

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Adoption of Chapter 15-309
Hawaii Administrative Rules

December 26, 2023

SUMMARY

Chapter 15-309, Hawaii Administrative Rules, entitled
"Dwelling Unit Revolving Fund Equity Pilot Program", is
adopted.

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

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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 JAN 15 2024] (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 the program.

"Applicant" means the primary person who submits an affidavit to participate in the 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 established pursuant to section 201H-191, HRS.

"Dwelling unit revolving fund equity pilot program" or "program" means the program established by Act 92, Session Laws of Hawaii 2023.

"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, staff at correctional facilities, and 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, 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 the time of purchase or capital improvements made by the purchaser after the property is purchased, as determined by a qualified appraiser.

[Eff **JAN 15 2024**] (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 **JAN 15 2024**] (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 provided below. These fees shall be nonrefundable.

Fee Schedule (January 2024)

PURPOSE	AMOUNT CHARGED
1. Calculation of program payoff amount	\$250
2. Releases	
Release of dwelling unit revolving fund equity pilot program	\$250
3. Notices	
Notice of demand	\$250
Notice of non-compliance	\$250

[Eff **JAN 15 2024**] (Auth: HRS §201H-4) (Imp: HRS §201H-4)

SUBCHAPTER 2

DWELLING UNIT REVOLVING FUND EQUITY PILOT PROGRAM

§15-309-8 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 qualified purchasers prioritized by the corporation.

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

(b) 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.

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

(d) 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.

(e) The corporation's allocated equity shall be paid to the developer at the time of the closing of the sale of the unit. [Eff JAN 15 2024] (Auth: SLH 2023, Act 92, §2)
(Imp: SLH 2023, Act 92, §2)

§15-309-09 Announcement. When marketing units for sale, the developer shall identify units that are part of the:

(1) Location of the units; and

(2) Amount of the corporation's equity and, if applicable, the corporation's equity percentage share, as determined between the developer and corporation.

[Eff JAN 15 2024] (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 shall submit the list 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 **JAN 15 2024**] (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 or defer action and request that additional information be submitted; provided that 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 shall go on a list of qualified purchasers and the name shall be provided to the developer. [Eff **JAN 15 2024**] (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 the 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 **JAN 15 2024**] (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 **JAN 15 2024**] (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

- (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 including to pay the corporation's net share of appreciation;
- (5) When the qualified purchaser no longer uses the unit as the qualified purchaser's principal and physical residence but continues to retain legal or equitable title to the unit, or both;
- (6) When the qualified purchaser rents the unit or any part of the unit to someone else but continues to retain legal or equitable title to the unit, or both; or
- (7) When the qualified purchaser fails to reoccupy the unit at the end of the temporary waiver period.

(b) Payments accepted shall be applied in the following order of priority: corporation's (i) equity interest; (ii) equity percentage share, if any; and (iii) equity.

(c) If the corporation's equity and equity percentage share is not paid when due, interest on the corporation's equity share shall accrue at the simple annual rate of ten per cent per year until paid.

(d) If after thirty years a purchaser has not repaid the corporation's equity, including any accrued interest, and the corporation's equity percentage share, if any, the corporation may undertake the following actions 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.

(e) Payment of the corporation's equity and equity percentage share, if any, shall be the sum of the following:

- (1) The corporation's equity plus simple interest at the rate of one per cent per year, unless otherwise indicated in the qualified purchaser's 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 value of the unit, minus the original value of the unit specified in the purchaser's program agreement, and multiplied by the corporation's equity percentage share.

[Eff JAN 15 2024] (Auth: SLH 2023, Act 92, §§1 and 2) (Imp: SLH 2023, Act 92, §§1 and 2)

§15-309-15 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, and equity percentage share, if any 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 JAN 15 2024] (Auth: SLH 2023, Act 92, §1) (Imp: SLH 2023, Act 92, §1)

§15-309-16 Non-compliance penalties. Upon determination by the corporation of a qualified purchaser's 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, the qualified purchaser shall 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 JAN 15 2024] (Auth: SLH 2023, Act 92, §2) (Imp: SLH 2023, Act 92, §2)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Chapter 15-309, Hawaii Administrative Rules, on the Summary Page dated December 26, 2023, was adopted on December 27, 2023, following a public hearing held on November 21, 2023, 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 20, 2023.

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

Gary Mackler

GARY MACKLER, Chairperson
Hawaii Housing Finance and
Development Corporation

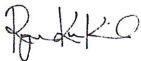
APPROVED:



JOSH GREEN, M.D.
Governor
State of Hawaii

Date: 01/05/24

APPROVED AS TO FORM:



Deputy Attorney General

JAN 15 2024

Filed