

## FOR ACTION

### I. REQUEST

Approve Proposed New Chapter 15-309 “Dwelling Unit Revolving Fund Equity Pilot Program,” Hawaii Administrative Rules, Implementing the Provisions of Act 92, Session Laws of Hawaii 2023, by Establishing a Dwelling Unit Revolving Fund Equity Pilot Program

### II. FACTS

- A. Act 92, Session Laws of Hawaii 2023, authorized the Hawaii Housing Finance and Development Corporation (HHFDC) to establish a five-year Dwelling Unit Revolving Fund (DURF) equity pilot program, which shall be funded by DURF, to address the high, unmet demand of for-sale units by Hawaii residents, specifically, residents who:
  - 1. Own no other real property;
  - 2. Receive no gift funds; and
  - 3. Work in a profession that is facing a shortage as defined by the corporation, including health care workers, educators, law enforcement officers, including staff at correctional facilities, or agricultural field workers.
- B. Act 92 authorizes HHFDC to use up to \$10 million of existing funds in DURF for the pilot program. The program will sunset on June 30, 2028.
- C. HHFDC must adopt rules pursuant to Chapter 91, Hawaii Revised Statutes, to govern the program, including the methods by which appreciated equity values shall be calculated, assessed, and satisfied; and the subsidy or deferred sales price and any accrued interest that may be paid, in part or in full, at any time.

### III. DISCUSSION

The proposed new Chapter 15-309, Hawaii Administrative Rules (HAR), are attached hereto as **Exhibit A**, with the substantive provisions summarized as follows:

- A. The corporation’s equity will be allocated towards specific housing units within for-sale housing development projects identified by the developer, with priority for starter units. The corporation shall enter into an agreement with the developer.
- B. The developer will market units under the program to eligible buyers who shall submit a completed affidavit for evaluation by the corporation. If accepted by the corporation, their names will go on a list of qualified purchasers that will be provided to the developer.
- C. The developer will offer units to qualified purchasers via the order in which their names appear on the list, the drawing of lots, or any other reasonable or fair method.

- D. Within 30 years of the date of the purchase, if the qualified purchaser sells the unit or upon a variety of circumstances, whichever occurs first, the qualified purchaser shall repay the corporation's equity and equity percentage share as calculated below:
1. The sum of the corporation's equity plus simple interest at the rate of 1% per year; and
  2. The net appreciation on the corporation's equity calculated as: a) the current fair market value or sales price of the unit, specified in the purchaser's equity sharing program agreement, minus the original fair market value of the unit, multiplied by: b) the corporation's equity percentage share.
- E. Should the corporation determine non-compliance with program rules and requirements, the corporation will notify the qualified purchaser, who will then have 60 days to correct the non-compliance.
- F. Fees are summarized in the following table.

| PURPOSE                                 | AMOUNT CHARGED |
|-----------------------------------------|----------------|
| 1. Calculation of Program Payoff Amount | \$250          |
| 2. Releases                             |                |
| Release of Equity Sharing Program       | \$250          |
| 3. Notices                              |                |
| Notice of Demand                        | \$250          |
| Notice of Non-Compliance                | \$250          |

#### IV. RECOMMENDATION

That the HHFDC Board of Directors:

- A. Approve the proposed new Chapter 15-309, HAR, subject to:
  1. Approval as to form by HHFDC's Deputy Attorney General; and
  2. The Governor's approval;
- B. Authorize the Executive Director or his designated representative(s) to conduct a public hearing on the adoption of the proposed rules; and
- C. After the public hearing, authorize the Interim Executive Director to transmit the proposed rules to the Governor for final approval, provided that no substantive amendments are made.

Attachments: Exhibit A – Proposed New Chapter 15-309, HAR

Prepared by: Cynthia Nyross, Planner

Lorna Kometani, Real Estate Services Section Chief

  


Reviewed by: Randy Chu, Development Branch Chief  
Dean Watase, Housing Planning Manager  
Chris Woodard, Chief Planner

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**Approved by the Board of Directors as**

☐ Circulated ☒ Amended

On October 12, 2023, as noted on Exhibit A,  
page 309-4, section 15-309-8, last sentence.  
Planning, Evaluation & Compliance Branch

**Please take necessary action.**



for **Executive Director**

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,  
AND TOURISM

Adoption of Chapter 15-309  
Hawaii Administrative Rules

October 05, 2023

1. Chapter 15-309, Hawaii Administrative Rules,  
entitled "Dwelling Unit Revolving Fund Equity Pilot  
Program", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,  
AND TOURISM

SUBTITLE 14

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

CHAPTER 309

DWELLING UNIT REVOLVING FUND EQUITY PILOT  
PROGRAM

Subchapter 1 General Provisions

|            |             |
|------------|-------------|
| \$15-309-1 | Purpose     |
| \$15-309-2 | Definitions |
| \$15-309-3 | Delegation  |
| \$15-309-4 | Fees        |

**EXHIBIT A**

## Subchapter 2 Dwelling Unit Revolving Fund Equity Pilot Program

|             |                                                                             |
|-------------|-----------------------------------------------------------------------------|
| \$15-309-8  | Equity pilot program; general provisions                                    |
| \$15-309-9  | Announcement                                                                |
| \$15-309-10 | Information and verification                                                |
| \$15-309-11 | Corporation action                                                          |
| \$15-309-12 | Unit offering                                                               |
| \$15-309-13 | Interest on equity                                                          |
| \$15-309-14 | Repayment of corporation's equity and<br>payment of equity percentage share |
| \$15-309-15 | Equity pilot program restrictions                                           |
| \$15-309-16 | Non-compliance penalties                                                    |

## SUBCHAPTER 1

## GENERAL PROVISIONS

**§15-309-1 Purpose.** The purpose of this chapter is to implement Act 92, Session Laws of Hawaii 2023, which permits the corporation to establish a dwelling unit revolving fund equity pilot program, which shall be funded by the dwelling unit revolving fund, to address the high, unmet demand of for-sale units by Hawaii residents. Under the program, until June 30, 2028, the corporation may purchase equity in for-sale housing development projects, subject to the conditions set forth in Act 92, Session Laws of Hawaii 2023, and this chapter. [Eff \_\_\_\_\_] (Auth: SLH 2023, Act 92, §2)(Imp: SLH 2023, Act 92, §2))

**§15-309-2 Definitions.** As used in this chapter:

"Affidavit" means the application to participate in this program.

"Applicant" means the primary person who submits an affidavit to participate in this program.

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

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

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

"Corporation's equity" means the difference between the original cost of the unit and the price of the unit paid by the qualified purchaser.

"Corporation's equity percentage share" means the percentage determined as: the corporation's equity divided by the value, excluding any options or upgrades, and established prior to closing the purchase of the unit, rounded to the nearest one per cent.

"Dwelling unit revolving fund" means the fund which was established pursuant to section 201H-191, HRS.

"Eligible buyer" means an applicant who: 1) owns no other real property; 2) receives no gift funds for purchase of the unit; 3) works in a profession that is facing a shortage as determined by the corporation, including health care workers, educators, law enforcement officers, including staff at correctional facilities, or agricultural field workers; and, if applicable, 4) meets the eligibility requirements set forth in section 15-308-22, Hawaii Administrative Rules.

"Housing development project" means a plan, design, or undertaking by the corporation or an eligible developer for the development of units. "Housing development project" includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and 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 development project.

"Interest rate" means the fixed rate charged on the corporation's equity at one per cent per year, unless

otherwise indicated in the qualified purchaser's program agreement.

"Qualified purchaser" means an eligible buyer who meets the criteria of the program for which an affidavit is submitted and has entered into a purchase contract and program agreement.

"Starter unit" means a unit that is designed to meet the basic living capacity requirements of homebuyers with families of limited size by eliminating needless design and space amenities.

"Unit" means 1) the structure and land upon which the structure is constructed, whether on fee simple or leasehold property, developed for residential purposes pursuant to chapter 201H, HRS; or 2) improved or unimproved real property that is developed for residential purposes pursuant to chapter 201H, HRS. Unit includes dwelling units.

"Value" means the unencumbered value of a unit, without options and upgrades at time of purchase or capital improvements made by the purchaser after the property is purchased, as determined by a qualified appraiser.

[Eff \_\_\_\_\_ ] (Auth: SLH 2023, Act 92, §2) (Imp: SLH 2023, Act 92, §2)

**§15-309-3 Delegation.** The corporation delegates to the executive director the authority to implement and carry out the purposes of this chapter. [Eff \_\_\_\_\_ ] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

**§15-309-4 Fees.** The corporation shall have the right to charge reasonable fees for administrative expenses incurred in processing the required real estate documents under this chapter, as follows. These fees shall be nonrefundable.

| PURPOSE                                    | AMOUNT<br>CHARGED |
|--------------------------------------------|-------------------|
| 1. Calculation of Program Payoff Amount    | \$250             |
| 2. Releases                                |                   |
| Release of Equity and Equity Pilot Program | \$250             |
| 3. Notices                                 |                   |

|                          |       |
|--------------------------|-------|
| Notice of Demand         | \$250 |
| Notice of Non-Compliance | \$250 |
|                          |       |

[Eff ] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

## SUBCHAPTER 2

### DWELLING UNIT REVOLVING FUND EQUITY PILOT PROGRAM

#### **§15-309-8 Equity pilot program; general provisions.**

(a) The corporation may purchase equity in for-sale housing development projects; provided that this equity shall be allocated to specific units within the housing development projects and the price to be paid by each eligible buyer of a unit shall be reduced by the corporation's equity amount for that unit. The corporation's equity shall be allocated to specific units, and the units shall be offered to eligible ~~buyers~~ **purchasers** prioritized by the corporation.

(b) In determining units to be allocated the corporation's equity, the corporation shall give priority to starter units.

(c) The corporation shall determine the total equity contribution to a housing development project, and the allocation of the corporation's equity to units in the housing development project.

(d) The corporation may partner with a developer of units to implement the program.

(e) The corporation shall enter into an agreement with the developer to purchase equity in specified units of a housing development project. The agreement shall specify the corporation's equity, the units to which the corporation's equity is allocated, and the amount to be paid by eligible buyers factoring in the corporation's equity. The agreement shall be subject to the approval of the board.

(f) The corporation's allocated equity shall be paid to the developer at the time of the closing of the sale of the unit. [Eff ] (Auth: SLH 2023, Act 92, §2) (Imp: SLH 2023, Act 92, §2)

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## EXHIBIT A

**§15-309-09 Announcement.** When marketing units for sale, the developer shall identify units that are part of the corporation's equity pilot program and provide information containing at minimum, a summary of the (1) location of the units; and (2) the amount of the corporation's equity and if applicable, the corporation's equity percentage share, as determined between the developer and corporation.  
[Eff ] (Auth: SLH 2023, Act 92, §2) (Imp: SLH 2023, Act 92, §2)

**§15-309-10 Information and verification.** (a) Eligible buyers interested in participating in the equity pilot program shall submit a completed affidavit to the respective developer or developer's broker and provide information relating to household income, composition, financial condition, and status changes, prior to close of the purchase.  
(b) The developer or developer's broker shall compile a list consisting of the names, addresses, and phone numbers of all individuals who have submitted an affidavit to participate in the announced program and submit to the corporation for review and approval.

(c) The list shall be compiled in the order in which applicants have submitted to the developer or developer's broker a duly executed affidavit that the applicant meets the definition of "eligible buyer" and intends to become a purchaser of a unit.

(d) By signing the affidavit, the applicant certifies that the information provided is complete and accurate. An applicant found to have wilfully submitted false information, made misstatements, or withheld important information shall be deemed to be ineligible, provided that the corporation shall not waive its right to pursue any other recourse provided by law. [Eff ] (Auth: SLH 2023, Act 92, §2) (Imp: SLH 2023, Act 92, §2)

**§15-309-11 Corporation action.** The corporation will evaluate the completed affidavits from the developer for acceptance. The corporation may deny the affidavit, defer

action and request that additional information be submitted. If so, the applicant shall respond within ten working days, otherwise the corporation will inform the applicant that the affidavit has been denied and the reasons why. If the affidavit is acceptable, the applicant's name will go on a list of qualified purchasers and be provided to the developer. [Eff ] (Auth: HRS §201H-4)  
(Imp: HRS §201H-4)

**§15-309-12 Unit offering.** (a) The developer will offer units to the qualified purchaser by one of the following means:

(1) In the order in which their names appear on the list of qualified purchasers provided by the corporation pursuant to section 15-309-10.

(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.

(b) Qualified purchasers may select a unit within their prequalified loan amount, including the corporation's equity." [Eff ] (Auth: SLH 2023, Act 92, §2)  
(Imp: SLH 2023, Act 92, §2)

**§15-309-13 Interest on equity.** The corporation may charge an interest rate on the corporation's equity, which shall be stated in the agreement with qualified purchasers. [Eff ] (Auth: SLH 2023, Act 92, §§1 and 2)  
(Imp: SLH 2023, Act 92, §§1 and 2)

**§15-309-14 Repayment of corporation's equity and payment of equity percentage share.** (a) Qualified purchasers shall repay the corporation's equity, including any accrued interest, upon the earliest of the following:

(1) Any time after financial closing at will of the purchaser;

(2) Upon sale or transfer of the unit;

(3) Prior to expiration of the thirty years from the qualified purchaser's sale closing date;

- (4) When the qualified purchaser obtains additional financing or refinances the original mortgage loan to pay the corporation's net share of appreciation. Payments accepted shall be applied in the following order of priority: (i) equity interest; (ii) equity appreciation; and (iii) equity principal;
  - (5) When the qualified purchaser no longer uses the unit as his or her principal and physical residence but continues to retain legal and/or equitable title to the unit;
  - (6) When the qualified purchaser rents the unit or any part of the unit to someone else but continues to retain legal and/or equitable title to the unit; or
  - (7) When the qualified purchaser fails to reoccupy the unit at the end of the temporary waiver period.
- (b) If the corporation's equity or equity percentage share is not paid when due, interest on the corporation's share shall accrue at the simple annual rate of ten per cent per year until paid.
  - (c) If after thirty years a purchaser has not repaid the corporation's equity, including any accrued interest, or the equity pilot program, the corporation may undertake the following action to seek repayment:
    - (1) Submittal of a demand letter to the qualified purchaser;
    - (2) Placement of a lien on the unit; and
    - (3) Judicial foreclosure of the unit.
  - (d) Payment of the corporation's equity pilot program shall be the sum of the following:
    - (1) Corporation's equity plus simple interest at the rate of one per cent per year, unless otherwise indicated in the qualified purchaser's equity pilot program agreement, on the corporation's equity to the qualified purchaser; and
    - (2) The net appreciation on the corporation's equity calculated as the (current fair market value or sales price of the unit, specified in the purchaser's equity pilot program agreement, minus the original fair market value of the unit), multiplied by the corporation's equity percentage share. [Eff

**EXHIBIT A**

] (Auth: SLH 2023, Act 92, §§1 and 2) (Imp:  
SLH 2023, Act 92, §§1 and 2)

**§15-309-15 Equity pilot program restrictions.** (a) Real property purchased under this chapter shall be occupied at all times by the qualified purchaser until such time the corporation's equity, including any accrued interest, is paid in full to the corporation, except in hardship cases where the inability to reside on the property arises out of unforeseeable circumstances as determined by the corporation and the qualified purchaser is granted a temporary waiver of the owner occupancy requirement. The qualified purchaser shall submit an application for relief to the corporation for review and approval.

(b) Unit owners shall not transfer title to the dwelling unit unless the corporation's equity, including any accrued interest, is paid in full to the corporation prior to the transfer. This restriction includes, but is not limited to, transfers to the owner's spouse, child, parent, sibling, or an inter vivos trust where the owner is the beneficiary of the trust. [Eff ]  
(Auth: SLH 2023, Act 92, §1) (Imp: SLH 2023, Act 92, §1)

**§15-309-16 Non-compliance penalties.** Upon determination by the corporation of non-compliance with program rules and requirements, the qualified purchaser shall be notified in writing and within sixty calendar days from the date of the notification, correct the non-compliance. The penalty for non-compliance with program rules and requirements is at the discretion of the corporation. In all cases, the corporation reserves the right to pursue all legal remedies to recapture the funds awarded, to seek specific performance, or other actions deemed necessary. [Eff ] (Auth: SLH 2023, Act 92, §2) (Imp: SLH 2023, Act 92, §2)

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**EXHIBIT A**

2. The adoption of chapter 15-309, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the forgoing are copies of the rules drafted in Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_, 2023, and filed with the Office of the Lieutenant Governor.

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GARY MACKLER, Chair  
Hawaii Housing Finance and  
Development Corporation

APPROVED AS TO FORM:

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Deputy Attorney General  
State of Hawaii

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**EXHIBIT A**