

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

December 5, 2018

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

HCDA Board Members:

**SUBJECT:** Shall the Hawaii Community Development Authority Authorize the Transfer of Rycroft Terrace Unit 529 to a Revocable Trust During the Regulated Term and Waive the Authority's First Option to Purchase and Defer the Shared Equity Due to the Authority?

**SUMMARY:**

The owner of Rycroft Terrace Unit 529 is requesting a waiver of the reserved housing rules under Hawaii Administrative Rules (HAR) § 15-22-188 to transfer his unit to a revocable trust as part estate planning to avoid probate. The owner would like to remain living in his unit and defer the payment of shared equity.

**AUTHORITIES:**

As indicated in the letter from the owner's attorney, the unit is governed by HAR § 15-22.

HCDA's options relative to a transfer of title of a reserved housing unit within the regulated term is provided in HAR § 15-22-186(c), the relevant sections are provided below:

(c) The conditions for transferring reserved housing units during the regulated term are as follows:

- (1) If an owner wishes to transfer title, the authority or a governmental agency approved by the authority shall have the first option to purchase the unit...
- (3) The owner shall notify the authority in writing of the intent to transfer title to the reserved housing unit and the property or the lease. The authority shall respond to the owner's notification by either waiving its option to purchase the unit, or by agreeing to buy the unit or providing a substitute buyer for the unit...

HAR § 15-22-188 however allows for the deferral or waiver of certain conditions on transfer of reserved housing. Subsection (a) would not apply as it is not a direct transfer to a family member, subsection (b) may apply:

(b) Waivers may be granted by the authority on a case-by-case basis if any of the following are met:

- (1) The waiver will not result in speculation;
- (2) Where fiscal management will not allow repurchase of the unit; or
- (3) Where such waiver will allow permanent financing by other mortgage lenders.

### **BACKGROUND:**

An attorney representing the owner of Rycroft Terrace Unit 529 contacted the HCDA to inquire about transferring his unit to a revocable trust for estate planning purposes. HCDA responded to the owner, citing the explicit provisions contained in the Unilateral Declaration of Restrictive Covenants for the unit relating to a transfer. As the inquiry identified estate planning, the HCDA response also made reference to HAR § 15-22-188. HCDA's letter is attached hereto as Exhibit A.

In a letter attached hereto as Exhibit B, the owner's attorney clarified that the owner's primary objective in transferring the property to a revocable trust is to avoid the probate process in the event of the owner's death. The attorney further cites HAR § 15-22-188 and notes that the action will not result in speculation, as the owner would remain in sole possession of the property as trustee of the revocable trust. Upon the owner's death, the owner plans to transfer the unit to his mother. The owner also expressed his interest in deferring any shared equity payment. The letter also formally requests HCDA consideration for waiver.

### **ANALYSIS:**

Under HAR § 15-22-186(c), the HCDA's alternatives to dealing with the transfer of a unit within the regulated term follow:

1. Exercising its first option to purchase the unit; and
2. Waiving the transfer, which would require the owner to pay shared equity.

Deferring shared equity is not an option. Otherwise upon transfer and payment of shared equity, the unit would no longer be subject to reserved housing requirements.

Under HAR § 15-22-188 a waiver *may* be granted by the *authority* on a case-by-case basis. In the letter from the owner's attorney the owner's intent is stated as estate planning with the planned transfer of the unit to the owner's mother upon death. The letter indicates that this transfer would not result in speculation, requesting further consideration by HCDA.

Based on HAR § 15-22-188 the request does meet the criteria for further consideration. While deferral of shared equity is not an option under HAR § 15-22-186, HAR § 15-22-188, does not preclude the Authority from placing conditions upon any waiver or deferral decision. The board could condition the waiver to constitute a deferral making the waiver subject to a new unilateral agreement and reinstate the regulated term requirements and shared equity. The board's waiver could also be conditioned on Executive Director review and approval of the trust document to ensure that there is no speculation.

Staff further notes that these types of transfers are contemplated and otherwise permitted under the new Reserved Housing Rules adopted in July 2018 for the subject request. Pursuant to HAR §15-218-42 (5), the Authority may defer its first option to purchase and equity sharing when the unit is transferred into an inter vivos trust in which the purchasers remain the primary beneficiary and their rights of occupancy are not affected.

**RECOMMENDATION:**

HCDA staff recommends that the Board Authorize the Transfer of Rycroft Terrace Unit 529 to a revocable trust during the regulated term subject to the following conditions:

1. A new unilateral agreement is executed between HCDA and the revocable trust reinstating HCDA's reserved housing requirements including regulated term requirements; and
2. The trust document shall be subject to review by the HCDA Executive Director to ensure the provisions of HAR § 15-22-188 are met.

Respectfully submitted,



Lindsey Doi  
Asset Manager

APPROVED FOR SUBMITTAL:



Aedward Los Banos, Executive Director

**Attachments**

Exhibit A – September 24, 2018 Letter from HCDA

Exhibit B – October 11, 2018 Letter from Attorney Samuel Suen



HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY



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Governor

John Whalen  
Chairperson

Aedward Los Banos  
Executive Director

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September 24, 2018

Mr. Shane Yonemura  
1550 Rycroft Drive, Unit 529  
Honolulu, Hawaii 96814

Dear Mr. Yonemura,

Re: Request to Transfer Reserved Housing Unit to a Revocable Trust  
for Rycroft Terrace, Unit 529, Honolulu, Hawaii 96814  
(TMK 1-2-3-18-022-57)

The Hawaii Community Development Authority (HCDA) is in receipt of an email dated August 2, 2018 from Mr. Samuel Suen, requesting a written confirmation that relates to the transfer of a Reserved Housing Unit located at 1550 Rycroft Drive, Unit 529, Honolulu, Hawaii 96814 to a Revocable Trust.

This unit is currently encumbered by a Unit Deed with Reservations and Conditions and a Unilateral Declaration of Restrictive Covenants for Unit Designated as a Reserved Housing Unit. This unit is subject to a Regulated Term of ten years that commenced October 8, 2018. Pursuant to Hawaii Administrative Rules (HAR) §15-22-186(c)(1), the conditions for transferring reserved housing units during the regulated term are as follows:

- (1) *If an owner wishes to transfer title to the reserved housing unit, the authority or a governmental agency approved by the authority shall have the first option to purchase the unit at a sales prices based on the lower of:*
  - a. *The current fair market value of the reserved housing unit less the authority's share of the equity in the unit as determined by section 15-22-187 of this chapter; or*
  - b. *The original sales price of the reserved housing unit adjusted proportionately to the change in the median income computed from the date of the purchase to the date of the sale.*

Subject to HAR §15-22-186(c), transferring the unit from Shane Kunio Yonemura to a revocable trust constitutes a title transfer and triggers HCDA's first option to purchase the unit.

Mr. Shane Yonemura  
September 24, 2018  
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However, pursuant to HRS §15-22-188, you may request a deferral or waiver of certain conditions on the transfer of this Reserved Housing Unit by notifying the Authority in writing, noting your circumstances and intentions.

Please advise HCDA whether you will be requesting a deferral or waiver of certain conditions, or you may also withdraw your request. Your decision is due to HCDA by Friday, October 12, 2018.

Please contact Lindsey Doi, Asset Manager, at 594-0300 if you have any questions.

Sincerely,



Aedward Los Banos  
Executive Director

ALB/LK/LK

c: Samuel K.L. Suen, Law Offices of Samuel K.L. Suen, LLC

**Law Office of Samuel K.L. Suen**  
**A Limited Liability Law Company**

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October 11, 2018

**VIA U.S. FIRST CLASS MAIL AND E-MAIL**

Hawaii Community Development Authority  
c/o Aedward Los Banos  
Executive Director  
547 Queen Street  
Honolulu, Hawaii 96813

Re: Request to Transfer Reserved Housing Unit to a Revocable Trust for Rycroft  
Terrace, Unit 529, Honolulu, Hawaii 96814 (TMK (1) 2-3-18-22 C.P.R. No. 157)

Dear Mr. Los Banos,

Thank you for your letter dated September 24, 2018 addressed to Shane Yonemura. I am the attorney assisting Mr. Yonemura with his estate planning and am writing on his behalf. I appreciate your response to my emails requesting written confirmation that Mr. Yonemura would not be able to transfer the real property located at 1550 Rycroft Drive, Apt. #529, Honolulu, Hawaii 96814, more particularly described as T.M.K. # (1) 2-3-18-22 C.P.R. No. 157 ("Property"), to his revocable trust as verbally communicated to me by a former Hawaii Community Development Authority ("HCDA") staff member in April after the Department of the Attorney General reviewed my inquiry.

As stated in your September 24, 2018 letter, the Property is subject to certain restrictions imposed by the HCDA. If the Property is transferred during the regulated term, HCDA has the first option to purchase the Property and is entitled to a share of the equity in the Property.

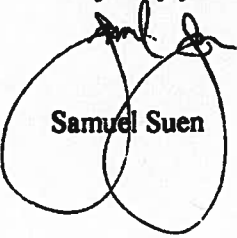
Thank you for informing us that a deferral of payment to HCDA of its share of the equity in the Property and waiver of HCDA's first option to purchase is possible. Upon review of H.A.R. § 15-22-188, it appears Mr. Yonemura may be eligible for a deferral and waiver. Mr. Yonemura has created a revocable trust of which he is the sole trustee. Mr. Yonemura's primary objective in transferring the Property to his revocable trust is for his estate to avoid the probate process in the event of his death. If a waiver is granted by HCDA, it will not result in speculation as Mr. Yonemura will remain in sole possession of the Property as trustee of his revocable trust. Furthermore, upon Mr. Yonemura's death, the Property is devised to his mother, Laraine Yonemura, who should qualify under rules established by HCDA.

On behalf of Mr. Yonemura, please accept this letter as a request for a waiver of HCDA's first option to purchase and deferral of HCDA's share of equity in the Property if Mr. Yonemura transfers the Property to his revocable trust.

HCDA  
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We appreciate HCDA's attention to this matter and consideration regarding Mr. Yonemura's request. If you have any questions or concerns or require any additional information, please do not hesitate to let me know.

Very truly yours,



Samuel Suen

cc: Shane Yonemura