

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

Amendment and Compilation of Chapter 15-308,
Hawaii Administrative Rules

November 14, 2022

SUMMARY

1. §§15-308-1 through 15-308-4 are amended.
2. §§15-308-21 and 15-308-22 are amended.
3. §15-308-24 is amended.
4. §§15-308-27 and 15-308-28 are amended.
5. §§15-308-41 through 15-308-44 are amended.
6. §15-308-61 is amended.
7. §§15-308-63 and 15-308-64 are amended.
8. §§15-308-83 through 15-308-86 are amended.
9. §§15-308-89 and 15-308-90 are amended.
10. §§15-308-106 through 15-308-108 are amended.
11. §15-308-122 is amended.
12. §15-308-124 is amended.
13. §§15-308-128 and 15-308-129 are amended.
14. §15-308-151 is amended.
15. §§15-308-153 and 15-308-154 are amended.

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16. §15-308-173 is amended.

17. Chapter 308 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 308

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Historical Note: Chapter 308 of Title 15, Hawaii Administrative Rules, was formerly part of Chapter 15-307, Hawaii Administrative Rules [Eff 12/04/10; am and comp 4/28/17], Chapter 373 of Title 6, Hawaii Administrative Rules [Eff 1/9/89; am 8/3/92; R 10/25/99], and Chapter 175 of Title 15, Hawaii Administrative Rules [Eff 10/25/99; R 12/04/10].

SUBCHAPTER 1

GENERAL PROVISIONS

\$15-308-1 Purpose. This chapter is adopted under chapter 91, HRS, and implements the provisions of chapter 201H, HRS, providing for the sale, resale, purchase, repurchase, lease, or rental of dwelling units.

Priority for affordable units marketed and sold under this chapter shall be for first-time homebuyers who require the assistance of programs under chapter 201H, HRS, to purchase their home. A first-time homebuyer who intends to purchase a unit developed or sold under this chapter with cash does not require the assistance of programs under chapter 201H, HRS, to become a homeowner.

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS \$201H-4) (Imp: HRS \$201H-4)

§15-308-2 Definitions. As used in this chapter:

"Administrative expenses" means expenses incurred by the corporation for activities performed in conjunction with the administration of this chapter pursuant to sections 201H-47 thru 201H-51, HRS. Such costs may include, but are not limited to salaries, other employee benefits, and other expenses necessary to administer this chapter.

"Administrator" means the executive director employed by the board or the executive director's designated representative.

"Applicant" means the primary person who submits an application to purchase a property under chapter 201H, HRS, and if applicable, applicant's spouse, co-applicant, and co-applicant spouse.

"Application" means an application to purchase a unit in a project. An application is deemed complete when submitted together with the required supporting information and verification documents for determination of eligibility to purchase a unit in a new for-sale affordable development, on a form approved by the corporation.

"Application for relief" means an application to the corporation by a party seeking relief under this chapter.

"Assets" means total cash, securities, and real property less any outstanding liabilities secured by the assets.

"Assisted project" means a project which is initiated and developed by an entity other than the corporation, and which is being provided state assistance to lower sales prices or rental rates. Such assistance may include, but is not necessarily limited to, interim and permanent financing, expedited processing of projects, tax credits, general excise tax exemptions, and rental assistance.

"Board" means the board of directors of the Hawaii housing finance and development corporation established under chapter 201H, HRS.

"Co-applicant" means a person who submits an application to purchase an affordable unit with the applicant and who is:

- (1) Not married to an applicant, is of the age of majority, unrelated to the applicant, and intends to reside in the unit; or
- (2) Related to an applicant by blood, marriage, or operation of law, including foster children and hanai children, is of the age of majority, and wishes to be on title of the affordable unit.

"Contractor" means a general engineering contractor or general building contractor licensed under chapter 444, HRS.

"Corporation" means the Hawaii housing finance and development corporation established under chapter 201H, HRS.

"County" includes the counties of Kauai, Maui, Hawaii, and the city and county of Honolulu, and unless the context requires a different meaning, it shall mean the county in which the project is situated.

"Design professional" means a professional engineer, architect, surveyor, or landscape architect licensed under chapter 464, HRS.

"Develop" or "development" means the planning, financing, 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 housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Domicile" means the state where a person has his or her true, fixed, and permanent home and to where the person has the intention of returning whenever the person is absent. A person may have only one domicile.

"Dwelling" means a structure designated for residential use.

"Dwelling unit" or "unit" means the structure and land upon which the structure is constructed, whether on fee simple or leasehold property, developed pursuant to chapter 201H, HRS, which is intended for residential purposes. It may also mean improved or unimproved real property which is developed for residential purposes pursuant to the provisions of chapter 201H, HRS.

"Elder" means a person who is a qualified resident of the State and who has attained the age of sixty-two.

"Eligible developer" means an individual, partnership, cooperative, including limited equity housing cooperatives (as defined in chapter 421H, HRS), firm, nonprofit or profit corporation, limited liability company, or public agency which the corporation has certified pursuant to the provisions of section 15-308-24 of this chapter.

"Eligible purchaser" means a first-time homebuyer or qualified resident who demonstrates need for assistance in obtaining housing, and who meets the requirements of section 15-308-22 for the project for which an application is submitted.

"Fair market value" means the unencumbered fair market value of a property that has no State or county restrictions attached thereto, as determined by a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, HRS.

"First-time homebuyer" means a qualified resident who has not owned any unit anywhere for a period of one year prior to the date of application for a lower cost housing unit.

"Former owner" means a former owner of a dwelling unit:

- (1) From whom the dwelling unit was repurchased pursuant to section 201H-47, HRS; or
- (2) Who has obtained a waiver of repurchase rights from the corporation under section 201H-47, HRS.

"Government assistance program" means any housing program qualified by the corporation and administered or operated by the State, the corporation, the United States, or any of its political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development for qualified persons in the State. Government assistance program includes, but is not limited to, the following:

- (1) Any program specified, allowed, or eligible for assistance under chapter 201H, HRS;
- (2) Any program specified, allowed, or eligible for assistance under laws, rules, or regulations of the United States Department of Housing and Urban Development and the United States Department of Agriculture; or
- (3) Any program regulated by either the corporation, counties, or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.

"Gross household income" means the total amount of income of household members, from all sources before deductions including all income for household members eighteen years of age and older who are currently residing in the household, or who will physically reside in the dwelling unit to be purchased.

"Guaranteed loan" means a loan that is guaranteed or as to which a commitment to guarantee has been made under the provisions of a federal or state law.

"Homeless" means those who meet one or more of the four categories of homelessness established by the United States Department of Housing and Urban Development, as follows:

- (1) Individuals and families who lack a fixed, regular, and adequate nighttime residence and includes a subset for an individual who is exiting an institution where he or she resided for ninety days or less and who resided in an emergency shelter or a place

not meant for human habitation immediately before entering that institution;

- (2) Individuals and families who will imminently lose their primary nighttime residence;
- (3) Unaccompanied youth and families with children and youth who are defined as homeless under other federal statutes; or
- (4) Individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member.

"Household" means an individual; or two or more persons who live or intend to live together as a unit and whose income and resources are available to meet the household's need and who may, but need not be, related by blood, marriage, or operation of law, including foster children and hanai children and whose head of household has reached the age of majority, or is otherwise legally emancipated.

"Household member" means a person who is a co-applicant or will reside in the dwelling unit.

"Household size" means the total number of household members residing, or that will be legally residing, in a dwelling unit. For purposes of calculating household size, a person who is pregnant shall count as two household members.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States Department of Housing and Urban Development.

"Improvement" means an addition, renovation, or replacement to the dwelling unit which enhances the value of the property, and for which labor and capital are expended. Improvements do not include repairs or maintenance of the property.

"Initial public offering" means the date when the project is authorized for release to the general public and applications are made available for distribution and acceptance.

"Lower cost housing", in the context of identifying the persons or families intended to be

served by such housing, primarily includes housing for persons or families whose incomes are identified as one hundred forty per cent or less of the area median income for each of the counties of Hawaii, Maui, Honolulu, and Kauai as determined by the United States Department of Housing and Urban Development from time to time, and as adjusted by family size. For the purpose of this chapter, such persons or families include persons or families within the following income groups:

- (1) "Very low income" -- those earning fifty per cent of the area median income and below;
- (2) "Low income" -- those earning above fifty per cent up to eighty per cent of the area median income;
- (3) "Low-moderate income" -- those earning above eighty per cent up to one hundred twenty per cent of the area median income; or
- (4) "Moderate income" - those earning above one hundred twenty per cent up to one hundred forty per cent of the area median income.

"Mortgage payment" means the owner's payment on any mortgage which is necessary for financing the purchase of an owner's dwelling unit. It may also include payments for lease rent, real property taxes, mortgage insurance, association fees, and any other expenses directly related to financing the purchase of the owner's real property or to maintaining an ownership interest in the real property.

"Mortgagee" means any bank or other institution authorized by federal or state law to make loans on dwelling units or the authorized assignee of such bank or institution.

"Owner" means the owner of a dwelling unit.

"Person with a disability" means a person having a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or is regarded as having such an impairment. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and working.

"Plans and specifications" includes construction plans and specifications and any other document that may be required by the county in the processing of the plans and specifications for the issuance of permits for construction and building of improvements within a project.

"Project" or "housing project" means a plan, design, or undertaking by the corporation or an eligible developer for the development of dwelling units, and includes all real and personal property, buildings and improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project, assisted project, or sponsored project.

"Qualified appraiser" means a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, HRS.

"Qualified nonprofit housing trust" means a corporation, association, or other duly chartered organization that is registered and in good standing with the State; is recognized by the Internal Revenue Service as a charitable or otherwise tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; has the capacity, resources, and mission to carry out the purposes of this chapter; and has been determined by the corporation to operate a homeownership program that:

- (1) Provides homeownership opportunities to first-time homebuyers; and
- (2) Imposes an owner-occupancy restriction on the homebuyers with a minimum term of ten years.

A "qualified nonprofit housing trust" shall be determined to have the capacity, resources, and mission to carry out the purposes of the chapter when it is determined, in the corporation's sole discretion, that it:

- (1) Demonstrates efficient financial capacity and ability to exercise the corporation's repurchase rights in a timely fashion;
- (2) Demonstrates the ability to comply with the requirements set forth in subchapter 5, *infra*; and
- (3) Agrees to comply with all applicable requirements set forth in subchapter 5 of this chapter.

"Qualified resident" means the same as defined under section 201H-32, HRS.

"Rules" means these rules.

"Sponsored" includes, but is not limited to, the provision of a loan and exemptions pursuant to section 201H-38, HRS.

"Sponsored project" means a housing project benefitting from various programs administered by the corporation including, but not limited to, a loan and exemptions pursuant to section 201H-38, HRS.

"State" means the State of Hawaii.

"Subsidies" means the difference between all costs expended by the corporation, less any recoveries by the corporation. It also includes unrecovered development, land, financing, and carrying costs.

"Sustainable affordable leases" means the same as defined in section 516-1, HRS.

"Value" means the value of a property as determined by a qualified appraiser.

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-40, 201H-41, 201H-42, 201H-45, 201H-47, 201H-51) (Imp: HRS §§201H-1, 201H-4, 201H-8, 201H-40, 201H-41, 201H-42, 201H-44, 201H-45, 201H-47, 201H-51)

§15-308-3 References to other chapters. (a) To the extent appropriate for the implementation of chapter 201H, HRS, references in documents, forms, and similar instruments of the corporation to chapters 201E, 201G, 356, 359, and 359G, HRS, shall be treated as references to chapter 201H, HRS.

(b) To the extent appropriate for the implementation of this chapter, references in documents, forms, and similar instruments of the

corporation to chapter 15-307 shall be treated as references to this chapter. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

§15-308-4 Fees. The corporation shall have the right to charge reasonable fees for administrative expenses incurred in processing required real estate documents under this chapter, as follows. These fees shall be nonrefundable.

PURPOSE	AMOUNT CHARGED
A. BUYBACK AND SAE PROGRAMS	
1. Consent to Mortgage/Subordination of SAE	
Analysis of Consent to Mortgage, Subordination of SAE, or both	\$250
Consent to Mortgage Document, Subordination of SAE Document, or both (including, as applicable, Resale to Qualified Resident)	\$250
2. Releases	
Analysis of Program Compliance for Release of Buyback Restriction	\$250
Release of Buyback Restriction Document	\$250
Release of SAE Program/ Agreement Document	\$250
Release of Mortgage Document	\$250
3. Waivers	
Amendment to Deed for Temporary Waiver of Owner Occupancy Requirement and Extension of Owner Occupancy and Buyback Requirements, Temporary Waiver of Owner Occupancy Requirement and Defer Payment Under SAE Agreement, or both	\$250
Analysis of Application for Temporary Waiver of Owner Occupancy Restriction	\$250

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PURPOSE	AMOUNT CHARGED
Waiver and Acknowledgement of Repurchase Right Document	\$250
4. Affidavits	
Buyer's Affidavit as to Qualified Resident	\$250
Transferee's Affidavit of Owner Occupancy and SAE Agreement Requirements	\$250
5. Notices	
Analysis and Notice of Conditional Approval After-the-Fact	\$250
Notice of Approval and Final Recording	\$150
Notice of Default - SAE Program	\$250
Notice of Default - Buyback Program or SAE Program	\$250
Notice of Non-Compliance with SAE Program	\$250
Notice of SAE Demand	\$250
6. Transfers	
Analysis of Eligibility for Owner's Title Transfer, Permitted Transfer, or Authorized Resale to Qualified Resident Buyer	\$250
Analysis of Program Compliance for Title Transfer into Owner's Revocable Trust	\$250
Calculation of SAE Payoff (Sale, Transfer, or Rental of Property)	\$250
Defer Payment and Acknowledgement of SAE Agreement Document	\$250
Analysis of Program Compliance for Additional Transfer of Title Documents	\$150
7. Memoranda to Deed	
Memorandum of Buyback Program Document	\$250
Memorandum of SAE Agreement Document	\$250
B. DEFERRED SALES PRICE (OR LAND VALUE) PROGRAM	

PURPOSE	AMOUNT CHARGED
Analysis of Payoff of Deferred Sales Price or Land Value	\$250
Notice of Non-Compliance with Deferred Sales Price or Land Value Program	\$250
Release of Deferred Sales Price or Land Value Document	\$250
C. LEASEHOLD PROGRAM ADMINISTRATION	
Amendment of Lease Document	\$250
Analysis and Preparation of Conveyance Tax Certificate for Amendment of Lease	\$150
Analysis of Program Compliance for Leased Fee or Fee Simple Interest Purchase Agreement	\$250
Analysis of Program Compliance for Lessee Transfer of Title	\$250
Assignment of Lease Document	\$250
Consent to (Leasehold) Mortgage Analysis	\$250
Consent to (Leasehold) Mortgage Document	\$250
Consent to Assignment (Transfer) of Lease Document	\$250
Conversion from Leasehold to Fee Simple - New Deed	\$250
Conveyance Tax Certificate for Amendment of Lease Document	\$150
Lease Rent Delinquency Fee (per statement)	\$50
Lease Term Extension Analysis	\$250
New Quitclaim Deed (for Lease-to-Fee Conversion)	\$250
Notice of Lease Default (per notice)	\$100
Transfer of Title Fee	\$250
D. RENT TO OWN PROGRAM	
Analysis of Program Compliance as requested by participant	\$250

PURPOSE	AMOUNT CHARGED
E. HOUSE PLANS	Actual cost of reproduction

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-16, 201H-100) (Imp: HRS §§201H-4, 201H-16, 201H-100)

SUBCHAPTER 2

ELIGIBILITY AND PREFERENCES TO PURCHASE AFFORDABLE DWELLING UNITS

§15-308-21 Purpose. This subchapter governs the eligibility for purchase of and preferences for the sale of dwelling units and vacant house lots developed under chapter 15-307. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-47) (Imp: HRS §§201H-45, 201H-47)

§15-308-22 Eligibility. (a) Priority for affordable units marketed and sold under this chapter shall be for first-time homebuyers who require the assistance of programs under chapter 201H, HRS, to purchase their home. A first-time homebuyer who intends to purchase a unit developed or sold under this chapter with cash does not require the assistance of programs under chapter 201H, HRS, to become a homeowner.

(b) An applicant shall be eligible to purchase a dwelling unit developed under this chapter if the applicant meets all of the following requirements:

- (1) Is a first-time homebuyer or qualified resident who is domiciled in the State and meets other qualifications set forth under section 201H-32, HRS;
- (2) Does not have a household income exceeding the corporation-established project income limits, or one hundred forty per cent of the

- area median income as determined by HUD, as adjusted by family size, whichever is lower;
- (3) Has household assets for initial deposit and down payment. Gift funds to assist in the down payment for purchase of the dwelling unit shall not exceed thirty-five per cent of the purchase price and must be received from a relative as defined according to Fannie Mae or Freddie Mac guidelines, as may be amended, in United States currency; and
 - (4) Has not previously received assistance under a homeownership program designed and implemented under this chapter by the corporation or any of the counties in the State. However, the corporation may on an individual basis, allow a person who previously purchased a dwelling sponsored or assisted by the corporation or any of the counties to reapply, provided that
 - (A) The corporation, the county, or a qualified nonprofit housing trust repurchased the dwelling unit; or
 - (B) The applicant is still living in the unit subject to section 201H-47, HRS; andthere has been a significant increase in household size.

An applicant may become eligible again if the sale of such person's first dwelling was caused by extreme hardship such as family death, divorce, loss of employment, or a disability, and the dwelling was repurchased by the corporation or the county.

Provided further that in the case of divorce, where one spouse retains ownership of the dwelling unit, the other spouse may become eligible one year after the final divorce decree to reapply for a dwelling unit sponsored or assisted by the corporation or the county. An applicant may become eligible again if the applicant is still living in the previously restricted unit subject to section 201H-47, HRS, applies for a new affordable unit, and sells the currently owned dwelling unit to a qualified resident

meeting corporation income requirements at a restricted price approved by the corporation.
[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-151, 201H-33) (Imp: HRS §§201H-1, 201H-151, 201H-162)

§15-308-23 Eligibility for current owners in corporation sponsored projects. (a) A current owner of a multi-family dwelling unit sponsored by the corporation may apply for the purchase of a larger dwelling unit in a corporation sponsored project if:

- (1) The applicant's current household size has increased and exceeds the permissible household size for the current unit as determined by prevailing county building or housing codes; or in the absence thereof, the housing code of the city and county of Honolulu; and
 - (2) The applicant has resided in the current dwelling unit for at least one year.
- (b) Household size shall be determined by the number of individuals on title and their dependents.
- (c) The applicant shall sell the applicant's current multi-family dwelling unit to the corporation prior to or upon the closing of the sale of the larger dwelling unit under the provisions of section 201H-47, HRS.

(d) Except for the applicant's current residence, the applicant shall be a qualified resident as set forth under section 201H-32, HRS.

[Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-151, 201H-33) (Imp: HRS §§201H-1, 201H-151, 201H-162)

§15-308-24 Eligibility for former owners in corporation sponsored projects. A former owner of a lower cost housing unit may apply to purchase another lower cost housing unit under the following conditions:

- (1) If the former owner is released from title and wishes to apply again, the former owner shall show that no profit was made on the

sale of the first affordable unit, and that the unit was sold to a qualified resident meeting corporation income and asset requirements, and at a restricted price approved by the corporation.

- (2) In the event the corporation does not repurchase the unit offered, the owner shall sell the unit at a restricted price. The unit shall remain affordable and sold to a qualified resident whose income does not exceed one hundred forty per cent of the area median income. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-47) (Imp: HRS §201H-1)

§15-308-25 Occupancy guidelines for sale units.

(a) The following occupancy guidelines shall be used for the sale of units:

- (1) To determine the maximum affordable sales price; and
- (2) During the initial application period, to establish a property selection order list.

Dwelling Unit Size	Preferred Household Size
0 Bedroom	1 person
1 Bedroom	2 persons
2 Bedroom	3 persons
3 Bedroom	4 persons
4 Bedroom	5 persons

(b) The maximum household size is determined by prevailing county building or housing codes, or in the absence thereof, the city and county of Honolulu housing code. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-33, 201H-41) (Imp: HRS §§201H-111, 201H-33, 201H-38, 201H-41)

§15-308-26 Counseling. (a) The corporation shall require developers to provide homeownership counseling and training to all qualified applicants. The counseling and training program shall be conducted by a HUD-approved housing counseling agency.

[Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-16) (Imp: HRS §§201H-8, 201H-16)

§15-308-27 Preference in dwelling unit sales.

(a) Unless otherwise provided in this chapter, in the sale of dwelling units by the corporation, the corporation, or an eligible developer, may give preference to applicants on the basis of overall need and to applicants who:

- (1) Are former owners of a dwelling unit repurchased by the corporation due to a construction or soil defect; provided that the former owner has not purchased another dwelling unit or land pursuant to section 15-308-148;
- (2) Meet the occupancy guidelines set forth in section 15-308-25; provided that for projects with multiple income level groupings, preference shall also be based upon the lowest income group and greater household size;
- (3) For single-family detached dwelling unit projects, applicants having legal dependents, excluding the applicants' spouses, as defined in the applicable regulations of the Internal Revenue Service and as shown on the applicants' or co-applicants' state income tax returns, divorce decrees having sole or joint custody, or other documents which are to be submitted upon the request of the

corporation. If preference was given due to birth of a child or pregnancy after the tax return year, verification of newborn children shall be made at the time of application, lot selection and purchase;

- (4) Have, as homeowners, been displaced from their homes because of governmental action;
- (5) For income preferences only, income preference shall be based on household size and annual gross household income as established by the corporation using amounts determined by HUD. All income for household members eighteen years of age and older who are currently residing with the household and will physically reside in the dwelling unit to be purchased shall be added to the gross household income to determine the income preference. The corporation shall determine the income preference for each project;
- (6) Are currently residing in public housing or have relocated because of income disqualifications from public housing;
- (7) For multi-family projects only, are persons with disabilities or whose household members are persons with disabilities; or
- (8) Have larger household sizes than other applicants; provided that the household size does not exceed the applicable county occupancy standards.

(b) Not more than twenty per cent of all affordable dwelling units in a specific project, as determined by the corporation, shall be for applicants with a preference as provided in paragraph (b)(1), (4), (6), and (7) however, the corporation may establish a limit on the number of units for which preference is provided on a project-by-project basis.

(c) Other preferences may be determined by the corporation for a specific project.

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS S201H-4) (Imp: HRS SS201H-31, 201H-33, 201H-45)

§15-308-28 Information and verification. (a)

The corporation shall require applicants to provide information relating to household income, household size, financial condition, and status changes prior to the close of the sale.

(b) The corporation may require applicants and program participants to provide documentation to verify information submitted to the corporation, including but not limited to:

- (1) Hawaii state income tax return;
- (2) Federal income tax return;
- (3) Certification of pregnancy;
- (4) Verification of length of residency; and
- (5) Other documents as required by the corporation.

(c) An applicant found to have willfully submitted false information, made misstatements, or withheld important information shall be deemed to be ineligible for the project and disqualified from future corporation-assisted projects, provided that the corporation shall not waive its right to pursue any other recourse provided by law.

(d) The corporation may establish an expiration date for applications received to purchase a dwelling unit on a project-by-project basis.

[Eff 1/15/22; am and comp **DEC 1 0 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-33)

SUBCHAPTER 3

MARKETING AND SALE OF AFFORDABLE DWELLING UNITS

§15-308-41 Marketing and sale of dwelling units.

(a) Affordable units developed under chapter 201H, HRS, shall be marketed and sold to eligible purchasers as set forth in this subchapter.

(b) Units completed or substantially completed shall be sold under the provisions of sections 201H-45 through 201H-50, HRS, including repurchase restrictions and the shared appreciation equity

program restrictions as set forth in subchapters 7 and 8 of this chapter, as applicable.

(c) Units shall be sold in accordance with all applicable state and federal fair housing laws.

(d) Applications may be accepted from an applicant for more than one project sponsored or assisted by the corporation, provided that upon execution of a binding contract for any affordable dwelling unit, the applicant must withdraw all other applications. [Eff 1/15/22; am and

comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-45, 201H-47, 515-3; HRS Chapter 514B)

§15-308-42 Announcement, publication. For a period of thirty calendar days, 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 at minimum a summary of the following information:

- (1) The location of the project;
- (2) A fair and reasonable estimate of:
 - (A) The total number of affordable units to be included in the project;
 - (B) The price range of the affordable units;
 - (C) The approximate size of the affordable units; and
 - (D) A designation whether the affordable units are being sold in fee simple or leasehold;
- (3) A statement that one hundred per cent of the affordable units are being sold in fee simple or leasehold;
- (4) The definition of "first-time homebuyer" and "qualified resident" as contained in section 201H-32, HRS;

- (5) The name and address of the real estate broker designated by the developer, whom eligible purchasers may contact to be placed on a reservation list, and to obtain further information on the project; and
- (6) A statement that the affordable units will be available to any eligible purchaser 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.

The publication shall also include the United States Department of Housing and Urban Development's equal housing opportunity slogan or logo.

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-1, 201H-45, 515-3)

§15-308-43 Application intake list, requirements. (a) During the initial offering period of thirty calendar days, the developer's designated broker shall compile an application intake list consisting of the names, addresses, and phone numbers of all individuals stating a desire to purchase an affordable unit contained in the announced project.

(b) The application intake list shall be compiled in the order in which applicants have submitted to the agent an acknowledgement that the applicant meets the definition of "first-time homebuyer" or "qualified resident" and intends to become a purchaser of an affordable unit.

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

(d) The developer shall submit the application intake list and the applicants' acknowledgement to the corporation within ten days of the expiration of the initial thirty day offering period. The corporation will provide the developer with an eligible purchaser list, which shall list the applicants approved as "first-time homebuyers" or "qualified residents." The developer shall offer affordable units to the individuals on the eligible purchaser list as described in section 15-308-44.

(e) Thirty days before the close of project sales, the developer shall submit to the corporation a summary of which individuals on the eligible purchaser list purchased an affordable unit, which did not purchase an affordable unit, and the applicant's reason for not purchasing a unit. From time to time, the corporation may request an updated summary from the developer. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-1, 201H-45)

§15-308-44 Sale of residential units. (a) The developer shall first offer affordable units to "first-time homebuyers" on the eligible purchaser list by one of the following means:

- (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 developer and approved by the corporation;

and then to the remaining "qualified residents" on the eligible purchaser list by the same means.

(b) The developer shall also be required to comply with the following:

- (1) Prior to the sale of any of the units, the developer shall submit to the corporation, for its review and approval, copies of the sales contracts and deeds which reference the qualified resident preference;
- (2) Prior to the sale of any of the units, the developer shall submit to the corporation a

copy of the covenants, conditions, and restrictions, if any, for review and approval;

- (3) The developer shall submit to the corporation a list of all of the purchasers by lot number, name, date of sales contract, date of recordation, tax map key, and property address. On this list, the developer shall designate with an asterisk (*) those purchasers who are qualified residents; and
- (4) The developer shall comply with all applicable state and federal fair housing laws. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: 24 CFR 108; 24 CFR 200, Subpart M; HRS §§201H-1, 201H-45, 515-3; HRS Chapter 514B)

SUBCHAPTER 4

RENTAL OF CORPORATION-OWNED DWELLING UNITS

§15-308-61 Eligibility. (a) An applicant is eligible to rent a dwelling unit owned by the corporation if the applicant meets all of the following requirements:

- (1) Is a qualified resident who is domiciled in the State and meets other qualifications set forth in section 201H-32, HRS;
- (2) Does not have a household income of more than one hundred forty per cent of the area median income as determined by HUD from time to time and as adjusted by family size;
- (3) Whose household assets do not exceed one hundred thirty-five per cent of the maximum qualifying household income in (2) above. Qualified retirement accounts shall not count toward the asset limit;
- (4) Does not have an outstanding debt owed to the corporation; and

- (5) Does not have a record or history of conduct or behavior, including past rent payment delinquencies, which may prove detrimental to other tenants or the corporation.

(b) Units shall be rented in accordance with all applicable state and federal fair housing laws.

[Eff 1/15/22; am and comp **DEC 1 0 2022**] (Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-9, 201H-31, 201H-33, 201H-45, 515-3)

§15-308-62 Occupancy guidelines for rental units. (a) The following occupancy guidelines may be used for rental units when the number of applicants exceeds the number and types of units available:

Dwelling Unit Size	Preferred Household Size
0 Bedroom	1 person
1 Bedroom	2 persons
2 Bedroom	3 persons
3 Bedroom	4 persons
4 Bedroom	5 persons

(b) The maximum household size is based on prevailing county housing, zoning, building, health and fire codes, or in the absence thereof, the housing code of the city and county of Honolulu.

[Eff 1/15/22; comp **DEC 1 0 2022**] (Auth: HRS §§201H-4, 201H-33) (Imp: HRS §§201H-31, 201H-33)

§15-308-63 Preference for the rental of dwelling units. Unless otherwise provided in this chapter, preference for admission to the rental program under this section shall be given to qualified applicants who:

- (1) Are "displaced" by governmental action as defined by section 111-2, HRS;

- (2) Qualify as "elders" for projects which are specifically designed for elders;
 - (3) Qualify as persons with disabilities;
 - (4) Are persons or families who are transitioning from homeless shelters, provided that certification by appropriate service providers or shelter operators shall be required; or
 - (5) Have an urgent need for housing as determined by the administrator.
- [Eff 1/15/22; am and comp **DEC 10 2022**]
 (Auth: HRS §201H-4) (Imp: HRS §201H-111)

§15-308-64 Information and verification. (a)

The corporation may require applicants and program participants to provide information relating to their household's income, composition, financial condition, and status changes, prior to admission to the program and at any other time as determined by the corporation.

(b) The corporation may require applicants and program participants to provide documentation to verify information submitted to the corporation, including but not limited to:

- (1) Verification of deposit;
- (2) Verification of employment; and
- (3) Credit bureau report or references.

(c) An applicant or program participant found to have willfully submitted false information, made misstatements, or withheld important information shall be disqualified from participation in the rental program, and the corporation reserves the right to pursue any other recourse provided by law.

(d) The corporation may establish an expiration date for applications received to rent a dwelling unit on a project-by-project basis. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-33)

§15-308-65 Rent determination. The monthly rent shall not exceed the affordable rent guidelines for

households at one hundred forty per cent of area median income as calculated by the corporation based on the area median income established by HUD and adjusted from time to time. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-33, 201H-45)

§15-308-66 Rental agreement. (a) A revocable permit as provided by the corporation shall constitute the rental agreement for units under this rental program and shall set forth the names of the authorized occupants, monthly rent amount, conditions of occupancy, and obligations of the parties.

(b) The revocable permit shall be executed by the responsible members of the tenant household and the administrator.

(c) Amendments to the revocable permit shall be in writing and executed by the parties involved and attached to the revocable permit.

[Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-33)

§15-308-67 Program administration. Except as otherwise provided by law or rule, the rental program for dwelling units developed under this chapter shall be administered in accordance with chapter 521, HRS, the residential landlord-tenant code.
[Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-33)

SUBCHAPTER 5
REPURCHASE OF DWELLING UNITS
SUBJECT TO RESTRICTIONS

§15-308-81 Purpose. This subchapter governs the general procedures for the repurchase by the corporation or a qualified nonprofit housing trust of a dwelling unit subject to the restrictions set forth

in section 201H-47(a)(1), HRS. [Eff 1/15/22;
comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS
§201H-47)

§15-308-82 Applicability. This subchapter applies to all dwelling units for which the restrictions set forth in sections 201H-47, including the shared appreciation equity program restrictions, 201H-49, and 201H-51, HRS, remain in effect. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-83 Providing consent to additional financing. (a) Within the statutorily required time period from the date of purchase, the corporation shall consent to additional financing or refinancing of the original mortgage and subordinate the restriction provided in section 201H-47, HRS, as follows:

- (1) When the total loan amount does not exceed the corporation's purchase price of the property as determined by the provisions of section 15-308-85(a);
- (2) When the total loan amount exceeds the corporation's purchase price of the property and the loan is used for:
 - (A) Capital improvements;
 - (B) Payment of subsidy, deferred land value or deferred sales price;
 - (C) Payment of the corporation's share of appreciation under the Shared Appreciation Equity Program; or
 - (D) Purchase of leased fee interest for the leasehold property owned.

(b) When the corporation's rights under section 15-308-103 are still applicable, the total amount of liens and encumbrances cannot be greater than the sum of eighty per cent of the owner's original purchase price and the owner's share of net appreciation. In cases where a house lot was purchased and the owner contributed the owner's own labor to construct the

dwelling, the fair market value of the dwelling shall be included as part of the owner's share of net appreciation. In extreme hardship cases involving health and safety, the corporation may allow up to an additional twenty per cent of the owner's original purchase price and the owner's share of net appreciation; provided that the lien or encumbrance is for a loan for capital improvement purposes only.

(c) In cases where the corporation previously consented to the existing loan and the principal balance is greater than the total loan amount determined herein, the corporation may consent to the principal balance of the previously consented-to loan.

(d) In cases where the corporation would have consented to the existing loan initially made without consent and the lender has submitted an application for relief; provided that the lender must complete all requirements and pay all fees as listed in section 15-308-4.

(e) In any event, the total loan amount shall not exceed the fair market value or county assessed value of the property at the time the loan is made, whichever is lower. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-84 Repurchase when owner seeks to transfer title. (a) If an owner seeks to transfer the title to a dwelling unit to which this subchapter applies, the corporation shall have the first option to purchase the dwelling unit. If the corporation waives its repurchase option, a qualified nonprofit housing trust shall have the option to repurchase the unit.

(b) The repurchase price shall be determined by the corporation pursuant to the guidelines set forth in section 15-308-105.

(c) The corporation or qualified nonprofit housing trust may repurchase the dwelling unit either by:

- (1) Conveyance free and clear of all liens and mortgages; or
- (2) Conveyance subject to existing mortgages and liens.

(d) If the real property is conveyed in the manner provided in paragraph (c)(1), it shall be conveyed to the corporation or qualified nonprofit housing trust only after all mortgages and liens are released.

(e) If the real property is conveyed in the manner provided in paragraph (c)(2), the corporation or qualified nonprofit housing trust, as applicable, shall assume the seller's obligation on any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing. The interest created by the provisions of this subsection shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

- (1) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (2) Any mortgage insured or held by a federal housing agency; and
- (3) Any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing. The amount paid by the corporation or qualified nonprofit housing trust, as applicable, to the seller shall be the difference, if any, between the purchase price determined in section 15-308-105 and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

(f) If the shared appreciation equity program amount was paid, and the corporation repurchases the property pursuant to the guidelines set forth in section 15-

308-105, the amount paid for the shared appreciation equity program shall be reimbursed to the owner.
[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS \$201H-4) (Imp: HRS \$201H-47)

§15-308-85 Determination of repurchase price for purchases subject to restrictions. (a) If the corporation repurchases a dwelling unit pursuant to section 201H-47(a)(1), HRS, the repurchase price shall be determined as follows:

- (1) The price at which the dwelling unit was originally purchased plus interest credit subsidies, if any, to be recaptured for federally subsidized mortgages; provided that when land only is purchased and the purchaser provides his or her labor to construct the dwelling unit, the fair market value of the dwelling provided by appraisal for the purposes of qualifying for the first mortgage or by appraisal obtained by the corporation plus the original purchase price of the land shall be used to determine the original purchase price;
- (2) The cost of improvements to the dwelling unit added by the owner after the original purchase, provided that the owner shall furnish financial documentation indicating the actual cost of improvements in a form deemed acceptable by the corporation in its sole discretion; and
- (3) Simple interest at the rate of one per cent per year on the purchaser's original cost and capital improvements.

(b) If the corporation has assigned its repurchase rights to the dwelling unit to a qualified nonprofit housing trust, the corporation shall determine the repurchase price using the same methodology as provided in subsection (a).

(c) Any dwelling unit repurchased by the corporation or qualified nonprofit housing trust under this subchapter shall be in resalable condition; or, in the alternative, the estimated expense required to

restore the dwelling unit to resalable condition shall constitute a reduction of the repurchase price to be paid by the corporation or qualified nonprofit housing trust, as applicable, provided, however, that no reduction shall be made for the estimated expense to repair a substantial soil or construction defect as defined in section 201H-51, HRS.

(d) The corporation shall notify the seller of the seller's right to recourse under chapter 15-300, in the event that there is a disagreement on the repurchase price determined by the corporation.
[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-47, 201H-51)

§15-308-86 Waiver by corporation of right to repurchase. (a) The corporation may waive the right to repurchase set forth in section 201H-47, HRS, if:

- (1) The owner wishes to transfer title to the dwelling unit by devise or through the laws of descent to the owner's spouse, child, parent, or sibling and the devisee or heir is otherwise eligible to purchase such a dwelling unit under this chapter;
- (2) The purchaser wishes to transfer title to the dwelling unit to the co-owner or a household member who meets the eligibility requirements; or
- (3) One of the following conditions exist:
 - (A) The waiver will not result in the owner being able to sell the dwelling unit for a substantial profit nor promote speculative purchasing or selling of dwelling units to which this subchapter applies and the dwelling unit is sold to a person who is a qualified resident and the owner pays the corporation its percentage share of the net appreciation, if applicable; or
 - (B) Fiscal considerations will not allow repurchase of the dwelling unit.

(b) If the corporation waives its right to repurchase a dwelling unit pursuant to section 201H-

47(a)(1), HRS, then the dwelling unit may be transferred by the owner and the restrictions provided for in sections 201H-47 through 201H-51, HRS, shall then be reinstated in any subsequent conveyance. In the event the restrictions are waived, the corporation shall inform the owner of the waiver in writing and the owner, at the owner's expense, shall draft and record such instruments as are necessary to make the waiver effective.

(c) If the corporation waives its right to repurchase a dwelling unit due to construction litigation, then the dwelling unit may be rented by the owner as provided for in subchapter 7. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-47, 201H-49, 201H-50, 201H-51)

§15-308-87 Release by the corporation of right to purchase. (a) The corporation may release the right to purchase as set forth in section 201H-47, HRS, if the property is financed under a federally subsidized mortgage program and when fiscal considerations will not allow the repurchase of the dwelling unit.

(b) The corporation's right to repurchase prescribed in sections 201H-47 to 201H-51, HRS, shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the dwelling unit pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. If requested by the owner, the corporation shall at the owner's expense execute a written release in a form which may be recorded. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-47, 201H-50, 201H-51)

§15-308-88 Procedures regarding repurchase by corporation and waiver of right of repurchase. (a)

If an owner seeks to transfer a dwelling unit, the owner shall deliver to the corporation by mail, postage prepaid, or in person a certificate of intent to sell, and a capital improvement computation form as used by the corporation. If the owner seeks a waiver of the corporation's right to repurchase the dwelling unit under section 201H-47(a)(1), HRS, then the owner shall also deliver to the corporation or by mail, postage prepaid, or in person a request for waiver of right of repurchase.

(b) The corporation shall review the certificate of intent to sell, the request for waiver of right of repurchase, or both. The corporation may request any additional information necessary for the review and the owner shall comply with the request. The corporation shall, within sixty days, notify the owner in writing of its decision to either waive the right to repurchase or to repurchase the unit. If the corporation determines that it will repurchase the dwelling unit, the repurchase shall close within ninety days of notification. This time limit, however, may be extended if the homeowner fails to comply with all of the conditions relating to the repurchase procedures, provided that the repurchase price shall remain unchanged.

(c) If the corporation determines that it will either repurchase or allow a qualified nonprofit housing trust to repurchase the dwelling unit, it shall provide a repurchase disclosure sheet to the owner and enter into a repurchase agreement with the owner. All rights and remedies of the corporation in regard to its option to repurchase the dwelling unit shall be preserved notwithstanding the failure of the owner to execute a repurchase agreement.

(d) If the corporation determines that it will waive its rights under section 201H-47(a)(1), HRS, then it shall issue to the owner a waiver of right of repurchase. The waiver shall not be issued to anyone other than the owner. [Eff 1/15/22; comp **DEC 1 C 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-89 Resale or rental of repurchased dwelling unit. (a) Following the repurchase of a dwelling unit pursuant to this subchapter, the corporation may in its discretion either resell or rent or lease the dwelling unit.

(b) If the corporation resells a repurchased dwelling unit, the sales price shall be determined by the corporation; provided, however, that the sales price shall not exceed the greater of:

- (1) The fair market value of the dwelling unit reduced by a reasonable discount representing the decrease in value resulting from the restrictions set forth in sections 201H-47 and 201H-49, HRS, and the shared appreciation program; or
- (2) The price at which the dwelling unit was repurchased by the corporation plus administrative expenses and the sale shall be conditioned on imposition of the restrictions set forth in sections 201H-47 and 201H-49, HRS, and the shared appreciation program.

(c) Resale policies to be followed by the corporation or its designated representative are as follows:

- (1) Resales shall be priced to be affordable to meet the incomes of target groups.
- (2) A statutorily required time period transfer and use restriction shall be imposed on each resale.
- (3) The shared appreciation equity program shall be part of the resale program.
- (4) When the number of applicants exceeds the number and type of units available, section 15-308-25 shall apply. After the initial period, the sale of units shall be offered to applicants on the wait list. The applicant shall also meet the original income requirements as determined for the project or unit.

(d) If the corporation rents the new project dwelling unit or repurchased dwelling unit, it shall

rent the dwelling unit as provided in subchapter 4.
[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS
§201H-4) (Imp: HRS §§201H-47, 201H-49)

§15-308-90 Repurchase under foreclosure of properties subject to restrictions. The corporation may repurchase a property that is the subject of a mortgage foreclosure or foreclosure under power of sale when the property is encumbered with the right-to-repurchase restrictions set forth in sections 201H-47, 201H-49, and 201H-51, HRS, and the shared appreciation equity program.

- (1) For property encumbered by the restrictions set forth in sections 201H-47, 201H-49, and 201H-51, HRS:
 - (A) The price may be determined by the guidelines set forth in section 15-308-105(a)(1) to (3), or at a price that will enable the corporation to resell the property; or
 - (B) The corporation may waive its option to purchase the property and shall be entitled to the proceeds remaining in excess of the customary and actual costs and expenses of the foreclosure sale, encumbrances of record, purchaser's costs of improvements and simple annual interest of one per cent on purchaser's original cost and capital improvements.
- (2) For property encumbered by the shared appreciation equity program restriction only:
 - (A) The property may be repurchased when the price, determined by adding the corporation's share of net appreciation amount plus the superior encumbrances of record, will enable the corporation to resell the property.
 - (B) The corporation shall be entitled to

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its share of net appreciation when the property is transferred as the result of the foreclosure sale.

- (C) If the corporation's share is not paid when due, interest on the corporation's amount will accrue interest at the simple annual rate of twelve per cent until paid.

The corporation shall pursue foreclosure or legal action. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-107, 201H-47, 201H-49, 201H-51)

SUBCHAPTER 6

SHARED APPRECIATION EQUITY PROGRAM RESTRICTIONS

§15-308-101 Purpose. This subchapter governs the general procedure for the payment to the corporation for its percentage share of the net appreciation upon the transfer or sale of the dwelling unit purchased from the corporation. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-102 Applicability. This subchapter shall apply to all dwelling units developed, sold, or sponsored by the corporation and for which all restrictions set forth in section 201H-47, HRS, including the right to repurchase restriction are in effect. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-103 Corporation's percentage share of net appreciation. (a) As the corporation is providing the opportunity for the purchaser to buy a home below fair market value, the purchaser shall pay the corporation its share of the net appreciation when the property is transferred or sold. The appraisal

procured by the corporation shall be used to establish the corporation's percentage share at the time of transfer or sale by the following calculation:

Original Fair Market Value minus Purchaser's Original Base Purchase Price divided by Original Fair Market Value rounded to the nearest one per cent.

Net appreciation is calculated as follows:

(Current Fair Market Value of the dwelling unit as originally purchased excluding any capital improvements by the purchaser subsequent to original purchase) - Purchaser's Original Base Purchase Price - Actual Sales costs incurred, if any. Any shared appreciation equity agreements entered into on or after August 27, 1999 shall not be eligible to deduct sales costs.

(b) The shared appreciation equity program restriction shall be part of the conveyance document for the sale of the dwelling unit recorded in the bureau of conveyances. Notification of the shared appreciation program restriction as an encumbrance on the property shall be recorded as a separate memorandum.

(c) If the corporation's percentage share of net appreciation is less than one-half of one per cent, the shared appreciation equity program restriction shall not apply. [Eff 1/15/22; comp **DEC 10 2022**]
(Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-104 Payment due on sale or transfer.

(a) The purchaser agrees that upon any sale or transfer, the corporation shall immediately be notified by the owner of the terms and conditions of the sale or transfer. Except for a permitted transfer approved by the corporation, the corporation shall be entitled to be paid its share of the net appreciation on the effective date of the transfer of an amount equal to:

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Corporation's Percentage Share multiplied by Net Appreciation as determined in section 15-308-103(a).

(b) If the corporation's share is not paid when due, interest on the corporation's share of net appreciation shall accrue at the simple annual rate of twelve per cent per year until paid. The corporation shall also be entitled to be paid the cost of reasonable attorney's fees and costs to enforce the payment of the corporation's percentage share of the net appreciation due.

(c) If the corporation's share is not paid when due as a result of a non-occupancy violation:

- (1) The owner shall provide evidence of the effective date of non-occupancy. In the event sufficient evidence is not provided by the owner, the corporation shall make the final determination of the effective date of non-occupancy.
- (2) If the owner fails to provide the effective date of non-occupancy, the corporation may commence legal action against the purchaser to pay the shared appreciation equity program amount due.
- (3) If a sale occurs after the non-occupancy violation, allowable closing cost shall not be allowed as a deduction in determining the corporation's share of net appreciation due.

(d) The corporation shall pursue legal action to recover the total amount owed. [Eff 1/15/22;

complete **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: PHRS §201H-47)

§15-308-105 Definition of sale or transfer. For purposes of this subchapter, a sale or transfer means when one of the following occurs:

- (1) When ownership interest in the dwelling unit is sold or transferred;
- (2) When the dwelling unit is no longer used as the owner's primary residence; or
- (3) When the dwelling unit or any part of the dwelling unit is rented to someone else, and

the owner has not obtained the corporation's determination that hardship circumstances exist, pursuant to section 201H-49, HRS.

[Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-47, 201H-49)

§15-308-106 Permitted transfers. (a) The following permitted transfers shall not result in the corporation's percentage share of the net appreciation becoming due and payable. However, the corporation's consent for the following transfers shall be required:

- (1) Creation of a lien or encumbrance which does not affect rights of occupancy provided that the total amount of liens and encumbrances cannot be greater than the sum of eighty per cent of the owner's original purchase price and the owner's share of net appreciation. In the case where a house lot was purchased and the owner contributed his labor to construct the dwelling, the then fair market value of the dwelling shall be included as part of the owner's share of net appreciation. In extreme hardship cases involving health and safety, the corporation may allow up to an additional twenty per cent of the owner's original purchase price and the owner's share of net appreciation provided that the lien or encumbrance would be a loan for capital improvement purposes only;
- (2) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by the entirety;
- (3) Transfer to a relative who meets eligibility requirements upon death of owner;
- (4) Transfer to spouse or children who meet eligibility requirements;
- (5) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes owner;
- (6) Transfer into an inter vivos trust in which the owners remain the primary beneficiary

and does not affect their rights of occupancy; or

- (7) Transfer into or from a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability.

(b) If the corporation's rights under this subchapter are derived from the sale of a vacant lot by the corporation, the use of the land as security for a loan to be used by the owner to purchase the land or to finance the construction of a principal residence is a permitted transfer to which the corporation's consent is not required. The corporation shall consent in writing to the subordination of its lien or contingent lien rights under this subchapter to the lien of any mortgage placed on the property to finance the construction of a principal residence or the purchase of the vacant lot. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-107 Determination of fair market value.

(a) Whenever it is necessary to determine the net appreciation of the property, the corporation shall select an appraiser and order an appraisal of the fair market value of the dwelling unit. The owner shall pay for the cost of the appraisal.

(b) Within ten business days upon receipt of the appraisal, a written copy shall be provided to the owner. Should the owner dispute the appraisal, the owner may obtain a second appraisal at the owner's cost and expense.

(c) If the first appraisal obtained by the corporation is not disputed, that appraisal shall be used to determine the fair market value.

(d) If the owner disputes the first appraisal, the second appraisal ordered by the owner shall be sent to the corporation within the earlier of (1) ten business days upon receipt, or (2) forty-five calendar days after the first appraisal is received from the corporation.

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(e) If the second appraisal is lower than the first appraisal, the fair market value used shall be one-half of the sum of the two appraisals.

(f) If the second appraisal is not lower, the corporation's first appraisal shall be used to determine the fair market value.

(g) All appraisals shall be made by a qualified appraiser as defined in this chapter.

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-108 Cancellation of the corporation's share of the net appreciation. (a) The corporation's right to be paid a share of the net appreciation shall constitute a lien on the property until all of the following events have occurred:

- (1) The corporation has been fully paid its share of the net appreciation and any other amounts that are due and owing the corporation;
- (2) The corporation releases the shared appreciation equity program restriction; and
- (3) The release is recorded at the bureau of conveyances by the purchaser.

(b) Should no amount be due the corporation following all computations, the corporation may issue a release of the shared appreciation equity program upon the request of the owner. In the event the corporation provides written notice to the owner that no amount is due, the owner, at the owner's own expense, shall draft and have recorded such instruments as are necessary to make the release effective. The owner shall submit a recorded copy of the release instruments to the corporation within forty-five days of the date of the corporation's written notice in order to have the shared appreciation equity program restriction cancelled.

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-109 Exercise of the right to purchase restriction. In the event the corporation exercises

its option to purchase the property, the shared appreciation equity program restriction shall not apply. If the purchaser paid part of or the full payment for the shared appreciation equity program, the corporation shall refund the amount paid. [Eff 1/15/22; comp **DEC 1 0 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-308-110 Prepayment of corporation's percentage share of net appreciation. (a) The owner may pay all or part of the corporation's share of the net appreciation at any time without a sale or transfer of the dwelling unit.

(b) If only a partial payment is made to the corporation, the owner's original purchase price shall be increased for the purpose of making any later calculation to determine the balance of the corporation's share of the net appreciation.

(c) The minimum amount of partial payment is twenty-five per cent. [Eff 1/15/22; comp **DEC 1 0 2022**] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

SUBCHAPTER 7

OWNER OCCUPANCY WAIVER PROCEDURES

§15-308-121 Purpose and applicability. This subchapter is adopted pursuant to chapter 91, HRS, and implements section 201H-49, HRS, and the shared appreciation equity program pursuant to section 201H-47, HRS, which applies to real property, restrictions on its use, and exceptions to those restrictions. [Eff 1/15/22; comp **DEC 1 0 2022**] (Auth: HRS §§201H-4, 201H-47, 201H-49) (Imp: HRS §§201H-47, 201H-49)

§15-308-122 Application for temporary owner occupancy waiver. When the owner of a unit in any qualified affordable housing project submits an

application to the corporation for an exception to the owner occupancy requirement in section 201H-49, HRS, the following shall apply:

- (1) The applicant shall submit to the corporation a completed temporary owner occupancy waiver form as provided by the corporation;
- (2) Along with the temporary waiver form, the applicant shall submit to the corporation the following information:
 - (A) A cover letter requesting the temporary owner occupancy waiver and which states the length of the temporary waiver period requested, including, but not limited to a letter from a physician, dean, or commanding officer;
 - (B) A signed Hawaii state income tax return for every year the applicant has occupied the dwelling unit;
 - (C) Documentation on the monthly mortgage payments the owner is paying; and
 - (D) Additional documentation necessary for the corporation to verify the hardship circumstance and make a determination on the temporary waiver request.
- (3) Upon receipt, the staff of the corporation shall time stamp the application.
 - (A) If the owner's temporary waiver request is found to be valid under this chapter, the staff shall issue written notification of that determination to the applicant within sixty working days thereafter.
 - (B) If the owner's temporary waiver request is found to be invalid under this chapter, the staff shall, within sixty working days of receipt, so notify the applicant, along with the reason or reasons that the temporary waiver request is denied.

[Eff 1/15/22; am and
comp **DEC 10 2022**] (Auth: HRS §§201H-
4, 201H-49) (Imp: HRS §201H-49)

§15-308-123 Hardship circumstances required.

Except for a natural disaster, the corporation may grant a temporary waiver of the owner occupancy requirement if the applicant is unable to reside on the property temporarily due to the following conditions:

- (1) An unforeseeable job or military transfer;
- (2) A temporary educational sabbatical;
- (3) Serious illness of the person or household member; or
- (4) Other circumstances as determined by the corporation on a case by case basis.

[Eff 1/15/22; comp **DEC 10 2022**] (Auth:
HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-124 Duration of temporary waiver. (a)

The corporation may waive the owner occupancy requirement for a total of not more than ten years after the purchase of the dwelling unit. If the owner does not reoccupy the dwelling unit at the end of the temporary waiver period, the owner shall pay the corporation its share of the net appreciated value of the property in accordance with subchapter 6, if applicable, and the corporation may repurchase the dwelling unit in accordance with subchapter 5 of this chapter. If the corporation elects not to repurchase the dwelling unit, the owner shall pay the corporation simple interest on the original cost and capital improvements at the rate of twelve per cent a year until the unit is reoccupied or sold.

(b) If the right to repurchase restriction has expired and only the shared appreciation equity program restriction is applicable, then the owner shall pay the corporation its share of the net appreciated value of the property in accordance with subchapter 6 of this chapter. [Eff 1/15/22; am and

comp **DEC 1 0 2022**] (Auth: HRS §§201H-4, 201H-49)
(Imp: HRS §201H-49)

§15-308-125 Allowable uses of the dwelling unit during the temporary waiver period. During the temporary waiver period, the dwelling unit may be rented or leased, provided that the owner complies with all applicable laws. The amount of monthly rent that may be charged by the owner shall not exceed (1) the corporation's affordable rent guidelines or (2) the owner's monthly mortgage payments for principal, interest, taxes, and applicable payments for mortgage insurance, homeowner association fees, maintenance fees, and lease rent; whichever is greater. The applicant shall submit to the corporation a signed rental agreement. Subletting is not allowed.
[Eff 1/15/22; comp **DEC 1 0 2022**] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-126 Proof of occupancy. A waiver may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling unit. The owner shall continue to pay resident state income taxes during the waiver period. The owner shall submit signed Hawaii state income tax returns for each year of the temporary waiver period. [Eff 1/15/22;
comp **DEC 1 0 2022**] (Auth: HRS §§201H-4, 201H-49)
(Imp: HRS §201H-49)

§15-308-127 Extension of the owner occupancy requirement. The corporation may extend the owner occupancy requirement by one month for every month or fraction thereof that the owner occupancy requirement of section 201H-49, HRS, is temporarily waived.
[Eff 1/15/22; comp **DEC 1 0 2022**] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-128 Recovery of administrative expenses and attorneys' fees. The corporation may recover all relevant administrative expenses and attorneys' fees

from the applicant in administering and implementing this subchapter. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-129 Failure to reoccupy. Failure to reoccupy the dwelling unit by the owner at the end of the temporary waiver period shall be sufficient reason for the corporation, at its option:

- (1) To purchase the unit as provided in section 201H-47, HRS, as applicable. In this situation, the owner shall not receive more than the maximum to which the owner would be entitled under section 201H-47, HRS; or
- (2) Demand the full payment for the shared appreciation equity restriction. The corporation has the right to verify the owner's failure to occupy.

[Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

§15-308-130 Extension of the temporary waiver period. An owner may apply for an extension of the temporary waiver period; provided that the total waiver period shall not exceed ten years; provided further, that application is made at least ninety working days prior to the termination of the initial temporary waiver period. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §§201H-4, 201H-49) (Imp: HRS §201H-49)

SUBCHAPTER 8

PROCEDURES TO IMPLEMENT QUALIFIED RESIDENT PREFERENCES IN THE INITIAL SALE OF MARKET-PRICED DWELLING UNITS

§15-308-151 Announcement; publication. For a period of thirty calendar days, 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 at a minimum a summary of the following information:

- (1) The location of the project;
- (2) A fair and reasonable estimate of:
 - (A) The total number of market-priced units to be included in the project;
 - (B) The price range of the market-priced units;
 - (C) The approximate size of the market-priced units; and
 - (D) A designation whether the market-priced units are being sold in fee simple or leasehold.
- (3) A statement that one hundred per cent of the market-priced units are being sold in fee simple or leasehold;
- (4) The definition of "qualified resident" as contained in section 201H-32, HRS;
- (5) The name and address of the real estate broker designated by the developer, whom interested individuals may contact to be placed on a reservation list, and to obtain further information on the project; and
- (6) A statement that the market rate units will be available to any qualified resident 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.
- (7) The publication shall also include HUD's equal housing opportunity slogan or logo.
[Eff 1/15/22; am and comp]
(Auth: HRS §201H-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201H-1, 201H-45, 515-3)

§15-308-152 Designation of residential units.

The developer of any housing project containing market-priced residential units shall designate one hundred per cent of such units for sale to prospective owner-occupant "qualified residents" during an initial offering period of thirty calendar days. Thereafter, the developer has the discretion to sell the remaining units to any purchaser. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-1, 201H-45)

§15-308-153 Reservation list, requirements.

(a) During the initial offering period of thirty calendar days, the developer's designated broker shall compile a "qualified resident" reservation list consisting of the names, addresses, and phone numbers of all individuals stating a desire to purchase a market-priced unit contained in the announced project.

(b) The list shall be compiled in the order in which applicants have submitted to the agent a duly executed affidavit that the applicant meets the definition of "qualified resident", agrees to be an owner-occupant for a minimum of 365 days and will obtain an owner occupant type of loan and intends to become a purchaser of a market-priced unit.

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

(d) The developer shall submit the reservation list together with the executed affidavits to the corporation within ten days of the expiration of the initial thirty day offering period. The corporation will provide the developer with an eligible qualified resident list, which shall list the applicants approved as "qualified residents." The developer shall

offer affordable units to the individuals on the eligible qualified resident list as described in section 15-308-154.

(e) Sixty days before the close of project sales, the developer shall submit to the corporation a summary of which individuals on the eligible qualified residents list purchased a market rate unit, which did not purchase a market rate unit, and the applicants' reason for not purchasing a unit. From time to time, the corporation may request an updated summary from the developer. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-1, 201H-45)

§15-308-154 Sale of residential units. (a) The developer shall offer all of the market-priced units to those individuals whose names are on the eligible "qualified resident" list by one of the following means:

- (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 developer.
- (b) Once the eligible "qualified resident" list is exhausted, the developer has the discretion to sell the remaining units to any purchaser.
- (c) The developer shall also be required to comply with the following:

- (1) Prior to the sale of any of the units, the developer shall submit to the corporation, for its review and approval, copies of the sales contracts and deeds which reference the qualified resident preference;
- (2) Prior to the sale of any of the units, the developer shall submit to the corporation a copy of the covenants, conditions, and restrictions, if any, for review and approval;
- (3) The developer shall submit to the corporation a list of all of the purchasers by lot number, name, date of sales contract,

date of recordation, tax map key, and property address. On this list, the developer shall designate with an asterisk (*) those purchasers who are qualified residents; and

- (4) The developer shall comply with all applicable state and federal fair housing laws. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: 24 CFR 108; 24 CFR 200, Subpart M; HRS §§201H-1, 201H-45, 515-3; HRS Chapter 514B)

SUBCHAPTER 9

ADMINISTRATION OF CORPORATION LEASES

§15-308-171 Purpose. This subchapter shall govern the general procedures for the administration of corporation-owned leases. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-12, 201H-43, 201H-22)

§15-308-172 Applicability. This subchapter shall apply to all lots developed and leased by the corporation and designated for lower cost and market housing, and for which lands and funds were used to meet the goals and objectives of providing affordable housing. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

§15-308-173 Administration of residential leases. (a) The corporation shall review applications submitted by lessees for assignment or transfer of leases and subleases, when applicable.

(b) As applicable, a purchaser of a residential lease shall meet the following eligibility requirements:

- (1) The purchaser shall be a qualified resident;

- (2) The purchaser shall not be delinquent in any obligation to the State or any county government, and shall not have had a previous contract cancelled due to default;
- (3) If the lot is vacant, the purchaser shall demonstrate the financial ability to construct a house within two years of the lease execution date; and
- (4) The purchaser shall provide state and federal tax clearances.
- (c) The corporation shall establish lease rents and shall initiate the renegotiation of lease rents at the reopen period as stated in the lease agreement.
- (d) Lease terms shall begin on the same date for all units in a project, when possible.
- (e) The corporation shall terminate a lease when a lessee fails to cure the default of any condition of the lease or violation of this chapter, using the following procedure:
 - (1) Lessees shall be sent a written notice of default;
 - (2) The mortgagee of record shall be sent a copy the notice of default; and
 - (3) Lessees shall be required to vacate the premises of the leased property upon termination of the lease.
- (f) The corporation's consent shall be required prior to any assignment or transfer of leases and subleases, if allowed, according to the terms of the lease agreement. [Eff 1/15/22; am and comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

§15-308-174 General lease provisions. (a) The corporation shall consent to mortgages as stated in the lease.

(b) The corporation's consent shall be required prior to any improvements installed on the land as stated in the lease.

(c) The lessee shall pay for all costs when necessary to determine the lessee's equity in the property. [Eff 1/15/22; comp **DEC 10 2022**] (Auth:

HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

§15-308-175 Extension of fixed rent period or lease term for mortgage purposes. (a) The corporation may extend the fixed rent period or term for mortgage purposes. The corporation may adjust the lease rent for the current fixed periods and the extended period as conditions of allowing the extension.

(b) The extended lease rents shall not be used in the valuation of the purchase of the leased fee interest of the land.

(c) The corporation may charge fees for the extension application. Such fees shall be as presented in §15-308-7.

(d) The lessee shall pay for all costs associated with the extension. [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

§15-308-176 Sale of leased fee interest of the land. (a) The corporation may sell the leased fee interest of the land according to the terms of the lease, or state statutes, as applicable.

(b) The original terms of the lease or revised terms and conditions mutually agreed upon in writing shall be used to value the leased fee interest of the land.

(c) The corporation may sell the leased fee interest of the land for the project, or for individual lots.

(d) The lessee shall pay for all costs to purchase the leased fee interest of the land." [Eff 1/15/22; comp **DEC 10 2022**] (Auth: HRS §201H-4) (Imp: HRS §§201H-5, 201H-9, 201H-12, 201H-15, 201H-22)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

Amendments to and compilation of Chapter 15-308, Hawaii Administrative Rules, on the Summary Page dated November 14, 2022, were adopted on November 15, 2022, following a public hearing held on November 14, 2022, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on October 14, 2022.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.



DONN MENDE, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED:



DAVID Y. IGE
Governor
State of Hawaii

Dated: Nov. 30, 2022

APPROVED AS TO FORM:



Deputy Attorney General

Filed

LIEUTENANT GOVERNOR'S
OFFICE

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