
A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The legislature finds that the shortage of
3 safe, decent, and sanitary housing has been a persistent problem
4 in Hawaii for decades. Almost 50 years ago, in 1970, the Hawaii
5 state legislature recognized the need to address the severe
6 shortfall of affordable housing and passed H.B. No. 397, as
7 amended, which was enacted into law as Act 105, Session Laws of
8 Hawaii 1970, and codified as chapter 359A, Hawaii Revised
9 Statutes. This enabling legislation expanded the powers of the
10 then Hawaii Housing Authority to provide for-sale affordable
11 housing units to the general public, in addition to providing
12 affordable rental housing units. This legislation was the
13 predecessor to what is today known as the Hawaii housing finance
14 and development corporation.

15 In Act 105, the legislature noted "a critical shortage of
16 housing units for lower and middle income residents" and
17 emphasized the importance of affordable housing to the fabric of
18 society. Act 105 also cited studies indicating that the high



1 cost of housing is the result of multiple factors, including
2 "the cost and availability of land, the cost of development, the
3 cost and availability of financing, the cost added by government
4 regulation, the cost and availability of labor and materials,
5 the inflationary state of the economy", and "conflicting
6 priorities in our pluralistic society".

7 The legislature further finds that, almost a half century
8 after Act 105, the shortage of affordable housing still exists
9 and has grown to crisis proportions. With the limited amount of
10 developable land and the lack of needed infrastructure, we find
11 median prices for single family homes on Oahu hovering at around
12 \$750,000. Recent studies show a need for 60,000 housing units
13 by the year 2020. It is necessary, therefore, for the
14 legislature to take steps to preserve existing affordable
15 housing units for as long as possible. This has not been the
16 case in recent years relative to government-assisted or mandated
17 affordable housing units. Because of the lack of financial or
18 other resources, government agencies have often opted to waive
19 their right of first refusal to repurchase housing units that
20 are sold within the designated restriction period.



1 The intent of this Act is to create a pool of affordable
2 housing units that will remain permanently affordable through
3 the purchase and management of the units by the housing trust.

4 The purpose of this Act is to:

5 (1) Authorize the Hawaii community development authority
6 to waive a right to repurchase a reserved or workforce
7 unit and transfer the right of repurchase to a
8 qualified nonprofit housing trust;

9 (2) Authorize the counties to waive their right of first
10 refusal to repurchase certain privately-developed
11 affordable housing units and transfer that right of
12 repurchase to a qualified nonprofit housing trust;

13 (3) Authorize the Hawaii housing finance and development
14 corporation to waive its first option to repurchase
15 certain real property and transfer the right of
16 repurchase to a qualified nonprofit housing trust; and

17 (4) Amend the means of calculating the maximum price for
18 the Hawaii housing finance and development
19 corporation's first option to purchase real property.

20 PART II



1 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§206E- Reserved and workforce housing units; transfer
5 to qualified nonprofit housing trust. (a) Notwithstanding any
6 law to the contrary, the authority may authorize a designated
7 qualified nonprofit housing trust to administer the covenants
8 and rules related to the reserved housing and workforce housing
9 programs. Additionally, the authority may waive its right to
10 repurchase a reserved or workforce housing unit during the
11 restriction period and may transfer that right of repurchase to
12 a qualified nonprofit housing trust for the purpose of
13 maintaining the reserved or workforce housing unit as an
14 affordable housing unit. If the repurchase rights are
15 transferred to a qualified nonprofit housing trust, the
16 restrictions prescribed in this chapter or in rules adopted by
17 the authority shall be automatically extinguished and shall not
18 attach in subsequent transfers of title; provided further that
19 the qualified nonprofit housing trust shall establish new
20 buyback restrictions for the purpose of maintaining the unit as



1 affordable for as long as practicable, or as otherwise required
2 by the authority.

3 (b) A qualified nonprofit housing trust shall report the
4 status and use of its housing units to the authority by November
5 30 of each calendar year."

6 SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§46-15.1 Housing; county powers.** (a) [~~Any~~]
9 Notwithstanding any law to the contrary [~~notwithstanding~~], any
10 county shall have and may exercise the same powers, subject to
11 applicable limitations, as those granted the Hawaii housing
12 finance and development corporation pursuant to chapter 201H
13 insofar as those powers may be reasonably construed to be
14 exercisable by a county for the purpose of developing,
15 constructing, and providing low- and moderate-income housing;
16 provided that no county shall be empowered to cause the State to
17 issue general obligation bonds to finance a project pursuant to
18 this section; provided further that county projects shall be
19 granted an exemption from general excise or receipts taxes in
20 the same manner as projects of the Hawaii housing finance and
21 development corporation pursuant to section 201H-36; and



1 provided further that section 201H-16 shall not apply to this
2 section unless federal guidelines specifically provide local
3 governments with that authorization and the authorization does
4 not conflict with any state laws. The powers shall include the
5 power, subject to applicable limitations, to:

- 6 (1) Develop and construct dwelling units, alone or in
7 partnership with developers;
- 8 (2) Acquire necessary land by lease, purchase, exchange,
9 or eminent domain;
- 10 (3) Provide assistance and aid to a public agency or other
11 person in developing and constructing new housing and
12 rehabilitating existing housing for elders of low- and
13 moderate-income, other persons of low- and moderate-
14 income, and persons displaced by any governmental
15 action, by making long-term mortgage or interim
16 construction loans available;
- 17 (4) Contract with any eligible bidders to provide for
18 construction of urgently needed housing for persons of
19 low- and moderate-income;
- 20 (5) Guarantee the top twenty-five per cent of the
21 principal balance of real property mortgage loans,



- 1 plus interest thereon, made to qualified borrowers by
2 qualified lenders;
- 3 (6) Enter into mortgage guarantee agreements with
4 appropriate officials of any agency or instrumentality
5 of the United States to induce those officials to
6 commit to insure or to insure mortgages under the
7 National Housing Act, as amended;
- 8 (7) Make a direct loan to any qualified buyer for the
9 downpayment required by a private lender to be made by
10 the borrower as a condition of obtaining a loan from
11 the private lender in the purchase of residential
12 property;
- 13 (8) Provide funds for a share, not to exceed fifty per
14 cent, of the principal amount of a loan made to a
15 qualified borrower by a private lender who is unable
16 otherwise to lend the borrower sufficient funds at
17 reasonable rates in the purchase of residential
18 property; and
- 19 (9) Sell or lease completed dwelling units.



1 For purposes of this section, a limitation is applicable to
2 the extent that it may reasonably be construed to apply to a
3 county.

4 (b) Each county shall recognize housing units developed by
5 the department of Hawaiian home lands and issue affordable
6 housing credits to the department of Hawaiian home lands. The
7 credits shall be transferable and shall be issued on a one-
8 credit for one-unit basis, unless the housing unit is eligible
9 for additional credits as provided by adopted county ordinances,
10 rules, or any memoranda of agreement between a county and the
11 department of Hawaiian home lands. In the event that credits
12 are transferred by the department of Hawaiian home lands,
13 twenty-five per cent of any monetary proceeds from the transfer
14 shall be used by the department of Hawaiian home lands to
15 develop units for rental properties. Credits shall be issued
16 for each single-family residence, multi-family unit, other
17 residential unit, whether for purposes of sale or rental, or if
18 allowed under the county's affordable housing programs, vacant
19 lot, developed by the department of Hawaiian home lands. The
20 credits may be applied county-wide within the same county in
21 which the credits were earned to satisfy affordable housing



1 obligations imposed by the county on market-priced residential
2 and non-residential developments. County-wide or project-
3 specific requirements for housing class, use, or type; or
4 construction time for affordable housing units shall not impair,
5 restrict, or condition the county's obligation to apply the
6 credits in full satisfaction of all county requirements, whether
7 by rule, ordinance, or particular zoning conditions of a
8 project. Notwithstanding any provisions herein to the contrary,
9 the department may enter into a memorandum of agreement with the
10 county of Kauai to establish, modify, or clarify the conditions
11 for the issuance, transfer, and redemption of the affordable
12 housing credits in accordance with county affordable housing
13 ordinances or rules. Notwithstanding any provisions herein to
14 the contrary, the department may enter into a memorandum of
15 agreement with the city and county of Honolulu to establish,
16 modify, or clarify the conditions for the issuance, transfer,
17 and redemption of the affordable housing credits in accordance
18 with county affordable housing ordinances or rules. At least
19 half of the affordable housing credits issued by the city and
20 county of Honolulu shall be subject to a memorandum of agreement
21 pursuant to this subsection.



1 For purposes of this section, "affordable housing
2 obligation" means the requirement imposed by a county,
3 regardless of the date of its imposition, to develop vacant
4 lots, single-family residences, multi-family residences, or any
5 other type of residence for sale or rent to individuals within a
6 specified income range.

7 (c) [~~Any~~] Notwithstanding any law to the contrary
8 [~~notwithstanding~~], any county may:

- 9 (1) Authorize and issue bonds under chapter 47 and chapter
10 49 to provide moneys to carry out the purposes of this
11 section or section 46-15.2, including the satisfaction
12 of any guarantees made by the county pursuant to this
13 section;
- 14 (2) Appropriate moneys of the county to carry out the
15 purposes of this section;
- 16 (3) Obtain insurance and guarantees from the State or the
17 United States, or grants from either;
- 18 (4) Designate, after holding a public hearing on the
19 matter and with the approval of the respective
20 council, any lands owned by it for the purposes of
21 this section;



1 (5) Provide interim construction loans to partnerships of
2 which it is a partner and to developers whose projects
3 qualify for federally assisted project mortgage
4 insurance, or other similar programs of federal
5 assistance for persons of low and moderate income; and

6 (6) Adopt rules pursuant to chapter 91 as are necessary to
7 carry out the purposes of this section.

8 (d) Notwithstanding any law to the contrary, a county may
9 waive its right to repurchase a privately-developed affordable
10 housing unit built pursuant to a unilateral agreement or similar
11 instrument, and may transfer that right of repurchase to a
12 qualified nonprofit housing trust for the purpose of maintaining
13 the unit as affordable for as long as required by the county
14 program.

15 For the purposes of this subsection, "qualified nonprofit
16 housing trust" means a corporation, association, or other duly
17 chartered organization that is registered and in good standing
18 with the State; that is recognized by the Internal Revenue
19 Service as a charitable or otherwise tax-exempt organization
20 under section 501(c)(3) of the Internal Revenue Code of 1986, as
21 amended; and that has the capacity, resources, and mission to



1 carry out the purposes of this section as determined by the
2 county in which the housing unit is located.

3 (e) A qualified nonprofit housing trust shall report the
4 status and use of its housing units to its respective county by
5 November 30 of each calendar year.

6 [~~(d)~~] (f) The provisions of this section shall be construed
7 liberally so as to effectuate the purpose of this section in
8 facilitating the development, construction, and provision of
9 low- and moderate-income housing by the various counties.

10 [~~(e)~~] (g) For purposes of this section, "low and moderate
11 income housing" means any housing project that meets the
12 definition of "low- and moderate-income housing project" in
13 section 39A-281."

14 SECTION 4. Section 201H-1, Hawaii Revised Statutes, is
15 amended by adding a new definition to be appropriately inserted
16 and to read as follows:

17 "Qualified nonprofit housing trust" means a corporation,
18 association, or other duly chartered organization that is
19 registered and in good standing with the State; is recognized by
20 the Internal Revenue Service as a charitable or otherwise tax-
21 exempt organization under section 501(c)(3) of the Internal



1 Revenue Code of 1986, as amended; and has the capacity,
2 resources, and mission to carry out the purposes of this chapter
3 as determined by the corporation."

4 SECTION 5. Section 201H-47, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§201H-47 Real property; restrictions on transfer; waiver
7 of restrictions. (a) The following restrictions shall apply to
8 the transfer of real property developed and sold under this
9 chapter, whether in fee simple or leasehold:

10 (1) For a period of ten years after the purchase, whether
11 by lease, assignment of lease, deed, or agreement of
12 sale, if the purchaser wishes to transfer title to the
13 real property, the corporation shall have the first
14 option to purchase the real property at a price that
15 shall not exceed the sum of:

16 (A) The original cost to the purchaser, as defined in
17 rules adopted by the corporation;

18 (B) The cost of any improvements added by the
19 purchaser, as defined in rules adopted by the
20 corporation; [~~and~~]



1 (C) Simple interest on the original cost and capital
2 improvements to the purchaser at the rate of one
3 per cent a year; and

4 (D) The corporation's share of net appreciation in
5 the real property, as determined under rules
6 adopted pursuant to chapter 91, when applicable;

7 (2) The corporation may purchase the real property either:

8 (A) By conveyance free and clear of all mortgages and
9 liens; or

10 (B) By conveyance subject to existing mortgages and
11 liens.

12 If the real property is conveyed in the manner
13 provided in subparagraph (A), it shall be conveyed to
14 the corporation only after all mortgages and liens are
15 released. If the real property is conveyed in the
16 manner provided in subparagraph (B), the corporation
17 shall acquire the property subject to any first
18 mortgage created for the purpose of securing the
19 payment of a loan of funds expended solely for the
20 purchase of the real property by the seller; and any
21 mortgage or lien created for any other purpose



1 provided that the corporation has previously consented
2 to it in writing.

3 The corporation's interest created by this
4 section shall constitute a statutory lien on the real
5 property and shall be superior to any other mortgage
6 or lien except for:

- 7 (i) Any first mortgage created for the purpose
8 of securing the payment of a loan of funds
9 expended solely for the purchase of the real
10 property by the seller;
- 11 (ii) Any mortgage insured or held by a federal
12 housing agency; and
- 13 (iii) Any mortgage or lien created for any other
14 purpose; provided that the corporation has
15 previously consented to it in writing.

16 The amount paid by the corporation to the seller shall
17 be the difference, if any, between the purchase price
18 determined by paragraph (1) (A) to (C), and the total
19 of the outstanding principal balances of the mortgages
20 and liens assumed by the corporation;



1 (3) A purchaser may refinance real property developed and
2 sold under this chapter; provided that the purchaser
3 shall not refinance the real property within ten years
4 from the date of purchase for an amount in excess of
5 the purchase price as determined by paragraph (1) (A)
6 to (C); provided further that the purchaser shall
7 obtain the corporation's written consent if any
8 restriction on the transfer of the real property
9 remains applicable;

10 (4) After the end of the tenth year from the date of
11 initial purchase or execution of an agreement of sale,
12 the purchaser may sell the real property and sell or
13 assign the property free from any price restrictions;
14 provided that the purchaser shall be required to pay
15 to the corporation the sum of:

16 (A) The balance of any mortgage note, agreement of
17 sale, or other amount owing to the corporation;

18 (B) Any subsidy or deferred sales price made by the
19 corporation in the acquisition, development,
20 construction, and sale of the real property, and
21 any other amount expended by the corporation not



1 counted as costs under section 201H-45 but
2 charged to the real property by good accounting
3 practice as determined by the corporation whose
4 books shall be prima facie evidence of the
5 correctness of the costs;

6 (C) Interest on the subsidy or deferred sales price,
7 if applicable, and any other amount expended at
8 the rate of seven per cent a year computed as to
9 the subsidy or deferred sales price, if
10 applicable, from the date of purchase or
11 execution of the agreement of sale, and as to any
12 amount expended, from the date of expenditure;
13 provided that the computed interest shall not
14 extend beyond thirty years from the date of
15 purchase or execution of the agreement of sale of
16 the real property. If any proposed sale or
17 transfer will not generate an amount sufficient
18 to pay the corporation the sum as computed under
19 this paragraph, the corporation shall have the
20 first option to purchase the real property at a



1 price that shall not exceed the sum as computed
2 under paragraphs (1) and (2); and

3 (D) The corporation's share of appreciation in the
4 real property as determined under rules adopted
5 pursuant to chapter 91, when applicable;

6 (5) Notwithstanding any provision in this section to the
7 contrary, pursuant to rules adopted by the
8 corporation, the subsidy or deferred sales price
9 described in paragraph (4) (B) and any interest accrued
10 pursuant to paragraph (4) (C) may be paid, in part or
11 in full, at any time; and

12 (6) Notwithstanding any provision in this section to the
13 contrary, the corporation's share of appreciation in
14 the real property described in paragraph (4) (D):

15 (A) Shall apply when the sales price of the real
16 property that is developed and sold under this
17 chapter is less than the then-current,
18 unencumbered, fair market value of the real
19 property as determined by a real property
20 appraisal obtained prior to the closing of the
21 sale;



1 (B) Shall be a restriction that runs with the land
2 until it is paid in full and released by the
3 corporation, or extinguished pursuant to
4 subsection [~~(e)~~] (f); and

5 (C) May be paid, in part or in full, at any time
6 after recordation of the sale.

7 (b) If the corporation waives its first option to
8 repurchase the real property provided in subsection (a), a
9 qualified nonprofit housing trust shall have the option to
10 purchase the real property at the price and in the manner set
11 forth in subsection (a).

12 [~~(b)~~] (c) For a period of ten years after the purchase,
13 whether by lease, assignment of lease, deed, or agreement of
14 sale, if the purchaser wishes to transfer title to the real
15 property, and if the corporation or the qualified nonprofit
16 housing trust selected by the corporation does not exercise the
17 option to purchase the real property as provided in subsection
18 (a) [~~(c)~~] or (b), then the corporation shall require the purchaser
19 to sell the real property to a "qualified resident" as defined
20 in section 201H-32, and upon the terms that preserve the intent



1 of this section and sections 201H-49 and 201H-50, and in
2 accordance with rules adopted by the corporation.

3 ~~[(e)]~~ (d) The corporation may waive the restrictions
4 prescribed in ~~[subsection]~~ subsections (a) ~~[or (b)]~~ through (c)
5 if:

- 6 (1) The purchaser wishes to transfer title to the real
7 property by devise or through the laws of descent to a
8 family member who would otherwise qualify under rules
9 established by the corporation;
- 10 (2) The sale or transfer of the real property would be at
11 a price and upon terms that preserve the intent of
12 this section without the necessity of the State
13 repurchasing the real property; provided that, in this
14 case, the purchaser shall sell the real property and
15 sell or assign the real property to a person who is a
16 "qualified resident" as defined in section 201H-32;
17 and provided further that the purchaser shall pay to
18 the corporation its share of appreciation in the real
19 property as determined in rules adopted pursuant to
20 chapter 91, when applicable; or



1 (3) The sale or transfer is of real property subject to a
2 sustainable affordable lease as defined in section
3 516-1.

4 ~~[(d)]~~ (e) The corporation may release the restrictions
5 prescribed in ~~[subsection]~~ subsections (a) ~~[or (b)]~~ through (c)
6 if the real property is financed under a federally subsidized
7 mortgage program and the restrictions would jeopardize the
8 federal government's ability to recapture any interest credit
9 subsidies provided to the homeowner.

10 ~~[(e)]~~ (f) The restrictions prescribed in this section and
11 sections 201H-49 to 201H-51 shall be automatically extinguished
12 and shall not attach in subsequent transfers of title when a
13 qualified nonprofit housing trust becomes the owner of the real
14 property pursuant to subsection (b); or a mortgage holder or
15 other party becomes the owner of the real property pursuant to a
16 mortgage foreclosure, foreclosure under power of sale, or a
17 conveyance in lieu of foreclosure after a foreclosure action is
18 commenced; provided that the mortgage is the initial purchase
19 money mortgage, or that the corporation consented to and agreed
20 to subordinate the restrictions to the mortgage when originated,
21 if the mortgage is not the initial purchase money mortgage; or



1 when a mortgage is assigned to a federal housing agency. Any
2 law to the contrary notwithstanding, a mortgagee under a
3 mortgage covering real property or leasehold interest encumbered
4 by the first option to purchase in favor of the corporation,
5 prior to commencing mortgage foreclosure proceedings, shall
6 notify the corporation in writing of:

7 (1) Any default of the mortgagor under the mortgage within
8 ninety days after the occurrence of the default; and

9 (2) Any intention of the mortgagee to foreclose the
10 mortgage under chapter 667 forty-five days prior to
11 commencing mortgage foreclosure proceedings;

12 provided that the mortgagee's failure to provide written notice
13 to the corporation shall not affect the mortgage holder's rights
14 under the mortgage. The corporation shall be a party to any
15 foreclosure action, and shall be entitled to its share of
16 appreciation in the real property as determined under this
17 chapter in lien priority when the payment is applicable, and if
18 foreclosure occurs within the ten-year period after the
19 purchase, the corporation shall also be entitled to all proceeds
20 remaining in excess of all customary and actual costs and
21 expenses of transfer pursuant to default, including liens and



1 encumbrances of record; provided that the person in default
2 shall be entitled to an amount that shall not exceed the sum of
3 amounts determined pursuant to subsection (a) (1) (B) and (C).

4 ~~[(f)]~~ (g) The provisions of this section shall be
5 incorporated in any deed, lease, agreement of sale, or any other
6 instrument of conveyance issued by the corporation. In any sale
7 by the corporation of real property for which a subsidy or
8 deferred sales price was made by the corporation, the amount of
9 the subsidy or deferred sales price described in subsection
10 (a) (4) (B), a description of the cost items that constitute the
11 subsidy or deferred sales price, and the conditions of the
12 subsidy or deferred sales price shall be clearly stated at the
13 beginning of the contract document issued by the corporation.
14 In any sale in which the corporation's share of appreciation in
15 real property is a restriction, the terms of the shared
16 appreciation equity program shall be clearly stated and included
17 as an exhibit in any deed, lease, agreement of sale, or any
18 other instrument of conveyance.

19 ~~[(g)]~~ (h) This section need not apply to market-priced units
20 in an economically integrated housing project, except as
21 otherwise determined by the developer of the units; provided



1 that preference shall be given to qualified residents in the
2 initial sale of market-priced units.

3 ~~[(h)]~~ (i) The corporation is authorized to waive any of the
4 restrictions set forth in this section in order to comply with
5 or conform to requirements set forth in federal law or
6 regulations governing mortgage insurance or guarantee programs
7 or requirements set forth by federally chartered secondary
8 mortgage market participants.

9 (j) Notwithstanding any law to the contrary, if real
10 property is purchased by a qualified nonprofit housing trust
11 pursuant to subsection (b), the housing trust shall establish
12 new buyback restrictions for the purpose of maintaining the unit
13 as affordable for as long as practicable, or as otherwise
14 required by the corporation.

15 (k) A qualified nonprofit housing trust shall report the
16 status and use of its housing units to the corporation by
17 November 30 of each calendar year."

18 SECTION 6. Section 206E-2, Hawaii Revised Statutes, is
19 amended by adding three new definitions to be appropriately
20 inserted and to read as follows:



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 9. This Act shall take effect on July 1, 2017;
7 provided that the amendments made to section 46-15.1, Hawaii
8 Revised Statutes, by section 3 of this Act shall not be repealed
9 when that section is reenacted on July 1, 2019, pursuant to
10 section 3 of Act 102, Session Laws of Hawaii 2015, and section 4
11 of Act 102, Session Laws of Hawaii 2015, as amended by section
12 50 of Act 55, Session Laws of Hawaii 2016.

13



Report Title:

Affordable Housing Units; Transfer; Qualified Nonprofit Housing Trusts

Description:

Authorizes qualified nonprofit housing trusts to repurchase affordable units developed with government assistance when a government entity waives its first right of refusal to repurchase the unit. Authorizes counties to waive a first right of refusal to repurchase a privately-developed affordable housing unit built pursuant to a unilateral agreement or similar instrument. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

