

DEPARTMENT OF FINANCE
COUNTY OF KAUAI
REAL PROPERTY TAXATION

LOW AND MODERATE-INCOME RENTAL
HOUSING EXEMPTION

RULES AND REGULATIONS OF THE DIRECTOR
OF FINANCE RELATING TO REAL PROPERTY TAX
EXEMPTION FOR LOW AND MODERATE-INCOME
HOUSING DEVELOPED, OWNED, AND OPERATED
BY NONPROFIT OR LIMITED DISTRIBUTION
MORTGAGOR OR CERTAIN OWNERS UNDER
SECTIONS 5-11.20 AND 5-11.21, REVISED
CODE OF ORDINANCES OF THE COUNTY OF KAUAI

SECTION RP-6.1 Purpose of rules. These rules and regulations are intended to clarify and implement the provisions of Sections 5-11.20, of the Revised Code of Ordinances of the County of Kauai, herein referred to as "RCO", which exempt low and moderate-income rental housing projects developed, owned, and operated by a nonprofit or limited distribution mortgagor or by a qualified entity from taxation.

SECTION RP-6.2 Definitions. (a) As used in these rules and regulations;

- (1) The term "building-seller-mortgagor" shall have the meaning set out in Sections 221.510 and 236.10 of Title 24, Code of Federal Regulations, as amended.
- (2) The term "director" shall mean the director of finance or his designee.
- (3) The term "FHA" shall mean the Federal Housing Administration.
- (4) The term "housing project" or "low and moderate-income housing" shall mean a project designed for use as rental housing to be occupied by low or moderate-income families or by elderly or handicapped families as defined in Section 202, 221(d)(3) or 236 of the National Housing Act and the regulations thereunder or other applicable federal or State laws.
- (5) The term "HUD" shall mean the Department of Housing and Urban Development.
- (6) The term "nonprofit or limited distribution mortgagor" shall mean a mortgagor who qualified for and obtains mortgage insurance under Sections 202, 221(d)(3) or 236 of the National Housing Act as a nonprofit or limited distribution mortgagor as defined in Sections 221.510, 236.10 and 277.1 of Title 24, Code of Federal Regulations, as amended.
- (7) The term "qualified entity" shall mean a person, corporation or association regulated by federal or State laws or by a political subdivision of the State or agency thereof as to rents, charges, profits, dividends, development costs and methods of operation which is not a nonprofit or limited distribution mortgagor.
- (8) The term "regulatory agreement" shall mean an agreement between the nonprofit or limited distribution mortgagor (FHA or HUD regulatory agreement) or qualified entity and the federal or State government or political subdivision or agency thereof, embodying provisions regulating by federal or State

laws or by a political subdivision of the State or agency thereof, the rents, charges, profits, dividends, development costs and methods of operation of the non-profit or limited distribution mortgagor or qualified entity.

- (9) The term "regulate" or "regulated" shall mean to fix, establish or control; to adjust by rule, method or established mode; to direct by rule or restriction. It shall also mean to prescribe terms, conditions, standard, procedures, criteria, rules or regulations; to require review and approval by a political subdivision or agency of the State or federal government of such provisions relating to rents, charges, profits, dividends, development costs and methods of operation.

(b) Use of gender and number: Words importing the singular number may extend and be applied to several persons or things, words importing the plural may include the singular; and words importing the masculine gender may also include the feminine.

SECTION RP-6.3 Rental housing eligible for exemption.

Real property used for low or moderate-income rental housing shall be exempt from property taxes if it satisfies the following requirements of (a) or (b):

(a) The housing project is owned and operated by a nonprofit or limited distribution mortgagor; or

(b) The housing project is owned and operated by a qualified entity such as a person, corporation or association which is regulated by federal or State laws or by a political subdivision of the State with respect to rents, charges, profits, dividends, development costs and methods of operation. The following are situations where the project shall be deemed to be regulated:

- (1) Rentals shall be approved by any federal, State or County laws or any agency of the federal or State government or of any county government.
- (2) Occupancy of the project is limited to the elderly, handicapped, low or moderate-income families where the occupancy and income criteria are prescribed or approved by federal or State laws, by any county or by any agency of the federal, State or county governments.
- (3) Where the prior approval of federal, State or county governments, or any agency thereof, is required for the payment of compensation or distribution of income or assets to any officers, directors or stockholders of the mortgagor corporation;
- (4) Where the amount of annual distributions to limited distribution mortgagors is limited by federal or State laws or by the County governments or by any federal, State or county agency;
- (5) Where the source of distribution to surplus cash is limited by federal or State laws or by the county governments, or by any federal, State or county agency;
- (6) Where payment for services, supplies or materials is limited by any federal, State or county government or by any agency thereof to such amounts ordinarily paid for such services, supplies or materials furnished.

(c) A housing project owned and operated by a "builder-seller mortgagor" shall not be eligible for exemption. However, a housing project subsequently acquired and operated by a nonprofit or limited

distribution mortgagor or qualified entity, respectively meeting the eligibility requirements as provided in this section shall be exempt from property taxes.

SECTION RP-6.4 Filing and reviewing the claim for exemption.

Each person, corporation, association or entity eligible for the exemption shall complete the form, as prescribed by the director, and file the same with the director of finance, together with a copy of the regulatory agreement, if any, and all other relevant documents or evidence that the entity is being regulated with respect to its rents, charges, profits, dividends, development costs and methods of operation.

(a) Date of filing. The initial claim for exemption and regulatory agreement, if any, shall be filed with the director within 60 days from the effective date of qualification. Annually thereafter, the claim for exemption shall be filed or refiled on or before December 31, preceding the tax year for which the exemption is claimed.

(b) Effective date of qualification. The effective date of qualification for nonprofit or limited distribution mortgagors shall be the date the qualifying mortgage is properly recorded or filed with the Registrar of the Bureau of Conveyances or the Assistance Registrar of the Land Court of the State, whichever is applicable. For all other entities, the effective date of qualification for the exemption shall be the date of the executed regulatory agreement is filed for recording with the Registrar of the Bureau of Conveyances or the Assistant Registrar of the Land Court of the State, whichever is applicable. In the event the regulatory agreement is not recorded, the effective date shall be the date the director certifies that, for purposes of the exemption, the entity is regulated with respect to rents, charges, profits, dividends, development costs and methods of operation as the same is provided in these regulations. The claimant shall be required to authenticate the recordation or filing date of the mortgage or the regulatory agreement.

(c) Review and allowance of exemption. The claim for exemption, the regulatory agreement, and all other documents and evidence submitted in support of the exemption shall be reviewed by the director. If all eligibility requirements are met as provided in this section, the exemption shall be allowed.

SECTION RP-6.5 Extent of exemption. The exemption, except as subject to the minimum tax provisions of Section 6-6.3(g), RCO, and other related sections, shall extend and apply to the real property which comprise the housing project.

(a) The exemption shall continue so long as the rental housing project is owned and operated by a nonprofit or limited distribution mortgagor or, in all other cases, the project continues to be regulated by the FHA, HUD or by federal or State laws or by a political subdivision of the State or agency thereof as to rents, charges, profits, dividends, development costs and methods of operation. Failure to meet the requirements herein set forth and the transfer of the property shall cancel the exemption.

(b) It shall be the responsibility of the nonprofit or limited distribution mortgagor or other qualified entity to report within thirty days any change in ownership or operation of the project which affects the allowance of the exemption.

(c) Whenever the housing project is converted to dwelling units under the Horizontal Property Regime of Chapter 514, HRS, the exemption shall be cancelled for the housing project. The exemption may be extended to those dwelling units that continue to meet the eligibility requirements of section 6.3 and upon the timely filing of claims for those units by the nonprofit or limited distribution mortgagor or qualified entity.

SECTION RP-6.6 Disallowance of other exemptions. Exemptions herein claimed shall disqualify the same property from receiving an exemption under Section 53-38, Hawaii Revised Statutes.

SECTION RP-6.7 Refund of property tax paid. Where real property taxes have been paid by the owners of a housing project which has qualified for the exemption for the period following the effective date of the exemption qualification, all such taxes paid, upon written application, shall be refunded to the nonprofit or limited distribution mortgagor or other qualified entity in the manner provided in Section 5-11.20(c)(1), RCO.

SECTION RP-6.8 Appeal. Any property owner aggrieved by the disallowance of a claim for real property exemption may appeal through the director as in the case of real property tax appeals. Appeals shall be governed by the appropriate sections of Chapter 5, RCO, and may be taken to the board of review or be taken directly to the tax appeal court without appealing to the board of review.

SECTION RP-6.9 The director's authority. In the enforcement and administration of these rules and regulations, nothing herein is intended to limit the director's power to apply any of the provisions of Chapter 5, RCO, Relating to Real Property Tax, and any and all other laws applicable thereto.

The Procedural Rules for the Implementation of Sections 5-11.20 and 5-11.21, RCO, Relating to Real Property Tax Exemption for Low and Moderate-Income Rental Housing were adopted on May 26, 1981, following a public hearing held on May 18, 1981, after public notice was given in The Garden Island Newspaper on April 24, 1981.

These rules shall take effect ten days after filing with the Office of the County Clerk, County of Kauai.

Eduardo E. Maloet
MAYOR, County of Kauai

APPROVED AS TO FORM:

DATED: 6/3/81

Thomas A. McLean
COUNTY ATTORNEY

James H. (J.D.)
COUNTY CLERK

Filed June 3, 1981