

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 174

STATE ASSISTED LAND AND HOUSING DEVELOPMENT PROGRAM

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Historical Note: Chapter 174 of Title 15, Hawaii Administrative Rules, is based substantially upon Chapter 6-373, Hawaii Administrative Rules, [Eff 8/2/92; comp 7/5/96; am 6/8/98; R **OCT 25 1999**]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-174-1 Purpose. These rules are adopted under chapter 91, HRS, and implement the provisions of chapter 201G, HRS, providing for the development and construction of housing projects; the sale, purchase, lease, or rental of dwelling units; interim and construction loans; and the provisions of loans and guarantees to qualified persons.
[Eff **OCT 25 1999**] (Auth: HRS §§201G-5, 201G-15, 201G-183, 201G-184, 201G-186, 201G-243, 201G-120, 201G-121, 201G-421, 201G-125, 201G-127, 201G-131, 201G-132) (Imp: HRS §§201G-4, 201G-184, 201G-186, 201G-243, 201G-120, 201G-121, 201G-125, 201G-127, 201G-131, 201G-132)

§15-174-2 Definitions. As used in this chapter:

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

"Assets" means total cash, securities, and real and personal 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, seed money loans or grants, tax credits, general excise tax exemptions, and rental assistance.

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

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

"Corporation" means the housing and community development corporation of Hawaii established under chapter 201G, HRS.

"Counseling" means guidance offered to individuals as administered by the homeownership counseling section and may include:

- (1) Housing information;
- (2) Homeownership counseling classes;
- (3) Referrals to other agencies;
- (4) Financial counseling; and
- (5) Any other services relevant to the functions of the homeownership counseling program.

"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 and personal 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 where the person has the intention of returning whenever the person is absent from it. A person may have several residences, but only one domicile.

" 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 201G, HRS, which is intended for residential purposes. It may also mean an improved or unimproved houselot which is developed for residential purposes pursuant to the provisions of chapter 201G, HRS.

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

"Eligible borrower" means in addition to the meaning prescribed by chapter 201G, HRS, a borrower who:

- (1) Has obtained a certificate of completion of the corporation's homeownership counseling program; and
- (2) Has fulfilled all other requirements as may be required by the corporation.

"Eligible contractor" means a general engineering contractor or general building contractor licensed under chapter 444, HRS, who:

- (1) Is determined by the board to be qualified by experience and financial responsibility and support to construct housing of the type described and of the magnitude encompassed by the given project; and
- (2) Meets all other requirements that the board deems to be just and reasonable, and all other requirements provided in these rules.

"Eligible developer" means an individual, partnership, cooperative, including limited equity housing cooperatives (as defined in chapter 421H, HRS), firm, nonprofit or profit corporation, or public agency which the corporation has determined:

- (1) To be qualified by experience and financial responsibility and support to construct housing of the type described and of the

- (2) magnitude encompassed by the given project;
- (2) To have submitted plans for a project adequately meeting the objectives of chapter 201G, HRS, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet all other requirements that the corporation deems to be just and reasonable, and all other requirements provided in chapter 201G, HRS, and these rules.

"Family dwelling" means a structure designated for residential use.

"Family" means:

- (1) Two or more persons who live or intend to live together as a unit and whose income and resources are available to meet the family'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;
- (2) A person who is pregnant or in the process of securing legal custody of a minor child or children, and who has reached the age of majority or is otherwise emancipated.

"Former owner" means a former owner of a dwelling unit from whom the dwelling unit was repurchased pursuant to section 201G-224, 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 201G, 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 family income" means the total amount of income of the borrower, borrower's spouse, and household members, from all sources before deductions.

"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 person" means an individual who lacks a fixed, regular, and adequate nighttime residence; and an individual who has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations, an institution that provides a temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular accommodation for human beings. Homeless persons may include, but are not limited to, elders, substance abusers, the mentally ill, abused persons, youth runaways, single- and two-parent families, and others with special needs.

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

"HRS" means the Hawaii Revised Statutes.

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

"Insured loan" means a loan that is insured or as to which the mortgage is insured or as to which a commitment for any such insurance has been made under the provisions of any state or federal law.

"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 these rules, 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 between fifty per cent and eighty per cent of the area median income;
- (3) "Low-moderate income" - those earning between eighty per cent and one hundred twenty per cent of the area median income; or
- (4) "Moderate income" - those earning between one hundred twenty per cent and one hundred forty per cent of the area median income.

"Monthly installment loan" means a loan repayable in equal or substantially equal monthly payments of principal and interest sufficient to amortize the principal amount of the loan in full within the term of the loan.

"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, 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.

"Qualified resident" means the same as defined under section 201G-2, HRS.

"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 (as defined by the Americans with Disabilities Act of 1990).

"Plans and specifications" includes construction plans and specifications and any other documents 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 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.

"Qualified appraiser" means a professional real estate appraiser whose occupation includes the valuation of real estate.

"Rules" means these rules.

"Special needs housing" means housing for persons for whom social problems, age, or physical or mental handicaps impair their ability to live independently and for whom such ability can be improved by more suitable housing conditions.

"Sponsored project" means a project which is initiated by the corporation, and is usually located on lands owned by the corporation. The corporation may or may not act as the developer of a project which it sponsors.

"Starter home" means a dwelling 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, but which nonetheless enables future expansion, modification, and improvement by the owner to accommodate increased occupancy over time as may be necessary.

"State" means the State of Hawaii.

"Subdivision and construction documents" includes all subdivision documents and plans and specifications.

"Subdivision documents" includes preliminary maps, final maps, subdivision construction plans and specifications, and any other document that may be required by the State or county in the processing of applications and permits relating to the project.

"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.

"Substantial construction defect" means a defect or deficiency in a dwelling unit which affects its structural integrity, habitability, or appearance and which is not caused by the act or omission of the owner or a person hired, retained, or engaged by the owner. This includes but is not necessarily limited to structural defects such as shifting foundations and

bearing walls; structural deficiencies due to the use of defective or undersized materials; defects affecting the health and safety of occupants; shifting sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

"Value" means the value of a property as determined by a qualified appraiser using acceptable appraisal methods. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-15, 201G-183, 201G-184, 201G-186, 201G-243, 201G-120, 201G-121, 201G-421, 201G-125, 201G-127, 201G-131) (Imp: HRS §§201G-1, 201G-4, 201G-8, 201G-184, 201G-186, 201G-242, 201G-243, 201G-244, 201G-311, 201G-321, 201G-322, 201G-113, 201G-118, 201G-120, 201G-121, 201G-122, 201G-124, 201G-125, 201G-127, 201G-131)

§15-174-3 References to other chapters. To the extent appropriate for the implementation of chapter 201G, HRS, references in documents, forms, and similar instruments of the corporation to chapters 356, 359, and 359G, HRS, shall be treated as references to chapter 201G, HRS. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-4)

§15-174-4 Development by corporation. (a) The corporation may develop land or housing projects in accordance with the provisions of chapter 201G, HRS:

- (1) On its own behalf;
- (2) On behalf of any government, or any landowner, or developer; or
- (3) With an eligible developer or contractor.

(b) The corporation may develop housing projects for employees, teachers or other government workers, and university and college students and faculty, nonprofit organizations, and government agencies for special needs housing projects primarily designed to meet the needs of elderly, persons with disabilities, displaced or homeless persons and their families, and other groups with special needs. The corporation may establish preferences and other necessary requirements and conditions for such housing projects on a project-by-project basis.

(c) The corporation shall offer not less than ten per cent of the total number of finished houselots in a single family project of fifty or more units to owner-

builders or nonprofit organizations assisting owner-builders in the construction of units thereon. This requirement does not apply to assisted projects which are not initiated by the corporation.

(d) The corporation may incorporate starter homes into any lower cost housing project developed by the corporation. The corporation shall determine the number of starter home units to be included in each particular project on a project-by-project basis.

- (1) Building, setback, minimum lot size, infrastructure, and architectural standards for the construction and development of starter homes shall be in substantial compliance with the design and construction requirements of the county in which the lower cost housing project is located. Deviations, if any, from such requirements shall be clearly indicated and shall be made part of the subdivision and construction documents.
- (2) The sale of starter home units by the corporation shall meet all requirements set forth in subchapter five.
 [Eff **OCT 25 1999**] (Auth: HRS §201G-4, 201G-113, 201G-120) (Imp: HRS §§201G-12, 201G-113, 201G-120,; SLH 1992, Act 309)

§15-174-5 Public information. The administrator may disseminate information and render assistance to the public in order that the provisions of the programs of the corporation may be understood and implemented effectively. The administrator may use all available news media or cause to be published these rules or an explanation of them for distribution.
 [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-4)

§15-174-6 Advisory committee; public hearing.
 (a) The corporation may appoint an advisory committee for each of the counties. A committee for a county shall be composed of residents of that county and in the number prescribed by the corporation. Each committee shall serve in an advisory capacity to the corporation and at the pleasure of the corporation. Each member shall serve a term of two years and may be reappointed to not more than four such terms. A

committee for a county shall receive, study, and advise upon community reaction upon request by the corporation for a project proposed to be developed under chapter 201G, HRS, in the county.

(b) The corporation may also hold informational hearings on any project proposed to be developed by the corporation as it deems necessary to receive and study community reaction to the proposed project.

[Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-4, 201G-6)

§15-174-7 Fees. The corporation shall have the right to charge reasonable fees for processing any instrument or taking any action required under this chapter. Such fees shall be as prescribed by the exhibit at the end of this chapter entitled "Fees", dated August 27, 1999. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-15, 201G-190) (Imp: HRS §§201G-4, 201G-15, 201G-190)

SUBCHAPTER 2

DEVELOPMENT OF HOUSING PROJECTS

§15-174-21 Purpose; effective date of subchapter. The purpose of this subchapter is to establish a procedure for the corporation to initiate by itself or with an eligible developer or contractor, or to enter into agreements with eligible developers or contractors, for the development of housing projects. This subchapter shall govern the development of real property and the construction of units thereon. [Eff **OCT 25 1999**] (Auth: HRS §§201G, 201G-113) (Imp: HRS §201G-113)

§15-174-22 Development by corporation. The corporation may develop land or housing projects in accordance with the provisions set forth in chapter 201G, HRS:

- (1) On its own behalf; or
 - (2) With an eligible developer or contractor.
- [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §§201G-4, 201G-113, 201G-120)

§15-174-23 Eligible developer, information required; determination by corporation. (a) An individual, partnership, cooperative, including limited equity housing cooperative as defined in chapter 421H, HRS, firm, a profit or a nonprofit corporation or a public agency that desires to be considered to develop a project either together with the corporation, or independent of the corporation, and who, in connection with the development of a project will need assistance such as acquisition of land or development rights to land, financing, subsidies, exemptions from general excise taxes, or expedited processing of a project under the provisions of chapter 201G, HRS, and the rules promulgated thereunder, shall submit to the corporation a developers' application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable. Information requested may include, but is not necessarily limited to:

- (1) Name, address, and telephone number of the applicant and evidence of the applicant's status as a corporation, partnership, joint venture or other business organization;
- (2) If the applicant is a corporation, certified copies of the articles of incorporation, and the names, addresses, and telephone numbers of each of the officers and directors of the corporation, and of any shareholder of the corporation holding more than twenty-five per cent of the outstanding shares issued by the corporation. If the applicant is a partnership, joint venturer, or sole proprietorship, certified copies of the partnership, joint venture agreement or proprietorship, as applicable, and the names, addresses, and telephone numbers of each of the individual partners, joint venturers, or owners;
- (3) A resume of the applicant's experience in the development of housing projects including a list and a brief description of the projects in which the applicant participated;
- (4) The name, title, address, and telephone number of the person to whom communications should be addressed;
- (5) Evidence of the applicant's legal authority to incur obligations and to sign and deliver

- such documents as may be necessary to finance, develop, and construct the project;
- (6) A current certificate of good standing from the department of commerce and consumer affairs and tax clearance from the department of taxation;
 - (7) Evidence of the applicant's capability to develop, own, manage, and provide appropriate services in connection with housing;
 - (8) Evidence of the applicant's credit worthiness including the following financial information, which shall be kept confidential to the extent permitted by law:
 - (A) Three years' fiscal year-end financial statements of the borrowing entity. If the statements are unaudited, tax returns shall be provided;
 - (B) Three years' fiscal year-end financial statements of any business, corporation, or partnership with which the principal applicant is affiliated. If the statements are unaudited, tax returns shall be provided;
 - (C) Interim balance sheets and income statements of the borrowing entity and principal developer if the fiscal year-end data is over nine months old;
 - (D) Tax returns if the borrower or guarantor is an individual;
 - (E) Articles of incorporation, bylaws, resolutions, and certificates of good standing as are appropriate to support corporate actions; and
 - (F) Any other financial data deemed appropriate by the corporation for proper credit analysis;
 - (9) The applicant's ties to the community and support from local community groups;
 - (10) Description of all housing projects or facilities owned or operated by the applicant;
 - (11) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the applicant or its principals;
 - (12) A description of the applicant's past or current business experience or involvement in

any programs or of its provision of services, other than housing, if any, that would give evidence of the applicant's management capabilities;

- (13) Evidence of ability to secure the necessary performance or payment bond or other evidence of surety and the ability to perform the work required to be performed in the housing project proposed;
- (14) A statement of the applicant's past or current involvement with the corporation and the Hawaii housing authority and the assistance, if any, received from those entities;
- (15) A project proposal in substantial compliance with section 15-174-24, which the applicant intends to submit to the corporation for approval; and
- (16) Any other information that the corporation deems necessary to determine the qualification of the applicant.

(b) The board may certify that the applicant is an eligible developer for the purposes of development of housing projects approved by the corporation under chapter 201G, HRS, if the board finds that the applicant:

- (1) Has demonstrated compliance with all laws, ordinances, rules, and other governmental requirements that the applicant is required to meet;
- (2) Has the necessary experience;
- (3) Has adequate and sufficient financial resources and support and has secured or has demonstrated the ability to secure a performance or payment bond, or other surety to develop housing projects of the size and type which the applicant proposes to develop; and
- (4) Has met all other requirements that the corporation determines to be appropriate and reasonable. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §201G-120)

§15-174-24 Project proposal; minimum requirements. (a) A project proposal, whether submitted by an applicant or eligible developer, or

initiated by the corporation for development by the corporation, in order to be considered for approval by the board for processing under the provisions of chapter 201G, HRS, must contain, as the corporation may determine to be applicable, the following minimum information:

- (1) Name and address of the eligible developer;
- (2) Evidence that the eligible developer has met the requirements of chapter 201G, HRS, applicable to eligible developers, and the requirements of section 15-174-23 of these rules;
- (3) A master plan of the proposed project, which shall show all or as much of the following information as may be required by the corporation:
 - (A) Evidence of site control (such as a deed, agreement of sale, commitment letter, or development agreement), and names and addresses of all legal and equitable holders of an interest in the land and a complete description of each holder's interest in the land;
 - (B) An accurate description of the land, its geographic and relative location within a larger tract of land, with descriptions of adjacent or surrounding subdivisions or other improvements on land;
 - (C) Approximate number of dwelling units, within the proposed project and the total area of the proposed project;
 - (D) Site plan showing the general development of the site, including the locations and descriptions of proposed and existing buildings, parking areas, and service areas; unusual site features; proposed and existing major streets in and adjacent to the proposed project; and proposed and existing major drainage facilities;
 - (E) Methods of sewage and solid waste disposal and sources of water and other utilities;
 - (F) Description of land contours;
 - (G) Location and description of existing historical or significant landmarks or

- their natural features within and adjacent to the proposed project;
- (H) Description of existing improvements within and adjacent to the proposed project, as well as off-site and on-site infrastructure and improvements requirements;
 - (I) Proposed and existing uses of each phase of the proposed project, and existing uses of lots adjacent to the proposed project for parks and other public places or spaces within adjoining properties; and
 - (J) Shoreline setbacks as may be required by chapter 205A, HRS.
- (4) Preliminary plans and specifications of typical housing units and other improvements in the project, including the number of proposed housing units, the number and types of structures, the number of stories, the number of units by size (number of bedrooms and bathrooms), any special features or amenities, natural resource conservation devices and energy efficient designs to be utilized, a description of the types of indigenous land plant species which shall be used for the landscaping of the housing project, if applicable, and the projected sales prices or rental rates for the units;
 - (5) Proposed financing of the project, including:
 - (A) The manner in which the project will be financed during the development and construction of the project and upon completion of the project;
 - (B) The sources of repayment of such financing;
 - (C) Estimated start-up expenses and the sources of funds to meet these expenses;
 - (D) The net equity, if any, which the developer intends to contribute to the proposed project; and
 - (E) Budgets and cashflow requirements;
 - (6) Development timetable, market analysis, sales marketing program, and other activities relating to a successful development of the project to completion;
 - (7) Description of the manner in which the

- proposed project addresses the housing needs of lower income families;
- (8) Description of the land for the proposed project as to present use, soil classification, agricultural importance as determined by the land evaluation and site assessment commission, flood, and drainage conditions;
 - (9) An assessment of the effects of the development of the proposed project upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, or other resources of the area;
 - (10) Availability of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, roads, police and fire protection, the adequacy thereof, and whether public agencies providing the services or facilities would be unreasonably burdened by the development of the proposed project;
 - (11) Specific requests to the corporation for participation by the corporation for financial or other assistance, description of the state subsidies required and applied for, and financial and other assistance provided for by other governmental agencies;
 - (12) Comments from the community or community groups;
 - (13) If the proposal for the development will cause displacement, the proposal shall include a program of housing accommodation for displaced persons;
 - (14) Applicable provisions of existing state and county general plans, development plans, community development plans, and other comparable plans developed or adopted by the state or county government in which the proposed project is situated, county zoning of the area and other applicable land use requirements, and if known, any substantial difference in the proposed project from the respective county general plan or development, or community development plan, or other county plans and zoning and other land use requirements, and the reasons for varying from the respective county

- requirements;
- (15) Specific requests for exemption from existing laws, charter provisions, ordinances and rules relating to the proposed project, including requests for exemption from subdivision standards and building codes, density, height, set back, parking, street width, open space, park dedication, and other specific land use requirements;
 - (16) Any other information that the corporation finds necessary to make an environmental assessment and to determine whether or not the proposed project complies as closely as possible with existing laws, charter provisions, ordinances, and rules, and is suitable under and meets the intent and purposes of chapter 201G, HRS.
 [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §§103-24.6, 201G-7)

§15-174-25 Project proposal; who may submit. (a) Any individual, partnership, profit or nonprofit corporation, or public agency, upon having filed application with the corporation as required by section 15-174-23, may submit project proposals for review and certification by the corporation.

(b) A project proposal may be submitted to the corporation together with the application required under section 15-174-23. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §§201G-113, 201G-118, 201G-120, 201G-121, 201G-122)

§15-174-26 Review of application and project; criteria for selection of proposals. The corporation shall review the application and project proposals to determine if the applicant qualifies by experience and financial responsibility and support to develop housing projects of the size and type proposed to be developed, and to determine if the proposed project meets certain minimum requirements, as follows:

The proposed project:

- (1) Is reasonably necessary and suitable for the development of lower cost housing units in the State, at the proposed location;
- (2) Is primarily designed for lower cost housing;

- (3) Follows existing laws, charter provisions, ordinances, and rules as closely as is consistent with the production of lower cost housing in the State;
- (4) Meets minimum standards of good planning, zoning, design, pleasant amenities, and a coordinated development;
- (5) Is not inconsistent with the housing objectives and policies of the Hawaii state plan;
- (6) Does not adversely affect surrounding property;
- (7) Does not unduly burden existing water systems, sewage and other waste disposal systems, transportation systems, roadway, drainage, street lighting, open spaces, parks, and other recreational areas, public utilities, and public services, or includes, as part of the proposed project, the development of such systems, facilities, and services at reasonable cost;
- (8) For projects constructed with state funds, located on state lands, or otherwise subsidized by the state, utilizing natural resources as well as energy-conserving devices pursuant to section 15-174-8;
- (9) Utilizes indigenous species of plants whenever and wherever feasible in the landscaping of the housing project if the project is to be developed with public moneys; and
- (10) Meets other minimum requirements established by the corporation and adopted as rules of the corporation pursuant to chapters 91 and 201G, HRS. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-120) (Imp: HRS §103-24.6, SLH 1992, Act 255, §2)

§15-174-27 Processing of proposal. (a) The administrator shall, upon receipt of an application or project proposal or both, time stamp the same as received and inform both the applicant and the board that a recommendation of approval or disapproval should be made within ninety days. The administrator shall invite comments from appropriate agencies in the review of the proposal for appropriateness, technical

compliance, and feasibility.

(b) After review of the proposal for appropriateness, technical compliance and feasibility, the administrator may submit the proposal with a recommendation for approval or disapproval to the board. Any proposal forwarded to the board by the administrator may be rejected, accepted, deferred, or re-referred to the administrator for further review and recommendation. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §§201G-113, 201G-116)

§15-174-28 Agreement with eligible developer or contractor; form of agreement. (a) The administrator, upon approval by the board, may enter into an agreement with an eligible developer or contractor, to develop a housing project.

(b) The agreement shall be subject to modification, and shall include, but not be limited to the following applicable terms, conditions, and covenants:

- (1) Purpose of the agreement, which shall include the development of lower cost housing;
- (2) A description of the role and responsibility of the corporation, the eligible developer or contractor, and other parties to the agreement, including the manner of compensating each party and the amount of profit for work performed;
- (3) Project concept and cost;
- (4) Time required to complete the project;
- (5) Delivery of dwelling units;
- (6) Sales prices or rents of dwelling units;
- (7) Construction agreements (when one of the parties is a contractor);
- (8) Insurance and bonding or surety requirements;
- (9) Inspection requirements and procedures;
- (10) Manner in which progress payments will be made; and
- (11) Such standard clauses that the corporation determines to be required, including, but not limited to, the following:
 - (A) Indemnity;
 - (B) Severability;
 - (C) Termination; and
 - (D) Assignability.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4,

201G-113) (Imp: HRS §§201G-113, 201G-118)

§15-174-29 State land use district boundary amendments. Upon receipt of any project proposal from an eligible developer that requires a state land use district boundary amendment by the state land use commission, the corporation may, concurrently with its review of the application and the project proposal, petition the state land use commission for a state land use district boundary amendment as provided in chapter 205, HRS. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-118)

§15-174-30 Other uses within housing project development. (a) The corporation may, as an integral part of development of a housing project under chapter 201G, HRS, designate portions of the land for commercial, industrial, and other uses; provided that the development is primarily for the benefit of dwelling units and that such commercial, industrial, and other uses are reasonably necessary as an integral part of the development and can help to preserve the lifestyles of purchasers of residences in the development. In the designation of such commercial, industrial, and other uses, the corporation shall consider the extent to which the proposed uses and the development thereof:

- (1) Conform to the objectives and policies of the Hawaii state plan;
- (2) Provide employment opportunities for the community;
- (3) Provide necessary and convenient amenities to the residents within the development;
- (4) Impact upon the suitability of the dwelling units within the development in the proximity of the proposed uses; and
- (5) Affect the economic feasibility of the development.

(b) With respect to development of a housing project under section 201G-124, HRS, only:

- (1) Preference of sales, leases, or rental of commercial, industrial or other facilities shall be given to persons who owned similar facilities in the project site and were displaced by government action. Lessees

- within the project area shall be on a second priority basis. Persons owning or leasing properties in the near vicinity shall be on a third priority basis.
- (2) The sale and leases of facilities shall be made at a cost as determined by the corporation to the above mentioned displacees. Sales and leases other than to said displacees shall be based on market values as determined by appraisal.
 - (3) The corporation may require that in the event a purchaser wishes to transfer title to a commercial property during the first twenty years after the purchase, the corporation shall have the right of first refusal at a price which shall not exceed the amount of the original cost to the purchaser together with the cost of any improvements or fixtures of a permanent nature added by the purchaser together with simple interest of said costs at the rate of seven per cent per year.
 [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113, 201G-124) (Imp: HRS §201G-124)

SUBCHAPTER 3

INDEPENDENT DEVELOPMENT OF PROJECTS

§15-174-51 Purpose. The purpose of this subchapter is to establish a procedure for eligible developers to develop housing projects pursuant to agreements with the corporation.
 [Eff **OCT 25 1999**] (Auth: HRS 201G-4, 201G-113)
 (Imp: HRS §201G-122)

§15-174-52 Project primarily designed for lower income housing; determination by corporation. (a) A project will be primarily designed for lower income housing if the project meets the requirements set forth in section 15-174-24, and in addition meets the following requirements:

- (1) The housing project includes dwelling units of different design and sales price levels or rental rates; and
- (2) The lower cost housing units are to be sold

or rented to such persons or families within income group or groups for lower cost housing as defined in section 15-174-2, as the corporation shall determine as the lower income housing group or groups to be served by the project at price ranges or rental rates which are affordable to such income group or groups.

(b) An eligible developer may submit a project proposal to the corporation for the corporation to determine if the project is primarily designed for lower income housing, and whether the corporation is willing to enter into an agreement with the eligible developer for the housing project.

(c) The project proposal to be submitted by the eligible developer shall contain the information required under section 15-174-24.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113)
(Imp: HRS §201G-121)

§15-174-53 Required conditions of agreements. If the corporation determines that the proposed project is primarily designed for lower income housing, and the corporation desires to enter into an agreement with the eligible developer, the agreement with the eligible developer for the development of housing projects shall include the following conditions:

- (1) That the eligible developer shall furnish a performance bond, issued by sureties that shall be satisfactory to the corporation, in favor of the corporation, to assure the timely and complete performance of the housing project;
- (2) That the plans and specifications of the housing project provide for the rental of units to eligible tenants or the sale of units in fee simple or in leasehold either to the corporation or to the purchaser. In the case of for-sale projects, the sale of the units shall be subject to all of the provisions in sections 201G-127, 201G-129, and 201G-130, HRS, except for units which are to be sold at market prices; and
- (3) That the housing project encompasses the use of lands adequately suited to size, design, and types of occupancies designated for

projects primarily designed for lower income housing, properly located for occupancy by the groups for which the development is designed, properly districted for the use intended prior to the application for the project, and appropriately zoned within an urban land use district, or appropriate in its situation and surroundings for more intensive or denser zoning.
 [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §201G-121)

§15-174-54 Conditions imposed at discretion of corporation. The corporation may include such conditions as it may deem to be appropriate, to assure that the project will be developed and the units sold or rented primarily as lower income housing. By agreement, the corporation may provide that all or a portion of the housing to be placed under the control of the corporation, is to be rented or sold by the corporation or to be sold to the corporation upon completion of all or a portion of the units.
 [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §201G-121)

§15-174-55 Processing of proposal; agreement with eligible developer. Processing of proposals and agreements with eligible developers shall be in accordance with sections 15-174-26 and 15-174-27.
 [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §201G-122)

SUBCHAPTER 4

(RESERVED)

SUBCHAPTER 5

THE SALE OF AFFORDABLE UNITS

§15-174-71 Purpose. This subchapter governs the general procedures for the initial sale of dwelling units and vacant house lots developed under this

chapter. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-127) (Imp: HRS §§201G-125, 201G-127)

§15-174-72 Sale of dwelling units. (a) Units completed or substantially completed shall be sold under the provisions of section 201G-125, HRS.

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

(c) Prior to identification of the site or the start of marketing, an affirmative fair housing marketing plan shall be filed with the U.S. Department of Housing and Urban Development, and marketing of the units shall not commence until approval of the plan is received from the department. Such approval shall be necessary to ensure receipt of Federal Housing Administration mortgage insurance.

(d) Applications may be accepted from an applicant for more than one project sponsored or assisted by the corporation.

[Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §201G-125, 515-3; HRS Chapter 514A)

§15-174-73 Eligibility for assistance. 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 qualified resident who is domiciled in the State and meets other qualifications set forth under section 201G-1, HRS.
- (2) 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 the corporation or the county repurchased the dwelling unit and there has been a significant change in one of the following:
 - (A) Family size;
 - (B) Place of employment; or
 - (C) Income.

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.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-311, 201G-113) (Imp: HRS §§201G-1, 201G-311, 201G-322)

§15-174-74 Exception of current owners in corporation 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 family size has increased and exceeds the preference required family size guidelines set forth in section 15-174-76; and

(2) The applicant has resided in the current dwelling unit for at least one year.

(b) Family 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 201G-127, HRS.

(d) Except for the applicant's current residence, the applicant shall be a qualified resident as set forth under section 201G-1, HRS. [Eff **OCT 25 1999**] (Auth: HRS §201G-4, 201G-311, 201G-113) (Imp: HRS §§201G-1, 201G-311, 201G-322)

§6-174-75 Exception of former owners in corporation projects. A former owner of a lower cost housing unit may purchase another of the same under the following conditions:

(1) If the former owner is released from title and wishes to apply again, the former owner must show that no profit was made on the sale of the first affordable unit.

- (2) In the event the corporation does not repurchase the unit offered, the owner will be required by the corporation to sell the unit at a restricted price plus sales costs. The unit must remain affordable and sold to a qualified resident whose income does not exceed 120 per cent of the area median income. [Eff **OCT 25 1999**] (Auth: HRS §201G-4, 201G-127) (Imp: HRS §§201G-1)

§15-174-76 Occupancy guidelines for sale units.

(a) The following occupancy guidelines may be used for sale units when the number of applicants exceeds the number and types of units available:

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

(b) The maximum family size is based on prevailing county housing, zoning, building, health and fire codes. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113, 201G-121) (Imp: HRS §§201G-111, 201G-113, 201G-118, 201G-121)

§15-174-77 Counseling. (a) The corporation shall provide counseling and training to all qualified applicants who apply for services under provisions of this counseling program, unless the applicant has been deferred, for good cause, by the administrator.

(b) The purpose of the counseling and training program shall be to help people deal with economic problems, to understand and accept responsibilities inherent in homeownership, to prepare applicants for homeownership tasks, and to develop resources that may assist the homeowner and the community.

(c) The counseling and training program shall operate in response to state and applicant needs, and shall be provided through a classroom-like group instructional setting. The corporation may also make

available a "home study" course designed to include all pertinent subjects covered in the group sessions when the administrator determines that an individual home study course is a more suitable alternative because of economic or other reasons.

(d) Upon successful completion of the homeownership course, applicants shall receive certificates. The certificate is required to purchase a dwelling unit. An administrative fee, which shall be the amount indicated on the attached fee schedule, may be charged to offset the cost for re-issuing certificates.

(e) A fee may be charged to each applicant applying or required to apply for services in an amount not to exceed \$200 per applicant.

(f) If the applicant obtains a deferment and fails to successfully complete the homeownership course within ninety days after the purchase of the dwelling unit, the corporation may repurchase the dwelling unit pursuant to guidelines set forth in section 15-174-103.

(g) The corporation, through contractual agreement, may provide counseling and other related services to qualified applicants of other governmental agencies. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-15) (Imp: HRS §§201G-8, 201G-15)

§15-174-78 Preference in dwelling unit sales.

(a) As used in this section:

"Person with a disability" means a mental or physical impairment which:

- (1) Is expected to be of long, continued, and indefinite duration;
- (2) Substantially impedes the ability of a person to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions; and
- (3) Has been certified by an independent consultant confirming the person's eligibility under these rules.

(b) Unless otherwise provided in these rules, in the sale of dwelling units by the corporation, the corporation 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 15-174-138;

- (2) Meet the occupancy guidelines set forth in section 6-174-76;
- (3) For single family developments only, have, excluding an applicant's spouse, dependents, as defined in the applicable regulations of the Internal Revenue Service, and as shown on the applicant's or co-applicant's state income tax return, divorce decree, or other document which is 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 new born children will be made at the time of lot selection and purchase;
- (4) Have, as homeowners, been displaced from their homes because of governmental action;
- (5) For income preferences only, income preference will be based on family size and annual family income as established by the United States Department of Housing and Urban Development. All income for family members eighteen years of age and older who are currently residing with the family and will physically reside in the dwelling unit to be purchased will be added to the gross family 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; or
- (7) For multi-family projects only, are persons with disabilities or whose household members are persons with disabilities.

(c) 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 paragraphs (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.

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

[Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-111, 201G-113, 201G-125)

§15-174-79 Information and verification. (a) The corporation shall require applicants to provide information relating to family income, family 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, 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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-113)

SUBCHAPTER 6

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

§15-174-81 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, an announcement containing as 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 201G-1, 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 priced 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.

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

[Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201G-1, 201G-125, 515-3)

§15-174-82 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 "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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-1, 201G-125)

§15-174-83 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" 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.

(d) The developer shall submit the reservation list within ten days of the expiration of the initial thirty day offering period to the corporation. At the close of project sales, the developer shall submit to the corporation a status of the reservation list as to who purchased and who did not purchase, and the reason for not purchasing. [Eff. **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-1, 201G-125)

§15-174-84 Sale of residential units. (a) The developer shall offer all of the market-priced units to those individuals whose names are on the "qualified resident" reservation 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 "qualified resident" reservation 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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: 24 CFR 108; 24 CFR 200, Subpart M; HRS §§201G-1, 201G-125, 515-3; HRS Chapter 514A)

SUBCHAPTER 7

RENTAL OF DWELLING UNITS

§15-174-91 Rental of dwelling units. (a) The corporation may rent dwelling units developed in accordance with this chapter to applicants who:

- (1) Do not have an outstanding debt owed to the corporation;
 - (2) Do 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; and
 - (3) Qualify as residents of the State.
- (b) Units shall be rented in accordance with all applicable state and federal fair housing laws. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: 24 CFR Part 108; 24 CFR Part 200, Subpart M; HRS §§201G-9, 201G-111, 201G-113, 201G-125, 515-3)

§15-174-92 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	Preferred
Unit Size	Family Size

0 Bedroom	1 person
1 Bedroom	2 persons
2 Bedroom	3 persons
3 Bedroom	4 persons
4 Bedroom	5 persons

(b) The maximum family size is based on prevailing county housing, zoning, building, health and fire codes. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-113) (Imp: HRS §§201G-111, 201G-113)

§15-174-93 Preference for the rental of dwelling units. Unless otherwise provided in these rules, 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 chapter 6-391, Hawaii Administrative Rules;
- (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 **OCT 25 1999**] (Auth: HRS §201G-4)
(Imp: HRS §201G-111)

§15-174-94 Information and verification. (a) The corporation may require applicants and program participants to provide information relating to their family'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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-113)

§15-174-95 Rent determination. The monthly gross rent of each rental unit in a rental housing project may include the prorated costs to pay for construction, maintenance, extraordinary maintenance reserves, operational costs, and appropriate costs as determined by the corporation. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-113, 201G-125)

§15-174-96 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 family 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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-113)

§15-174-97 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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-113)

SUBCHAPTER 8

REPURCHASE OF DWELLING UNITS
SUBJECT TO RESTRICTIONS

§15-174-101 Purpose. This subchapter governs the general procedures for the repurchase by the corporation of a dwelling unit subject to the restrictions set forth in section 201G-127(a)(1), HRS. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-102 Applicability. This subchapter applies to all dwelling units purchased from the corporation for which the restrictions set forth in sections 201G-127, 201G-129 and 201G-131, HRS, remain in effect, and may also apply to all dwelling units which are not subject to these restrictions. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-103 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.

(b) The repurchase price shall be determined by the corporation pursuant to the guidelines set forth in section 15-174-106 or 15-174-107.

(c) The corporation may repurchase the dwelling unit either by:

- (1) conveyance free and clear of all liens and mortgages or by
- (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 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 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 corporation's 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 to the seller shall be the difference, if any, between the purchase price determined in section 15-174-106 or 15-174-107 and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

[Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-104 Repurchase when owner seeks to transfer title for properties subject to restrictions in effect on or after May 20, 1993. A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property, within the statutorily required time period from the date of purchase, for an amount in excess of the purchase price as determined by the provisions of section 15-174-103. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-105 Providing consent to additional financing. (a) The corporation shall consent to additional financing or refinancing of the original mortgage and subordinate the restriction provided in section 201G-127, HRS as follows:

- (1) When the total loan amount does not exceed the original sales price of the property; or
- (2) When the total loan amount exceeds the original sales 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.
- [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-106 Determination of repurchase price for purchases subject to restrictions in effect prior to April 29, 1991. (a) For purchases subject to restrictions in effect prior to April 29, 1991, if the corporation repurchases a dwelling unit pursuant to section 201G-127(a)(1), HRS, the repurchase price shall be no greater than the sum of the following:

- (1) The price at which the dwelling unit was originally purchased plus any additional initial acquisition costs;
- (2) The cost of improvements to the dwelling unit added by the owner after the original purchase; and
- (3) Simple interest at the rate of seven per cent per year on the owner's equity in the dwelling unit.

(b) Any dwelling unit repurchased by the corporation 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, provided, however, that no reduction shall be made for the estimated expense to repair a substantial construction defect.

(c) For the purpose of this section, the term "equity" includes the original cost to the purchaser which consists of the cash down payment made and payments on principal on the mortgage loans incurred to purchase the dwelling unit. "Equity" also includes the cost of improvements which are amounts of payment of principal that the owner has made to improve the unit. In no case shall the term "equity" mean the appreciated value of the dwelling unit caused by market fluctuation or include payments made to the corporation.

(d) In determining the repurchase price under this section, the amount of interest on the equity shall be calculated by adding the following to the extent applicable:

- (1) The product which results from multiplying the sum of the down payment and the additional acquisition costs by a factor of .0001944 ($.07/360$) and multiplying the resulting product by the number of days between the time the owner acquired the dwelling unit and the time the owner sells the dwelling unit to the corporation;
- (2) The product which results from multiplying the cost of an improvement to the dwelling unit by a factor of .0001944 and multiplying the resulting product by the number of days between the time the owner constructed the improvement and the time the owner sells the dwelling unit to the corporation; and
- (3) The product which results from multiplying one-half the amount allocable to the principal on mortgage payments by a factor of .0001944 and multiplying the resulting product by the number of days between the time the owner acquired the dwelling unit and the time the owner sells the dwelling unit to the corporation.

(e) The corporation shall notify the seller of the seller's right to recourse under chapter 15-160, Hawaii Administrative Rules, in the event that there is a disagreement on the repurchase price paid by the corporation. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-107 Determination of repurchase price for purchases subject to restrictions in effect on or after April 29, 1991. (a) For purchases subject to restrictions in effect on or after April 29, 1991, if the corporation repurchases a dwelling unit pursuant to section 201G-127(a)(1), HRS, the repurchase price shall be determined as follows:

- (1) The price at which the dwelling unit was originally purchased plus any additional initial acquisition costs and 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; and
- (3) Simple interest at the rate of one per cent per year on the purchaser's original cost and capital improvements.

(b) Any dwelling unit repurchased by the corporation 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, provided, however, that no reduction shall be made for the estimated expense to repair a substantial as defined in section 201G-131, HRS.

(c) The corporation shall notify the seller of the seller's right to recourse under chapter 15-160, Hawaii Administrative Rules, in the event that there is a disagreement on the repurchase price paid by the corporation. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-127, 201G-131)

§15-174-108 Waiver by corporation of right to repurchase. (a) The corporation, upon approval of the board, may waive the right to repurchase set forth in section 201G-127, 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; or
- (2) The purchaser wishes to transfer title to the dwelling unit to the co-owner or a family 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 201G-127(a)(1), HRS, then the corporation may permit the dwelling unit to be transferred by the owner and the restrictions provided for in sections 201G-127 through 201G-224, HRS, shall then be reinstated. In the event the corporation waives the restrictions, 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. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-127, 201G-129, 201G-130, 201G-131)

§15-174-109 Release by the corporation of right to purchase. (a) The corporation may release the right to purchase as set forth in section 201G-127, 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 201G-127 to 201G-224, 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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-127, 201G-130)

§15-174-110 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 201G-127(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 will 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.

(c) If the corporation determines that it will 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 201G-127(a)(1), HRS, then it will issue to the owner a waiver of right of repurchase. [Eff. **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-111 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 value of the dwelling unit reduced by a reasonable discount representing the decrease in value resulting from the restrictions set forth in sections 201G-127 and 201G-129 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 201G-127 and 201G-129, HRS, and the shared appreciation program.
- (c) Resale policies to be followed by the corporation are the following:
- (1) Resales by the corporation will be priced to be affordable to meet the incomes of target groups.
 - (2) A statutorily required time period transfer and use restriction will be imposed on each resale.
 - (3) The shared appreciation equity program will be part of the resale program.
 - (4) When the number of applicants exceeds the number and type of units available, the required family size will be given substantial consideration. Preference for single family units will be given to families comprised of at least two persons, one of which is a minor dependent. The applicant must also meet the income requirements as determined by the corporation.
- (d) The following procedures shall be followed in selecting purchasers of resale units:
- (1) After the initial sales of a housing project have closed, persons remaining on a dwelling unit selection list will become applicants on the waiting list.
 - (2) Initial applicants on the waiting list will be notified in writing regarding the waiting list policy and procedures, and may be required to periodically update their applications.
 - (3) The corporation shall review updated applications for eligibility.
 - (4) Buyers shall be notified of their opportunity to purchase the unit in the order that their

- names appear on the updated waiting list.
- (5) A sales contract will be executed by the corporation only when the buyer has obtained a pre-qualification letter from a lender and the corporation has verified the buyer's eligibility.
- (e) If the corporation rents the repurchased dwelling unit, it shall rent the dwelling unit under such terms and conditions as it deems appropriate. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-127, 201G-129)

SUBCHAPTER 9

SHARED APPRECIATION EQUITY PROGRAM RESTRICTIONS

§15-174-121 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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-122 Applicability. This subchapter shall apply to all dwelling units developed and sold by the corporation and for which restrictions set forth in section 201G-127, HRS, are in effect. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-123 Corporation's percentage share of net appreciation. 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 as determined by the corporation will be used to establish the corporation's percentage share at the time of sale by the following calculation:

Original Fair Market Value = Purchaser's Original 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 i.e., (excludes any capital improvements by the purchaser subsequent to original purchase) - Purchaser's Original Purchase Price - Actual Sales costs incurred, if any. Any shared appreciation equity agreements entered into on or after August 27, 1999 are not eligible to deduct sales costs. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-124 Payment due on sale or transfer.

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

Corporation's Percentage Share x Net Appreciation.

(b) If the corporation's share is not paid when due, interest on the corporation's percentage share will accrue interest at the simple annual rate of twelve per cent per year until paid. The corporation will 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. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-125 Definition of sale or transfer. A sale or transfer is defined 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 purchaser's primary residence; or
- (3) Except for hardship cases pursuant to 201G-129, HRS, when the dwelling unit or any part of the dwelling unit is rented to someone else. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-126 Permitted transfers. (a) The following permitted transfers will 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 will 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 purchaser's original purchase price and the purchaser's share of net appreciation; provided that in the case where a house lot was purchased and the purchaser contributed his labor to construct the dwelling, the then fair market value of the dwelling will be included as part of the purchaser's share of net appreciation; however, in extreme hardship cases involving health and safety, the corporation may allow up to an additional twenty per cent of the purchaser's original purchase price and the purchaser'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 purchaser;
- (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; or
- (6) Transfer into a inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy.

(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 purchaser 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. However, upon request, 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 **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-127 Determination of fair market value.

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

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

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

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

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

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

(g) All appraisals will be made by an appraiser having one or more of the following qualifications:

- (1) State of Hawaii licensed appraiser; or
- (2) State of Hawaii certified appraiser.

[Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-128 Option for owner to use lender's appraisal to determine fair market value. (a) An owner may use a lender's appraisal to determine the fair market value when paying off the corporation's share of the net appreciation in the property under the

following circumstances:

- (1) The owner has refinanced or is refinancing the existing mortgage loan on the property; or
 - (2) The owner is selling the property and a lender's appraisal was prepared for the new buyer or the property.
- (b) The corporation may accept a current lender's appraisal (e.g., within six months from the date of the appraisal report) subject to the following conditions:
- (1) The lender's appraisal complies with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) and is subject to an acceptable review by the corporation's review appraiser;
 - (2) The lender's appraiser shall subtract the fair market value for any capital improvements made by the owner pursuant to the initial purchase of the property; and
 - (2) The property owner shall pay for all costs incurred in connection with the review appraisal process. [Eff **OCT 25 1999**]
(Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-129 Cancellation of the corporation's share of the net appreciation. The corporation's right to be paid a share of the net appreciation will continue and will constitute a lien on the property until both of the following events have occurred:

- (1) The purchaser has sold or transferred ownership interest in the property; and
- (2) The corporation has been fully paid its share of the net appreciation and any other amounts that are due and owing the corporation.

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 releases the restriction, the corporation shall inform the owner of the release in writing and the owner, at the owner's expense, shall draft and record such instruments as are necessary to make the release effective. [Eff **OCT 25 1999**]
(Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-130 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 will not apply. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

§15-174-131 Prepayment of corporation's percentage share of net appreciation. (a) The purchaser 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 purchaser's original purchase price will 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 to be determined by the corporation. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-127)

SUBCHAPTER 10

REPURCHASE OR REPAIR OF DWELLING UNITS HAVING
SUBSTANTIAL CONSTRUCTION DEFECTS

§15-174-131 Purpose. The purpose of this subchapter is to set forth the manner in which the corporation shall exercise the right conferred by section 201G-131, HRS, to repurchase or repair dwelling units which have substantial construction defects. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131) (Imp: HRS §201G-131)

§15-174-132 Applicability. Unless otherwise provided herein, this subchapter applies to all dwelling units for which the restrictions set forth in section 201G-127, HRS, are in effect. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131) (Imp: HRS §201G-131)

§15-174-133 Notice of existence of substantial construction defect. (a) Prior to commencing any legal proceeding against the corporation for claims arising out of a substantial construction defect in a dwelling unit to which this subchapter applies, the owner shall deliver to the corporation by mail, postage prepaid, or in person a notice of substantial construction defect.

(b) Upon receipt of the notice, the corporation may, but shall not be obligated to, take one of the following actions:

- (1) Execute a repurchase agreement with the owner;
- (2) Execute a repair and rental agreement with the owner; or
- (3) Execute a statement of intent to enforce its repurchase right, and deliver the statement to the owner.

(c) If within ninety days from receipt of the notice of substantial construction defect, the corporation fails to take any action authorized under subsection (b), then the owner after the expiration of the ninety day period shall have the right to start legal proceedings arising out of the substantial construction defect against the corporation.

(d) If the corporation takes an action described under subsection (b) within ninety days after the receipt of the notice of substantial construction defect, then the owner shall be precluded from starting any legal proceedings arising out of the substantial construction defect against the corporation.

(e) Observance of the requirements of this section does not toll any period of limitations imposed under chapter 657, HRS. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131) (Imp: HRS §201G-131)

§15-174-134 Repurchase of dwelling unit. (a) Upon receipt of a notice of substantial construction defect, the corporation shall review the notice and conduct an investigation to determine if a substantial construction defect exists in the dwelling unit and if at least one of the following conditions also exists:

- (1) The dwelling unit has been found to be unsafe by the building department of the county in which the dwelling unit is situated;
- (2) The corporation determines that the substantial construction defect cannot be

repaired or it will not be economically feasible to repair the substantial construction defect; or

- (3) The corporation determines that the substantial construction defect is of such a magnitude that it will take longer than one year to repair.

(b) If the corporation determines that there is a substantial construction defect in the dwelling unit and at least one of the conditions set forth in paragraph (a)(1), (a)(2) or (a)(3) also exists, then the corporation, upon approval by the board, may, but shall not be obligated to:

- (1) Enter into a repurchase agreement, with the owner and repurchase the dwelling unit; or
- (2) If the owner fails to enter into a repurchase agreement, then execute and deliver to the owner a statement of intent to enforce its repurchase right, within the ninety day period prescribed under section 15-174-93 and repurchase the dwelling unit without the owner's consent.

(c) If the corporation repurchases the dwelling unit pursuant to section 201G-131, HRS, then the repurchase shall include the transfer by the owner to the corporation of the owner's right, title, and interest in the dwelling unit and rights with respect to the dwelling unit as more fully described in paragraph (d)(2) and the repurchase price shall be established pursuant to section 15-174-84.

(d) The repurchase agreement between the owner and the corporation shall include at least the following:

- (1) A release and indemnification by the owner in favor of the corporation relating to any liability arising out of the and any work performed by design professionals and contractors to repair the dwelling unit.
- (2) A covenant that the owner shall, pursuant to the repurchase agreement, transfer to the corporation all of the owner's right, title, and interest in the dwelling unit and all of the owner's rights with respect to the dwelling unit, including, but not limited to, all of the rights of the owner under instruments such as the deed or lease and contracts of warranty, claims for relief

under contracts, and claims for relief for tortious conduct.

(e) If the corporation repurchases the dwelling unit pursuant to section 201G-131, a displacee certificate, effective for ten years, will be issued to the owners. Only one displacee certificate will be issued for each dwelling unit repurchased.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131)
(Imp: HRS §201G-131)

\$15-174-135 Repair of repurchased dwelling unit.

(a) After a dwelling unit is repurchased by the corporation pursuant to section 201G-131, HRS, the corporation shall determine whether or not the dwelling unit should be repaired.

(b) If the corporation determines that the dwelling unit should be repaired, then it may retain the services of one or more design professionals and contractors for the purpose of repairing the dwelling unit.

(c) If the corporation determines that the dwelling unit should not be repaired, then it may retain the services of one or more contractors for the purpose of destroying the dwelling unit.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131)
(Imp: HRS §201G-131)

\$15-174-136 Resale or rental of repaired dwelling unit. (a) After a repurchased dwelling unit is repaired by the corporation, the dwelling unit shall be first offered for sale to the former owner pursuant to section 15-174-137(a).

(b) If the former owner fails to exercise his or her first right of refusal provided for under section 15-174-137(a), then the corporation may proceed to resell or rent the repaired dwelling unit pursuant to section 15-174-111; provided, however, that any sale of the dwelling unit shall be subject to the former owner's rights under section 15-174-137(c).

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131)
(Imp: HRS §201G-131)

\$15-174-137 Former owner's right of first refusal. (a) A former owner of a dwelling unit shall

have the right of first refusal regarding the resale by the corporation of a dwelling unit repurchased from him or her under this subchapter; provided, however, that the former owner has not yet purchased a dwelling unit pursuant to section 15-174-138.

(b) Under this section, after a dwelling unit repurchased from the former owner by the corporation under this subchapter is repaired, the corporation shall first offer the dwelling unit for sale to the former owner for a price equal to the repurchase price paid by the corporation for the dwelling unit and subject to the restrictions set forth in sections 201G-127 and 201G-114, HRS, and the shared appreciation program restriction in effect at the time of repurchase. If the former owner rejects the offer, then the corporation may offer the dwelling unit for sale to persons other than the former owner at the price and subject to the restrictions set forth in this subsection.

(c) If the corporation is unable to sell the dwelling unit under the terms and conditions set forth in subsection (b), then the corporation may offer the dwelling unit for sale under new terms and conditions that may differ from those specified in subsection (b); provided, however, that the corporation shall first offer the dwelling unit for sale to the former owner under the new terms and conditions. If the former owner rejects the offer, then the corporation may offer the dwelling unit for sale to persons other than the former owner under the new terms and conditions.

[Eff: **OCT 25 1999**] (Auth: HRS §§201-E, 201G-131)
(Imp: HRS §201G-131)

§15-174-138 Former owner's right to preference.

(a) A former owner of a dwelling unit repurchased by the corporation under this subchapter shall have the right to a preference in all other projects of the corporation; provided, however, that the former owner has not repurchased a dwelling unit pursuant to section 15-174-137.

(b) For the purpose of this section, the former owner's right to a "preference" means that the former owner has the right superior to any other person to purchase or rent a dwelling unit in any project of the corporation.

(c) In order to be entitled to a preference, the

former owner must deliver by mail, postage prepaid, or in person to the corporation a request for preference and the effective displacee certificate issued by the corporation.

(d) Upon receipt of a request for preference, the corporation shall provide information to the former owner regarding available projects.

(e) If the former owner exercises a right of preference with respect to a project, the corporation shall offer to sell or rent a dwelling unit in that project to the former owner; provided, however, that the former owner meets the eligibility requirements imposed under chapter 201G, HRS, and under this chapter. The corporation, upon approval by the board, may, although it shall not be obligated to, waive one or more eligibility requirements to permit the former owner to purchase or rent the dwelling unit in the project. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131) (Imp: HRS §201G-131)

§15-174-139 Former owner's right to relocation assistance when the corporation repurchases a dwelling unit without the former owner's consent. If the corporation repurchases a dwelling unit without the former owner's consent, then the former owner shall be entitled to relocation assistance as provided for in chapter 111, HRS, and chapter 15-174-87, Hawaii Administrative Rules. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131) (Imp: HRS §201G-131)

§15-174-140 Repair and rental agreement. (a) If the corporation receives a notice of **substantial** construction defect and determines that the dwelling unit has a substantial construction defect, then the corporation, upon approval of the board, may, but shall not be obligated to, enter into a repair and rental agreement, with the owner.

(b) If the corporation enters into a repair and rental agreement with the owner, the corporation shall enter into contracts with such design professionals and contractors whose services are reasonably necessary to repair the dwelling unit. Under the terms of the contracts, the corporation, and not the owner, shall be responsible for making payments due to the design professionals and contractors under the contracts.

(c) If the corporation determines that the owner will be substantially deprived of the use of the dwelling unit during the time it is being repaired pursuant to a repair and rental agreement, the corporation shall pay rent to the owner during the period of time the dwelling unit is being repaired. The amount of rent to be paid shall be determined by the corporation; provided, however, that the rent paid shall not exceed the amount of the mortgage payments being made by the owner on the dwelling unit.

(d) The repair and rental agreement provided for under this section shall include at least the following:

- (1) The scope of repair to be performed on the dwelling unit;
- (2) The amount of rent to be paid to the owner, if any; and
- (3) A release and indemnification by the owner in favor of the corporation relating to any liability arising out of the construction or soil defect and the work performed by the design professionals and contractors to repair the dwelling unit.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131) (Imp: HRS §201G-131)

§15-174-141 Legal action on behalf of

corporation. (a) If the corporation expends moneys to repurchase or repair and rent a dwelling unit pursuant section 201G-131, HRS, then the corporation, upon approval by the board, shall have the authority to take legal action against the developer, co-developer, general contractor, and their subcontractors, consultants and other parties involved with the development, construction, or sale of the dwelling unit or with the substantial construction defect in order to recover the moneys expended.

(b) The corporation, upon approval by the board, shall have the authority to retain attorneys and expert witnesses and incur the expenses reasonably necessary for the legal action to recover the moneys expended.

(c) The corporation shall not be barred from bringing a legal action under this section notwithstanding any period of limitations set forth in chapter 657, HRS. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-131)

§15-174-142 Legal action on behalf of owner.

(a) For the purpose of this section, the term "dwelling unit" means all residences developed, constructed, financed, or sold pursuant to chapter 201G, HRS, regardless of whether or not the restrictions set forth in section 201G-127, HRS, remains in effect, and the term "land" means vacant lots developed, constructed, financed, or sold pursuant to chapter 201G, HRS, regardless of whether or not the restrictions set forth in section 201G-127, HRS, remains in effect.

(b) If a dwelling unit or land is found to have a substantial construction defect, the corporation, upon approval of the board, may, but shall not be obligated to, file a legal action on behalf of the owner of the dwelling unit for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants and other parties involved with the development, construction, or sale of the dwelling unit or with the substantial construction defect.

(c) Before the corporation may file or participate in any legal action on behalf of the owner, the corporation shall enter into an agreement approved by the board, with the owner relating to the corporation's participation in the legal action. The agreement shall include, but shall not be limited to, provisions as to the following:

- (1) The scope of the corporation's participation in the legal action;
- (2) The responsibility for payment of the expenses of litigation, including attorneys' fees and expert witnesses' fees; and
- (3) The allocation of any damages awarded in the legal action or of any proceeds from settlement of the legal action.

(d) The corporation, upon approval of the board, shall have the authority to retain attorneys and expert witnesses and incur the expenses reasonably necessary for the legal action.

(e) The corporation shall not be barred from bringing a legal action under this subsection notwithstanding any period of limitations set forth in chapter 657, HRS. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §201G-131)

SUBCHAPTER 11

PROJECT FINANCING OF LOANS AND MORTGAGE
AND SECURITY REQUIREMENTS

§15-174-151 Purpose. The purpose of this subchapter is to set forth the rules relating to the interim financing of housing project.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-131)
(Imp: HRS §201G-120, 201G-123, 201G-244)

§15-174-152 Interim financing. (a) Interim loans for approved projects shall be funded in accordance with section 201G-123, HRS, and will be available to developers and contractors who qualify in accordance with this chapter.

(b) A developer or contractor must satisfy the corporation that the developer or contractor is a sound credit risk and has the ability to repay the money borrowed.

(c) Upon the report and recommendation of the administrator, the corporation, through board action, may at any time thereafter approve or disapprove the loan.

(d) The loan amount shall not exceed the actual cost of the project including the land cost, total construction contract price, architectural and engineering fees, interest on the loan, legal and accounting expenses, construction insurance and performance bond premiums, charges for appliances, and such other related expenses and costs as are directly attributable to the development and construction of the project; provided that in no event shall the loan amount exceed a percentage of the total value of the project as determined by the corporation for such project.

(e) Mortgage and security requirements shall conform to section 201G-123, HRS, and may include the condition that no disbursements of the loan fund will be made by the corporation until the corporation receives satisfactory evidence that there is available permanent financing or other means of repayment covering the project or the individual dwelling units that are for sale.

(f) A building and loan agreement and other

security agreements, as appropriate, shall be executed on approval of the interim loan upon such terms and conditions as may be required by the corporation.

(g) The corporation may participate with private lenders in the provision of interim loans to developers and contractors. [Eff **OCT 25 1999**] (Auth: HRS §§201G-5, 201G-123) (Imp: HRS §201G-123, 201G-244)

SUBCHAPTER 12

DEFAULT OR DELINQUENCY HEARING PROCEDURE

§15-174-221 Default. In the event any loan made under this chapter becomes delinquent, the corporation may proceed with foreclosure action in accordance with chapter 667, HRS, or may pursue any other civil remedy permitted by law. [Eff **OCT 25 1999**] (Auth: HRS §201G-4) (Imp: HRS §§201G-125, 201G-324)

SUBCHAPTER 13

OWNER OCCUPANCY WAIVER PROCEDURES

§15-174-230 Purpose and applicability. This subchapter is adopted pursuant to chapter 91, HRS, and implements section 201G-129, HRS, which applies to real property, restrictions on its use, and exceptions to those restrictions. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-231 Definitions. As used in this subchapter:

"Administrative costs" means costs incurred by the corporation for activities performed in conjunction with the administration of these rules pursuant to section 201G-129, HRS. Such costs may include, but are not limited to salaries, other employee benefits, and other expenses necessary to administer this subchapter.

"Application" means an application to the corporation by a party which seeks relief under these rules. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-232 Application for temporary owner occupancy waiver. When the owner in any qualified affordable housing project submits an application to the corporation for an exception to the owner occupancy requirement in section 201G-129, HRS the following shall apply:

- (1) The applicant shall submit to the corporation a completed temporary owner occupancy waiver form, as used 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 these rules, 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 these rules, 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 **OCT 25 1999**] (Auth: HRS
§§201G-4, 201G-129) (Imp: HRS §201G-
129)

§15-174-233 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 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 **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-234 Duration of temporary waiver.

The corporation may waive the owner occupancy requirement for a total of not more than ten years after the purchase of the dwelling unit. [Eff **OCT 25 1999**]

(Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-235 Allowable uses of the dwelling unit during the temporary waiver period. During the temporary waiver period, the dwelling unit may be rented or leased. 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 must submit to the corporation a signed rental agreement. Subletting is not allowed.

[Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-236 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 **OCT 25 1999**]

(Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-237 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 is temporary waived. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-238 Schedule of administrative expenses and attorneys fees. The corporation may recover all relevant administrative expenses and attorneys' fees from the applicant. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-239 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, to purchase the unit as provided in section 201G-127, HRS as applicable. In this situation, the owner shall not receive more than the maximum to which the owner would be entitled under section 201G-127, HRS. The corporation has the right to verify the owner's failure to occupy. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-240 Disagreement with the corporation's determination. Any owner who disagrees with the corporation's determination shall be entitled to a contested case proceeding under chapter 91. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

§15-174-241 Extension of the temporary waiver period. An owner may apply for an extension of the temporary waiver period provided the application is made at least ninety working days prior to the termination of the initial temporary waiver period. [Eff **OCT 25 1999**] (Auth: HRS §§201G-4, 201G-129) (Imp: HRS §201G-129)

August 27, 1999

FEEES

Fees may be charged by the Housing Finance and Development Corporation as follows:

<u>PURPOSE</u>	<u>AMOUNT TO BE CHARGED</u>
<u>Sales or Repurchase Documents</u>	
Lease Consent	\$25.00**
Release of Mortgage	\$25.00**
Release of Restriction	\$25.00
Release of Deferred Sales Price	\$25.00
Release of Deferred Land Value	\$25.00
Subordination of Deferred Sales Price/SAE Program	\$25.00
Assignment of Lease	\$25.00
Waiver of Repurchase Right	\$25.00
Release of Restrictions	\$25.00
No-Breach Letter	\$25.00
Amendment of Lease	\$25.00
V.A. No Enforcement of Restrictions Letter	\$25.00
Restrictions Letter	\$25.00
Expiration of Transfer and Use of Restrictions	\$25.00
Consent to Change Tenancy Form and Letter	\$25.00
Notification of Change in Buyback Letter	\$25.00
Conversion from Leasehold to Fee Simple - New Deed	\$25.00
Extension of Option to Purchase Letter	\$25.00
Extension of Lease Letter	\$25.00
Rent with Option to Purchase Agreement	\$25.00
Cancellation Fee	\$25.00
Transfer Fee	\$25.00
Execution Fee	\$25.00
Miscellaneous Sales Refinancing/Processing Fees	\$25.00**
HOC Fees to Re-issue Certificates	\$25.00
HCDCH Project-Lease to Fee Conversion	\$100 per unit
House Plans	Reproduction Costs
Developer's Application Fee*	\$0 to \$1,000
Developer's Financing Fee*	1% to 2.5% of loan amount
Interim Interest on DURF Construction Loan*	1% to 8.5% per annum
Administrative Fee (assessed to developers)*	\$0 to \$1,500 per unit

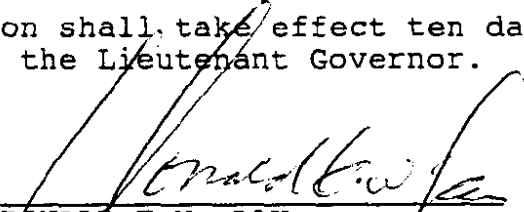
*To be determined by the Board on a case-by-case basis.

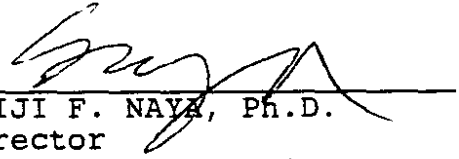
**Minimum of \$25.00 but no more than \$100.00.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

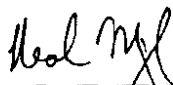
The repeal of chapter 6-373 and the adoption of chapter 15-174, Hawaii Administrative Rules, on the Summary Page dated August 27, 1999, was adopted on August 27, 1999, following public hearings held on Maui on July 15, 1999, Hilo on July 16, 1999, Oahu on July 19, 1999, and Kauai on July 20, 1999, after public notice was given in the Midweek newspaper on June 7, 1999.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.


DONALD K.W. LAU
Executive Director
Housing and Community Development
Corporation of Hawaii



SEIJI F. NAYA, Ph.D.
Director
Department of Business, Economic
Development, and Tourism

APPROVED AS TO FORM:


NEAL H. MIYAHIRA
Director of Finance


Deputy Attorney General

APPROVED:


BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: 10-14-99

OCT 15 1999

Filed

LIEUTENANT GOVERNOR'S
OFFICE

'99 OCT 15 P 2:10