

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 223

NINETY-NINE YEAR LEASEHOLD RESIDENTIAL CONDOMINIUM
PROGRAM

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SUBCHAPTER 1

GENERAL PROVISIONS

§15-223-1 Purpose and intent. Consistent with the intent of section 206E-282, Hawaii Revised Statutes, the purpose of this chapter is to establish the ninety-nine year leasehold program for the purpose of providing low-cost, leasehold residential condominium units for sale to Hawaii residents on state-owned lands within an urban redevelopment site. This chapter is adopted under chapter 91, HRS, and implements the provisions of chapter 206E, HRS, Part XII, Ninety-Nine Year Leasehold Program. [Eff _____] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-2 Administration. The HCDA, through its executive director, shall administer the provisions of this chapter. [Eff _____] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-3 Severability. If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this chapter shall continue to be separately and fully effective. [Eff _____] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-4 Rules of Interpretation. (a)

Provisions of the rules are activated by "shall" when required; "should" when recommended; and "may" when optional.

(b) Terms not defined in section 15-223-6 (definitions) shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and those found elsewhere within the HCDA's administrative rules, these rules shall take precedence for this chapter.

(c) Words used in the singular include the plural; words used in plural include the singular.

(d) Words used in the present tense include the future tense; words used in future tense include the present tense. [Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-5 Interpretation by the executive

director. (a) In administering this chapter, the executive director, when deemed necessary by the executive director, may render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity, and applicability to a particular situation.

(b) A written interpretation shall be signed by the executive director and include the following:

- (1) Identification of the section of this chapter in question;
- (2) A statement of the question;
- (3) A statement of interpretation; and
- (4) A statement of justification.

(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent sections of this chapter. All written interpretations rendered pursuant to this chapter shall be public record, and shall be effective on the date signed by the executive

director. [Eff _____] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-6 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or a different meaning or intent:

"Condominium Unit" means a residential condominium unit developed under the ninety-nine year leasehold program.

"Develop" or "development" means the planning, financing, and acquisition of real property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures or any combination of the foregoing, of any Project. It also includes any and all undertakings necessary therefore.

"Developer" means a private person, or an entity retained by the HCDA to develop a ninety-nine year leasehold residential condominium project under the ninety-nine year leasehold condominium program.

"Eligible buyer" means a person or a household that is eligible to purchase a condominium unit pursuant to §15-223-18, Eligibility.

"Executive Director" means the executive director of the HCDA.

"HCDA" means the Hawaii community development authority established by section 206E-3, Hawaii Revised Statutes.

"Household" means an individual; or two or more persons who live or intend to live together as a unit and who may, but need not be, related by blood, marriage, or operation of law.

"HRS" means the Hawaii Revised Statutes.

"Mixed-use project" means a project consisting of any combination of: a commercial project, a redevelopment project, or a residential project that include ninety-nine year leasehold residential condominium units.

"Owner" means the eligible buyer who has purchased and resides in the condominium unit.

"Owner-occupied residential use" means any use currently permitted in existing residential zones consistent with owner occupancy. "Owner-occupied residential use" does not include renting or subleasing by the owner of a residential condominium unit to any tenant or sublessee of any kind.

"Program" means the ninety-nine year leasehold program.

"Project" means a specific work or improvement, including real and personal properties, or any interest therein, acquired, owned, constructed, reconstructed, rehabilitated, or improved by the HCDA, or a developer, including a commercial project, redevelopment project, residential project, mixed-use project, that include ninety-nine year leasehold residential condominium units.

"Public transit station" means a planned or existing station connected to a locally preferred alternative for a mass transit project.

"State" means the State of Hawaii.

"Urban redevelopment site" means non-ceded state-owned lands within a one-mile radius of a public transit station in a county having a population greater than five hundred thousand. [Eff] (Auth: HRS §§206E-4, 206E-281, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-7 to §15-223-17 (Reserved) .

SUBCHAPTER 2

ELIGIBILITY TO PURCHASE NINETY-NINE YEAR LEASEHOLD
CONDOMINIUM UNITS

§15-223-18 Eligibility. (a) An eligible buyer may own real property for up to six months after closing on the purchase of a condominium unit.

(b) Within six months from the closing on the purchase of a condominium unit, the eligible buyer shall have completed the sale of any other residential or non-residential real property owned by the eligible buyer. The eligible buyer shall provide proof, that is acceptable to the executive director, of the sale of the real property(ies) to the executive director within thirty-days of the sale of the property(ies).

(c) The eligible buyer:

- (1) Shall be a qualified resident of the State, as defined in section 201H-32, HRS;
- (2) Shall not own any other real property, including any residential or non-residential property, except as provided in §15-223-18(a);
- (3) Shall not have any beneficial ownership of any trusts that hold real property; and
- (4) Shall not have any co-ownership or fractional ownership of a residential or non-residential real property, except as provided in §15-223-18(b).

(d) An owner of a condominium unit who is in the process of selling the condominium unit to another eligible buyer may purchase and hold other residential or non-residential real property(ies) up to six months in advance of closing on the sale of the condominium unit. [Eff _____] (Auth: HRS §§206E-4, 206E-284) (Imp: HRS §206E-284)

§15-223-19 Owner occupancy. (a) The eligible buyer shall not use the condominium unit for any purpose other than owner-occupied residential use.

(b) An eligible buyer shall be considered an owner-occupant if the eligible buyer resides in the condominium unit for at least two-hundred and seventy days annually. The owner shall submit an annual affidavit to the executive director attesting that the owner has resided in the condominium unit for at least two-hundred seventy days each year.

(c) The executive director may waive the requirements of §15-223-19 (a) and (b) where the inability of an owner to reside in the condominium unit is due to unforeseen circumstances, military transfer, serious illness, or other hardship circumstances as determined by the executive director in the executive director's sole discretion. The owner of the condominium unit shall file an application of waiver of occupancy to the executive director for a determination. . [Eff]
(Auth: HRS §§206E-4,206E-284) (Imp: HRS §206E-284)

§15-000-20 to §15-223-30 (Reserved).

SUBCHAPTER 3

MARKETING AND SALE OF NINETY-NINE YEAR LEASEHOLD
RESIDENTIAL CONDOMINIUM UNITS

§15-223-31 Marketing and Sale of Condominium Units. (a) The HCDA may advertise the sale of condominium units and qualify and select eligible buyers for the condominium units. It may also permit the developer of the condominium units, or the

developer's designated representative, to be responsible for advertising the sale of the condominium units and qualifying and selecting eligible buyers for the condominium units.

(b) Applications for the purchase of the condominium units shall be accepted on a first-come, first-served or on a lottery basis. The applications shall be submitted in person by the applicant. Only completed applications shall be acceptable. Applicants shall not be required to submit a deposit amount exceeding \$500. [Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-32 Condominium Units Sale Announcement.

For a period of thirty calendar days, the HCDA or the developer shall publish or cause to be published in the classified section of at least one newspaper published daily in the State and having a general circulation in the county in which the project is located, at least twice a week, or once a week if paired with another form of public notice such as a designated project website or informational meeting, an announcement containing the following information regarding the sale of condominium units in the project:

- (1) The location of the project;
- (2) The total number of condominium units in the project;
- (3) The salesprice of the condominium units;
- (4) The approximate size of the condominium units;
- (5) A statement that one hundred per cent of the condominium units are being sold in leasehold;
- (6) The eligible buyer requirements in §15-223-18;
- (7) The owner-occupancy requirements in §15-223-19;

- (8) The name and address of the real estate broker designated by the HCDA or the developer, whom eligible buyers may contact to be placed to obtain further information on the project; and
- (9) A statement that the condominium units will be available to any eligible buyers without regard to race, sex, color, religion, marital status, familial status, national origin, person with a disability status, age, or HIV (human immunodeficiency virus) infection. [Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-33 Application intake list. (a) During the initial offering period of thirty calendar days, the HCDA or the developer shall compile an application intake list consisting of the names, addresses, and phone numbers of all individuals stating a desire to purchase a condominium unit contained in the project.

(b) The application intake list shall be compiled in the order in which applicants have submitted to the HCDA or the developer an acknowledgment that the applicant meets the eligible buyer requirements in §15-223-18.

(c) Any individual who makes any false statement in the acknowledgment will be subject to criminal charges and civil action under the laws of the State. Any individual found to have willfully submitted false information, made misstatements, or withheld important information will be deemed to be ineligible for the project and disqualified from purchase of condominium units in any future projects, provided that the HCDA shall not waive its right to pursue any other recourse provided by law.

(d) If the marketing and sales of the condominium units is conducted by the developer, the developer shall submit the application intake list and the applicants' acknowledgment to the HCDA within ten

days of the expiration of the initial thirty day offering period. Within thirty days of the expiration of the initial thirty day offering period, the developer shall verify that applicants meet the eligible buyer requirements in §15-223-18 and submit a list of eligible buyers for the executive director's review and approval.

(e) If the marketing and sales of the condominium units is conducted by the developer, thirty days before the close of project sales, the developer shall submit to the HCDA a summary of which individuals on the eligible buyer list purchased a condominium unit, which did not purchase a condominium unit, and the applicant's reason for not purchasing a unit if a reason was provided by the applicant.

[Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-34 Sales of condominium units. (a) The HCDA or the developer shall offer the condominium units to eligible buyers on the application intake list by one of the following methods:

- (1) In the order in which their names appear on the list;
- (2) By the drawing of lots; or
- (3) By any other reasonable and fair method as determined by the executive director.

(b) If the marketing and sale of the condominium units is conducted by the developer, the developer shall also be required to comply with the following:

- (1) Prior to the sale of any of the condominium units, the developer shall submit to the executive director, for review and approval, copies of the sales contracts and deeds for the condominium units;
- (2) Prior to the sale of any of the condominium units, the developer shall submit to the executive director a copy of the covenants, conditions, and restrictions, if any, for review and approval;

- (3) If the marketing and sale of the condominium units is conducted by the developer, the developer shall submit to the executive director a list of all purchasers by condominium unit number, name, date of sales contract, date of recordation, tax map key, and property address; and
- (4) The HCDA or the developer shall comply with all applicable state and federal fair housing laws. [Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-35 to §15-223-45 (Reserved).

SUBCHAPTER 4

RESALE OR TRANSFER OF LEASEHOLD CONDOMINIUM UNITS

§15-223-46 Purpose. This subchapter governs the general procedures for the resale of a condominium unit by an owner to another eligible buyer.

[Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-47 Applicability. This subchapter applies to all condominium units developed and sold under the program as defined in §15-223-6.

[Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-48 Right of First Refusal to Purchase by the HCDA. (a) If an owner wants to sell a condominium unit within five years from the date of purchase date of the condominium unit, the HCDA shall have the right of first refusal to purchase the condominium unit.

(b) For purchase of the condominium unit by the HCDA, purchase price shall be determined by the HCDA by taking into consideration the original sale price of the condominium unit, consumer price index for Honolulu area published by the United States Bureau of Labor Statistics, and the cost of any value-added improvements made by the owner of the condominium unit. The following formula shall be utilized to calculate the purchase price:

Purchase Price = (Original Sale Price X Consumer Price Index Factor) + Cost of any Value-Added Improvements made by the Owner

The Consumer Price Index Factor shall be computed based on the annual consumer price index for Honolulu area published by the United States Bureau of Labor Statistics.

The condominium unit owner shall provide financial documentation acceptable to the executive director indicating the actual cost of any value-added improvements before the cost can be eligible for inclusion in determining the purchase price.

[Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-49 Resale of the Condominium Unit. If the HCDA does not exercise its right to purchase the condominium unit, the owner of the condominium unit may sell the unit to an eligible buyer as defined in §15-223-18. When the sale of the condominium unit is to any entity other than the HCDA, the former owner

shall not qualify for purchase of another condominium unit under the program. [Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-50 Transfer upon the Death of the Condominium Owner to an Heir. (a) Upon the death of the owner of a condominium unit, the condominium unit may be transferred to the deceased's heir by devise or as any other real property under existing law, provided that the deceased's heir qualifies as an eligible buyer.

(b) If the deceased's heir does not qualify as an eligible buyer, the deceased's heir shall sell the condominium unit to another eligible buyer as defined in §15-223-18 within six-months from the date of disqualification of the deceased's heir as an eligible buyer as determined by the HCDA in its sole discretion. Within the first five years from the date of purchase of the condominium unit, the HCDA shall have the right of first refusal to purchase the condominium unit before it can be sold to another eligible buyer.. [Eff] (Auth: HRS §§206E-4, 206E-283, 206E-284) (Imp: HRS §§206E-283, 206E-284)

§15-223-51 to §15-223-61 (Reserved) .

SUBCHAPTER 5

ENFORCEMENT AND PENALTIES

§15-223-62 Enforcement of Owner Occupant

Requirement. (a) The condominium units shall not be advertised for rent, rented, or used for any purpose other than for owner-occupied residential use as provided in §15-223-19.

(b) The owner of the condominium unit shall annually submit an acknowledgment to the executive director attesting that the owner has remained an owner occupant of the condominium unit as provided in §15-223-19. Any condominium unit owner making a false statement in the acknowledgment will be subject to criminal charges and civil action under the laws of the State. [Eff] (Auth: HRS §§206E-4, 206E-283) (Imp: HRS §206E-283)

§15-223-63 Cure Period.

If a condominium unit owner is in violation of the owner-occupancy requirement, the HCDA shall notify the condominium unit owner in writing and the condominium unit owner shall have sixty (60) calendar days to cure the violation from the date of the written notification. [Eff] (Auth: HRS §§206E-4, 206E-283) (Imp: HRS §206E-283)

§15-223-64 Penalties.

(a) If after notification of the owner-occupancy requirement violation, the condominium unit owner fails to cure the violation within the sixty day cure period, the HCDA may require an owner to sell the condominium unit to an eligible buyer within one hundred and eighty-days from the end of the cure period.

(b) The HCDA may disqualify a person, or a household that is required to sell the condominium unit pursuant to §15-223-64(a) from purchasing another condominium unit developed under the program. [Eff] (Auth: HRS §§206E-4, 206E-283) (Imp: HRS §206E-283)

§15-223-65 to §15-223-75 (Reserved) .

SUBCHAPTER 6

FORECLOSURE

§15-223-76 Foreclosure. (a) In the event of a foreclosure, any law to the contrary notwithstanding, a mortgagee under a mortgage covering a condominium unit shall, prior to commencing mortgage foreclosure proceedings, notify the HCDA in writing 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.

(b) In the event of a foreclosure, the mortgagee shall provide the HCDA the opportunity to exercise its right of first refusal to purchase the condominium unit, if the foreclosure occurs within five years from the date of sale of the condominium unit to the owner.

(c) If the HCDA exercises its right to purchase the condominium unit, the purchase price shall be calculated based on the formula provided in §15-223-48 (b). . [Eff _____] (Auth: HRS §§206E-4, 206E-284) (Imp: HRS §206E-284)

§15-223-77 Sale of a Condominium Unit by the Mortgagee Pursuant to a Foreclosure. If the HCDA does not exercise its right of first refusal to purchase the condominium unit, the mortgagee of the condominium

unit may sell the unit in leasehold for a term not to exceed 99 years to any buyer. Provisions of §15-223-18 and §15-223-19 shall not be applicable to sale of a condominium unit under this section. . [Eff] (Auth: HRS §§206E-4,206E-284) (Imp: HRS §206E-284)

§15-223-78 to §15-223-88 (Reserved).

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