

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

January 9, 2019

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

HCDA Board Members:

**SUBJECT:** Shall the Authority Authorize the Transfer of Rycroft Terrace Unit 529 to a Revocable Trust During the Regulated Term, Subject to Certain Conditions?

**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. The owner would like to remain living in his unit and defer the payment of shared equity. The Authority deferred this action item at the December meeting and requested further information on how such transfers are managed.

**AUTHORITIES:**

Rycroft Terrace Unit 529 is governed by HAR § 15-22. The Hawaii Community Development Authority's (HCDA's) options relative to a transfer of title of a reserved housing unit within the regulated term are provided in HAR § 15-22-186(c), the relevant sections of which 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 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; however, 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 inquired with the HCDA about transferring a reserved housing unit to a revocable trust. HCDA cited the provisions contained in the owner's Unilateral Declaration of Restrictive Covenants and in 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 requested a waiver of the reserved housing rules, citing HAR § 15-22-188 and noting that the transfer of the property into a revocable trust would not result in speculation, as the owner would remain in sole possession of the property as trustee of the revocable trust. The owner also expressed interest in deferring any shared equity payment, as he would remain living in the unit.

At its December 5, 2018, board meeting, Authority members deferred action, requesting further information regarding:

1. How are similar transfers managed by the Hawaii Housing Finance and Development Corporation (HHFDC)?
2. Has the HCDA ever allowed revocable trusts to purchase reserved housing units?
3. How would the trust be regulated to provide the necessary controls for reserved housing (i.e., owner occupancy)?

**ANALYSIS:**

In response to the Authority's questions, HCDA staff confirmed the following:

Question 1: How are similar transfers managed by HHFDC?

Answer: HHFDC regards transfers to revocable trusts as "permitted transfers" and allows for waivers of HHFDC's first option to purchase and deferral of shared equity with the proper documentation. HHFDC also requires owner occupancy and stipulates that the primary beneficiary of the trust must remain living in the unit as their primary residence.

HHFDC requires that the revocable trust and new Deed documentation be provided for review to ensure the original Unit Deed encumbrances are referenced and that HHFDC's first option to purchase is retained. The original restrictions are recorded in the new Deed under the original terms (i.e., Regulated Term expires 10 years after the original date of recordation, the term does not start over with the execution of a new Deed).



Question 2: Has the HCDA ever allowed revocable trusts to purchase reserved housing units?

Answer: HCDA Planning staff confirmed that a number of Reserved Housing Units in Keola Lai were originally sold to revocable trusts.

Question 3: How would the trust be regulated to provide the necessary controls for reserved housing (i.e., owner occupancy)?

Answer: Like HHFDC, HCDA Reserved Housing Requirements could be incorporated in the new Deed that would run with the property, as well as a new Unilateral Agreement. The owner occupancy requirement would apply to the original qualified program participant. The deed restriction would also seek to have all other program element such as regulated term, shared equity, and transfers remain intact.

Under HAR § 15-22-186(c), the HCDA's options for dealing with the subject request are limited to:

1. Exercise its first option to purchase the unit; or
2. Waive its option to purchase the unit, which would require the owner to pay shared equity and would release the unit from HCDA's Reserved Housing Program.

Under HAR § 15-22-188 a waiver *may* be granted by the *authority* on a case-by-case basis if certain conditions are met. The owner's attorney claims this transfer meets the provisions of HAR § 15-22-188(b)(1), as it would not result in speculation.

While deferral of shared equity is not an option under HAR § 15-22-186, HAR § 15-22-188 provides for a waiver with continued Reserved Housing requirements as a viable option. The waiver could be subject to a new unilateral agreement and deed restrictions which reinstates the regulated term and shared equity requirements.

Staff further notes that these types of transfers are permitted under the new Reserved Housing Rules adopted in July 2018. 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. Allowing the transfer of Rycroft Terrace Unit 529 into an inter vivos revocable trust would be consistent with this policy.

## **RECOMMENDATION**

HCDA staff recommends that the Board authorize the transfer of Reserved Housing units to revocable trusts 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 the regulated term; 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.

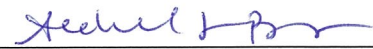
Respectfully submitted,



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Lindsey Doi  
Asset Manager

APPROVED FOR SUBMITTAL:



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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



David Y. Ige  
Governor

John Whalen  
Chairperson

Aedward Los Banos  
Executive Director

547 Queen Street  
Honolulu, Hawaii  
96813

Telephone  
(808) 594-0300

Facsimile  
(808) 587-0299

E-Mail  
dbedt.hcda.contact@hawaii.gov

Website  
[dbedt.hawaii.gov/hcda](http://dbedt.hawaii.gov/hcda)

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**

1575 South Beretania Street, Suite 205 • Honolulu, Hawaii 96826  
Phone: (808) 282-4411 Facsimile: (888) 696-7055 Email: sam@skslaw.com

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.

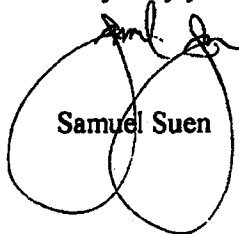
On behalf of Mr. Yonemura, please accept this letter as a request for a waiver of HCDA's first option to purchase and deferral of HCDA's share of equity in the Property if Mr. Yonemura transfers the Property to his revocable trust.



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

