

**The City's Affordable Housing Buyback Restrictions
For Buyers Earning Up to 100%, 120%, 140% Area Median Income**

1. During the Affordability Restriction Period, if the purchaser of an Affordable Housing Unit wishes to resell or transfer title of the real property, the City Department of Budget and Fiscal Services ("BFS") or a qualified nonprofit housing trust shall have the first option to purchase the property. BFS or the qualified nonprofit housing trust may purchase the real property either:
 - a. By conveyance free and clear of all mortgages and liens; or
 - b. By conveyance subject to existing mortgages and liens, where the City or the qualified nonprofit housing trust 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 Director (the "Director") of the Department of Planning and Permitting of the City and County of Honolulu ("DPP") has previously consented to it in writing. The City or the qualified nonprofit housing trust interest, created by this section shall constitute as a statutory lien on the real property and shall be superior to any other mortgage or lien except for:
 - i. 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;
 - ii. Any mortgage insured or held by a federal housing agency; and
 - iii. Any mortgage or lien created for any other purpose, provided that the Director has previously consented to it in writing.
2. The original purchaser or subsequent owner shall notify the BFS of the purchaser's or subsequent owner's intent to sell the unit (the "Notice of Intent") by sending a letter to BFS at the following address:

City and County of Honolulu
Department of Budget and Fiscal Services
530 South King Street, Room 208
Honolulu, Hawaii 96813
Phone: (808) 768-3901
Fax: (808) 768-3179
Email: bfsmail@honolulu.gov
3. During the Affordability Period, if the purchaser of an Affordable Housing Unit wishes to resell or transfer title of the real property, the property's resale price shall not exceed the sum of:
 - a. The original cost of the affordable housing unit to the owner;
 - b. The cost of any property improvements added by the owner; and
 - c. Simple interest on the original cost of the unit plus property improvements by the owner at the rate of one percent (1 %) per year the affordable housing unit has been occupied.

4. If BFS or qualified nonprofit housing trust does not exercise the option to purchase the real property, then the owner shall:
 - a. Sell or transfer the real property at a price no more than described in section #3 above and upon terms that preserve the intent of the Rules to Implement City's Affordable Housing Requirements effective March 31, 2019 (the "AHR");
 - b. Sell or assign to a qualified resident as described in the AHR, and who is in the same income group as the original purchaser at the time of the original sale, approved by DPP; and
 - c. Submit a copy of the deed and final transfer of sale to the DPP within ninety days (90) after the date of sale.
5. An owner found to have not met or been approved for any of these conditions may be deemed to be in violation of the buyback restriction, and the City reserves the right to recover any money wrongfully gained and to any other recourse provided by law.
6. The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance.

Terms of Restrictions

(a) Each affordable housing unit shall be subject to and encumbered by the restrictions on transfer, use and sale of affordable housing units stated in §§201 H-47, 201 H-49, and 201 H-50, HRS, except as those restrictions are modified in this chapter.

(b) The length of the restriction period on the affordable housing units shall be set forth in the affordable housing agreement and reflected in the deed restriction that encumbers the affordable housing unit.

(c) The restrictions on transfer, sale/buyback, additional financing, and use shall be fully stated in their entirety in all conveyance documents and restrictive covenants on the affordable housing units.

(d) No owner, shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the City, holder of a duly recorded first mortgage on the affordable housing unit, and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the City.

(e) The City, developer, or City's authorized agent shall reserve the right to seek financial recourse from the owner if the provisions of this Chapter are violated. Terms of the financial recourse shall be fully stated in their entirety in all instruments, conveyance documents, and restricted covenants. Financial recourse may include the appreciated value of the affordable housing unit. Funds collected from any financial recourse action shall be credited to the entity that provided the affordable housing subsidy or to the City to fulfill an outstanding affordable housing unit obligation. The City reserves the right to disqualify units which are noncompliant with the restriction period requirement.

(f) The restrictions of this chapter shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the Director releases the restrictions.

Restrictions on Use:

Affordable for-sale housing units purchased under the affordable housing program shall be occupied as the purchaser's principal residence for the duration of the restriction period. The owner of an affordable for-sale housing unit shall not rent the affordable housing unit, except in extreme hardship circumstances which prevents the continued occupancy of the affordable housing unit, as determined and approved by the Director pursuant to Section 5 of the AHR.

Restriction on Additional Financing:

During the restriction period, only mortgages and liens consented to in advance by the City and created for the purpose of financing essential improvements or maintenance and repair of the affordable housing unit, or other expenditures relating to the property of an emergency or life-threatening nature, may be placed on the property, provided that the owner shall not refinance the real property for an amount in excess of the purchase price as determined by §5-4(a) of the AHR. (b) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance.

Waiver of Owner-Occupancy

(a) The Director may temporarily waive the owner-occupancy requirement for a total of not more than ten (10) years of the restriction period, during which time the affordable housing unit may be rented to a person who is a qualified resident as described in Chapter 3 of the AHR, and who is in the same income category as the original purchaser at the time of the original sale, approved by DPP. The rent must be at a price as described in §2-12 of the AHR.

(b) The restriction period shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived. The Director may grant a one-time extension of the waiver period on a case-by-case basis due to extreme hardship circumstances.

(c) Waivers may be granted only to qualified residents who have paid property and resident state income taxes during all years in which they occupied the affordable housing unit, who continue to pay property and resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster.

(d) If the owner fails to reoccupy the affordable housing unit after any waiver period and attempts to sell the affordable housing unit, then the owner shall receive no more than the maximum amount as stated in §5-4 of the AHR. (a), subject to the Director's approval. Any person who disagrees with the Director's determination under this section shall be entitled to a contested case proceeding under Chapter 10 of these rules.

(e) Owners shall submit annual reports to the DPP for the duration of the waiver period, as described in §6-2 of the AHR.

New Restriction Period

(a) If an affordable housing unit is repurchased by the City and resold to a new owner during the restriction period, a new restriction period equal to the original restriction period or remainder of the period may be imposed upon the new owner.

(b) If a qualified nonprofit housing trust purchases an affordable housing unit in place of the City, as described in §5-4(a) of the AHR, then in accordance with §201 H-47, HRS, the restrictions prescribed in this chapter shall be automatically extinguished and the housing trust shall establish new buyback restrictions for the purpose of maintaining the unit as affordable for as long as practicable, or as otherwise required by the City.

Waiver

If an owner wishes to sell an affordable for-sale housing unit during the buyback restriction period, BFS may waive the transfer restriction for that specific transaction. A waiver by BFS will be determined on each separate request based on the following criteria: (1) The owner wishes to transfer title to the real property by devise or through the laws of descent to a household member who would otherwise qualify under these rules. (2) The sale or transfer of the real property would be at a price, as described in §5-4(a) of the AHR, and upon terms that preserve the intent of this section without the necessity of BFS repurchasing the real property; provided that, in this case, the owner shall be required to sell the affordable housing unit or lot and sell or assign the property to a person who is a qualified resident as described in Chapter 3 of the AHR, who is in the same income category as the original owner at the time of the original sale, approved by BFS.