

Shall the Authority Exercise Its Option to Buy-Back the Pacifica Honolulu Condominium Reserved Housing Unit 609?

Staff Report

September 16, 2015

Background: In the fourth quarter of 2011, Oliver McMillan Pacifica, LLC ("OMP") completed development of the Pacifica Honolulu Condominium project in the Kakaako Community Development District. Pursuant to the Hawaii Community Development Authority ("HCDA") Mauka Area Rules in effect at the time of the development, OMP was required to provide at least one hundred twenty-four (124) two (2) bedroom reserved housing units within the project. Mr. Mark Kawabata and Ms. Chung-Ju Michelle Wei qualified to purchase a reserved housing unit and subsequently acquired Unit 609 on September 21, 2011.

Mr. Kawabata and Ms. Wei original purchase price was FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$425,000.00) and at that time the fair market value of the unit was FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00). Therefore, the HCDA has a shared equity encumbrance on the unit of at least TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). The unit is currently appraised at SIX HUNDRED THIRTY-FOUR THOUSAND SIX HUNDRED DOLLARS (\$634,600.00). The reserved housing unit is also subject to a "Buy-Back" provision which provides the HCDA with the first right-of-refusal to purchase the reserved housing unit at a price set by a formula if the purchaser decides to sell the unit during the five (5) years immediately following their purchase of the unit.

By a letter dated August 24, 2015, Mr. Kawabata and Ms. Wei notified the HCDA of their intent to sell Pacifica Honolulu Condominium Reserved Housing Unit 609 and are in the process of a divorce. They are requesting the HCDA's declaration with respect to its option to Buy-Back this reserved housing unit. A copy of their letter is attached hereto as Exhibit A. §15-22-186(c) (3), Hawaii Administrative Rules, provides that the Authority may:

- waive its option to purchase the unit, the HCDA will receive the shared equity;
- agree to buy the unit (the estimated HCDA option purchase price for the unit is approximately FOUR HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED FOUR DOLLARS AND SEVENTEEN CENTS (\$452,604.17) based on the formula provided in the rules); or
- provide a substitute buyer for the unit at the price calculated by its rules.

The HCDA's rules further require that the "Authority shall notify the owner of its decision within sixty (60) days of receipt of the owner's notification." Based on Mr. Kawabata and Ms. Wei's August 24, 2015, letter, the Authority has until October 23, 2015, to notify them of its position regarding its option to Buy-Back the unit.

Act 61, Session Laws of Hawaii 2014, revised Chapter 206E in two sections with respect to Reserved Housing Units. First, Section 171-64.7, is amended and allows the HCDA to sell Reserved Housing Units without a prior concurrent resolution adopted by each house by at least a two-thirds majority vote of the members. Secondly, Act 61 specifically authorizes the Authority to sell Reserved Housing Units by amending the §206E-31.5 language prohibiting sale of Kakaako lands.

Discussion: At the Hawaii Community Development Authority's September 2, 2015 Kakaako General Meeting, the Authority requested HCDA staff to provide a current Preliminary Title Report and the outstanding balance of the original loan(s) for the Pacifica Honolulu Condominium Reserved Housing Unit 609, to assist the Authority with its decision related to the request. Enclosed is a Stewart Title Guaranty Company Agreement effective August 12, 2015 attached as Exhibit B which reflects the liens on this unit. Recorded on the title report is one (1) mortgage dated November 23, 2011 in the amount of THREE HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS (\$375,000.00), with Wells Fargo Home Mortgage of Hawaii, LLC. The outstanding balance for this mortgage is THREE HUNDRED FORTY-SIX THOUSAND TWO HUNDRED THIRTY-SEVEN DOLLARS AND TWENTY-ONE CENTS (\$346,237.21).

With Act 61, SLH 2014, effective July 1, 2014, the HCDA now has the option to buy back Reserved Housing Units from owners who purchased and reside in a Reserved Housing Unit and subsequently request to sell their unit previous to their buy-back period's expiration. Given this tool, the HCDA now has the ability to purchase a Reserved Housing Unit and resell the unit at the current affordable sales price or find a substitute buyer utilizing the formula as stated in the applicable HCDA Mauka Area Rules. The HCDA also has the option to waive its rights to buy back the unit. While the HCDA staff implements revised Mauka Area Plan and Rules, staff believes the Authority should explore purchasing the unit rather than the Authority waiving its right to buy back the unit.

If the HCDA decides to waive its Buy-Back option and the unit is sold, the HCDA will receive its shared equity payment of at least TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) upon closing. This money would be deposited into the HCDA's Reserved Housing sub-account and used to support the development of other projects. However, once the sale to any willing market purchaser takes place and the shared equity payment is made, the unit will no longer be a reserved housing unit.

Recommendation: The current balance as of date for the Reserved Housing Subaccount is EIGHT HUNDRED FORTY-THREE THOUSAND FIVE HUNDRED FORTY-THREE DOLLARS (\$843,543.00). Staff recommends the Authority exercise its right to buy back Pacifica Honolulu Condominium Reserved Housing Unit 609 for approximately FOUR HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED FOUR DOLLARS AND SEVENTEEN CENTS (\$452,604.17)

Attachment: Exhibit A – August 24, 2015 letter from Mr. Kawabata and Ms. Wei
Exhibit B – Stewart Title Guaranty Company Agreement effective August 12, 2015