

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

EMPLOYEES' RETIREMENT SYSTEM

CHAPTER 27

MEMBER HOME LOAN PROGRAM

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§6-27-1 Scope. This chapter shall govern the administration of the member home loan program adopted by the board of trustees of the system. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5)

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(Imp: §§88-119, 88-119.5)

§6-27-2 Definitions. As used in this chapter:

“Active member” means a member who is an employee within the meaning of section 88-21, Hawaii Revised Statutes, and does not include a member who ceases to be an employee, notwithstanding the member’s establishment of vested benefit status provided in sections 88-96 and 88-281, Hawaii Revised Statutes.

“Board” or “board of trustees” means the board of trustees of the system.

“Borrower” means the person who signs the note evidencing the loan and the mortgage securing it.

“Eligible member” means a person who meets the eligibility requirements of section 6-27-6.

“Home improvement” means an addition made to the property and shall not include renovations, maintenance, repairs, or replacement of furniture, fixtures, or appliances.

“Leasehold conversion loan” means:

- (1) To purchase the fee simple interest where there is an existing first leasehold mortgage loan:
- (2) To satisfy an agreement of sale for the purchase of the fee simple interest where there is an existing first leasehold mortgage loan; or
- (3) To refinance a loan made for the purchase of the fee simple interest where there is an existing first leasehold mortgage loan.

“Lender” means a financial institution which may by law make loans secured by first or second mortgages on real estate and which participates in the member home loan program under an agreement with the system.

“Loan” or “member home loan” means a loan made under the member home loan program.

“Member” means an active member or retirant.

“Program” means the member home loan program.

“Retirant” means a member who has retired and becomes a beneficiary of the system and includes an elective officer or judge who terminates membership in the system as provided in section 88-61(c), Hawaii Revised Statutes.

“System” means the employees’ retirement system of the State of Hawaii. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-3 Purpose of program. The purpose of the home loan program is to facilitate investment of system funds in a well-secured, prudent, and historically sound investment vehicle, and at the same time to assist eligible members of the system in the purchase, construction, or improvement of a principal home, the purchase of leasehold land on which existing homes are located, and in refinancing certain mortgage loans. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS 88-119, 88-119.5)

§6-27-4 Operation of program; in general. (a) Periodically, the board of trustees of the system may allocate as part of its overall investment program, and under the limitations as are set forth in section 88-119(1), Hawaii Revised Statutes, a portion of its investment funds for investment in the member home loan program. Funds so allocated shall be further allocated to participating financial institutions.

(b) Members of the system desiring a member home loan shall apply to a participating financial institution for a member home loan. A participating financial institution shall not accept a loan application from a member unless the participating financial institution has an office on the island which the member is residing.

(c) The participating financial institution shall:

- (1) Apply to the system for certification of the applicant's eligibility for a loan;
- (2) Ensure the purpose for which the loan is sought is an eligible purpose under this chapter;
- (3) Determine the applicants' creditworthiness;
- (4) Make the loan in its own name as lender;
- (5) Forward the note, mortgage and the documentation as shall be required by the system to the system for its approval.

(d) Providing the loan and the mortgage securing the loan are made in accordance with the requirements of this chapter, the lending institution shall endorse the note and assign the mortgage and note to the system which shall purchase the same from the lending institution.

(e) The system may, in its discretion, service the loan or forward it to a financial institution having a servicing agreement with the system. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5)

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(Imp: HRS §§88-119, 88-119.5)

§60-27-5 Purpose of loan. Member home loans shall be made for the following verified purposes only:

- (1) To purchase, construct, or improve a principal home;
- (2) To satisfy an outstanding agreement of sale to buy a principal home;
- (3) To convert a construction loan not made under the program for the construction of a principal home or home improvement loan to a permanent member home loan;
- (4) To purchase the fee simple interest in a principal home situated on leasehold land;
- (5) To refinance an existing first mortgage loan which was not made under the program;
- (6) To refinance an existing member home loan if the purpose is to finance proposed or prospective home improvements amounting to at least the minimum loan amount set by the board of trustees or to purchase the leasehold property in fee;
- (7) To refinance an existing second mortgage loan not made under the program and convert it to a first mortgage member home loan if the second mortgage loan was made for the purpose of:
 - (A) Making the down payment for the subject property;
 - (B) Purchasing leasehold property in fee; or
 - (C) Making home improvements;
- (8) To purchase the fee simple interest where there is an existing first leasehold mortgage loan;
- (9) To satisfy an agreement of sale for the purchase of the fee simple interest where there is an existing first leasehold mortgage loan; or
- (10) To refinance a loan made for the purchase of the fee simple interest where there is an existing first leasehold mortgage loan.

Cash take out shall not be permitted under the member home loan program. [Eff 2/9/89; am 12/24/90; am 6/11/92] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-6 Persons eligible for member home loans. To be eligible for a member home loan, the applicant shall be a retirant or an active member of the system with at least twelve continuous months of

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membership service immediately before certification by the system that the applicant is eligible for the loan, provided that:

- (1) An active member whose appointment (employment) is for a fixed period of time or to a fixed date shall have had at least eighteen continuous months of membership service immediately before certification and, in addition, shall have at least six months remaining in the period of appointment. If the remaining period of appointment is less than six months, the system may waive the six month requirement upon presentation of written assurance of reappointment given by the appointing authority;
- (2) An active member on leave without pay shall not be eligible;
- (3) A member who has an outstanding member home loan shall not be eligible, except as otherwise provided in section 6-27-7;
- (4) A member shall not be eligible to apply for or obtain a loan for another person. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §88-119, 88-119.5)

§6-27-7 Eligibility for another loan; limitations. A member who once had a member home loan or who has an outstanding member home loan shall not be eligible for another member home loan unless both of the following conditions are met:

- (1) The expiration of two years after the date the system purchased the prior or outstanding loan from the lender;
- (2) Full satisfaction of the prior or outstanding loan. [Eff 2/9/89] (Auth: HRS §88-28, 88-119.5) (Imp: HRS §88-119.5)

§6-27-8 Property qualifying under program; construction by owner. (a) To qualify under the member home loan program, the property securing the loan shall be located in the State of Hawaii and shall be held in fee simple or on an acceptable leasehold upon which there is located:

- (1) A one- to four-family dwelling or structure which may be attached or detached;

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(2) A one-family dwelling unit in a planned development; or
(3) A one-family unit in a condominium project or townhouse; occupied or to be occupied by the member as the member's principal home. The appraisal shall include the value of all improvements but the value of the unit or units not occupied by the member shall be deducted in computing the loan-to-value ratio.

(b) The system may refuse to purchase a loan secured by property which is not served by any utilities, lacks or has difficult access to or from a paved public road, does not conform to all applicable zoning and use restrictions, is located on a substandard lot, is a lodging unit, or has any other unusual characteristic which may affect its value. The lender may request the system's prior written approval as to whether a specific property qualifies for purchase by the system before issuing a loan commitment to the applicant.

(c) The system shall not purchase any member home loan made for the construction of or improvements to a principal home, where the construction was done or improvements were made by the owner as contractor. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-9 Co-ownership of mortgaged property. The member or the member and the member's spouse, if married, shall have at least a fifty per cent interest in the mortgaged property. If the member is not the sole owner of the mortgaged property, all persons whose signatures are required to create a valid first mortgage lien upon the mortgaged property shall sign the mortgage. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-10 Creditworthiness. The lender shall be responsible for determining the creditworthiness of each applicant who applies to it for a member home loan. In making that determination the lender shall take into consideration:

- (1) The applicant's monthly debt payment to income ratio;
- (2) The applicant's credit reputation; and

- (3) Any other factor considered by a prudent lender. [Eff 2/9/89]
(Auth: HRS §88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-11 Monthly mortgage payment to income ratio. (a) As used in this section:

“Applicant” means any person signing the note or mortgage, or both, and occupying the subject property, including an eligible member.

“Guarantors, endorsers, or co-signers” means the persons signing the note or mortgage, or both, but who may or may not be occupying the subject property.

(b) As a general rule, the lender shall require that the applicant’s monthly mortgage payment does not exceed twenty-eight and one-half percent of the applicant’s stable monthly income less any monthly debt payments.

(c) Monthly mortgage payment shall include first mortgage payment, hazard and flood insurance payments, lease rent, property taxes, and monthly dues for common element/property charges and maintenance, but excluding unit utility charges for condominiums and property with similar dues and charges.

(d) Monthly debt payment shall include all monthly payments on installment debts having a remaining term of one year or more. Secondary financing for the subject property, mortgage loan payment for other properties, alimony, child support, and separate maintenance payments shall be considered installment debts, unless the obligations terminate within one year.

(e) Stable monthly income is the applicant’s gross monthly income from the applicant’s primary employment base earnings plus recognizable secondary income averaged for the past twelve months. Secondary income of the applicant, such as rental income, overtime or part-time employment may be included in stable monthly income only if those items of secondary income are substantiated by written evidence of the applicant’s previous year’s earnings and that the continuation thereof is probable. Interest and dividends may be considered if substantiated by written evidence and averaged for the past two years. Rental income for the subject property may be considered if substantiated by written evidence.

(f) If the applicant chooses to disclose income from alimony, child support, or maintenance payments, the lender may consider those

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payments as income to the extent that they are likely to be consistently made. Factors which the lender may consider in making that determination include, but shall not be limited to:

- (1) Whether the payments are received pursuant to written agreement or court decree;
- (2) The length of time the payments have been received;
- (3) The regularity of payments;
- (4) The availability of procedures to compel payment;
- (5) Whether full or partial payments have been made;
- (6) The age of any child; and
- (7) The creditworthiness of the payer, including the credit history of the payer where available to the lender under the Fair Credit Reporting Act (15 USC §§1681-1681t) or other applicable laws. The lender shall submit to the system evidence to support its determination.

(g) Factors such as expected pay increases under union or other contract terms, education, training, technical skills, occupation, potential or expected pay increases, past employment history, and future employment expectations may be taken into account on a case-by-case basis in determining stable monthly income. Income necessary to qualify the borrower from sources not substantiated in the credit report shall be verified in writing from a reliable source. When the borrower is self-employed, the minimum acceptable documentation to verify income shall be the:

- (1) Profit and loss statements for the prior two years, the last statement covering the year ending before the applicant's application; or
- (2) Tax returns for the previous two years.

(h) If the applicant does not qualify for the loan under the above credit underwriting guidelines, the system shall consider purchasing on a case-by-case basis a loan with no more than two personal guarantors, endorsers or other co-signers. The guarantee, endorsement or agreement shall not be qualified or limited in any manner. All credit underwriting standards shall apply to the credit evaluation of a guarantor, endorser, or co-signer. The monthly mortgage payment shall not exceed twenty-eight and one-half per cent of the combined stable monthly income of the applicant and the guarantor, endorser, or co-signer less any monthly debt payments. In addition, the

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applicant's monthly mortgage payment shall not exceed forty per cent of the applicant's stable monthly income less any monthly debt payments.

(i) If an eligible member is already liable for a member home loan and wishes to guarantee, endorse or co-sign the note for another member home loan, the mortgage loan payment for both loans shall not exceed twenty-eight and one-half per cent of the eligible member's stable monthly income less any monthly debt payments.

(j) If an eligible member has guaranteed, endorsed, or co-signed for an existing member home loan and is applying for his own member home loan, the mortgage loan payment for both loans shall not exceed twenty-eight and one-half per cent of the eligible member's stable monthly income less any monthly debt payments.

(k) If the applicant is applying for a leasehold conversion loan, the monthly mortgage payment shall not exceed twenty-eight and one-half per cent of the applicant's stable monthly income less any monthly debt payment including the first mortgage payment for the subject property. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-12 First mortgage loans; minimum and maximum loan amounts. (a) No member home loan secured by a first mortgage on unencumbered improved real estate owned in fee simple shall exceed eighty per cent of the lesser of the purchase price or the appraised value of the real estate mortgaged to secure it.

(b) No member home loan secured by a first mortgage on leasehold interest in improved real estate shall exceed eighty per cent of the lesser of the purchase price or the appraised value of the leasehold interest and improvements.

(c) If the purpose of the member home loan is to satisfy an agreement of sale, the loan-to-value ratio shall be the lesser of the purchase price, if purchased less than one year ago, or the appraised value.

(d) If the loan-to-value ratio is over eighty per cent, lenders shall obtain the system's prior written approval for mortgage insurance. The mortgage insurance shall be obtained from a mortgage insurer licensed to do business in the State of Hawaii and shall insure or guarantee against the borrower's default or loss sufficient to reduce the system's exposure

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to not more than eighty per cent of the value of the mortgaged property. Mortgage insurance coverage shall remain in force until the principal amount of the loan is reduced to eighty per cent of the market value of the mortgaged property, at which time the coverage shall be subject to cancellation solely at the board's option. The borrow shall pay for the premiums for the insurance.

(e) No member home loan secured by a first mortgage shall be made in an amount which is less than or greater than the minimum or maximum loan amounts set by the board of trustees. The minimum and maximum loan amounts shall be set and may be periodically adjusted by the board of trustees at any of its regularly scheduled meetings. Notice of the board's intention to adjust the minimum and maximum loan amounts shall be included in the agenda for the meeting at which loan amounts shall be set or adjusted.

(f) There shall be a minimum cash equity of ten per cent of the purchase price for home purchases. [Eff 2/9/89; am 12/24/90; am 6/11/92] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-13 Leasehold conversion loans; minimum and maximum amounts. (a) The collateral shall be a first mortgage on the fee simple interest and a second mortgage on the leasehold interest on improved real estate.

(b) No leasehold conversion loan shall be made in an amount less than the minimum loan amount set by the board of trustees.

(c) No leasehold conversion loan shall be made which, when combined with the outstanding balance of a first leasehold member home loan, exceeds the maximum loan amount set by the board of trustees, or when the combined balances of the first leasehold mortgage loan and the amount of the leasehold conversion loan exceeds eighty per cent of the appraised value of the real estate mortgaged to secure it. [Eff 2/9/89; am 12/24/90; am 6/11/92] (Auth: HRS §§88-28, 88-119.5) (Imp: §§88-119, 88-119.5)

§6-27-14 Term. (a) The term of any member home loan shall not exceed thirty years or the lesser period as may be determined appropriate upon consideration of the character and economic life of the

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property securing the loan. There shall be no minimum term requirement.

(b) If the loan is secured by first mortgage on leasehold property, the fixed rental term of the lease shall extend at least five years after the date of the execution of the note and mortgage, and the remaining term of the lease shall extend at least two years after the stated maturity date of the note and mortgage.

(c) The term of any leasehold conversion loan shall not exceed fifteen years. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-15 Sale or transfer of mortgaged property. (a) Every mortgage shall contain a due-on-sale clause giving the system the right to require the borrower to make immediate payment in full of the entire indebtedness secured by the mortgage if the borrower sells or transfers all or a part of the mortgaged property, including any equitable or beneficial interest, without first obtaining the system's prior written consent.

(b) The requirement for prior consent shall not apply to a transfer to an inter vivos trust in which the borrower is and remains the beneficiary and which does not relate to the transfer of the borrower's occupancy of the mortgaged property. The attorney preparing the inter vivos trust document shall issue a statement acknowledging that he or she has read the provisions of this section, and represents that the transfer of the interest in the mortgaged property into the inter vivos trust conforms to the limitations under this section. This statement shall be submitted to the participating financial institution. The due-on-sale clause shall be fully effective as to any sale or transfer of the mortgaged trust property by the trustee, or sale or transfer of the borrower's equitable or beneficial interest in the property, without the prior written consent of the system.

(c) The system's consent shall be subject to the member home loan program policy in effect on the date a request for consent is received by the system.

(d) The system's right to require the borrower or trustee to make payment in full with respect to the sale or transfer shall be subject to any applicable federal or state laws which restrict or prohibit the system's exercise of the right.

(e) The system shall not unreasonably withhold its consent to

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the borrower's sale or transfer of the mortgaged property by agreement of sale, provided the system's mortgage priority is not affected by the sale or transfer, the borrower is not in default of the loan or has not broken any promises made in obtaining the loan, has notified the system within a reasonable time of the proposed transaction, and agrees to:

- (1) The shortening of the remaining loan term to the earlier of:
 - (A) The term of the agreement of sale; or
 - (B) Three years and to make immediate payment in full of all amounts due if the buyer under the agreement of sale is not an eligible member;
- (2) The increase of the interest rate for the loan to the lesser of either four per cent above the interest rate then in effect or the interest rate then in effect for the program; except if the result is less than the interest rate for the loan in effect there shall be no change in the interest rate;
- (3) Pay or reimburse the lender, servicer, or the system, as the case may be, for all costs or expenses, including reasonable attorney's fees and consent fees incurred to review the proposed transaction and draft documents;
- (4) Acknowledge that the system shall not consent to any assumption of the loan or to any further sale or transfer of the mortgaged property;
- (5) Acknowledge that as a condition for the system's consent, the buyer shall sign a certification of occupancy in which the buyer represents and agrees to occupy and use the mortgaged property as a principal home for at least one year after the closing of the agreement of sale;
- (6) Sign the documents as may be necessary, including a loan modification agreement; and
- (7) Give assurances as the lender or servicer may require to protect the system's lien priority in the mortgaged property.

If any of the foregoing conditions require the borrower to pay an interest rate or finance charge which would exceed the highest rate permitted by law, then the borrower's obligation to pay interest or finance charge shall be reduced to the highest permitted by law, so that the borrower is not obligated to pay any interest or finance charge which

would result in the payment of interest or finance charge in excess of the limit so permitted. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-16 Assumption. (a) No assumption shall be allowed of any loan made after June 30, 1974.

(b) The system may consent to only one assumption of a loan made before July 1, 1974, upon the following conditions:

- (1) The borrower and buyer shall agree that the interest rate for the loan shall be increased to the interest rate in effect for new loans being made during the allocation period, if the interest rate for the allocation period is more than the interest rate specified in the loan. The borrower and buyer shall agree to sign all documents required to reflect any modification in interest rate;
- (2) The buyer shall have the creditworthiness to assume the loan;
- (3) If the buyer is an eligible member, the buyer shall meet the underwriting requirements as the applicant, pursuant to section 6-27-11;
- (4) If the buyer is not an eligible member, the buyer's monthly mortgage payment shall not exceed twenty-five per cent of the buyer's stable monthly income less any monthly debt payments. If the buyer does not qualify for the loan, the system shall consider on a case-by-case basis a loan with no more than two personal guarantors, endorsers or other co-signers. The guarantee, endorsement or agreement shall not be qualified or limited in any manner. All credit underwriting standards shall apply to the credit evaluation of a guarantor, endorser, or co-signer. The monthly mortgage payment shall not exceed twenty-five per cent of the combined stable monthly income of the buyer and the guarantor, endorser or co-signer less any monthly debt payments. In addition, the buyer's monthly mortgage payment shall not exceed forty per cent of the buyer's stable monthly income less any monthly debt payments;
- (5) The buyer shall agree to pay a loan assumption fee of one per cent of the loan balance, plus all costs and expenses, including attorney's fees, related to the assumption of the loan;
- (6) The buyer shall promise the system in writing to occupy the

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mortgaged property as a principal home for at least one year after the date the assumption of mortgage becomes effective;

- (7) The mortgage shall continue to be a first lien on the mortgaged property; and
- (8) The buyer shall agree to make immediate payment in full of all amounts due under the loan upon a further sale or transfer of the mortgaged property.

A loan may not be assumed if the person who is applying initially acquired the mortgaged property by way of an agreement of sale and is requesting the system to consent to the buyer's assumption of the underlying loan. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-17 Certification of applicant's eligibility; delivery of loan.

- (a) The lender shall be responsible for obtaining from the system certification as to whether the applicant is eligible for a member home loan. The name of every applicant who is a member shall be submitted to the system for certification.
- (b) Before the applicant's name is submitted for certification, the lender shall obtain the sales contract, agreement of sale document, construction contract, plans and specifications, whichever applies. Until certification of eligibility is obtained from the system, the lender shall not incur any costs chargeable to the applicant.
- (c) The terms and conditions of a member home loan shall be in accordance with this chapter in effect on the date of the applicant's certification of eligibility.
- (d) The lender shall disburse the loan proceeds within four months after date of the certification, or within ten months where new home construction is involved under this program, or within six months where home improvement is involved under this program.
- (e) The lender shall deliver the loan file to the system for approval to purchase within six months after the date of certification, or within fourteen months after the date of certification where new home construction under this program is involved, or within ten months after the date of certification where home improvement under this program is involved.
- (f) The lender shall sell the loan to the system within one month

after the date of the letter of approval to purchase by the system.

(g) The lender may request a precertification of eligibility if the lender anticipates that the loan proceeds cannot be disbursed within four months after the date of certification. [Eff 2/9/89] (Auth: HRS §88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-18 Precertification of applicant's eligibility. (a)

Precertification against future allocations may be obtained from the system for the following purposes:

- (1) To purchase a principal home which is under construction or will be constructed and will be conveyed to the borrower upon completion of construction;
 - (2) To finance the purchase of the fee simple interest on leasehold land which is located a principal home.
- (b) If the system precertifies the applicant as an eligible member, the lender may issue a precommitment to make the applicant a member home loan, subject to the following conditions:
- (1) The availability of funds for the allocation period when the member is recertified;
 - (2) The eligibility and qualification of the member to take out a loan at loan closing;
 - (3) The possibility that the interest rate may have changed when the member is recertified as still being eligible.
- (c) The lender shall recertify the member to assure that the member is still eligible to obtain a member home loan within thirty days of the date the loan proceeds are anticipated to be funded.
- (d) The terms and conditions of the member home loan shall be in accordance with this chapter in effect on the date of the member's recertification of eligibility.
- (e) The application, credit report, appraisal reports, verification of employment and deposits shall be updated if made more than three months before the request for recertification.
- (f) The lender shall deliver the loan file to the system for approval to purchase within three months after the date of recertification of member's eligibility or within four months where construction is involved.
- (g) The lender shall sell the loan to the system within one month

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after the date of the letter of approval to purchase by the system. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-19 Insurance. (a) Each member home loan shall be covered by a title insurance policy on the current standard American Land Title Association (ALTA) form issued by a title insurer licensed to do business in the State of Hawaii. The amount of coverage shall be at least equal to the amount of the loan and the benefits of the policy shall run to the system. The Alta Policy shall insure against any mechanic's and materialman's lien.

(b) The mortgaged property shall be covered by fire and extended coverage insurance equal to the full replacement costs of the improvements on the mortgaged property without deduction for depreciation. If the mortgaged property is located in an area identified and designated as a flood hazard area by the Federal Department of Housing and Urban Development, flood insurance under the Federal Flood Disaster Protection Act of 1973, Public Law No. 93-234, shall be obtained. If the mortgaged property is a condominium apartment, the association of owners shall have and keep in full force and effect a blanket fire and extended coverage insurance policy. The lender shall assure that the system is named as loss payee on the policies. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-20 Security for loans. (a) Member home loans shall be secured by:

- (1) First mortgages on unencumbered improved real estate owned in fee simple; or
- (2) First mortgages on leasehold interests in improved real estate.

(b) Leasehold conversion loans shall be secured by a first mortgage on the fee simple interest and a second mortgage on the leasehold interest on improved real estate.

For the purpose of this section, improved real estate owned in fee simple is unencumbered notwithstanding the existence of:

- (1) Instruments reserving mineral, oil, timber, or similar rights, rights of way, sewer rights, rights in walls;

- (2) Any liens for taxes or assessments not yet due;
- (3) Liens not delinquent for community recreation facilities or for the maintenance of community facilities;
- (4) Building restrictions or other restrictive covenants common to the community in which the property is located;
- (5) Liens for service and maintenance of water rights where not delinquent. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119) (Imp: HRS §§88-119, 88-119.5)

§6-27-21 Interest rate. (a) The interest rate for member home loan mortgages shall be set and may be periodically adjusted by the board of trustees at any of its regularly scheduled meetings. Notice of the board's intention to adjust the interest rate shall be included in the agenda for the meeting at which the rate will be set or adjusted.

(b) An active member of the system or retirant may apply with the lender servicing the loan for an interest rate reduction if the system's prevailing interest rate is less than the interest rate on the borrower's original note, subject to all of the following conditions:

- (1) The active member of the system or retirant shall be currently residing on the mortgaged property;
- (2) The lender servicing the loan, may charge a fee of one-half of one per cent of the loan balance, but in no event more than \$300;
- (3) Only one interest rate reduction shall be allowed during the term of the loan;
- (4) The borrower(s) shall complete a loan application and execute a revision agreement;
- (5) The loan shall be reamortized over its remaining term;
- (6) The new interest rate shall become effective the first day of the month after the borrower's execution of the revision agreement;
- (7) The mortgage loan shall be current in monthly installments;
- (8) The revision agreement shall be executed by all the borrower(s). [Eff 2/9/89; am 6/11/92] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

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§6-27-22 Prepayment penalty; allowable loan charges. (a) If the borrower pays off the entire member home loan balance within one year after the date of the note or, when a construction loan is made under the program, the date the Notice of Completion was filed with the court, there shall be a prepayment penalty of six per cent.

(b) The lender may require the borrower to pay all reasonable fees and charges ordinarily charged to and paid by a borrower for a loan. However, the lender may not charge the borrower any more than the amounts shown below for the following items:

<u>Item</u>	<u>Amount</u>
Loan origination fee	\$300 or one per cent of the loan amount, whichever is larger.
Loan origination fee for construction loans and home improvement loans	\$300 or two per cent of the loan amount, whichever is larger.

(c) The lender may charge a deposit fee when the application is made. The deposit shall be credited towards the closing costs if the loan is made. If the loan is not made, the deposit shall be returned to the applicant, less any costs chargeable to the applicant. [Eff 2/9/89; am 1/29/90; am 6/11/92] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-23 Affidavit of occupancy. Consistent with the purpose of the member home program, every applicant who will reside on the mortgaged property applying for a member home loan shall file with the lender an affidavit stating that:

- (1) The applicant will occupy the mortgaged property as the applicant's principal home within forty-five days after the notice from the contractor or developer that the residence is ready for occupancy or within forty-five days after the date of closing of the loan where an existing structure of residence is acquired;
- (2) The applicant will occupy the residence as a principal home for at least one year;
- (3) If the applicant fails to comply, any and all indebtedness owing by and chargeable to the applicant by way of a mortgage loan made on the basis of the application filed in

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connection with the loan shall become immediately due and payable in full, unless for good cause shown, the period to occupy is extended by the system in writing. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-24 Sanctions. (a) The applicant shall sign the application for a mortgage loan. By doing so, the applicant shall be considered to have verified the truth of all statements made in the application. The applicant shall be subject to the sanctions of section 710-1063, Hawaii Revised Statutes, for any false statements.

(b) If an applicant or a borrower makes any false or untrue statement, intentionally or otherwise, for a mortgage loan, the system may, after hearing held in accordance with chapter 6-23, determine that the applicant or borrower shall not be eligible for a mortgage loan for a period up to five years after the date the system actually learns of the false or untrue statement, or if the system has already purchased the mortgage loan made to the applicant or borrower, up to five years after the applicant or borrower has made immediate payment in full of all sums secured by the mortgage pursuant to this section.

(c) The borrower shall be required to make immediate payment in full of all sums secured by the mortgage if the borrower breaks any promise for a mortgage or with respect to a mortgage loan or makes or has made a false or untrue statement to qualify or be eligible for a mortgage loan or with respect to the mortgage loan. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)

§6-27-25 Request for review. (a) An applicant for a member home loan may request the board to review or reconsider any decision or determination relating to the application, except that the applicant's creditworthiness shall be a matter solely for the lender to determine.

(b) A borrower under an existing member home loan may request the board to review or reconsider any decision or determination relating to the loan.

(c) The request shall be in writing, shall be filed with the system within sixty days of the decision or determination sought to be reviewed,

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and shall contain a statement of the facts and include copies of all documents upon which the applicant or borrower relies in support of the request.

(d) The board may request the submission of additional information or documents and may request the applicant or borrower to appear at a specified place, date and time to submit oral testimony in support of the request for review. [Eff 2/9/89] (Auth: HRS §§88-28, 88-119.5) (Imp: HRS §§88-119, 88-119.5)