

FOR ACTION

I. REQUEST

Approve the Revisions to Proposed Chapter 15-308 "State Assisted Sale and Lease Program," Hawaii Administrative Rules, Based on Public Hearing Comments Relating to the Definition of "Asset", Exclusions from the Asset Limit, and Broadening the Allowable Grounds for Consenting to Additional Financing.

II. FACTS

- A. On October 8, 2020, the HHFDC Board approved Proposed Chapter 15-308, Hawaii Administrative Rules (HAR), which transfers provisions relating to HHFDC's Sales Program to a new chapter. The October 8, 2020 For Action memorandum and a summary of proposed Chapter 15-308 is provided in Exhibit A.
- B. Approval to conduct a public hearing was granted on June 14, 2021. The public hearing was held on July 26, 2021, following statewide publication of notice on June 22, 2021.

III. DISCUSSION

- A. Four individuals representing the Bank of Hawaii, Honolulu Habitat for Humanity and Oceanfront Sotheby's Realtors attended the public hearing, but did not provide any comment. HHFDC also received written comments on proposed Chapter 15-308, HAR from representatives of Central Pacific Bank Home Loans Division, the Hawaii HomeOwnership Center, Na Hale O Maui, Castle & Cooke Hawai'i, and one individual. (See Exhibit B).
- B. After review of the written comments on proposed Chapter 15-308, staff recommends that the following revisions be made:
 - 1. Accept public comment relating to the definition of "asset" and relating to exclusions from the proposed household asset limit, as follows:
 - a. In section 15-308-2, amend the definition of "asset" to exclude references to personal property. This would address concerns that the asset limit would unduly penalize homebuyers with personal property such as automobiles or savings for a down payment.
 - b. In section 15-308-22, expressly exclude qualified retirement accounts, health savings accounts, qualified tuition programs (such as 529 savings plans), savings of up to twenty percent of the purchase price intended for use as a down payment, and gifts of up to twenty percent of the purchase price to assist in the purchase of the unit from the asset limit.

2. Accept public comment relating to allowable grounds for HHFDC to consent to homeowner additional financing, as follows. In section 15-308-83, amend subsection (c) to strike a proviso limiting HHFDC authority to consent to a homeowner's refinancing for purposes of reducing interest rate only. Commenters pointed out that there were other reasonable grounds to refinance a mortgage loan, such as to remove Private Mortgage Insurance (PMI) or to refinance out of an Adjustable-Rate Mortgage (ARM) to a conventional loan.
 3. **Not accept** the following public comments:
 - a. Amend the definition of "first-time homebuyer" by replacing the term "unit" with "residential property suitable for dwelling purposes. This was not deemed necessary, because "unit" is already a defined term in the rules.
 - b. Amend the definition of "qualified resident"
 - i. To include qualified nonprofit housing trusts. This was determined to be contrary to statutory intent.;
 - ii. To be identical to the Internal Revenue Service's (IRS) definition of first-time homebuyer and to §201H-32, HRS. There is no requirement to limit homeownership opportunities to only those who have had no ownership interest in residential property for the last three years; and
 - iii. To include those who have owned not more than 50 percent of any unit in Hawaii. This was determined to be contrary to the program's intent to help first-time homebuyers.
 - c. Amend §15-308-85 to allow qualified nonprofit housing trusts to use their own resale formulas rather than HHFDC's buyback formula when repurchasing an affordable for-sale unit. This was deemed unnecessary, since the HHFDC buyback formula no longer applies once a qualified nonprofit housing trust has acquired the unit.
 - d. Amend §15-308-105 to stop applying any 201H restrictions to qualified nonprofit housing trusts once they are pre-approved by HHFDC. This was determined to be contrary to the program's intent.
 - e. Amend §15-308-107 by making the owner, not the purchaser, the individual responsible for paying for the unit's appraisal.
 4. Other grammatical, typographical, technical, and housekeeping amendments were also made to the proposed draft.
- C. A copy of proposed Chapter 15-308, HAR, as revised to incorporate the public comments discussed above, is attached hereto as Exhibit C.

IV. RECOMMENDATION

That the HHFDC Board of Directors:

- A. Approve proposed Chapter 15-308, HAR, as revised herein to incorporate certain comments made at the public hearing, and
- B. Authorize the Executive Director to transmit proposed Chapter 15-308, HAR, to the Governor for final approval if no additional substantive amendments are required.

Attachments: Exhibit A – October 8, 2020 For Action memorandum and section-by-section description of proposed Chapter 15-308, HAR
Exhibit B – Written comments received on proposed Chapter 15-308, HAR
Exhibit C - Proposed Chapter 15-308, HAR as revised post-public hearing

Prepared by: Mavis Masaki, Planner

MM

Reviewed by: Dean Minakami, Development Branch Chief

DM

Janice Takahashi, Chief Planner

JT

**Approved by The Board of Directors at its meeting
on SEPTEMBER 9, 2021
PLANNING, EVALUATION & COMPLIANCE BRANCH
Please take necessary action.**



EXECUTIVE DIRECTOR

FOR ACTION

I. REQUEST

Approve Proposed Chapter 15-308 "State Assisted Sale and Lease Program," Hawaii Administrative Rules, to Transfer Provisions Related to the Corporation's Sales Program from Chapter 15-307, Hawaii Administrative Rules to a New Chapter; to Implement Act 159, SLH 2017, as Amended by Act 65, SLH 2018, to Set Forth Parameters for Qualified Nonprofit Housing Trusts to Exercise the Corporation's Buyback Rights When the Corporation Opt's Out of Them, to Broaden Circumstances Under Which Homeowners May Finance Their Affordable Homes, and To Make Other Clarifying and Housekeeping Amendments

II. FACTS

- A. Chapter 15-307, Hawaii Administrative Rules (HAR), governs most of HHFDC's development programs, including the 201H expedited approvals process and Dwelling Unit Revolving Fund (DURF) loans. At present, it also governs the sale of affordable units, the buyback program, the shared appreciation equity program, and the administration of HHFDC leases. Chapter 15-307, HAR is HHFDC's lengthiest administrative rules chapter.
- B. Act 159, Session Laws of Hawaii (SLH) 2017, as amended by Act 65, SLH 2018, gave qualified non-profit housing trusts the ability to exercise the HHFDC's buyback rights to affordable for-sale homes developed under Chapter 201H if the HHFDC has opted out of buying back the home. To implement Act 159, HHFDC must amend the Sales Program provisions currently in Chapter 15-307, HAR.
- C. The Sales Program provisions that are currently in the Development rules, will be put into a new HAR chapter, tentatively identified as Chapter 15-308, "State Assisted ~~Real Estate Services~~ Program", HAR to separate them from the development-related subchapters of Chapter 15-307, HAR and to make them less unwieldy. *Sale and Lease*
- D. The adoption of Chapter 15-308, HAR will have to take place concurrently with proposed amendments to Chapter 15-307, HAR to remove the same provisions so that there is no gap between the two rulemaking actions.

III. DISCUSSION

- A. HHFDC consulted with various non-profit organizations that promote homeownership for first-time homebuyers using various models, including the community land trust in the drafting of provisions implementing Act 159. Some of the comments provided by these non-profit organizations were incorporated into the draft. Some of the comments made requested changes beyond the scope of Act 159, and could not be adopted via HHFDC rulemaking alone.
- B. Proposed Chapter 15-308, HAR, is attached hereto as Exhibit A.
- C. A section-by-section summary of proposed Chapter 15-308, HAR, is attached hereto as Exhibit B.

- D. Major amendments to the current rule language that are proposed are highlighted below:
1. Eligibility for purchase or rental of a residence in an HHFDC-assisted project now includes a household asset limitation of 135 percent of the maximum qualifying household income limit for the project, excluding qualified retirement accounts and gifts of up to 20 percent of the purchase price for use as a down payment. This amendment is intended to ensure that first-time homebuyers actually need homebuyer assistance to purchase their homes.
 2. Act 159 Implementation:
 - a. The defined term "qualified nonprofit housing trust" was added to state the eligibility requirements for nonprofit housing entities to be offered the opportunity to exercise HHFDC's buyback rights when an affordable home is sold. HHFDC will establish a list of qualified nonprofit housing trusts who have expressed interest in participating in the buyback program.
 - b. When HHFDC is notified that a homeowner with a buyback restriction wants to sell their home, HHFDC will calculate the buyback price using the existing buyback formula. If HHFDC decides not to buy back the home, HHFDC will offer it to a qualified nonprofit housing trust at that calculated price.

E. The next steps in the rulemaking process are as follows:

1. Pursuant to Administrative Memorandum 18-02, uploading the proposed rule amendments to the Hawaii Administrative Rules Processing Site (HARPS);
2. Statewide publication of notice of the public hearing no later than 30 days prior to the hearing date;
3. The public hearing; and
4. Submission of a request for the Governor's final approval of the proposed rule amendments through HARPS. The request will include a summary of all public comments on the proposed rules.

If at any step in this process, it becomes necessary to make substantive amendments to the proposed rule amendments, staff will return to the Board for further discussion and approval.

IV. RECOMMENDATION

That the HHFDC Board of Directors:

- A. Approve proposed Chapter 15-308, HAR, subject to approval as to form by HHFDC's Deputy Attorney General, and to the Governor's approval, and authorize the Executive Director, or designated representative(s), to conduct a public hearing on the adoption of Chapter 15-308, HAR;
- B. Authorize the Executive Director to make any necessary non-substantive amendments to the draft rule following the public hearing; and

- C. Subsequent to the public hearing, authorize the Executive Director to transmit proposed Chapter 15-308, HAR, to the Governor for final approval if no additional substantive amendments are required.

Attachments: Exhibit A - Proposed Chapter 15-308, HAR
Exhibit B - Section-by-section description of Proposed Chapter 15-308, HAR

Prepared by: Mavis Masaki, Planner

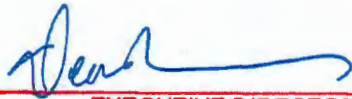
Reviewed by: Deepak Neupane, Development Branch Chief

Janice Takahashi, Chief Planner

MM
DN
JK

Approved by The Board of Directors at its meeting
on OCT 08 2020, as noted on page 1
PLANNING, EVALUATION & COMPLIANCE BRANCH

Please take necessary action.



EXECUTIVE DIRECTOR

Section by Section Summary of Proposed Chapter 15-308, HAR

Subchapter	Section	Title	Change	Summary
1 - General Provisions	15-308-1	Purpose	Deletes references to development programs. Adds language clarifying the intent of the sales program to assist first-time homebuyers that are in need of assistance to purchase their home.	The added language is intended to address circumstances in which a prospective homebuyer meets the eligibility requirements as a first-time homebuyer with respect to income, but has access to sufficient liquid assets themselves, or by gift, to not require government assistance to become a homeowner.
	15-308-2	Definitions	Adds new definitions and amended others as described herein.	Added new definitions of "administrative costs", "applicant", "application for relief", "co-applicant", "eligible purchaser", "fair market value", "first-time homebuyer", "HUD", "initial public offering", and "qualified nonprofit housing trust".
				Amended the definitions of "application", "gross household income", "person with a disability", and "sponsored project".
				Repealed the following definitions which solely relate to the development programs and therefore not needed in this new chapter: "special needs housing", "starter home", "subdivision and construction documents", "subdivision documents", and "substantial construction defect".
	15-308-3	References to other chapters	Adds new subsection to add reference to Chapter 15-307.	The new subsection clarifies that any pre-existing references to sales or lease program provisions in Chapter 15-307, HAR should henceforth be construed as references to relevant provisions in new Chapter 15-308, HAR.
	15-308-4	Fees	Moves sales and lease program fees only into the body of the rules.	In addition to moving the existing program fees here, the following new fees are proposed: Lease Rent Delinquency Fee (per invoice): \$50 Notice of Lease Default: \$250
2 - Eligibility and Preferences to Purchase Affordable Dwelling Units		Title	Amends subchapter title from "The Sale of Affordable Units" to title <i>supra</i> .	Title change to more accurately reflect contents of this subchapter.
	15-308-21	Purpose	Clarifies that the subchapter covers eligibility and preferences for the sale of dwelling units.	Broadens purpose of the subchapter beyond sales procedures. Also makes housekeeping amendment to include reference to Chapter 15-307, HAR to make clear that the subchapter applies to dwelling units developed under that HAR chapter.
	15-308-22	Eligibility	Amends title. Adds new language expanding income and asset limits for eligibility purposes. Adds in references to qualified nonprofit housing trusts.	Added language imposes an income limit of 140% AMI or the project's income limits, whichever is lower. Also imposes an asset limit of 135% of the maximum qualifying household income of the project or 140% AMI, whichever is lower. The asset limit excludes qualified retirement accounts and gifts of downpayments not exceeding 20% of the purchase price of the dwelling unit. This new limit is intended to screen out first-time homebuyers that do not actually need HHFDC assistance to purchase a home. Also adds in language referencing qualified nonprofit housing trusts to the repurchase reference. Repeals changes in "place of employment" and "income" as grounds to allow those who have previously purchased a dwelling unit using HHFDC's program to purchase another dwelling unit.
	15-308-23	Eligibility for current owners in corporation sponsored projects	Amends title.	Deletes "exception" and replaces it with "eligibility."
	15-308-24	Eligibility for former owners in corporation sponsored projects	Amends title. Adds in reference to qualified nonprofit housing trusts.	
	15-308-25	Occupancy guidelines for sale units	None.	
	15-308-26	Counseling	None.	

Section by Section Summary of Proposed Chapter 15-308, HAR

	15-308-27	Preference in dwelling unit sales	Deletes subsection defining "person with a disability."	In addition to the deletion, amends reference to child custody status and various other housekeeping amendments for style and grammar purposes.
	15-308-28	Information and verification	Adds language to subsection (c).	Clarifies that applicants who willfully provided false information in their applications are not only ineligible, but are disqualified from any other future corporation-assisted project.
3 - Marketing and Sale of Affordable Dwelling Units			Amends Subchapter title	Added "Marketing and..." to the previous subchapter title.
	15-308-41	Marketing and Sale of dwelling units	Amends title. Adds new subsection.	Clarifies that all affordable dwelling units developed under Chapter 201H, HRS, are subject to the marketing and sale provisions of this subchapter. Adds that applicants with more than one application submitted must withdraw the others when the applicant enters into a binding sales contract.
	15-308-42	Announcement; publication	Replaces "market-priced" with "affordable"	Clarifies that this subchapter applies only to the sale and marketing of affordable, not market-priced, units. Makes other housekeeping amendments for style purposes.
	15-308-43	Reservation list; requirements	Replaces "market-priced" with "affordable"	
	15-308-44	Sale of residential units	Deletes subsection (b).	Repeals the ability of developers to sell affordable units to any market purchaser after the qualified resident reservation list is exhausted to ensure that developers try to locate affordable purchasers for their projects.
4 - Rental of Corporation-Owned Dwelling Units			Amends Subchapter title	Clarifies that this subchapter only applies to the rental of dwelling units owned by HHFDC.
	15-308-61	Eligibility	Amends section title. Adds eligibility criteria for renters.	Adds in qualified resident and income and asset limits to eligibility criteria for applicants seeking to rent a corporation-owned dwelling unit. Makes other conforming amendments for purposes of grammar and style.
	15-308-62	Occupancy guidelines for sale units	None.	
	15-308-63	Preference for the rental of dwelling units	None.	
	15-308-64	Information and verification	None.	
	15-308-65	Rent determination	Replaces existing language with new language.	Sets rent limit at 140% AMI, as adjusted from time to time.
	15-308-66	Rental agreement	None.	
	15-308-68	Program administration	None.	
5 - Repurchase of Dwelling Units Subject to Restrictions				
	15-308-81	Purpose	Adds in "qualified nonprofit housing trust"	Clarifies that qualified nonprofit housing trusts may exercise HHFDC's repurchase rights per Act 159.
	15-308-82	Applicability	Deletes "purchased from the corporation."	The amendment is to clarify that the repurchase restrictions apply to all dwelling units developed under 201H, not just corporation-owned units.

Section by Section Summary of Proposed Chapter 15-308, HAR

	15-308-83	Providing consent to additional financing	Moves this section forward in order. Adds language clarifying the total amount of additional financing that a homeowner can borrow while still under HHFDC's buyback and SAE restrictions. It also allows refinancing loans for purposes of lowering interest rates provided that there is no cash out. It sets a maximum loan amount at not to exceed the FMV.	This section switches places with the following section. The provision clarifies the circumstances under which a homeowner can obtain additional refinancing, or refinancing of the mortgage loan. It allows refinancing for purposes of lowering interest rate so long as the principal amount of the mortgage does not change. It does not allow additional financing that would exceed eighty percent of the fair market value (FMV) unless there are hardship circumstances. It also sets a hard limit of 100% of FMV for allowable financing on a home still encumbered by HHFDC's restrictions.
	15-308-84	Repurchase when owner seeks to transfer title	Moves this section back in order. Adds in references to "qualified nonprofit housing trust" throughout.	This section is also amended to add in "qualified nonprofit housing trust" as an entity that may repurchase units.
	15-308-85	Determination of repurchase price for purchases subject to restrictions	Adds language to subsection (a), adds new subsection (b) and adds references to "qualified nonprofit housing trusts" throughout.	Adds proviso that owners must provide adequate documentation of any claimed improvement costs when calculating the repurchase price of their dwelling unit. Adds new subsection stating that HHFDC shall calculate the repurchase price to be paid by a qualified nonprofit housing trust if the repurchase rights have been assigned to said trust.
	15-308-86	Waiver by corporation of right to repurchase	Amends subsection (b).	Clarifies that when HHFDC waives the buyback restriction the restriction is reinstated for any subsequent conveyance. Makes other housekeeping amendments for grammar and style.
	15-308-87	Release by the corporation of right to repurchase	None.	
	15-308-88	Procedures regarding repurchase by corporation and waiver of right of repurchase.	Amends subsections (b), (c), and (d).	Adds proviso that in cases where an extension of time is needed to review an owner's request to sell that the repurchase price remains unchanged if the time limit to repurchase is extended due to the owner's failure to comply with repurchase procedures. Adds in references to qualified nonprofit housing trusts to implement Act 159. Adds clarification that only the owner can receive a waiver of the repurchase right from the corporation.
	15-308-89	Resale or rental of repurchased dwelling unit	Amends subsections (c) and (d).	Adds in references to qualified nonprofit housing trusts to implement Act 159. Provides that if the corporation purchases a unit and subsequently rents the unit out, it shall do so pursuant to Subchapter 4.
	15-308-90	Repurchase under foreclosure of properties subject to restrictions	None.	
6 - Shared Appreciation Equity Program Restrictions				
	15-308-101	Purpose	None.	
	15-308-102	Applicability	None.	
	15-308-103	Corporation's percentage share of net appreciations	Amends subsection (a)	Adds language to clarify that the share of net appreciation is due upon the transfer or sale, for purposes of consistency.

Section by Section Summary of Proposed Chapter 15-308, HAR

	15-308-104	Payment due on sale or transfer	Replaces existing references to "purchaser" throughout with "owner", a defined term.	This amendment is a housekeeping measure for style and consistency.
	15-308-105	Definition of sale or transfer	Replaces existing references to "purchaser" throughout with "owner", a defined term.	This amendment is a housekeeping measure for style and consistency.
	15-308-106	Permitted transfers	Replaces existing references to "purchaser" throughout with "owner", a defined term.	This amendment is a housekeeping measure for style and consistency.
	15-308-107	Determination of fair market value	Replaces existing references to "purchaser" throughout with "owner", a defined term. Amends subsection (g) to replace existing language with "qualified appraiser as defined in these rules."	These amendments are housekeeping measures for style and consistency.
	15-308-108	Cancellation of the corporation's share of the net appreciation	None.	
	15-308-109	Exercise of the right to repurchase restriction	None.	
	15-308-110	Prepayment of corporation's percentage share of net appreciation	Replaces existing references to "purchaser" throughout with "owner", a defined term. Establishes the minimum partial payment amount as 25%.	The first amendment is a housekeeping measure for style and consistency. The second establishes a set minimum partial payment amount of 25% for owners who wish to prepay a part of their share of net appreciation.
7 - Owner Occupancy Waiver Procedures				
	15-308-121	Purpose and applicability	None.	
	15-308-122	Application for temporary owner occupancy waiver	Makes minor clarifying amendments.	Clarifies that unit owners submit applications for temporary owner occupancy waivers on forms provided by HHFDC.
	15-308-123	Hardship circumstances required	None.	
	15-308-124	Duration of temporary waiver	None.	
	15-308-125	Allowable uses of the dwelling unit during the temporary waiver period	None.	
	15-308-126	Proof of occupancy	None.	
	15-308-127	Extension of the owner occupancy requirement	None.	
	15-308-128	Recovery of administrative expenses and attorneys fees.	None.	
	15-308-129	Failure to reoccupy	None.	

Section by Section Summary of Proposed Chapter 15-308, HAR

	15-308-130	Extension of the temporary waiver period	Deletes preceding section that allowed owners a right to a contested case hearing. Renumbers this section.	Removes the right to a contested case hearing if the owner disagrees with HHFDC's determination on the waiver request.
8 - Procedures to Implement Qualified Resident Preferences in the Initial Sale of Market-Priced Dwelling Units				Adds new subchapter to govern market-priced units in 201H projects.
	15-308-151	Announcement; publication	Adds new section.	Describes how developers are to publish notice of their market-priced units.
	15-308-152	Designation of residential units	Adds new section.	States that developers with market-priced units shall designate all units for qualified residents during the initial offering period. Only after the 30-day initial offering can they sell any remaining market-priced units to any purchaser.
	15-308-153	Reservation list; requirements	Adds new section.	Requires developers' brokers to establish a qualified resident reservation list for market-priced units on a first-come first served basis. Provides that applicants making false statements on their applications are subject to criminal charges and civil actions as provided in State law. Requires developers to submit the reservation list to the corporation.
	15-308-154	Sale of residential units	Adds new section.	Provides that the developer shall offer market-priced units to those on the reservation list by one of 3 allowable methods. Only once the reservation list is exhausted may the developer sell any remaining units to any purchaser. Requires the developer to submit sales contracts and deeds, other real estate documents and information to the corporation, same as it does for the affordable units. Requires the developer to comply with state and federal fair housing laws.
9 - Administration of Corporation Leases				
	15-308-171	Purpose	None.	
	15-308-172	Applicability	None.	
	15-308-173	Administration of residential leases	None.	
	15-308-174	General lease provisions	None.	
	15-308-175	Extension of fixed rent period or lease term for mortgage purposes	Amends subsection (c).	Updates existing reference to fee schedule to its current place, in section 15-308-7.
	15-308-176	Sale of leased fee interest of the land	None.	



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July 23, 2021

Hawaii Housing Finance and Development Corporation
Department of Business, Economic Development and Tourism
State of Hawaii
677 Queen Street, Suite 300
Honolulu, HI 96813
Attn: Mavis Masaki

SUBJECT: Amendments to and compilation of Chapter 15-307, HAR, and a proposed new Chapter 15-308, HAR

Dear Ms. Masaki:

I am Reina Miyamoto, Executive Director of the Hawaii HomeOwnership Center (HHOC), as well as the HHOC Housing & Land Trust, a 501(c)(3) nonprofit subsidiary of HHOC. The HHOC Housing and Land Trust was established in 2015 for the purpose of preserving an inventory of affordable housing units that are anti-speculative in nature. In general, our goal is to maintain affordable housing for as long as possible with less emphasis on increasing equity for the homeowner.

The HHOC Housing and Land Trust would like to express its support of the rule changes proposed in the new Chapter 15-308, HAR, particularly provisions which implement Act 159, Session Laws of Hawaii 2017. This Act allows qualified nonprofit housing trusts to exercise HHFDC's buyback rights when buyers opt to sell their units prior to the 10-year restriction period.

We would like to offer the following technical amendments to the draft rules:

- 1) Amend paragraph (3) under the definition of "qualified nonprofit housing trust" (QNHT) on page 308-12 to read as follows:

"(3) Agrees to comply with all applicable requirements set forth in subchapter 5 of this chapter unless otherwise provided for in Section 201H-47, HRS, whereby a qualified nonprofit housing trust can implement its own restrictions relative to the sale of repurchased dwelling units, subject to the approval of the corporation."

Rationale: This technical amendment would be consistent with the legislative intent of Act 159, SLH 2017, and would enable the QNHT to impose more stringent requirements in order that the affordable housing stock can be preserved for a longer period of time than required under the draft rules.



EXHIBIT B

2) Amend the definition of "Qualified resident" on page 308-12 to read as follows:

"Qualified resident" means the same as defined under section 201H-32, HRS. It may also include a qualified nonprofit housing trust that subsequently sells a repurchased unit to a qualified resident."

Rationale: This technical amendment clarifies that when HHFDC waives its right to repurchase a unit, buyers can sell their units to a QNHT which, in turn, would sell the unit to a qualified resident.

Your favorable consideration of our proposed amendments would be greatly appreciated.

Sincerely,



Reina Miyamoto
Executive Director

Masaki, Mavis M

From: Byron Chock <bkchock@hotmail.com>
Sent: Monday, July 26, 2021 10:10 AM
To: Masaki, Mavis M
Cc: Kometani, Lorna M
Subject: [EXTERNAL] Fw: Proposed Hawaii Administrative Rules

re: First time Homebuyer....in my opinion, the Agency might want to follow the same guidelines as the MCC program and the HULA Mae program. Since both programs are funded by tax exempt bonds, the first time homebuyer requirements are defined by the IRS as follows: the applicant may not have owned a "principal" residence for the last 3 years prior to application (or closing) of the new owner occupant property. This allows someone to actually have owned investment properties (or in some cases family property) and not be disqualified. And looking down the road, in the event the MCC program does continue and/or if the HULA MAE program is used for an affordable project at least this guideline will not conflict with each other. I think the way it is being proposed, someone who had owned an o/oc property two years but sold it could be eligible for the affordable program but not the MCC or HULA MAE. MCC is really not a big deal but if an affordable project is using the HULA MAE program as one of the financing tools, it does put more pressure on staff to catch this quirk (just in case the loan officer doesn't catch it).

Assets--might want to add more definition to state only "liquid" assets such as cash, stocks, investments (except retirement funds) and similar. This should eliminate the problem regarding "personal" property less outstanding Liabilities. The way it is being presented, someone's car would have to be included. Besides trying to verify the amount owed on the car, would need to establish how the current value is be calculated. If any gift funds are being used for the transaction, might want to state this will also be part of the liquid fund assets to be counted toward the maximum amount allowed. Might also want to state the gift funds must be US \$ within the United States and its territories.

Gross household income---I think it states all income will be counted for all adult members (age 18+) of the household. I'm guessing this would include any college students who might still be counted as dependents under their parents.

FYI--Dependent student's income is not counted in the MCC and HULA MAE programs.

15-308-22 Eligibility

I understand about not including the retirement accounts toward the 135% limit; is the proposal stating that gift funds up to 20% of the sales prices would be exempt? If this is the case, I recommend that all gift funds be deposited directly with escrow---this would allow staff to see how much funds are being used.

Issue---if the applicant qualifies under the 135% proposed rule at application, do they still need to qualify again prior to closing?

I'm mixed about the issue exempting that 20% gift funds; I can argue for both sides but I guess it would depend on the direction the Agency is trying for. I am leaning towards counting everything; that way I think this would allow those who really need affordable housing; for those who become ineligible because of this rule, I think they could qualify for a market unit.

Last thing, if you do allow equity lines at closing, you might want to add some provision that the Agency will not consent to paying off any equity lines within the first year after recordation.

Reason: depending on which gift guidelines are accepted, there could be those who might skirt the rules by taking out a second position equity line. The applicant could pay off the equity line with gift funds given 1-2 months after closing.--just a thought.

Have a good day.

bc



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DEVELOPMENT CORP
2021 JUL 23 P 3:01

Testimony by Harry Saunders
President, Castle & Cooke Hawai'i
July 23, 2021

Hawaii Housing Finance & Development Corporation
Regarding:
Title 15 – Chapter 308 – State Assisted Sales and Lease Program

COMMENTS

Chair Donn Mende, Vice Chair Gary Mackler, and Members of the Hawaii Housing Finance & Development Corporation Board of Directors,

I am Harry Saunders, President of Castle & Cooke Hawai'i. Thank you for the opportunity to submit testimony regarding the proposed amendments to Title 15 – Chapter 308 – State Assisted Sales and Lease Program.

Castle & Cooke Hawai'i supports the development of affordable homes and prioritizing the sale of affordable units to first-time homebuyers in continued efforts to bring homeownership to Hawai'i residents.

To that point, I offer the following comment. In the section on eligibility, 15-308-22 (3), limits household assets to 135% of the maximum qualifying household income, and qualified retirement accounts and gifts up to 20% of the purchase price. These household assets could include vehicles, and retirement accounts and gifts exceeding 20% of the purchase price. That limit is too restrictive and will penalize buyers who have diligently saved over the years to buy a home while earning wages within the qualified household income limits. To illustrate, a 2 person household with a household income meeting 120% AMI and looking to purchase a home at the top of the 120% AMI sales price could not have household assets exceeding \$156,654 and any qualified retirement accounts and gifts exceeding \$135,200 would count as household assets.

At a time when there are so many in need of a home, a dire lack of new construction, dramatically increasing housing construction costs and home prices, we must do everything we can to give people the ability to purchase or rent a home. This is not the time to make more restrictive regulations and policies.

Let's start with providing as many opportunities as possible to Hawai'i residents with earnings falling within the affordable spectrum who have been diligently working, saving and waiting for the day of homeownership.

680 Iwilei Road, Box 510, Honolulu, Hawaii 96817
Phone: (808) 548-4811 Fax: (808) 548-6690

EXHIBIT B

Testimony of Harry Saunders
July 23, 2021
Page 2

Mahalo for your consideration of my testimony. Should you have any questions, please feel free to contact us:

Harry Saunders
President
Castle & Cooke Hawai'i
fsakai@castlecooke.com
Phone: 548-4884

Garret Matsunami
Vice President Residential Operations
Castle & Cooke Hawai'i
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EXHIBIT B

EXHIBIT B

Section	Page	Description	Suggested revision	Rationale
§15-308-2	308-8	First-time homebuyer	revise to "qualified resident who has owned Hawaii for a period of one-year prior to the date of application."	Definition should be consistent with §15-308-22 Eligibility (4) "sale of first dwelling caused by extreme hardship such as family death, divorce, loss of employment, or a disability...."
§15-308-4	308-14	Fees	Clarify: Fees charged for action undertaken by the state. Not when a Qualified nonprofit housing trust enforces terms of sustainable lease	State should collect fees when it is required to admin/work. State should not collect fees when another entity does the admin/work.
§15-308-85	308-32-33	Repurchase Price	HHFDC formula	allow Corporation to waive its rights/formal in favor of Qualified Nonprofit Housing Trust to use their Resale Formula.
§15-308-90	308-37	Repurchase-Foreclosure (sub) restrictions	Allow a qualified nonprofit housing trust to exercise option (Act 159)	Keep affodable for a longer period or in perpetuity
308-38		Repurchase - foreclosure sub) shared appreciation	Allow a qualified nonprofit housing trust/CLT to exercise option (Act 159)	Keep affodable for a longer period or in perpetuity
SubChapter 6 §§15-308-101-105		Shared Appreciation	Approve qualified nonprofit housing trust program including but not limited to shared appreciation policy.	If corporation allow nonprofit housing trust/CLT to step in and exercise option, should follow their program.
§15-308-108	308-44	Cancellation of shared net appreciation	cancel upon transfer of option to qualified nonprofit housing trust/CLT	Keep affodable for a longer period or in perpetuity
§15-308-109	308-45	Exercise of Right to purchase	Should include transfer of right to qualified nonprofit housing trust/CLT	Keep affodable for a longer period or in perpetuity
§15-308-129	308-48	Failure to reoccupy	Allow qualified nonprofit housing trust/CLT to succeed to corporations' right to repurchase	Keep affodable for a longer period or in perpetuity

Masaki, Mavis M

From: Kometani, Lorna M
Sent: Friday, July 23, 2021 8:26 AM
To: Masaki, Mavis M
Cc: Spencer Lee
Subject: Fw: Proposed Amendment to HHFDC Development Sales and Lease Programs

Forwarding Spencer Lee's comments to the proposed revisions. He and I spoke discussed his comments/explanations to the proposed rules.

He has worked on the Kapiolani Residence and The Central Ala Moana projects as a mortgage loan officer/manager and have directly participated in the overall sales process with us.

His colleague, Rusty Rasmussen may also submit comments.

Thank you!

Lorna Kometani
Real Estate Services Section Chief
Tel: (808) 587-0517

Hawaii Housing Finance and Development Corporation
Real Estate Services Section
677 Queen Street, Suite 300, Honolulu 96813
Fax: (808) 587-0600

From: Spencer Lee <spencer.lee@cpb.bank>
Sent: Wednesday, July 14, 2021 9:33 AM
To: Kometani, Lorna M <lorna.m.kometani@hawaii.gov>
Subject: [EXTERNAL] FW: Proposed Amendment to HHFDC Development Sales and Lease Programs

resending



Spencer Lee
VP, Sales Manager
NMLS# 844697



HOME LOANS DIVISION
225 Queen Street, 5th Floor, Honolulu, HI 96813
Phone: 808.544.1931 | Mobile: 808.729.1919 | eFax: 808.544.5952
spencer.lee@cpb.bank | cpb.bank



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From: Spencer Lee <spencer.lee@cpb.bank>
Sent: Thursday, July 8, 2021 2:59 PM
To: lorna.m.kometani@hawaii.gov
Cc: Rusty Rasmussen <rusty.rasmussen@cpb.bank>
Subject: FW: Proposed Amendment to HHFDC Development Sales and Lease Programs

Hi Lorna,

I'd be happy to discuss my comments below. Also, if you want I can provide written testimony. I'd like to if you think it would make a difference.

Chapter 307:

Subchapter 9: §15-307-144 Repurchase of dwelling unit. The Department of VA doesn't like this as it forces the veteran to sell and potentially leaves them without a home. If this is not removed, then the VA will continue to not allow VA loans on affordable units. This harms veterans as they cannot utilize their VA loan benefit. We ran into 3 of these on Kapiolani Residence.

(3) The corporation determines that the construction or soil defect is of such a magnitude that it will take longer than one year to repair.

(b) If the corporation determines that there is a substantial construction or soil defect in the dwelling unit and at least one of the conditions set forth in paragraph (a) (1), (a) (2) or (a) (3) also exists, then the corporation, upon approval by the board, may, but shall not be obligated to:

(1) Enter into a repurchase agreement with the owner and repurchase the dwelling unit; or

(2) If the owner fails to enter into a repurchase agreement, then execute and deliver to the owner a statement of intent to enforce its repurchase right within the ninety day period prescribed under section 15-307-109 and repurchase the dwelling unit without the owner's consent.

(c) If the corporation repurchases the dwelling

Changes to Chapter 308:

§15-308-2 Definitions: First-time home buyer; Was the "majority ownership interest" part removed? If so, I like it/agreed. Also, I recommend removing the "unit" and replacing it with "residential property suitable for dwelling purposes" because "unit" implies "condo". And should "lower cost housing unit" be changed to "affordable unit" for consistency?

"First-time homebuyer" means a qualified resident who has not owned any unit anywhere for a period of one year prior to the date of application for a lower cost housing unit.

Is this a good section to define "co-mortgagor"? There is always so much confusion on that.

§15-308-22 Eligibility; I think the 135% asset cap is good. However, I feel that it is not clear if someone has retirement or gifts over 20%. Are gifts over 20% allowed, and if so, would the amounts over 20% be counted toward the 135% max asset cap? Or is there a hard line, such that gifts over 20% are they not allowed at all?

(3) Has household assets that do not exceed one hundred thirty-five per cent of the maximum qualifying household income stated in subparagraph (2), above. Qualified retirement accounts and gifts of up to twenty per cent of the purchase price to assist in the downpayment for purchase of the dwelling unit shall not count towards this asset limit;

308-16

Is this a good section to make an eligibility requirement of something like, "Has employment as of the date of application from which taxable income is derived." I'm trying to make the requirement that the buyer has to have a job. As of now there is no regulation saying that the buyer needs to have a job. This is to prevent the situations where the adult children/buyers have no job and the loan qualification is based solely on the parents as co-signors.

§15-308-[84] 83 Providing consent to additional financing; I recommend adding to the reasons where a higher LTV loan may be allowed. Sometimes an individual should refi, even if they are going to get the same rate. For example, they might be able to take off the mortgage insurance or change the loan program from a variable rate arm loan or a fixed rate loan. These other examples should be allowed as long as the loan amount doesn't increase their principle balance beyond the approved closing costs.

(c) In cases where the corporation previously consented to the existing loan and the principal balance is greater than the total loan amount determined herein, the corporation may consent to the principal balance of the previously consented-to loan, provided that the loan is for purposes of reducing the interest rate only.

Same section. There are times where the county assessed value is very low for some reason. Maybe it will go up next year, but there is a time window where it's low. In these cases, I don't think that the loan amount should be capped by the county assessed value.

(d) In any event, the total loan amount shall not exceed the fair market value or county assessed value of the property at the time the loan is made, whichever, is lower. [Eff] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

308-31

§15-308-107 Determination of fair market value; Since the financial crisis lenders have been required to randomly select an independent 3rd party appraiser. So I recommend that the regulation allow for the use of the lender's appraisal in the cases where one is available. As it stands now, there are 2 appraisals being done and paid for at the time of purchase and refinance. The extra cost, time, and efforts seem unneeded.

§15-308-107 Determination of fair market value.

(a) Whenever it is necessary to determine the net appreciation of the property, the corporation shall select an appraiser and order an appraisal of the fair market value of the dwelling unit. The ~~[purchase]~~ owner shall pay for the cost of the appraisal.



Spencer Lee
VP, Sales Manager
NMLS# 844697

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From: Kometani, Lorna M <lorna.m.kometani@hawaii.gov>
Sent: Tuesday, June 22, 2021 3:17 PM
To: Kometani, Lorna M <lorna.m.kometani@hawaii.gov>
Cc: Kawewehi, Loreen L <loreen.l.kawewehi@hawaii.gov>; Kometani, Lorna M <lorna.m.kometani@hawaii.gov>
Subject: Proposed Amendment to HHFDC Development Sales and Lease Programs

Good afternoon affordable housing partners.

On Monday, July 26, 2021 at 10:00 am, the HHFDC will hold a virtual public hearing on Amendments to and compilation of [Title 15 - Chapter 307 - State Assisted Land and Housing Development Program](#) which include repealing and moving the affordable sales and lease programs to [Title 15 - Chapter 308 - State Assisted Sales and Lease Program](#). See attached copy of the [HHFDC Public Hearing Notice \(15-307 and 15-308\).pdf](#) published today in all major statewide publications; and available on the HHFDC website.

Of significance are new definitions such as eligible purchaser, initial public offering, qualified nonprofit housing trust and other clarifying terms used to administer the Chapter and prioritize sale of affordable units to "first-time homebuyers" (Subchapter 1); household asset limitation related to income eligibility requirement (Subchapter 2); marketing

requirements for affordable units (Subchapter 3); criteria to rent a corporation-owned unit (Subchapter 4) and clarifying loan limitations for additional financing or refinancing (Subchapter 5). Note that Subchapter 8 was used for Subchapter 3 which was further modified to delete all market-unit references. Only the section references in Subchapter 8 have changed.

Written testimony in advance of the public hearing will be accepted through Monday, July 26, 2021 by mail to HHFDC's office at 677 Queen St #300, Honolulu HI 96813. Or, by email to mavis.m.masaki@hawaii.gov.

We encourage your participation and ask that you share this information with others who share your interest in affordable housing. Thank you in advance for your consideration and continued partnership in affordable housing opportunities.

Lorna Kometani
Real Estate Services Section Chief
Tel: (808) 587-0517

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HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 308

STATE ASSISTED SALES AND LEASE PROGRAM

Subchapter 1 General Provisions

- \$15-308-1 Purpose
- \$15-308-2 Definitions
- \$15-308-3 References to other chapters
- \$15-308-4 Fees

Subchapter 2 [~~The Sale of Affordable~~]
Eligibility and Preferences to
Purchase Affordable Dwelling Units

- \$15-308-21 Purpose
- \$15-308-22 Eligibility [~~for assistance~~]
- \$15-308-23 [~~Exception~~] Eligibility for current
owners in corporation sponsored
projects
- \$15-308-24 [~~Exception~~] Eligibility for former
owners in corporation sponsored
projects
- \$15-308-25 Occupancy guidelines for sale units
- \$15-308-26 Counseling
- \$15-308-27 Preference in dwelling unit sales
- \$15-308-28 Information and verification

Subchapter 3 Marketing and Sale of Affordable Dwelling Units

- \$15-308-41 Marketing and sale of dwelling units
- \$15-308-42 Announcement, publication
- \$15-308-43 Reservation list, requirements
- \$15-308-44 Sale of residential units

Subchapter 4 Rental of Corporation-Owned Dwelling Units

- \$15-308-61 [~~Rental of dwelling units~~] Eligibility
- \$15-308-62 Occupancy guidelines for rental units
- \$15-308-63 Preference for the rental of dwelling units
- \$15-308-64 Information and verification
- \$15-308-65 Rent determination
- \$15-308-66 Rental agreement
- \$15-308-67 Program administration

Subchapter 5 Repurchase of Dwelling Units Subject to Restrictions

- \$15-308-81 Purpose
- \$15-308-82 Applicability
- \$15-308-83 [~~Repurchase when owner seeks to transfer title~~] Providing consent to additional financing
- \$15-308-84 [~~Providing consent to additional financing~~] Repurchase when owner seeks to transfer title
- \$15-308-85 Determination of repurchase price for purchases subject to restrictions
- \$15-308-86 Waiver by corporation of right to repurchase
- \$15-308-87 Release by corporation of right to purchase

- \$15-308-88 Procedures regarding repurchase by corporation and waiver of right of repurchase
- \$15-308-89 Resale or rental of repurchased dwelling unit
- \$15-308-90 Repurchase under foreclosure of properties subject to restrictions

Subchapter 6 Shared Appreciation Equity Program Restrictions

- \$15-308-101 Purpose
- \$15-308-102 Applicability
- \$15-308-103 Corporation's percentage share of net appreciation
- \$15-308-104 Payment due on sale or transfer
- \$15-308-105 Definition of sale or transfer
- \$15-308-106 Permitted transfers
- \$15-308-107 Determination of fair market value
- \$15-308-108 Cancellation of the corporation's share of the net appreciation
- \$15-308-109 Exercise of the right to purchase restriction
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Subchapter 7 Owner Occupancy Waiver Procedures

- \$15-308-121 Purpose and applicability
- \$15-308-122 Application for temporary owner occupancy waiver
- \$15-308-123 Hardship circumstances required
- \$15-308-124 Duration of temporary waiver
- \$15-308-125 Allowable uses of the dwelling unit during the temporary waiver period
- \$15-308-126 Proof of occupancy

- §15-308-127 Extension of the owner occupancy requirement
- §15-308-128 Recovery of administrative expenses and attorneys fees
- §15-308-129 Failure to reoccupy
- §15-308-130 [~~Disagreement with the corporation's determination~~]
- ~~§15-308-131~~ Extension of the temporary waiver period

Subchapter 8 Procedures to Implement Qualified Resident Preferences in the Initial Sale of Market-Priced Dwelling Units

- §15-308-151 Announcement; publication
- §15-308-152 Designation of residential units
- §15-308-153 Reservation list; requirements
- §15-308-154 Sale of residential units

Subchapter 9 Administration of Corporation Leases

- §15-308-171 Purpose
- §15-308-172 Applicability
- §15-308-173 Administration of residential leases
- §15-308-174 General lease provisions
- §15-308-175 Extension of fixed rent period or term for mortgage purposes
- §15-308-176 Sale of leased fee interest of the land

Historical Note: Chapter 308 of Title 15, Hawaii Administrative Rules, was formerly part of Chapter 15-307, Hawaii Administrative Rules [Eff 12/04/10; am and comp 4/28/17], Chapter 373 of Title 6, Hawaii Administrative Rules [Eff 1/9/89; am 8/3/92; R 10/25/99], and Chapter 175 of Title 15, Hawaii Administrative Rules [Eff 10/25/99; R 12/04/10].

SUBCHAPTER 1

GENERAL PROVISIONS

§15-308-1 Purpose. These rules are adopted under chapter 91, HRS, and implement the provisions of chapter 201H, HRS, providing for [~~the development and construction of housing projects; the development and construction of mixed-use development projects;~~] the sale, resale, purchase, repurchase, lease, or rental of dwelling [~~units; interim and construction loans; regional infrastructure grants and loans; and the provisions of loans and guarantees to qualified persons.~~] units.

Priority for affordable units marketed and sold under this chapter shall be for first-time homebuyers who require the assistance of programs under chapter 201H, HRS to purchase their home. A first-time homebuyer that intends to purchase a unit developed or sold under this chapter with cash does not require the assistance of programs under chapter 201H, HRS to become a homeowner. [Eff _____] (Auth: HRS §201H-4)

§15-308-2 Definitions. As used in this chapter:

"Administrative costs" means costs incurred by the corporation for activities performed in conjunction with the administration of these rules pursuant to section 201H-49, HRS. Such costs may include, but are not limited to salaries, other employee benefits, and other expenses necessary to administer this chapter.

"Administrator" means the executive director employed by the board or the executive director's designated representative.

"Applicant" means the primary person who submits an application to purchase a property under chapter

201H, HRS, and if applicable, applicant's spouse, co-applicant, and co-applicant spouse.

"Application" means an application to purchase real property assisted by the corporation under chapter 201H, HRS. An application is deemed complete when submitted together with the required supporting information and verification documents for determination of eligibility to purchase a unit in a new for-sale affordable development, on a form approved by the corporation. [by a party which seeks relief under these rules.]

"Application for relief" means an application to the corporation by a party seeking relief under these rules.

"Assets" means total cash, securities, and real [and personal] property less any outstanding liabilities secured by the assets.

"Assisted project" means a project which is initiated and developed by an entity other than the corporation, and which is being provided state assistance to lower sales prices or rental rates. Such assistance may include, but is not necessarily limited to, interim and permanent financing, expedited processing of projects, tax credits, general excise tax exemptions, and rental assistance.

"Board" means the board of directors of the Hawaii housing finance and development corporation established under chapter 201H, HRS.

"Co-applicant" means a person who submits an application to purchase an affordable unit with the applicant and who is:

- (1) Not married to an applicant, is of the age of majority, unrelated to the applicant and intends to reside in the unit, or
- (2) Related to an applicant and wishes to be on title of the affordable unit.

"Contractor" means a general engineering contractor or general building contractor licensed under chapter 444, HRS.

"Corporation" means the Hawaii housing finance and development corporation established under chapter 201H, HRS.

"County" includes the counties of Kauai, Maui, Hawaii, and the city and county of Honolulu, and unless the context requires a different meaning, it shall mean the county in which the project is situated.

"Design professional" means a professional engineer, architect, surveyor, or landscape architect licensed under chapter 464, HRS.

"Develop" or "development" means the planning, financing, acquisition of real property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Domicile" means the state where a person has his or her true, fixed, and permanent home and to where the person has the intention of returning whenever the person is absent. A person may have only one domicile.

"Dwelling" means a structure designated for residential use.

"Dwelling unit" or "unit" means the structure and land upon which the structure is constructed, whether on fee simple or leasehold property, developed pursuant to chapter 201H, HRS, which is intended for residential purposes. It may also mean improved or unimproved real property which is developed for residential purposes pursuant to the provisions of chapter 201H, HRS.

"Elder" means a person who is a qualified resident of the State and who has attained the age of sixty-two.

"Eligible developer" means an individual, partnership, cooperative, including limited equity housing cooperatives (as defined in chapter 421H, HRS), firm, nonprofit or profit corporation, limited liability company, or public agency which the corporation has certified pursuant to the provisions of section 15-308-24 of these rules.

"Eligible purchaser" means a qualified resident who demonstrates need for assistance in obtaining housing, and who meets the income requirements for the project for which an application is submitted.

"Fair market value" means the unencumbered fair market value of a property that has no State or county restrictions attached thereto, as determined by a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, HRS.

"First-time homebuyer" means a qualified resident who has not owned any unit anywhere for a period of one year prior to the date of application for a lower cost housing unit.

"Former owner" means a former owner of a dwelling unit:

- (1) From whom the dwelling unit was repurchased pursuant to section 201H-47, HRS; or
- (2) Who has obtained a waiver of repurchase rights from the corporation under section 201H-47, HRS.

"Government assistance program" means any housing program qualified by the corporation and administered or operated by the State, the corporation, the United States, or any of its political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development for qualified persons in the State. Government assistance program includes, but is not limited to, the following:

- (1) Any program specified, allowed, or eligible for assistance under chapter 201H, HRS;
- (2) Any program specified, allowed, or eligible for assistance under laws, rules, or regulations of the United States Department of Housing and Urban Development and the United States Department of Agriculture; or
- (3) Any program regulated by either the corporation, counties, or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.

"Gross household income" means the total amount of income of [~~the~~] household members, from all sources before deductions including all income for household members eighteen years of age and older who are currently residing in the household, or who will physically reside in the dwelling unit to be purchased.

"Guaranteed loan" means a loan that is guaranteed or as to which a commitment to guarantee has been made under the provisions of a federal or state law.

"Homeless" means those who meet one or more of the four categories of homelessness established by the United States Department of Housing and Urban Development, as follows:

- (1) Individuals and families who lack a fixed, regular, and adequate nighttime residence and includes a subset for an individual who is exiting an institution where he or she resided for ninety days or less and who resided in an emergency shelter or a place not meant for human habitation immediately before entering that institution;
- (2) Individuals and families who will imminently lose their primary nighttime residence;
- (3) Unaccompanied youth and families with children and youth who are defined as homeless under other federal statutes; or

- (4) Individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member.

"Household" means an individual; or two or more persons who live or intend to live together as a unit and whose income and resources are available to meet the household's need and who may, but need not be, related by blood, marriage, or operation of law, including foster children and hanai children and whose head of household has reached the age of majority, or is otherwise legally emancipated.

"Household member" means a person who is a co-applicant or will reside in the dwelling unit.

"Household size" means the total number of household members residing, or that will be legally residing, in a dwelling unit. For purposes of calculating household size, a person who is pregnant shall count as two household members.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States Department of Housing and Urban Development.

"Improvement" means an addition, renovation, or replacement to the dwelling unit which enhances the value of the property, and for which labor and capital are expended. Improvements do not include repairs or maintenance of the property.

"Initial public offering" means the date when the project is authorized for release to the general public and applications are made available for distribution and acceptance.

"Lower cost housing", in the context of identifying the persons or families intended to be served by such housing, primarily includes housing for persons or families whose incomes are identified as one hundred forty per cent or less of the area median income for each of the counties of Hawaii, Maui, Honolulu, and Kauai as determined by the United States

department of housing and urban development from time to time, and as adjusted by family size. For the purpose of these rules, such persons or families include persons or families within the following income groups:

- (1) "Very low income" -- those earning fifty per cent of the area median income and below;
- (2) "Low income" -- those earning above fifty per cent up to eighty per cent of the area median income;
- (3) "Low-moderate income" -- those earning above eighty per cent up to one hundred twenty per cent of the area median income; or
- (4) "Moderate income" - those earning above one hundred twenty per cent up to one hundred forty per cent of the area median income.

"Mortgage payment" means the owner's payment on any mortgage which is necessary for financing the purchase of an owner's dwelling unit. It may also include payments for lease rent, real property taxes, mortgage insurance, association fees, and any other expenses directly related to financing the purchase of the owner's real property or to maintaining an ownership interest in the real property.

"Mortgagee" means any bank or other institution authorized by federal or state law to make loans on dwelling units or the authorized assignee of such bank or institution.

"Owner" means the owner of a dwelling unit.

"Person with a disability" means a person having a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or is regarded as having such an impairment [~~as defined by the Americans with Disabilities Act of 1990~~]. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and working.

"Plans and specifications" includes construction plans and specifications and any other documents that

may be required by the county in the processing of the plans and specifications for the issuance of permits for construction and building of improvements within a project.

"Project" or "housing project" means a plan, design, or undertaking by the corporation or an eligible developer for the development of dwelling units, and includes all real and personal property, buildings and improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project, assisted project, or sponsored project.

"Qualified appraiser" means a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, [~~Hawaii Revised Statutes.~~] HRS.

"Qualified nonprofit housing trust" means a corporation, association, or other duly chartered organization that is registered and in good standing with the State; is recognized by the Internal Revenue Service as a charitable or otherwise tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; has the capacity, resources, and mission to carry out the purposes of this chapter; and has been determined by the corporation to operate a homeownership program that:

- (1) Provides homeownership opportunities to first-time homebuyers; and
- (2) Imposes an owner-occupancy restriction on the homebuyers with a minimum term of ten years.

A "qualified nonprofit housing trust" shall be determined to have the capacity, resources, and mission to carry out the purposes of the chapter when it is determined, in the corporation's sole discretion, that it:

- (1) Demonstrates efficient financial capacity and ability to exercise the corporation's repurchase rights in a timely fashion;
- (2) Demonstrates the ability to comply with the requirements set forth in subchapter 5, *infra*; and
- (3) Agrees to comply with all applicable requirements set forth in subchapter 5 of this chapter.

"Qualified resident" means the same as defined under section 201H-32, HRS.

"Rules" means these rules.

~~["Special needs housing" means housing for persons for whom social problems, age, or physical or mental handicaps impair their ability to live independently and for whom such ability can be improved by more suitable housing conditions.]~~

"Sponsored" includes, but is not limited to, the provision of a loan and exemptions pursuant to section 201H-38, HRS.

~~"Sponsored project" means [a project which is initiated by the corporation, and is usually located on lands owned by the corporation. The corporation may or may not act as the developer of a project which it sponsors.]~~ a housing project benefitting from various programs administered by the corporation including, but not limited to a loan and exemptions pursuant to section 201H-38, HRS.

~~["Starter home" means a dwelling unit that is designed to meet the basic living capacity requirements of homebuyers with families of limited size by eliminating needless design and space amenities, but which nonetheless enables future expansion, modification, and improvement by the owner to accommodate increased occupancy over time as may be necessary.]~~

"State" means the State of Hawaii.

~~["Subdivision and construction documents" includes all subdivision documents and plans and specifications.]~~

~~"Subdivision documents" includes preliminary maps, final maps, subdivision construction plans and specifications, and any other document that may be required by the State or county in the processing of applications and permits relating to the development of the project.]~~

"Subsidies" means the difference between all costs expended by the corporation, less any recoveries by the corporation. It also includes unrecovered development, land, financing and carrying costs.

~~["Substantial construction defect" means a defect or deficiency in a dwelling unit which affects its structural integrity, habitability, or appearance and which is not caused by the act or omission of the owner or a person hired, retained, or engaged by the owner. This includes, but is not necessarily limited to, structural defects such as shifting foundations and bearing walls, structural deficiencies due to the use of defective or undersized materials, defects affecting the health and safety of occupants, and shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.]~~

"Sustainable affordable leases" means the same as defined in section 516-1, HRS.

"Value" means the value of a property as determined by a qualified appraiser.

[Eff] (Auth: HRS §§201H-4, 201H-40, 201H-41, 201H-42, 201H-45, 201H-47, 201H-51) (Imp: HRS §§201H-1, 201H-4, 201H-8, 201H-40, 201H-41, 201H-42, 201H-44, 201H-45, 201H-47, 201H-51)

§15-308-3 References to other chapters. (a) To the extent appropriate for the implementation of chapter 201H, HRS, references in documents, forms, and similar instruments of the corporation to chapters 201E, 201G, 356, 359, and 359G, HRS, shall be treated as references to chapter 201H, HRS.

(b) To the extent appropriate for the implementation of this chapter, references in documents, forms, and similar instruments of the corporation to chapter 15-307, Hawaii Administrative Rules, shall be treated as references to this chapter.
 [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §§201H-4)

§15-308-4 Fees. The corporation shall have the right to charge reasonable fees for processing any instrument or taking any action required under this chapter, as follows. These fees shall be nonrefundable. [~~Such fees shall be as prescribed by the exhibit at the end of this chapter entitled "Fees", dated _____.~~]

PURPOSE	AMOUNT CHARGED
Buyback Program Administration	\$250.00
Consent to Mortgage	\$250.00
Release of 10 Year Repurchase Restriction	\$250.00
Waiver and Reinstatement of Repurchase Right	\$250.00
Temporary Waiver of Owner Occupancy Restriction	\$250.00
Amendment of Deed (Restatement of Repurchase Right term)	\$250.00
Shared Appreciation Equity (SAE) Program Administration	\$250.00
Consent to Mortgage/Subordination of SAE	\$250.00
Release of SAE Program	\$250.00
Waiver and Reinstatement of SAE Program	\$250.00
Deferred Sales Price Program Administration	\$250.00
Release of Deferred Sales Price	\$250.00
Release of Deferred Land Value	\$250.00

PURPOSE	AMOUNT CHARGED
Leasehold Program Administration	\$250.00
Lease Consent	\$250.00
Lease Rent Delinquency Fee (per invoice)	\$50.00
Notice of Lease Default	\$250.00
Assignment of Lease	\$250.00
Amendment of Lease	\$250.00
Extension of Lease Term for Individual House Lot	\$250.00
Purchase of Leased Fee Interest	\$250.00
Conversion from Leasehold to Fee Simple - New Deed	\$250.00
Transfer Fee	\$250.00
Sales/Rental Program Administration	\$250.00
Rent to Own Program Administration	\$250.00
Release of Mortgage	\$250.00
House Plans	Actual cost of reproduction

[Eff] (Auth: HRS §§201H-4, 201H-16, 201H-100) (Imp: HRS §§201H-4, 201H-16, 201H-100)

SUBCHAPTER [4] 2

[THE SALE OF AFFORDABLE] ELIGIBILITY AND PREFERENCES TO PURCHASE AFFORDABLE DWELLING UNITS

§15-308-21 Purpose. This subchapter governs the ~~[general procedures for the initial sale of]~~ eligibility for purchase of and preferences for the sale of dwelling units and vacant house lots developed under [this] chapter 15-307, HAR. [Eff] (Auth: HRS §§201H-4, 201H-47) (Imp: HRS §§201H-45, 201H-47)

§15-308-22 Eligibility [~~for assistance~~]. An applicant shall be eligible to purchase a dwelling unit developed under this chapter if the applicant meets all of the following requirements:

- (1) Is a qualified resident who is domiciled in the State and meets other qualifications set forth under section 201H-32, HRS;
- (2) Does not have a household income exceeding the corporation-established project income limits, or one hundred forty per cent of the area median income as determined by HUD, as adjusted by family size, whichever is lower;
- (3) Has household assets that do not exceed one hundred thirty-five per cent of the maximum qualifying household income stated in subparagraph (2), above. Qualified retirement accounts, health savings accounts, qualified tuition programs, savings of up to twenty per cent of the purchase price intended for use as a downpayment, and gifts of up to twenty per cent of the purchase price to assist in the downpayment for purchase of the dwelling unit shall not count towards this asset limit;
- (4) Has not previously received assistance under a homeownership program designed and implemented under this chapter by the corporation or any of the counties in the State. However, the corporation may on an individual basis, allow a person who previously purchased a dwelling sponsored or assisted by the corporation or any of the counties to reapply, provided that
 - (A) The corporation, ~~or~~ the county, or a qualified nonprofit housing trust repurchased the dwelling unit; or
 - (B) The applicant is still living in the [~~previously restricted~~] unit subject to section 201H-47, HRS; and

there has been a significant [change]
increase in [~~one of the following:~~

- ~~(i) Household size;~~
- ~~(ii) Place of employment; or~~
- ~~(iii) Income.] household size.~~

An applicant may become eligible again if the sale of such person's first dwelling was caused by extreme hardship such as family death, divorce, loss of employment, or a disability, and the dwelling was repurchased by the corporation or the county.

Provided further that in the case of divorce, where one spouse retains ownership of the dwelling unit, the other spouse may become eligible one year after the final divorce decree to reapply for a dwelling unit sponsored or assisted by the corporation or the county. An applicant may become eligible again if the applicant is still living in the previously restricted unit subject to section 201H-47, applies for a new affordable unit, and sells the currently owned dwelling unit to a qualified resident meeting corporation income requirements at a restricted price approved by the corporation. [Eff _____]

(Auth: HRS §§201H-4, 201H-151, 201H-33) (Imp: HRS §§201H-1, 201H-151, 201H-162)

§15-308-23 [Exception] Eligibility for current owners in corporation sponsored projects. (a) A current owner of a multi-family dwelling unit sponsored by the corporation may apply for the purchase of a larger dwelling unit in a corporation sponsored project if:

- (1) The applicant's current household size has increased and exceeds the permissible household size for the current unit as determined by prevailing county building or housing codes; or in the absence thereof, the housing code of the city and county of Honolulu; and

- (2) The applicant has resided in the current dwelling unit for at least one year.
- (b) Household size shall be determined by the number of individuals on title and their dependents.
- (c) The applicant shall sell the applicant's current multi-family dwelling unit to the corporation prior to or upon the closing of the sale of the larger dwelling unit under the provisions of section 201H-47, HRS.
- (d) Except for the applicant's current residence, the applicant shall be a qualified resident as set forth under section 201H-32, HRS.
- [Eff] (Auth: HRS §201H-4, 201H-151, 201H-33) (Imp: HRS §§201H-1, 201H-151, 201H-162)

§15-308-24 [Exception] Eligibility for former owners in corporation sponsored projects. A former owner of a lower cost housing unit may apply to purchase another lower cost housing unit under the following conditions:

- (1) If the former owner is released from title and wishes to apply again, the former owner shall show that no profit was made on the sale of the first affordable unit, and that the unit was sold to a qualified resident meeting corporation income and asset requirements, and at a restricted price approved by the corporation.
- (2) In the event the corporation does not repurchase the unit offered, the owner shall sell the unit at a restricted price. The unit shall remain affordable and sold to a qualified resident whose income does not exceed 140 per cent of the area median income. [Eff] (Auth: HRS §201H-4, 201H-47) (Imp: HRS §201H-1)

§15-308-25 Occupancy guidelines for sale units.

(a) The following occupancy guidelines shall be used for the sale of units:

- (1) To determine the maximum affordable sales price; and
- (2) During the initial application period, to establish a property selection order list.

Dwelling Unit Size	Preferred Household Size
0 Bedroom	1 person
1 Bedroom	2 persons
2 Bedroom	3 persons
3 Bedroom	4 persons
4 Bedroom	5 persons

(b) The maximum household size is determined by prevailing county building or housing codes, or in the absence thereof, the city and county of Honolulu housing code. [Eff] (Auth: HRS §§201H-4, 201H-33, 201H-41) (Imp: HRS §§201H-111, 201H-33, 201H-38, 201H-41)

§15-308-26 Counseling. (a) The corporation shall require developers to provide homeownership counseling and training to all qualified applicants. The counseling and training program shall be conducted by a HUD-approved housing counseling agency.

(b) The purpose of the counseling and training program shall be to help people deal with economic problems, to understand and accept responsibilities inherent in homeownership, to prepare applicants for homeownership tasks, and to develop resources that may assist the homeowner and the community.

[Eff] (Auth: HRS §§201H-4, 201H-16)
(Imp: HRS §§201H-8, 201H-16)

§15-308-27 Preference in dwelling unit sales.

(a) ~~[As used in this section:~~

~~"Person with a disability" means a mental or physical impairment which:~~

- ~~(1) Is expected to be of long, continued, and indefinite duration;~~
- ~~(2) Substantially impedes the ability of a person to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions; and~~
- ~~(3) Has been certified by an independent consultant confirming the person's eligibility under these rules.~~

~~(b)] Unless otherwise provided in these rules, in the sale of dwelling units by the corporation, the corporation, or an eligible developer, may give preference to applicants on the basis of overall need and to applicants who:~~

- (1) Are former owners of a dwelling unit repurchased by the corporation due to a construction or soil defect; provided that the former owner has not purchased another dwelling unit or land pursuant to section 15-308-148;
- (2) Meet the occupancy guidelines set forth in section 15-308-76; provided that for projects with multiple income level groupings, preference shall also be based upon the lowest income group and greater household size;
- (3) For single-family detached dwelling unit projects, have applicants having legal dependents, excluding the applicants' spouses, as defined in the applicable regulations of the Internal Revenue Service and as shown on the applicants' or co-applicants' state income tax returns, divorce decrees having sole or joint custody, or other documents which are to be submitted upon the request of the

corporation. If preference was given due to birth of a child or pregnancy after the tax return year, verification of new born children shall be made at the time of application, lot selection and purchase;

- (4) Have, as homeowners, been displaced from their homes because of governmental action;
- (5) For income preferences only, income preference shall be based on household size and annual gross household income as established by the corporation using amounts determined by HUD. [~~United States Department of Housing and Urban Development.~~] All income for household members eighteen years of age and older who are currently residing with the household and will physically reside in the dwelling unit to be purchased shall be added to the gross household income to determine the income preference. The corporation shall determine the income preference for each project;
- (6) Are currently residing in public housing or have relocated because of income disqualifications from public housing;
- (7) For multi-family projects only, are persons with disabilities or whose household members are persons with disabilities[~~+~~] ; or
- (8) Have larger household sizes than other applicants; provided that the household size does not exceed the applicable county occupancy standards.

[~~(e)~~] (b) Not more than twenty per cent of all affordable dwelling units in a specific project, as determined by the corporation, shall be for applicants with a preference as provided in paragraphs (b)(1), (4), (6), and (7) however, the corporation may establish a limit on the number of units for which preference is provided on a project-by-project basis.

[~~(d)~~] (c) Other preferences may be determined by the corporation for a specific project.

[Eff] (Auth: HRS §201H-4) (Imp: HRS §§201H-31, 201H-33, 201H-45)

§15-308-28 Information and verification.

(a) The corporation shall require applicants to provide information relating to household income, household size, financial condition, and status changes prior to the close of the sale.

(b) The corporation may require applicants and program participants to provide documentation to verify information submitted to the corporation, including but not limited to:

- (1) Hawaii state income tax return;
- (2) Federal income tax return;
- (3) Certification of pregnancy;
- (4) Verification of length of residency; and
- (5) Other documents as required by the corporation.

(c) An applicant found to have willfully submitted false information, made misstatements, or withheld important information shall be deemed to be ineligible for the project and disqualified from future corporation-assisted projects, provided that the corporation shall not waive its right to pursue any other recourse provided by law.

(d) The corporation may establish an expiration date for applications received to purchase a dwelling unit on a project by project basis.

[Eff] (Auth: HRS §201H-4) (Imp: HRS §201H-33)

SUBCHAPTER [5] 3

MARKETING AND SALE OF AFFORDABLE DWELLING UNITS

§15-308-41 [Sale] Marketing and sale of dwelling units. (a) Affordable units developed under chapter

201H, HRS, shall be marketed and sold to eligible purchasers as set forth in this subchapter.

(b) Units completed or substantially completed shall be sold under the provisions of sections 201H-45 through 50, HRS, including repurchase restrictions and the shared appreciation equity program restrictions as set forth in subchapters 7 and 8 of this chapter, as applicable.

~~[(b)]~~ (c) Units shall be sold in accordance with all applicable state and federal fair housing laws.

~~[(e)]~~ (d) Applications may be accepted from an applicant for more than one project sponsored or assisted by the corporation, provided that upon execution of a binding contract for any affordable dwelling unit, the applicant must withdraw all other applications. [Eff _____] (Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-45, 201H-47, 515-3; HRS Chapter 514A)

§15-308-42 Announcement, publication. For a period of thirty calendar days, the developer shall publish or cause to be published in the classified section of at least one newspaper published daily in the State and having a general circulation in the county in which the project is located at least twice a week, an announcement containing as a minimum a summary of the following information:

- (1) The location of the project;
- (2) A fair and reasonable estimate of:
 - (A) The total number of [~~market-priced~~] affordable units to be included in the project;
 - (B) The price range of the [~~market-priced~~] affordable units;
 - (C) The approximate size of the [~~market-priced~~] affordable units; and
 - (D) A designation whether the [~~market-priced~~] affordable units are being sold in fee simple or leasehold;

- (3) A statement that one hundred per cent of the [~~market-priced~~] affordable units are being sold in fee simple or leasehold;
- (4) The definition of "qualified resident" as contained in section 201H-32, HRS;
- (5) The name and address of the real estate broker designated by the developer, whom [~~interested individuals~~] eligible purchasers may contact to be placed on a reservation list, and to obtain further information on the project; and
- (6) A statement that the [~~market-priced~~] affordable units will be available to any [~~qualified resident~~] eligible purchaser without regard to race, sex, color, religion, marital status, familial status, national origin, person with a disability status, age, or HIV (human immunodeficiency virus) infection.

The publication shall also include the United States Department of Housing and Urban Development's equal housing opportunity slogan or logo.

[Eff] (Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-1, 201H-45, 515-3)

§15-308-43 Reservation list, requirements. (a)

During the initial offering period of thirty calendar days, the developer's designated broker shall compile a "qualified resident" reservation list consisting of the names, addresses, and phone numbers of all individuals stating a desire to purchase [~~a market-priced~~] an affordable unit contained in the announced project.

(b) The list shall be compiled in the order in which applicants have submitted to the agent a duly executed affidavit that the applicant meets the definition of "qualified resident" and intends to

become a purchaser of [~~a market-priced~~] an affordable unit.

(c) Any individual who makes any false statement in the affidavit is subject to criminal charges and civil action under the laws of this State.

(d) The developer shall submit the reservation list within ten days of the expiration of the initial thirty day offering period to the corporation. At the close of project sales, the developer shall submit to the corporation a status of the reservation list as to who purchased and who did not purchase, and the reason for not purchasing. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §§201H-1, 201H-45)

§15-308-44 Sale of residential units. (a) The developer shall offer all of the [~~market-priced~~] affordable units to those individuals whose names are on the "qualified resident" reservation list by one of the following means:

- (1) In the order in which their names appear on the list;
- (2) By the drawing of lots; or
- (3) By any other reasonable and fair method as determined by the developer and approved by the corporation.

(b) [~~Once the "qualified resident" reservation list is exhausted, the developer has the discretion to sell the remaining units to any purchaser.~~

~~(c)]~~ The developer shall also be required to comply with the following:

- (1) Prior to the sale of any of the units, the developer shall submit to the corporation, for its review and approval, copies of the sales contracts and deeds which reference the qualified resident preference;
- (2) Prior to the sale of any of the units, the developer shall submit to the corporation a copy of the covenants, conditions, and

restrictions, if any, for review and approval;

- (3) The developer shall submit to the corporation a list of all of the purchasers by lot number, name, date of sales contract, date of recordation, tax map key, and property address. On this list, the developer shall designate with an asterisk (*) those purchasers who are qualified residents; and
- (4) The developer shall comply with all applicable state and federal fair housing laws. [Eff _____] (Auth: HRS §201H-4) (Imp: 24 CFR 108; 24 CFR 200, Subpart M; HRS §§201H-1, 201H-45, 515-3; HRS Chapter 514A)

SUBCHAPTER [6] 4

RENTAL OF CORPORATION-OWNED DWELLING UNITS

§15-308-61 [Rental of dwelling units]

Eligibility. (a) [~~The corporation may rent dwelling units developed in accordance with this chapter to applicants who:~~] An applicant is eligible to rent a dwelling unit owned by the corporation if the applicant meets all of the following requirements:

- (1) Is a qualified resident who is domiciled in the State and meets other qualifications set forth in section 201H-32, HRS;
- (2) Does not have a household income of more than one hundred forty per cent of the area median income as determined by HUD from time to time and as adjusted by family size;
- (3) Whose household assets do not exceed one hundred thirty-five per cent of the maximum qualifying household income in (2) above.

Qualified retirement accounts shall not count toward the asset limit;

- ~~[(1) De]~~ (4) Does not have an outstanding debt owed to the corporation; and
~~[(2) De]~~ (5) Does not have a record or history of conduct or behavior, including past rent payment delinquencies, which may prove detrimental to other tenants or the corporation[; ~~and~~
~~(3) Qualify as residents of the State].~~

(b) Units shall be rented in accordance with all applicable state and federal fair housing laws.

[Eff] (Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-9, 201H-31, 201H-33, 201H-45, 515-3)

§15-308-62 Occupancy guidelines for rental

units. (a) The following occupancy guidelines may be used for rental units when the number of applicants exceeds the number and types of units available:

Dwelling Unit Size	Preferred Household Size
0 Bedroom	1 person
1 Bedroom	2 persons
2 Bedroom	3 persons
3 Bedroom	4 persons
4 Bedroom	5 persons

(b) The maximum household size is based on prevailing county housing, zoning, building, health and fire codes, or in the absence thereof, the housing code of the city and county of Honolulu.

[Eff] (Auth: HRS §§201H-4, 201H-33)
(Imp: HRS §§201H-31, 201H-33)

§15-308-63 Preference for the rental of dwelling units. Unless otherwise provided in these rules, preference for admission to the rental program under this section shall be given to qualified applicants who:

- (1) Are "displaced" by governmental action as defined by section 111-2, HRS;
- (2) Qualify as "elders" for projects which are specifically designed for elders;
- (3) Qualify as persons with disabilities;
- (4) Are persons or families who are transitioning from homeless shelters, provided that certification by appropriate service providers or shelter operators shall be required; or
- (5) Have an urgent need for housing as determined by the administrator.
[Eff _____] (Auth: HRS §201H-4)
(Imp: HRS §201H-111)

§15-308-64 Information and verification. (a) The corporation may require applicants and program participants to provide information relating to their household's income, composition, financial condition, and status changes, prior to admission to the program and at any other time as determined by the corporation.

(b) The corporation may require applicants and program participants to provide documentation to verify information submitted to the corporation, including but not limited to:

- (1) Verification of deposit;
- (2) Verification of employment; and
- (3) Credit bureau report or references.

(c) An applicant or program participant found to have willfully submitted false information, made misstatements, or withheld important information shall be disqualified from participation in the rental

program, and the corporation reserves the right to pursue any other recourse provided by law.

(d) The corporation may establish an expiration date for applications received to rent a dwelling unit on a project by project basis. [Eff]
(Auth: HRS §201H-4) (Imp: HRS §201H-33)

§15-308-65 Rent determination. [~~The monthly gross rent of each rental unit in a rental housing project may include the prorated costs to pay for construction, maintenance, extraordinary maintenance reserves, operational costs, and appropriate costs as determined by the corporation.~~] The monthly rent shall not exceed the affordable rent guidelines for households at one hundred forty per cent of area median income as calculated by the corporation based on the area median income established by HUD and adjusted from time to time. [Eff]
(Auth: HRS §201H-4) (Imp: HRS §§201H-33, 201H-45)

§15-308-66 Rental agreement. (a) A revocable permit as provided by the corporation shall constitute the rental agreement for units under this rental program and shall set forth the names of the authorized occupants, monthly rent amount, conditions of occupancy, and obligations of the parties.

(b) The revocable permit shall be executed by the responsible members of the tenant household and the administrator.

(c) Amendments to the revocable permit shall be in writing and executed by the parties involved and attached to the revocable permit.

[Eff] (Auth: HRS §201H-4) (Imp: HRS §201H-33)

§15-308-68 Program administration. Except as otherwise provided by law or rule, the rental program

for dwelling units developed under this chapter shall be administered in accordance with chapter 521, HRS, the residential landlord-tenant code.

[Eff 12/04/10; comp 4/28/17; comp]
(Auth: HRS §201H-4) (Imp: HRS §201H-33)

SUBCHAPTER [7] 5

REPURCHASE OF DWELLING UNITS
SUBJECT TO RESTRICTIONS

§15-308-81 Purpose. This subchapter governs the general procedures for the repurchase by the corporation or a qualified nonprofit housing trust of a dwelling unit subject to the restrictions set forth in section 201H-47(a)(1), HRS. [Eff 12/04/10; comp 4/28/17; comp] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-82 Applicability. This subchapter applies to all dwelling units [~~purchased from the corporation~~] for which the restrictions set forth in sections 201H-47, including the shared appreciation equity program restrictions, 201H-49, and 201H-51, HRS, remain in effect. [Eff] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-~~[84]~~ 83 Providing consent to additional financing. (a) Within the statutorily required time period from the date of purchase, the corporation shall consent to additional financing or refinancing of the original mortgage and subordinate the restriction provided in section 201H-47, HRS as follows:

- (1) When the total loan amount does not exceed the corporation's purchase price of the property as determined by the provisions of section [~~15-308-105; or~~] 15-308-85(a);

- (2) When the total loan amount exceeds the corporation's purchase price of the property and the loan is used for:
- (A) Capital improvements;
 - (B) Payment of subsidy, deferred land value or deferred sales price;
 - (C) Payment of the corporation's share of appreciation under the Shared Appreciation Equity Program; or
 - (D) Purchase of leased fee interest for the leasehold property owned.

(b) When the corporation's rights under section 15-308-103 are still applicable, the total amount of liens and encumbrances cannot be greater than the sum of eighty per cent of the owner's original purchase price and the owner's share of net appreciation. In cases where a house lot was purchased and the owner contributed the owner's own labor to construct the dwelling, the fair market value of the dwelling shall be included as part of the owner's share of net appreciation. In extreme hardship cases involving health and safety, the corporation may allow up to an additional twenty per cent of the owner's original purchase price and the owner's share of net appreciation; provided that the lien or encumbrance is for a loan for capital improvement purposes only.

(c) In cases where the corporation previously consented to the existing loan and the principal balance is greater than the total loan amount determined herein, the corporation may consent to the principal balance of the previously consented-to loan.

(d) In any event, the total loan amount shall not exceed the fair market value or county assessed value of the property at the time the loan is made, whichever is lower. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-[83] 84 Repurchase when owner seeks to transfer title. (a) If an owner seeks to transfer

the title to a dwelling unit to which this subchapter applies, the corporation shall have the first option to purchase the dwelling unit. If the corporation waives its repurchase option, a qualified nonprofit housing trust shall have the option to repurchase the unit.

(b) The repurchase price shall be determined by the corporation pursuant to the guidelines set forth in section 15-308-105.

(c) The corporation or qualified nonprofit housing trust may repurchase the dwelling unit either by:

- (1) Conveyance free and clear of all liens and mortgages or by
- (2) Conveyance subject to existing mortgages and liens.

(d) If the real property is conveyed in the manner provided in paragraph (c)(1), it shall be conveyed to the corporation or qualified nonprofit housing trust only after all mortgages and liens are released.

(e) If the real property is conveyed in the manner provided in paragraph (c)(2), the corporation or qualified nonprofit housing trust, as applicable, shall assume the seller's obligation on any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing. The [~~corporation's~~] interest created by the provisions of this subsection shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

- (1) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (2) Any mortgage insured or held by a federal housing agency; and

purchase, provided that the owner shall furnish financial documentation indicating the actual cost of improvements in a form deemed acceptable by the corporation in its sole discretion; and

- (3) Simple interest at the rate of one per cent per year on the purchaser's original cost and capital improvements.

(b) If the corporation has assigned its repurchase rights to the dwelling unit to a qualified nonprofit housing trust, the corporation shall determine the repurchase price using the same methodology as provided in subsection (a), above.

(c) Any dwelling unit repurchased by the corporation or qualified nonprofit housing trust under this subchapter shall be in resalable condition; or, in the alternative, the estimated expense required to restore the dwelling unit to resalable condition shall constitute a reduction of the repurchase price to be paid by the corporation or qualified nonprofit housing trust, as applicable, provided, however, that no reduction shall be made for the estimated expense to repair a substantial soil or construction defect as defined in section 201H-51, HRS.

~~[(e)]~~ (d) The corporation shall notify the seller of the seller's right to recourse under chapter 15-300, Hawaii Administrative Rules, in the event that there is a disagreement on the repurchase price ~~[paid]~~ determined by the corporation. [Eff]
(Auth: HRS §201H-4) (Imp: HRS §§201H-47, 201H-51)

§15-308-86 Waiver by corporation of right to repurchase. (a) The corporation may waive the right to repurchase set forth in section 201H-47, HRS, if:

- (1) The owner wishes to transfer title to the dwelling unit by devise or through the laws of descent to the owner's spouse, child, parent, or sibling and the devisee or heir

is otherwise eligible to purchase such a dwelling unit under this chapter; or

- (2) The purchaser wishes to transfer title to the dwelling unit to the co-owner or a household member who meets the eligibility requirements; or
- (3) One of the following conditions exist:
 - (A) The waiver will not result in the owner being able to sell the dwelling unit for a substantial profit nor promote speculative purchasing or selling of dwelling units to which this subchapter applies and the dwelling unit is sold to a person who is a qualified resident and the owner pays the corporation its percentage share of the net appreciation, if applicable; or
 - (B) Fiscal considerations will not allow repurchase of the dwelling unit.

(b) If the corporation waives its right to repurchase a dwelling unit pursuant to section 201H-47(a)(1), HRS, then the ~~[corporation may permit]~~ the dwelling unit ~~[to]~~ may be transferred by the owner and the restrictions provided for in sections 201H-47 through 201H-51, HRS, shall then be reinstated in any subsequent conveyance. In the event the ~~[corporation waives the]~~ restrictions are waived, the corporation shall inform the owner of the waiver in writing and the owner, at the owner's expense, shall draft and record such instruments as are necessary to make the waiver effective.

[Eff] (Auth: HRS §201H-4) (Imp: HRS §§201H-47, 201H-49, 201H-50, 201H-51)

§15-308-87 Release by the corporation of right to purchase. (a) The corporation may release the right to purchase as set forth in section 201H-47, HRS, if the property is financed under a federally subsidized mortgage program and when fiscal

considerations will not allow the repurchase of the dwelling unit.

(b) The corporation's right to repurchase prescribed in sections 201H-47 to 201H-51, HRS, shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the dwelling unit pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. If requested by the owner, the corporation shall at the owner's expense execute a written release in a form which may be recorded. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §§201H-47, 201H-50, 201H-51)

§15-308-88 Procedures regarding repurchase by corporation and waiver of right of repurchase. (a) If an owner seeks to transfer a dwelling unit, the owner shall deliver to the corporation by mail, postage prepaid, or in person a certificate of intent to sell, and a capital improvement computation form as used by the corporation. If the owner seeks a waiver of the corporation's right to repurchase the dwelling unit under section 201H-47(a)(1), HRS, then the owner shall also deliver to the corporation or by mail, postage prepaid, or in person a request for waiver of right of repurchase.

(b) The corporation shall review the certificate of intent to sell, the request for waiver of right of repurchase, or both. The corporation may request any additional information necessary for the review and the owner shall comply with the request. The corporation shall, within sixty days, notify the owner in writing of its decision to either waive the right to repurchase or to repurchase the unit. If the corporation determines that it will repurchase the dwelling unit, the repurchase shall close within ninety days of notification. This time limit,

however, may be extended if the homeowner fails to comply with all of the conditions relating to the repurchase procedures, provided that the repurchase price shall remain unchanged.

(c) If the corporation determines that it will either repurchase or allow a qualified nonprofit housing trust to repurchase the dwelling unit, it shall provide a repurchase disclosure sheet to the owner and enter into a repurchase agreement with the owner. All rights and remedies of the corporation in regard to its option to repurchase the dwelling unit shall be preserved notwithstanding the failure of the owner to execute a repurchase agreement.

(d) If the corporation determines that it will waive its rights under section 201H-47(a)(1), HRS, then it shall issue to the owner a waiver of right of repurchase. The waiver shall not be issued to anyone other than the owner. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-89 Resale or rental of repurchased dwelling unit. (a) Following the repurchase of a dwelling unit pursuant to this subchapter, the corporation may in its discretion either resell or rent or lease the dwelling unit.

(b) If the corporation resells a repurchased dwelling unit, the sales price shall be determined by the corporation; provided, however, that the sales price shall not exceed the greater of:

- (1) The value of the dwelling unit reduced by a reasonable discount representing the decrease in value resulting from the restrictions set forth in sections 201H-47 and 201H-49, HRS, and the shared appreciation program; or
- (2) The price at which the dwelling unit was repurchased by the corporation plus administrative expenses and the sale shall be conditioned on imposition of the

restrictions set forth in sections 201H-47 and 201H-49, HRS, and the shared appreciation program.

(c) Resale policies to be followed by the corporation or its designated representative are as follows:

(1) Resales shall be priced to be affordable to meet the incomes of target groups.

(2) A statutorily required time period transfer and use restriction shall be imposed on each resale.

(3) The shared appreciation equity program shall be part of the resale program.

(4) When the number of applicants exceeds the number and type of units available, section 15-308-25 shall apply. After the initial period, the sale of units shall be offered to applicants on the wait list. The applicant shall also meet the original income requirements as determined [by the corporation] for the project or unit.

(d) If the corporation rents the new project dwelling unit or repurchased dwelling unit, it shall rent the dwelling unit [under such terms and conditions as it deems appropriate.] as provided in subchapter 4. [Eff] (Auth: HRS §201H-

4) (Imp: HRS §§201H-47, 201H-49)

§15-308-90 Repurchase under foreclosure of properties subject to restrictions. The corporation may repurchase a property that is the subject of a mortgage foreclosure or foreclosure under power of sale when the property is encumbered with the right-to-repurchase restrictions set forth in sections 201H-47, 201H-49, and 201H-51, HRS, and the shared appreciation equity program.

(1) For property encumbered by the restrictions set forth in sections 201H-47, 201H-49, and 201H-51, HRS:

- (A) The price may be determined by the guidelines set forth in subsections 15-308-105(a)(1)-(3), or at a price that will enable the corporation to resell the property; or
 - (B) The corporation may waive its option to purchase the property and shall be entitled to the proceeds remaining in excess of the customary and actual costs and expenses of the foreclosure sale, encumbrances of record, purchaser's costs of improvements and simple annual interest of one per cent on purchaser's original cost and capital improvements.
- (2) For property encumbered by the shared appreciation equity program restriction only:
- (A) The property may be repurchased when the price, determined by adding the corporation's share of net appreciation amount plus the superior encumbrances of record, will enable the corporation to resell the property.
 - (B) The corporation shall be entitled to its share of net appreciation when the property is transferred as the result of the foreclosure sale.
 - (C) If the corporation's share is not paid when due, interest on the corporation's amount will accrue interest at the simple annual rate of twelve per cent until paid.

The corporation shall pursue foreclosure or legal action. [Eff _____] (Auth: HRS §201H-4)
 (Imp: HRS §§201H-107, 201H-47, 201H-49, 201H-51)

SUBCHAPTER [§] 6

SHARED APPRECIATION EQUITY PROGRAM RESTRICTIONS

§15-308-101 Purpose. This subchapter governs the general procedure for the payment to the corporation for its percentage share of the net appreciation upon the transfer or sale of the dwelling unit purchased from the corporation.
[Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-102 Applicability. This subchapter shall apply to all dwelling units developed, sold, or sponsored by the corporation and for which all restrictions set forth in section 201H-47, HRS, including the right to repurchase restriction are in effect. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-103 Corporation's percentage share of net appreciation. (a) As the corporation is providing the opportunity for the purchaser to buy a home below fair market value, the purchaser shall pay the corporation its share of the net appreciation when the property is transferred or sold. The appraisal procured by the corporation shall be used to establish the corporation's percentage share at the time of transfer or sale by the following calculation:

Original Fair Market Value minus Purchaser's Original Base Purchase Price divided by Original Fair Market Value rounded to the nearest one per cent.

Net appreciation is calculated as follows:
(Current Fair Market Value of the dwelling unit as originally purchased excluding any capital improvements by the purchaser subsequent to

original purchase) - Purchaser's Original Base Purchase Price - Actual Sales costs incurred, if any. Any shared appreciation equity agreements entered into on or after August 27, 1999 shall not be eligible to deduct sales costs.

(b) The shared appreciation equity program restriction shall be part of the conveyance document for the sale of the dwelling unit recorded in the bureau of conveyances. Notification of the shared appreciation program restriction as an encumbrance on the property shall be recorded as a separate memorandum.

(c) If the corporation's percentage share of net appreciation is less than one-half of one per cent, the shared appreciation equity program restriction shall not apply. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-104 Payment due on sale or transfer.

(a) The purchaser agrees that upon any sale or transfer, the corporation shall immediately be notified by the [~~purchaser~~] owner of the terms and conditions of the sale or transfer. Except for a permitted transfer approved by the corporation, the corporation shall be entitled to be paid its share of the net appreciation on the effective date of the transfer of an amount equal to:

Corporation's Percentage Share multiplied by Net Appreciation as determined in section 15-308-103(a).

(b) If the corporation's share is not paid when due, interest on the corporation's share of net appreciation shall accrue at the simple annual rate of twelve per cent per year until paid. The corporation shall also be entitled to be paid the cost of reasonable attorney's fees and costs to enforce the payment of the corporation's percentage share of the net appreciation due.

§15-308-106 Permitted transfers. (a) The following permitted transfers shall not result in the corporation's percentage share of the net appreciation becoming due and payable. However, the corporation's consent for the following transfers shall be required:

- (1) Creation of a lien or encumbrance which does not affect rights of occupancy provided that the total amount of liens and encumbrances cannot be greater than the sum of eighty per cent of the [~~purchaser's~~] owner's original purchase price and the [~~purchaser's~~] owner's share of net appreciation. In the case where a house lot was purchased and the [~~purchaser~~] owner contributed his labor to construct the dwelling, the then fair market value of the dwelling shall be included as part of the [~~purchaser's~~] owner's share of net appreciation. In extreme hardship cases involving health and safety, the corporation may allow up to an additional twenty per cent of the [~~purchaser's~~] owner's original purchase price and the [~~purchaser's~~] owner's share of net appreciation provided that the lien or encumbrance would be a loan for capital improvement purposes only;
- (2) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by the entirety;
- (3) Transfer to a relative who meets eligibility requirements upon death of [~~purchaser~~] owner;
- (4) Transfer to spouse or children who meet eligibility requirements;
- (5) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes owner;
- (6) Transfer into an inter vivos trust in which the [~~purchasers~~] owners remain the primary

beneficiary and does not affect their rights of occupancy; or

- (7) Transfers into or from a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability.

(b) If the corporation's rights under this subchapter are derived from the sale of a vacant lot by the corporation, the use of the land as security for a loan to be used by the [~~purchaser~~] owner to purchase the land or to finance the construction of a principal residence is a permitted transfer to which the corporation's consent is not required. The corporation shall consent in writing to the subordination of its lien or contingent lien rights under this subchapter to the lien of any mortgage placed on the property to finance the construction of a principal residence or the purchase of the vacant lot. [Eff] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-107 Determination of fair market value.

(a) Whenever it is necessary to determine the net appreciation of the property, the corporation shall select an appraiser and order an appraisal of the fair market value of the dwelling unit. The [~~purchaser~~] owner shall pay for the cost of the appraisal.

(b) Within ten business days upon receipt of the appraisal, a written copy shall be provided to the [~~purchaser~~] owner. Should the [~~purchaser~~] owner dispute the appraisal, the [~~purchaser~~] owner may obtain a second appraisal at the [~~purchaser's~~] owner's cost and expense.

(c) If the first appraisal obtained by the corporation is not disputed, that appraisal shall be used to determine the fair market value.

(d) If the [~~purchaser~~] owner disputes the first appraisal, the second appraisal ordered by the [~~purchaser~~] owner shall be sent to the corporation

within the earlier of (1) ten business days upon receipt, or (2) forty-five calendar days after the first appraisal is received from the corporation.

(e) If the second appraisal is lower than the first appraisal, the fair market value used shall be one-half of the sum of the two appraisals.

(f) If the second appraisal is not lower, the corporation's first appraisal shall be used to determine the fair market value.

(g) All appraisals shall be made by ~~[an]~~ a qualified appraiser ~~[having one or more of the following qualifications:~~

- ~~(1) State of Hawaii licensed appraiser; or~~
- ~~(2) State of Hawaii certified appraiser]~~ as defined in these rules.

[Eff _____] (Auth: HRS §201H-4)
(Imp: HRS §201H-47)

§15-308-108 Cancellation of the corporation's share of the net appreciation. (a) The corporation's right to be paid a share of the net appreciation shall constitute a lien on the property until all of the following events have occurred:

- (1) The corporation has been fully paid its share of the net appreciation and any other amounts that are due and owing the corporation;
- (2) The corporation releases the shared appreciation equity program restriction; and
- (3) The release is recorded at the bureau of conveyances by the purchaser.

(b) Should no amount be due the corporation following all computations, the corporation may issue a release of the shared appreciation equity program upon the request of the owner. In the event the corporation provides written notice to the owner that no amount is due, the owner, at the owner's own expense, shall draft and have recorded such instruments as are necessary to make the release

effective. The owner shall submit a recorded copy of the release instruments to the corporation within forty-five days of the date of the corporation's written notice in order to have the shared appreciation equity program restriction cancelled.
[Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-109 Exercise of the right to purchase restriction. In the event the corporation exercises its option to purchase the property, the shared appreciation equity program restriction shall not apply. If the purchaser paid part of or the full payment for the shared appreciation equity program, the corporation shall refund the amount paid.
[Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-110 Prepayment of corporation's percentage share of net appreciation. (a) The [~~purchaser~~] owner may pay all or part of the corporation's share of the net appreciation at any time without a sale or transfer of the dwelling unit.
(b) If only a partial payment is made to the corporation, the [~~purchaser's~~] owner's original purchase price shall be increased for the purpose of making any later calculation to determine the balance of the corporation's share of the net appreciation.
(c) The minimum amount of partial payment is [~~to be determined by the corporation.~~] twenty-five per cent. [Eff _____] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

SUBCHAPTER [§] 7

OWNER OCCUPANCY WAIVER PROCEDURES

308-47
EXHIBIT C

§15-308-121 Purpose and applicability. This subchapter is adopted pursuant to chapter 91, HRS, and implements section 201H-49, HRS, and the shared appreciation equity program pursuant to section 201H-47, HRS, which applies to real property, restrictions on its use, and exceptions to those restrictions. [Eff] (Auth: HRS §§201H-4, 201H-47, 201H-49) (Imp: HRS §§ 201H-47, 201H-49)

§15-308-122 Application for temporary owner occupancy waiver. When the owner of a unit in any qualified affordable housing project submits an application to the corporation for an exception to the owner occupancy requirement in section 201H-49, HRS, the following shall apply:

- (1) The applicant shall submit to the corporation a completed temporary owner occupancy waiver form as [used] provided by the corporation;
- (2) Along with the temporary waiver form, the applicant shall submit to the corporation the following information:
 - (A) A cover letter requesting the temporary owner occupancy waiver and which states the length of the temporary waiver period requested, including, but not limited to a letter from a physician, dean, or commanding officer;
 - (B) A signed Hawaii state income tax return for every year the applicant has occupied the dwelling unit;
 - (C) Documentation on the monthly mortgage payments the owner is paying; and
 - (D) Additional documentation necessary for the corporation to verify the hardship circumstance and make a determination on the temporary waiver request;

- (3) Upon receipt, the staff of the corporation shall time stamp the application.
- (A) If the owner's temporary waiver request is found to be valid under these rules, the staff shall issue written notification of that determination to the applicant within sixty working days thereafter.
- (B) If the owner's temporary waiver request is found to be invalid under these rules, the staff shall, within sixty working days of receipt, so notify the applicant, along with the reason or reasons that the temporary waiver request is denied.
- [Eff _____] (Auth: HRS
§§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-123 Hardship circumstances required.

Except for a natural disaster, the corporation may grant a temporary waiver of the owner occupancy requirement if the applicant is unable to reside on the property temporarily due to the following conditions:

- (1) An unforeseeable job or military transfer;
 - (2) A temporary educational sabbatical;
 - (3) Serious illness of the person or household member; or
 - (4) Other circumstances as determined by the corporation on a case by case basis.
- [Eff _____] (Auth: HRS §§201H-4,
201H-49) (Imp: HRS §201H-49)

§15-308-124 Duration of temporary waiver. (a)

The corporation may waive the owner occupancy requirement for a total of not more than ten years after the purchase of the dwelling unit. If the owner does not reoccupy the dwelling unit at the end of the temporary waiver period, the owner shall pay the

corporation its share of the net appreciated value of the property in accordance with subchapter [§] 6 of these rules, if applicable, and the corporation may repurchase the dwelling unit in accordance with subchapter [§] 5 of these rules. If the corporation elects not to repurchase the dwelling unit, the owner shall pay the corporation simple interest on the original cost and capital improvements at the rate of twelve per cent a year until the unit is reoccupied or sold.

(b) If the right to repurchase restriction has expired and only the shared appreciation equity program restriction is applicable, then the owner shall pay the corporation its share of the net appreciated value of the property in accordance with subchapter 7 of these rules. [Eff]
(Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-125 Allowable uses of the dwelling unit during the temporary waiver period. During the temporary waiver period, the dwelling unit may be rented or leased, provided that the owner complies with all applicable laws. The amount of monthly rent that may be charged by the owner shall not exceed (1) the corporation's affordable rent guidelines or (2) the owner's monthly mortgage payments for principal, interest, taxes, and applicable payments for mortgage insurance, homeowner association fees, maintenance fees, and lease rent; whichever is greater. The applicant shall submit to the corporation a signed rental agreement. Subletting is not allowed.
[Eff] (Auth: HRS §§201H-4, 201H-49)
(Imp: HRS §201H-49)

§15-308-126 Proof of occupancy. A waiver may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling unit. The owner shall

continue to pay resident state income taxes during the waiver period. The owner shall submit signed Hawaii state income tax returns for each year of the temporary waiver period. [Eff] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-127 Extension of the owner occupancy requirement. The corporation may extend the owner occupancy requirement by one month for every month or fraction thereof that the owner occupancy requirement of section 201H-49, HRS, is temporarily waived. [Eff] (Imp: HRS §201H-49)

§15-308-128 Recovery of administrative expenses and attorneys fees. The corporation may recover all relevant administrative expenses and attorneys' fees from the applicant in administering and implementing this subchapter. [Eff] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-129 Failure to reoccupy. Failure to reoccupy the dwelling unit by the owner at the end of the temporary waiver period shall be sufficient reason for the corporation, at its option,

- (1) To purchase the unit as provided in section 201H-47, HRS as applicable. In this situation, the owner shall not receive more than the maximum to which the owner would be entitled under section 201H-47, HRS; or
 - (2) Demand the full payment for the shared appreciation equity restriction. The corporation has the right to verify the owner's failure to occupy.
- [Eff] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

~~§15-308-130 Disagreement with the corporation's determination.~~ Any owner who disagrees with the corporation's determination shall be entitled to a contested case proceeding under chapter 91. ~~[Eff _____] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §§201H-47, 201H-49)]~~

§15-308-130 Extension of the temporary waiver period. An owner may apply for an extension of the temporary waiver period; provided that the total waiver period shall not exceed ten years; provided further, that application is made at least ninety working days prior to the termination of the initial temporary waiver period. [Eff _____] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

SUBCHAPTER 8

PROCEDURES TO IMPLEMENT QUALIFIED RESIDENT PREFERENCES IN THE INITIAL SALE OF MARKET-PRICED DWELLING UNITS

§15-308-151 Announcement; publication. For a period of thirty calendar days, the developer shall publish or cause to be published in the classified section of at least one newspaper published daily in the State and having a general circulation in the county in which the project is located at least twice a week, an announcement containing at a minimum a summary of the following information:

- (1) The location of the project;
- (2) A fair and reasonable estimate of:
 - (A) The total number of market-priced units to be included in the project;
 - (B) The price range of the market-priced units;
 - (C) The approximate size of the market-priced units; and

- (D) A designation whether the market-priced units are being sold in fee simple or leasehold;
- (3) A statement that one hundred per cent of the market-priced units are being sold in fee simple or leasehold;
- (4) The definition of "qualified resident" as contained in section 201H-32, HRS;
- (5) The name and address of the real estate broker designated by the developer, whom interested individuals may contact to be placed on a reservation list, and to obtain further information on the project; and
- (6) A statement that the market priced units will be available to any qualified resident without regard to race, sex, color, religion, marital status, familial status, national origin, person with a disability status, age, or HIV (human immunodeficiency virus) infection.
- (7) The publication shall also include HUD's equal housing opportunity slogan or logo.
[Eff 12/04/10; comp 4/28/17; comp
(Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-1, 201H-45, 515-3)]

§15-308-152 Designation of residential units.

The developer of any housing project containing market-priced residential units shall designate one hundred per cent of such units for sale to prospective owner-occupant "qualified residents" during an initial offering period of thirty calendar days. Thereafter, the developer has the discretion to sell the remaining units to any purchaser. [Eff 12/04/10; am and comp 4/28/17; comp] (Auth: HRS §201H-4)
(Imp: HRS §§201H-1, 201H-45)

§15-308-153 Reservation list, requirements.

(a) During the initial offering period of thirty calendar days, the developer's designated broker shall compile a "qualified resident" reservation list consisting of the names, addresses, and phone numbers of all individuals stating a desire to purchase a market-priced unit contained in the announced project.

(b) The list shall be compiled in the order in which applicants have submitted to the agent a duly executed affidavit that the applicant meets the definition of "qualified resident", agrees to be an owner-occupant for a minimum of 365 days and will obtain an owner occupant type of loan and intends to become a purchaser of a market-priced unit.

(c) Any individual who makes any false statement in the affidavit is subject to criminal charges and civil action under the laws of this State.

(d) The developer shall submit the reservation list within ten days of the expiration of the initial thirty day offering period to the corporation together with the executed affidavit. At the close of project sales, the developer shall submit to the corporation a status of the reservation list as to who purchased and who did not purchase, and the reason for not purchasing. [Eff 12/04/10; comp 4/28/17; comp] (Auth: HRS §201H-4) (Imp: HRS §§201H-1, 201H-45)

§15-308-154 Sale of residential units. (a) The developer shall offer all of the market-priced units to those individuals whose names are on the "qualified resident" reservation list by one of the following means:

- (1) In the order in which their names appear on the list;
- (2) By the drawing of lots; or
- (3) By any other reasonable and fair method as determined by the developer.

(Auth: HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-12, 201H-43, 201H-22)

§15-308-172 Applicability. This subchapter shall apply to all lots developed and leased by the corporation and designated for lower cost and market housing, and for which lands and funds were used to meet the goals and objectives of providing affordable housing. [Eff] (Auth: HRS §201H-4) (Imp: HRS §§ 201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

§15-308-173 Administration of residential leases. (a) The corporation shall review applications submitted by lessees for assignment or transfer of leases and subleases, when applicable.

(b) As applicable, a purchaser of a residential lease shall meet the following eligibility requirements:

- (1) The purchaser shall be a qualified resident;
- (2) The purchaser shall not be delinquent in any obligation to the State or any county government, and shall not have had a previous contract cancelled due to default;
- (3) If the lot is vacant, the purchaser shall demonstrate the financial ability to construct a house within two years of the lease execution date; and
- (4) The purchaser shall provide state and federal tax clearances.

(c) The corporation shall establish lease rents and shall initiate the renegotiation of lease rents at the reopen period as stated in the lease agreement.

(d) Lease terms shall begin on the same date for all units in a project, when possible.

(e) The corporation shall terminate a lease when a lessee fails to cure the default of any condition of the lease or violation of this chapter, using the following procedure:

- (1) Lessees shall be sent a written notice of default.
 - (2) The mortgagee of record shall be sent a copy the notice of default; and
 - (3) Lessees shall be required to vacate the premises of the leased property upon termination of the lease.
- (f) The corporation's consent shall be required prior to any assignment or transfer of leases and subleases, if allowed, according to the terms of the lease agreement. [Eff] (Auth: HRS §201H-4) (Imp: HRS §§ 201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

§15-308-174 General lease provisions. (a) The corporation shall consent to mortgages as stated in the lease.

(b) The corporation's consent shall be required prior to any improvements installed on the land as stated in the lease.

(c) The lessee shall pay for all costs when necessary to determine the lessee's equity in the property. [Eff] (Auth: HRS §201H-4) (Imp: HRS §§ 201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

§15-308-175 Extension of fixed rent period or lease term for mortgage purposes. (a) The corporation may extend the fixed rent period or term for mortgage purposes. The corporation may adjust the lease rent for the current fixed periods and the extended period as conditions of allowing the extension.

(b) The extended lease rents shall not be used in the valuation of the purchase of the leased fee interest of the land.

(c) The corporation may charge fees for the extension application. Such fees shall be as

presented [~~in the exhibit at the end of this chapter~~
~~entitled "Fees" dated _____~~] in §15-308-7.

(d) The lessee shall pay for all costs
associated with the extension. [Eff _____]
(Auth: HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-
12, 201H-15, 201H-22)

**§15-308-176 Sale of leased fee interest of the
land.** (a) The corporation may sell the leased fee
interest of the land according to the terms of the
lease, or state statutes, as applicable.

(b) The original terms of the lease or revised
terms and conditions mutually agreed upon in writing
shall be used to value the leased fee interest of the
land.

(c) The corporation may sell the leased fee
interest of the land for the project, or for
individual lots.

(d) The lessee shall pay for all costs to
purchase the leased fee interest of the land.
[Eff _____] (Auth: HRS §201H-4) (Imp: HRS §§
201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

Chapter 15-308, Hawaii Administrative Rules, on the Summary Pages dated _____, was adopted on _____, following a public hearing held on _____, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on _____.

The adoption of chapter 15-308 shall take effect ten days after filing with the Office of the Lieutenant Governor.

DONN MENDE, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

EXHIBIT C

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

Adoption of Chapter 15-308,
Hawaii Administrative Rules

_____, 2020

SUMMARY

Chapter 15-308, Hawaii Administrative Rules,
entitled "State Assisted Real Estate Services
Program," is adopted.

EXHIBIT C