

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

March 7, 2018

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Shall the Authority Waive Its Option to Buy Back Symphony Honolulu Reserved Housing Unit 2112?

SUMMARY:

Mr. Richard Phomsouvanh requested permission to sell Symphony Honolulu Reserved Housing Unit 2112, which has a 5-year regulated term expiring on May 4, 2021. However, Hawaii Community Development Authority (HCDA) did not issue a response within the mandated 60-day time frame, thus triggering automatic approval.

AUTHORITIES:

Under, Hawaii Administrative Rules (HAR) § 15-218-36, the HCDA has the first option to purchase any Reserved Housing Unit if a reserved housing unit owner wishes to sell that unit during the regulated term.

Under HAR § 15-218-37, the HCDA shall notify the owner of its decision within sixty days of receipt of the owner's notification. Failure to notify the owner of a decision will mean the authority shall have waived its first option to purchase the unit.

The text to the applicable HAR can be referenced in Exhibit A.

BACKGROUND:

On January 29, 2018, Shannon Gripper, Asset Management Specialist, received an inquiry from Mr. Eric Chu on behalf of Mr. Richard Phomsouvanh, owner of Symphony Honolulu Reserved Housing Unit 2112. Mr. Phomsouvanh intends to sell Unit 2112, which is under a 5-year regulated term that expires on May 4, 2021. Mr. Phomsouvanh sent a request letter to the HCDA dated November 21, 2017 (see Exhibit B), requesting the HCDA release Unit 2112 from the Reserved Housing Program so that he may sell the unit at market.

Mr. Gripper responded to Mr. Chu that he was unaware of this request and had not received Mr. Phomsouvanh's letter. HCDA staff then conducted an extensive search and found the letter had been delivered via certified mail to the HCDA on November 29, 2017. However, HCDA staff never issued a letter of receipt or a decision.

All incoming mail relating to Reserved Housing is routed to Mr. Gripper for an appropriate response. It is unclear how this letter was lost, as Mr. Gripper cannot locate the original letter in his files.

Under current procedures, all requests to sell a Reserved Housing Unit during the reserved term are given the same response in accordance with the Authority's decision on September 7, 2016 (see Exhibit C). In such cases, the HCDA notifies the unit owner that the HCDA will buy back the unit at the price specified by Rule. The HCDA would have issued the same response to Mr. Phomsouvanh, as his Unit is still under the regulated term.

However, on February 6, 2018, the HCDA received a second letter from Mr. Phomsouvanh, stating that the 60-day deadline for a response from HCDA had elapsed. The second letter was dated February 1, 2018, which is 63 days after the HCDA received the first letter.

ANALYSIS:

Pursuant to HAR § 15-218-36, the HCDA has the first option to buy back Symphony Honolulu Reserved Housing Unit 2112 if the original owner chooses to sell the Unit prior to May 4, 2021.

However, HAR § 15-218-37 dictates that the HCDA has 60 days to exercise its option after receiving the owner's notification to sell. Given the above circumstances and HCDA's lack of timely response to the owner's notification letter, HAR § 15-218-37 (4) applies. The HCDA must waive its right to buy back Symphony Honolulu Reserved Housing Unit 2112 to comply with HAR § 15-218-37 (4).

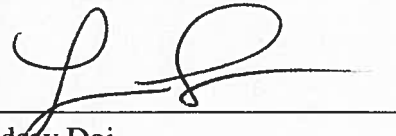
HCDA staff notes this is not an acceptable practice and changes have been implemented to ensure this type of oversight does not occur again. All incoming mail will now be simultaneously scanned to both staff and supervisor, and secretaries will follow up to ensure responses are given in a timely manner. HCDA staff regrets this error occurred.

RECOMMENDATION

HCDA staff recommends that the Board:

Uphold HAR § 15-218-37 (4) and authorize R. Phomsouvanh's request to waive HCDA's first option to purchase Symphony Honolulu Reserved Housing Unit 2112.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



**Garrett Kamemoto, Interim Executive Director
Hawaii Community Development Authority**

Attachments:

Exhibit A – HAR § 15-218-36 and 37

Exhibit B - HCDA timestamped original postal correspondence from Mr. Phomsouvanh

Exhibit C – Reserved Housing Action Item September 7, 2016

Exhibit D – Second postal correspondence from Mr. Phomsouvanh

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 22

THE MAUKA AREA RULES

Repealed

§§15-22-1 to 15-22-280 Repealed. [NOV 11 2011]

section 15-218-41. [Eff NOV 11 2011] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-36 First option to purchase. If the owner of a reserved housing unit wishes to sell the unit during the regulated term, the authority or an entity approved by the authority shall have the first option to purchase the unit. The purchase price shall be based on the lower of:

- (1) The current fair market price of the reserved housing unit as determined by the authority less the authority's share of equity in the unit as determined by section 15-218-42; or
- (2) The reserved housing unit price calculated based on the AMI at the time of sale of the unit. [Eff NOV 11 2011] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-37 Sale or transfer of reserved housing units. Sale or transfer of reserved housing units during the regulated term shall be as follows:

- (1) The authority or an entity approved by the authority shall have the first option to purchase the unit in the manner indicated in section 15-218-36;
- (2) The owner shall notify the authority in writing of the intent to sell the reserved housing unit;
- (3) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (a) (2) above. The authority may:
 - (A) Wave its option to purchase the unit,
 - (B) Agree to purchase the unit, or
 - (C) Designate another buyer for the unit;
- (4) If the authority fails to notify the owner of a decision in the manner prescribed in

subsection (a)(3), the authority shall have waived its first option to purchase the unit;

- (5) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and
- (6) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In these cases, the amount to be paid to the owner by the authority shall be the difference between the price as determined in section 15-218-36 (1) or (2) and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.
[Eff NOV 11 2011] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-38 Foreclosure. In the event of a foreclosure, any law to the contrary notwithstanding, a mortgagee under a mortgage covering a reserved housing unit and land or leasehold interest subject to the restrictions of sections 15-218-35, 15-218-36, and 15-218-37, shall, prior to commencing mortgage foreclosure proceedings, notify the authority of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS. The authority shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all

customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record. The person in default shall be entitled to any amount remaining provided the amount shall not exceed the lower of the amounts computed in section 15-218-35. [Eff NOV 11 2011] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-39 Transfers of title pursuant to a mortgage foreclosure. The conditions prescribed in sections 15-218-35, 15-218-36, and 15-218-37(a) (1) through (6) above shall be automatically extinguished and shall not attach to subsequent transfers of title pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. [Eff NOV 11 2011] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-40 Incorporation in deed. The provisions of sections 15-218-35 through 15-218-37, and section 15-218-41 shall be incorporated in any deed, lease, mortgage, agreement of sale, or other instrument of conveyance for reserved housing units. [Eff NOV 11 2011] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-41 Equity sharing requirements. (a) The authority's share of the equity in the reserved housing unit shall become due upon resale of the reserved housing unit.

(b) The authority's share of the equity in the reserved housing unit shall be the higher of:

- (1) An amount equal to the difference between the original fair market price of the unit as determined by the authority and its original sales contract price; or
- (2) An amount equivalent to the percentage of net appreciation calculated as the

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November 21, 2017

Hawaii Community Development Authority
547 Queen St
Honolulu, HI 96813

RECEIVED
2017 NOV 29 PM 1 12

HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

Dear HCDA Board,

I am writing you this letter to request the release of my unilateral agreement for my Symphony Honolulu Unit #2112. I am looking to sell this unit at the estimated value that the redfin site has given me at \$618,509.00.

Thank you,



Richard Phomsouvanh

Richard Phomsouvanh
588 Kapiolani Blvd #2112
Honolulu HI 96813

CERTIFIED MAIL



7017 2680 0000 4155 6255



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Hawaii Community Development Authority
547 Queen St.
Honolulu HI 96813

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USPS Tracking®

Tracking

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Track Another Package +

Tracking Number: 7017268000041556255

Remove X

Expected Delivery by

Status

MONDAY

 **Delivered**

27 NOVEMBER 2017  **8:00pm**

November 27, 2017 at 1:11 pm
Delivered, Left with Individual
HONOLULU, HI 96813

Delivered

Tracking History

November 27, 2017, 1:11 pm
Delivered, Left with Individual
HONOLULU, HI 96813

Your item was delivered to an individual at the address at 1:11 pm on November 27, 2017 in HONOLULU, HI 96813

7017 2680 0000 4155 6255

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com™.

HONOLULU HI 96813

Certified Mail Fee	\$3.35
Extra Services & Fees (check box, add fee)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$8.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49
Total Postage and Fees \$3.84



Sent to **HCD**
Street and Apt. No., or PO Box No.
547 Queen St
City, State, ZIP+4®
Honolulu HI 96813

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions.

Decision Making: Shall the Authority Delegate to the Executive Director the Following Limited Actions Relating to the Administration of the HCDA's Reserved Housing Program –

1) Sale or Transfer After the Regulated Term, 2) Sale or Transfer During the Regulated Term, and 3) Owners' Refinancing Request and Subordination of Shared Equity Interest?

Staff Report

September 7, 2016

Background: As prefaced at the July 6, 2016 and August 3, 2016 General Meetings, in the interest of streamlining future meetings of the Authority, staff recommends the delegation of certain decisions relating to HCDA Reserved Housing to the Executive Director. Such decisions are currently subject to Board approval and represent multiple agenda items at nearly every monthly Board meeting. The request for delegation only pertains to those decisions that the Board has *consistently* taken in the past year.

While staff does believe these decisions are significant for the agency, the consistency to which they have been historically reviewed and applied could be administered directly by staff. Doing so would expedite responses to Reserved Housing Unit owners and would also lessen the agenda for future Board meetings.

If approved by the Board, any decisions identified above will be included in the Executive Director Report at the next regularly scheduled Board meeting. Any request on which the Board has *not* previously taken a position will be brought to the Board for approval.

Discussion: The Interim Executive Director recommends the following limited actions relating to the administration of the HCDA's Reserved Housing Unit Program be delegated to the Executive Director as follows:

1. **Sale or Transfer After the Regulated Term** – acceptance of Shared Equity Payment and execution of a release of the HCDA's Shared Equity Encumbrance for sale of the reserved housing unit after the regulated term has expired, excluding sales and transfers where the value of Shared Equity Interest is calculated pursuant to Hawaii Administrative Rules (HAR) §15-218-41(b)(2) (HAR §15-22-187(b)(2) of the vested Mauka Area Rules) and HAR §15-216-41(b)(2) (for Kalaeloa).

2. **Sale or Transfer During the Regulated Term** – exercise the HCDA’s option to “buy-back” a reserved housing unit during the regulated term, where specific enumerated conditions have been met.
3. **Owner’s Refinancing Request and Subordination of Shared Equity Interest** – approve refinancing of owner’s primary mortgage up to the value of the original acquisition loan amount, provided that such that approval would not adversely impact recovery of the HCDA’s Shared Equity Interest and subordination of HCDA Shared Equity Interest as second lien holder.

Any transaction that does not meet the criteria specified in the conditions set forth below that further details each request, shall continue to be brought for Board action. Also any appeal of a decision issued under this delegation would also be brought for Board action.

1. Sale or Transfer After the Regulated Term

By a Board decision at its November 7, 2012 meeting, the Executive Director is already authorized to execute and deliver documents for the release of the shared equity encumbrance of a reserved housing unit, upon receipt of shared equity payment for the sale or transfer of a reserved housing unit, outside of the regulated term.

Currently, this process entails a staff review of the sales price for consistency with recent market sales and scrutiny of the transaction to the extent the sales price affects HCDA’s calculation of shared equity. Market values have not yet risen to a point where the calculation described in HAR §15-218-41(b)(2) (HAR §15-22-187(b)(2) of the vested Mauka Area Rules) or HAR §15-216-41(b)(2) (for Kalaeloa) has been triggered.

Staff proposes to modify the previous Board action to **exclude** from delegation, any sale or transfer where the Shared Equity Interest value as calculated under HAR §15-218-41(b)(2) (HAR §15-22-187(b)(2) of the vested Mauka Area Rules) or HAR §15-216-41(b)(2) for Kalaeloa, would prevail. The HCDA does not have a history that can be applied under this circumstance and the underlying “market price” could prove to be subjective.

2. Sale or Transfer During the Regulated Term

Since the buy-back provisions were made “operational” by Act 71, Session Laws of Hawaii 2014, the Authority has consistently voted to

buy-back all units within the regulated term to retain them as reserved housing units, as provided for under HAR §15-218-36 (HAR §15-22-186(c)(1) of the vested Mauka Area Rules) or HAR §15-216-36 for Kalaeloa.

To the extent there are funds available in the Hawaii Community Development Revolving Fund, Reserved Housing subaccount, the Board delegates to the Executive Director the ability to execute buy-back at the price determined and stipulated by HAR §15-218-36 (HAR §15-22-186(c)(1) of the vested Mauka Area Rules) or HAR §15-216-36 for Kalaeloa. If there are inadequate funds in the Reserved Housing sub-account, and adequate funds elsewhere, staff may propose the buy-back using other funding sources.

3. *Owner's Refinancing Request and Subordination of Shared Equity Interest*

Unless previously released by the HCDA, HCDA's shared equity interest is second only to a primary mortgage on a reserved housing unit at the time of the original sale. Lower interest rates or other personal circumstances may require an owner to re-finance their unit to access earned equity or realize savings in monthly payments.

To safeguard the value and collection of HCDA's shared equity interest at the first point of sale, staff has historically recommended and the Board has historically taken action to:

1. Approve requests to refinance the primary mortgage up to the value of the original acquisition loan amount, provided that market conditions have not deteriorated to adversely impact recovery of the HCDA's shared equity interest.
2. Deny all requests subordinating the HCDA's shared equity interest to a 2nd mortgage (such as a Home Equity Line of Credit - HELOC) or similar financing tool that would demote the HCDA's "second position" on the property.

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RECEIVED

2018 FEB 6 AM 10 37

HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

February 01, 2018

Via U.S. Certified Mail and E-Mail shannon.gripper@hawaii.gov; DBEDT.hcda.reservedhousing@hawaii.gov

Hawaii Community Development Authority
[547 Queen St](#)
[Honolulu, HI 96813](#)

ATTENTION: Shannon "Gripper" Gripper

Re: [888 Kapiolani Blvd #2112, Honolulu, HI 96813](#)

Dear Mr. Gripper

Please be advised that I had previously sent notification on November 27, 2017 requesting the release of my unilateral agreement regarding the above-mentioned property via U.S. Certified Mail, tracking no. 70172680000041556255.

I have enclosed a copy of the letter and the certified mail receipt provided by the USPS and tracking information stating that the letter had been received and left with an individual at your facility located at [547 Queen St., Honolulu, HI 96813](#).

Please be advised that the HCDA reserve housing rule section [15-218-37](#) "Sale or transfer of reserved housing units" subsection (4) states the following:

"If the authority fails to notify the owner of a decision in the manner prescribed in subsection (a)(3), the authority shall have waived its first option to purchase the unit"

(a)(3) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (a)(2) above. The authority may:

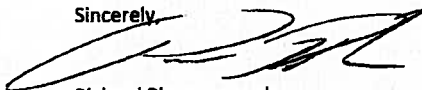
- (A) Wave its option to purchase the unit,
- (B) Agree to purchase the unit, or
- (C) Designate another buyer for the unit;

(a)(2) The owner shall notify the authority in writing of the intent to sell the reserved housing unit;

As of today, this marks the 66th day since HCDA has received my notification. Therefore, I kindly request that HCDA provide written notification of waiver of its first option to purchase, being that HCDA had failed to notify me of their decision within the 60 days time frame so that I may start the process of selling my unit.

Thank You for your attention and professional cooperation in this matter.

Sincerely,



Richard Phomsouvanh

Enclosures: November 27, 2017 Correspondence, USPS Certified Mailing Receipt