

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

August 5, 2020

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

HCDA Board Members:

SUBJECT: Shall the Authority Delegate to the Interim Executive Director the Authority to Take the Following Limited Actions Relating to the Administration of the HCDA's Reserved Housing Program as Described in the August 5, 2020 Staff Report to Approve Requests Relating to 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?

SUMMARY:

Hawaii Community Development Authority (HCDA) staff requests the continuation of its existing Reserved Housing policies governing sales of units during and after the regulated term, as well as refinancing. Without the approval of these blanket policies, each request from a Reserved Housing unit owner will require a separate action item at future Authority meetings.

AUTHORITIES:

At the September 7, 2016 General Meeting, the Authority approved several policies relating to the administration of the HCDA Reserved Housing Program for a term of four years. These policies will expire on September 7, 2020, requiring further action by the Authority to allow HCDA staff to continue processing Reserved Housing requests.

The HCDA oversees about a thousand Reserved Housing units governed by Hawaii Administrative Rules (HAR), with several hundred more under construction. These rules allow certain actions with approval by the Authority, such as refinancing or selling a unit during or after the regulated term.

BACKGROUND:

In the September 2016, HCDA staff recommended delegating certain decisions relating to HCDA's Reserved Housing Program to the Executive Director to expedite the processing of requests and streamline future Authority meetings. Without such blanket policies, each individual request from a Reserved Housing unit owner must be brought before the Authority for a decision at the monthly board meeting.

In previous years, multiple Reserved Housing requests appeared on each board meeting agenda. These requests were often identical (e.g., requests for refinancing within the allowable limits or requests to sell the unit after the regulated term has expired) but required separate action items. This resulted in lengthy board meetings and delays in processing, despite the Authority generally approving each request.

At its September 7, 2016 General Meeting, the Authority approved delegating such decisions to the Executive Director when the request met certain conditions. The minutes for this meeting are attached hereto as Exhibit A, and the staff report for this item is attached hereto as Exhibit B. At this meeting, the Authority enacted the following Reserved Housing policies until September 7, 2020:

1. **Sale or Transfer After the Regulated Term** – Accept the payment of Shared Equity and execute of the Release of Unilateral Declaration to allow the reserved housing unit owner to sell the unit at market after the regulated term has expired, provided the Shared Equity value is not calculated under the formulas listed in HAR §15-22-187(b)(2) of the 2005 Rules, HAR §15-218-41(b)(2) of the 2011 Rules, or HAR §15-216-41(b)(2) of the Kalaeloa Rules.

The HCDA does not have history of administering these calculations for Shared Equity, as to date, these formulas have always yielded lower results than the standard Shared Equity calculation of the Original Fair Market Value less the Original Sales Price. By rule, the Shared Equity due is the higher of the two formulas.

2. **Sale or Transfer During the Regulated Term** – Exercise the HCDA’s first option to “buy back” a reserved housing unit if the owner needs to sell during the regulated term, provided there are funds available in the Hawaii Community Development Revolving Fund, Reserved Housing subaccount.

The “buy back” price is determined and stipulated by HAR §15-22-186(c)(1) of the 2005 Rules, HAR §15-218-36 of the 2011 Rules, and HAR §15-216-36 of the Kalaeloa Rules. 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** – Approve refinancing of owner’s primary mortgage up to the value of the original acquisition loan amount, provided it is not greater than 80% of the purchase price.

Unless previously subordinated 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. To safeguard the value and collection of HCDA's Shared Equity interest, the HCDA denies all requests subordinating the HCDA's Shared Equity interest to a second mortgage (such as a Home Equity Line of Credit or similar financing tool) that would demote the HCDA's "second position" on the property.

The above policies approved at the September 7, 2016 meeting were consistent with Authority action in previous years. If any request fell outside of the above parameters, or if the unit owner appealed the HCDA's policy, the request would be brought back to the Authority for further action.

On August 2, 2017, the Authority approved a Memorandum of Agreement (MOA) with the Hawaii Housing Finance and Development Corporation (HHFDC) to allow HHFDC to serve as the HCDA's designated "buy back" agent for Rycroft Terrace for any Reserved Housing units sold during the regulated term. This MOA allows HHFDC to repurchase such units on HCDA's behalf, then resell them under HHFDC's own affordable housing program to keep them affordable for longer. If HHFDC determines the repurchase is not feasible and declines to proceed, the HCDA releases the unit from the Reserved Housing Program once the owner pays the applicable Shared Equity due to the HCDA.

Two years later, on August 7, 2019, the Authority approved the expansion of this MOA to allow HHFDC to buy back any HCDA Reserved Housing unit sold during the regulated term and resell them as part of HHFDC's own program. Unlike the aforementioned policies, which expire on September 7, 2020, the HHFDC "Buy Back" MOA will remain in place until either the HCDA or HHFDC terminates the agreement.

ANALYSIS:

Regarding **Sale or Transfer After the Regulated Term**, this is largely an administrative matter that requires documentation of the unit being released from the HCDA's Reserved Housing Program and the payment of the Shared Equity due to the HCDA through escrow. HCDA staff recommends no changes and proposes a continuation of the existing policy that has been in effect since September 7, 2016.

Regarding **Sale or Transfer During the Regulated Term**, HCDA staff recommends continuing the existing policy of exercising HCDA's first option to buy back all units offered for sale during the regulated term. This will be done in accordance with the existing MOA with HHFDC. If the HHFDC determines repurchasing the unit is not financially feasible, the HCDA will release the unit from the Reserved Housing Program after the unit owner pays the applicable Shared Equity to the HCDA.

Regarding **Refinancing Requests and Subordinations of HCDA's Shared Equity Interest**, the recent historic low interest rates prompted many Reserved Housing unit owners and lenders to request higher refinancing limits than what was previously allowed. On June 3, 2020, the Authority temporarily increased the maximum allowable refinancing limit to 95% of the original purchase price for all Reserved Housing unit owners governed by the 2005 and 2011 Rules. Many owners and lenders were pleased with this decision and dozens submitted new requests to refinance under the temporary higher limit, which is also set to expire on September 7, 2020.

HCDA staff recognizes the original Reserved Housing policy that limited refinances to only 80% of the original purchase price or the original loan amount, whichever was lower, negatively impacts owners. This policy penalizes owners who put down large down payments (and therefore had small original loans), as they cannot access their own equity. This policy also penalizes owners who put down small down payments, as they cannot refinance their full original loan amount which may have been as high as 95% of the original purchase price.

Therefore, HCDA staff proposes making permanent the temporary policy approved on June 3, 2020, which increased the allowable refinancing maximum to 95% of the original purchase price for all Reserved Housing unit owners governed by the 2005 and 2011 Rules. This has proven to be very simple for HCDA staff to administer and has been met favorably by owners and lenders.

Authority members previously inquired about an alternative calculation by which the HCDA could guarantee the protection of its Shared Equity interest. Under this formula, the refinancing maximum would be calculated as the Current Fair Market Value, less the Shared Equity amount. This would place an additional burden on the unit owner by requiring them to procure a certified appraisal for the purposes of calculating the maximum refinancing limit but would likely yield an even higher refinancing maximum.

For the purposes of comparing the above two formulas proposed for calculating the maximum refinancing limit, the following values are from a unit at Ke Kilohana that was recently appraised:

- The current fair market value is \$650,000.
- The original fair market value was \$571,000, and the original purchase price was \$474,289, so the Shared Equity due to the HCDA is \$96,711.
- 95% of the original purchase price is \$450,574.55.
- Current fair market value less the Shared Equity is \$553,289.

In this example, the Ke Kilohana unit owner could refinance \$102,714.45 more if the HCDA changed its policy to allow refinancing up to the value of the Current Fair Market Value, less the Shared Equity.

These results are even more drastic when the Shared Equity amount is low, such as in the case with Reserved Housing units at Pacifica Honolulu. The following are values from a recent Pacifica Honolulu appraisal:

- The current fair market value is \$665,000.
- The original fair market value was \$415,000, and the original purchase price was \$407,000, so the Shared Equity due to the HCDA is \$8,000.
- 95% of the original purchase price is \$386,650.
- Current fair market value less the Shared Equity is \$657,000.

In this example, the Pacifica Honolulu unit owner could refinance \$270,350 more if the HCDA utilized the current fair market value in calculating the maximum refinancing limit.

Although such calculations are very favorable for the unit owner, HCDA staff proposes keeping the current formula of allowing refinances up to 95% of the original purchase price. This adds a buffer of protection to HCDA's Shared Equity interest, is extremely simple to calculate, and is the current practice under the temporary policy.

HCDA staff receive at least half a dozen inquiries from Reserved Housing unit owners seeking to refinance or sell their unit each week. The number of requests for refinancing have increased in recent months due to favorable interest rates.

Reviewing each request at the monthly Authority meeting would be a time-consuming process and would also cause delays that might jeopardize a unit owner's ability to refinance or sell their unit. While HCDA staff acknowledge these decisions are significant, staff can rely on consistent application of rules and past practice to render fair decisions for future requests. Delegating this role to the Interim Executive Director and staff would expedite responses to Reserved Housing unit owners and would also streamline the agenda for future Authority meetings.

If blanket policies are approved, any actions taken in accordance with the policies will continue to be reported to the Authority in the monthly Executive Director's report. Any request that does not fall under the above policies or any appeal of the above policies will be brought to the Authority for further action.

RECOMMENDATION:

HCDA staff recommends that the Board:

Delegate to the Interim 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 as Detailed in the August 5, 2020 Staff Report.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Garrett Kamemoto, Interim Executive Director

Attachments

Exhibit A – Minutes of September 7, 2016 General Meeting

Exhibit B – September 7, 2016 Staff Report for Reserved Housing Delegation

Minutes of a Regular Meeting
of the Members of the
Hawaii Community Development Authority
State of Hawaii

Wednesday, September 7, 2016

GENERAL BUSINESS

I. CALL TO ORDER/ROLL CALL

A general business meeting of the Members of the Hawaii Community Development Authority (“Authority” or “HCDA”), a body corporate and a public instrumentality of the State of Hawaii, was called to order by Chair Whalen at 10:12 AM September 7, 2016 at Authority’s principal offices at 547 Queen Street in Honolulu, Hawaii, 96813, pursuant to Article IV, Section 1 of the Authority’s Bylaws.

Members Present: Beau Bassett
Wei Fang
Michael Golojuch, Sr.
Scott Kami
Jason Okuhama
David Rodriguez
Mary Pat Waterhouse
William Oh
Amy Luersen
Derek Kimura
John Whalen

Members Absent: George Atta
Kalani Capelouto
Steven Scott
Shirley Swinney
Donna Camvel

Others Present: Aedward Los Banos, Interim Executive Director & ASO
Mike Wong, Deputy Attorney General
Lori Sunakoda, Deputy Attorney General
Deepak Neupane, Planning Director
Tessa Malama, Director of Planning and Development - Kalaheo
Lindsey Doi, Asset Manager
Garett Kamemoto, Communications and Community Outreach
Officer
Laura Savo, Court Reporter

II. APPROVAL OF MINUTES

1. General Regular Meeting of August 3, 2016.

No comments or corrections were made. Minutes were approved as presented.

REPORT OF THE EXECUTIVE DIRECTOR

Interim Executive Director, Aedward Los Banos introduced Mr. Garrett Kamemoto who joined HCDA and is the new Compliance Assurance and Community Outreach Officer. Mr. Kamemoto replaced Ms. Lindsey Doi Leaverton who is now HCDA's Asset Manager. Shelby Hoota, Media Specialist resigned in August, 2016.

Mr. Los Banos highlighted the following items:

- The Office of Environmental Quality Control (OEQC) will publish the park Environmental Impact Statement on Thursday, September 8, 2016.
- The Family Assessment center is scheduled to open in mid-September and will be located at the former maintenance shed in Kakako Waterfront Park.
- The HCDA Financial Statement Audit for Fiscal Year Ending 2016 is currently underway and will be brought forward for board approval at a future meeting.

Member Waterhouse asked a few questions regarding some information reported in the July 2016 financial statements and Mr. Los Banos stated the following:

- The variance amount reported for the salary and fringe benefits funded by the revolving fund is a result of the position vacancy of the Executive Director.
- The GO bond fund section of the financial statement will be updated to reflect the current annual budget for HCDA salaries and
- The 690 counsel listed under "Project and Utilizing Revolving Funds" is an action authorized by the previous board for specialized counsel to provide due diligence and negotiation terms. HCDA still retains counsel for that project and there is an item on the Kakaako agenda that will include an updated term sheet on the project.

Member Luersen requested a status update, at a future meeting, on the Heeia parcel and the Heeia master plan.

There were no further discussion, questions or comments from board members and the public.

III. BUSINESS MATTERS

2. Information and Discussion: Executive Director (ED) Search Committee Update

Chair Whalen noted that consultant Bishop & Company, came up with a list of first-round candidates (after reviewing applications, resumes and conducting background checks and some preliminary interviews). The ED search committee will start to schedule interviews this month with those list of candidates.

Member Bassett asked Chair Whalen to clarify the process and asked at what stage the selection for a new Executive Director will be presented before the full board. Chair Whalen stated the ED search committee will interview the first-round list of candidates and present at least two, may be three, candidates for the full board to meet with, interview and to make a selection. The ED search committee is hopeful to make its recommendation by the November meeting.

There were no comments or questions from the board members or the public.

3. Decision Making: Establishment of the 2017 HCDA Legislative Task Force

Chair Whalen named Member Mary Pat Waterhouse, Shirley Swinney and Chair Whalen to the 2017 Legislative Task Force and stated the Task Force is allowed one additional (fourth) member and asked if there was anyone interested in participating.

There were no comments or questions from the board members or the public.

4. 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:

- a. Sale or Transfer After the Regulated Term
- b. Sale or Transfer During the Regulated Term

Chair Whalen stated, the board was provided information at a previous board meeting regarding the current item and reminded board members the decision will be made based on ministerial decisions that the board has previously made. The decisions and the delegation follow the rules and regulations related to reserve housing. Chair Whalen asked for any comments before proceeding to a vote.

Member Waterhouse mentioned in the staff report regarding the second item "the sale or transfer during the regulated term" it describes if there are inadequate funds in the reserved housing subaccount and adequate funds elsewhere. She suggested revising the language to reflect "staff shall propose to the board the buyback using other funding sources"

Member Kami asked Mr. Los Banos to expand on the "sale or transfer after the regulated term" and clarify what staff is asking. Mr. Los Banos explained that current

rules dictate sale or transfer of a reserved housing unit after the regulated term is subject to board approval. He further explained that after the regulated term is done, there is no interest in the unit by HCDA other than the shared equity. All units are fairly new, so, going forward decisions will be ministerial. Member Kami asked Mr. Los Banos to explain the difference with the two items. Mr. Los Banos explained the difference and provided examples for instances where approval would be brought back for board approval vs. decisions made through board delegation to the executive director.

Member Luersen asked to clarify the language on the decision making item. Member Oh stated for clarification, the intent of the delegation to staff in terms of streamlining the process is so that anything that is ministerial gets passed without having to come to the board for approval. Member Oh commented and agreed that other than the point that Member Waterhouse made in terms of the funds being used other than the funds that we have if it's an external source, to make it simple and clear, there should be a delegation to staff as everything is quantifiable.

Member Luersen stated support of the staff recommendation proposed in the board packet.

Member Waterhouse asked what the process would be for the next board, as the current item is being decided on the current board's consistent positions taken in the past. Mr. Los Banos stated the next board could take action according to their delegation preference, unless the current board would like to include a time limit for two or three years if that is the board's desire. The decision item would expire and the next board would take action. Member Waterhouse asked Deputy Attorney General Lori Sunakoda and Mike Wong if they agreed with Mr. Los Banos' statement. Ms. Sunakoda stated for Member Waterhouse if there are concerns about clarity and wanted to make it clear for the record to any limitations or parameters, the Deputy Attorney General's recommendation would be to incorporate language in the motion to reflect any action the board is inclined to take.

Chair Whalen, Members Luersen, Bassett and Waterhouse discussed the language for the motion.

Chair Whalen recessed the meeting at 10:47 a.m.

Chair Whalen reconvened the meeting at 10:53 a.m.

There were no further discussion from board members or public comments.

Member Waterhouse made a motion, for the authority to approve the interim director's request and recommendation for granting a delegation of authority to the executive

director for a term of four years concerning limited actions relating to the administration of the HCDA's Reserved Housing Program as set forth in the interim executive director's staff report dated September 7, 2016, as amended by the board's discussion today.

Member William Oh seconded the motion.

Interim Executive Director, Aedward Los Banos, conducted the roll call vote. All members unanimously approved. Motion passed with 10 votes and four excused.

IV. ADJOURNMENT

Chairperson Whalen adjourned the regular meeting at 10:55 a.m.

Respectfully submitted,

/s/

John Whalen,
Chair

Note: The transcript of this meeting contains a verbatim record and should be consulted if additional detail is desired.

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.