

BILL NO. 292  
(DRAFT 3)

**ORDINANCE NO. 14 135**

**AN ORDINANCE AMENDING CHAPTER 19, ARTICLE 10, SECTION 19-71 OF THE HAWAI‘I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), RELATING TO ELIGIBILITY TO CLAIM PROPERTY AS A PRINCIPAL HOME.**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I:**

**SECTION 1.** The purpose of this ordinance is to ensure that the person seeking the tax exemption is a full time resident of the County of Hawai‘i. This ordinance requires that the person applying for a tax exemption from the real property tax rate on a person’s “principal home” have filed a Hawai‘i state income tax return as a year round resident. In order to afford a reasonable period to transition to the new eligibility criteria for a home exemption and to allow for outreach to educate the public, this amendment will not take effect until December 31, 2015.

**SECTION 2.** Chapter 19, article 10, section 19-71 of the Hawai‘i County Code 1983 (2005 Edition, as amended), is amended to read as follows:

**“Section 19-71. Homes.**

(a) Real property owned and occupied as a principal home shall be exempt to the following extent from property taxes:

- (1) Totally exempt where the value of the property is not in excess of \$40,000;
- (2) Where the value of the property is in excess of \$40,000, the exemption shall be the amount of \$40,000.

Provided that:

- (A) No such exemption shall be allowed to any corporation, co-partnership, or company;
- (B) The exemption shall not be allowed on more than one home for any one taxpayer and that such taxpayer shall certify under penalty of perjury that such taxpayer has no other home exemption in any other jurisdiction;
- (C) The taxpayer has acquired said home by a recorded deed;
- (D) A husband and wife shall not be permitted exemption of separate homes owned by each of them, unless they are living separate and apart, in which case they shall be entitled to one exemption, to be apportioned equally between each of their respective homes;

- (E) A person living on premises, a portion of which is used for commercial purposes, except as provided in subsection (b) or which is legally permitted as a home occupation in accordance with the zoning code, shall not be entitled to an exemption with respect to such portion, but shall be entitled to an exemption with respect to the portion thereof used exclusively as a home;
  - (F) A person living on the premises, a portion of which is used as residential housing rental for a term of not less than six months and legally permitted by all codes, shall be entitled to an exemption, except as provided in subsection (b); and
  - (G) In the case of a lease of Hawaiian homestead lands, where either a husband or wife is of non-Hawaiian descent, either spouse shall be entitled to the home exemption in the same manner as if either spouse was considered the owner thereof, provided proof of marriage is submitted to the director of finance.
- (b) The use of a portion of any real property, building or structure for the purpose of any agricultural use permitted pursuant to section 205-2(d) or 205-4.5, Hawai'i Revised Statutes, shall not affect the exemptions provided for by this section.
  - (c) Where two or more individuals by life estate and remainder, jointly, by the entirety, or in common own or lease land on which their homes are located, each home, if otherwise qualified for the exemption granted by this section, shall receive the exemption. If a portion of land held by life estate and remainder, jointly, by the entirety, or in common by two or more individuals is not qualified to receive an exemption, such disqualification shall not affect the eligibility for an exemption or exemptions of the remaining portion.
  - (d) A taxpayer who is sixty years of age or over and who qualifies under subsection (a) shall be entitled to one of the following home exemptions:

<b>Age of Taxpayer</b>	<b>Exemption Amount</b>
60 years of age or over but not 70 years of age or over	\$80,000
70 years of age or over	\$100,000

For the purpose of this subsection, a husband and wife who own property by life estate and remainder, jointly, by the entirety, or in common, on which a home exemption under the provisions of subsection (a) has been granted shall be entitled to the applicable home exemption set forth above when at least one of the spouses qualifies each year for the applicable home exemption.

- (e) For purposes of this section, the term “real property owned and occupied as a principal home” is defined as the place where an individual has a true, fixed, permanent home and principal establishment, and to which place the individual has, whenever absent, the intention of returning. It is the place in which an individual has voluntarily fixed habitation, not for mere special, temporary, or vacation purpose, but with the intention of making a permanent home.

- (1) ~~[Three]~~ Four elements are necessary for real property to be considered a “principal home.”
- (A) The ~~[taxpayer]~~ owner has no other home exemption or principal home in any other jurisdiction;
  - (B) ~~[Intent of the owner to create or maintain a]~~ The owner maintains the principal home residence within the County; ~~[and]~~
  - (C) ~~[Owner’s]~~ The owner’s actual physical occupancy of the principal home within the County [-]; and
  - (D) The owner has filed a Hawai‘i state income tax return as a full time resident for each fiscal year that the exemption is sought, or:
    - (i) In the case of an owner who has not earned sufficient income to require the filing of a Hawai‘i state income tax return, the owner may seek a conditional waiver of this requirement from the director by certifying that the only reason the waiver is sought is insufficient income to require the filing of a Hawai‘i state income tax return, and by providing evidence to the satisfaction of the director that the owner is a full time resident; or
    - (ii) In the case of an owner who relocated to the County of Hawai‘i and has not yet had the opportunity to file a Hawai‘i state income tax return, but intends to file a Hawai‘i state income tax return at the next tax return filing deadline, that owner may seek from the director a conditional waiver of this requirement by certifying that the owner shall file a Hawai‘i state income tax return within the next twelve months. In the event the owner does not file a Hawai‘i state income tax return within the twelve month period, the owner shall be charged the amount of tax that was exempted and shall not be eligible to apply for the exemption under this section for one year.
- (2) ~~[“Intent of the owner to create or to maintain a principal home”]~~ Maintaining a principal residence may be evidenced by ~~[-, but not be limited to, any]~~ one or more of the following ~~[indicia]:~~
- (A) Occupancy of the home in the County for more than two hundred calendar days of ~~[a]~~ the calendar year~~[-];~~ for which the exemption is sought;
  - (B) Registering to vote in the County;
  - (C) Being stationed in the County under military orders of the United States and must claim residency only in Hawai‘i; or
  - (D) Possession of any of the following with a reported address within the County of Hawai‘i:
    - (i) Valid Hawai‘i ~~[drivers]~~ driver’s license.
    - (ii) Hawai‘i state identification card.
    - (iii) ~~[Filed resident income tax return of the State of Hawai‘i.~~
    - (iv) Resident aliens possessing a valid resident alien card (“green card”) must claim residency only in Hawai‘i.

(iv) Completed and signed copy of the owner's Hawai'i County voter registration application, with only the last four digits of the owner's social security number visible.

(v) U.S. Internal Revenue Service tax return with only the last four digits of the social security number visible.

The director of finance may require documentation of the above or additional [~~indicia of intent to reside~~] evidence of residence in the County from a property owner applying for an exemption or from an owner as evidence of continued qualification for an exemption. Failure to respond fully to the director's request, or in the event the director receives satisfactory evidence that a claimant occupies a permanent home outside the County [~~and~~] or there is documented evidence [of the claimant's intent to reside] the claimant resides outside of the County[~~;~~] for more than one hundred sixty-five calendar days, shall be deemed grounds for denying a claim for exemption or disallowing an existing exemption.

(f) Real property qualifying under subsection (a) shall be entitled to an additional exemption of twenty percent of the assessed value of the property not to exceed an additional \$80,000."

**SECTION 3.** Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material and underscoring need not be included.

**SECTION 4.** Severability. If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 5.** This ordinance shall take effect December 31, 2015.

INTRODUCED BY:

  
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COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i

Date of Introduction: October 15, 2014  
Date of 1<sup>st</sup> Reading: October 15, 2014  
Date of 2<sup>nd</sup> Reading: November 7, 2014  
Effective Date: December 31, 2015

OFFICE OF THE COUNTY CLERK  
 County of Hawai'i  
 Hilo, Hawai'i

COUNTY CLERK  
 COUNTY OF HAWAII  
 2014 DEC -3 PM 1: 29

(Draft 2)

Introduced By: Margaret Wille  
 Date Introduced: October 15, 2014  
 First Reading: October 15, 2014  
 Published: November 1, 2014

REMARKS: \_\_\_\_\_  
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Second Reading: November 7, 2014  
 To Mayor: November 21, 2014  
 Returned: December 3, 2014  
 Effective: December 31, 2015  
 Published: December 13, 2014

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Eoff	X			
Ford	X			
Ilagan	X			
Kanuha	X			
Kern	X			
Onishi	X			
Poindexter			X	
Wille	X			
Yoshimoto	X			
	8	0	1	0


(Draft 3)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Eoff	X			
Ford	X			
Ilagan	X			
Kanuha	X			
Kern			X	
Onishi	X			
Poindexter	X			
Wille	X			
Yoshimoto	X			
	8	0	1	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

Approved/Disapproved this 13<sup>th</sup> day  
 of December, 2014.

  
 MAYOR, COUNTY OF HAWAII

  
 COUNCIL CHAIRPERSON  
  
 COUNTY CLERK

Bill No.: 292 (Draft 3)  
 Reference: C-1045.6/FC-197  
 Ord No.: 14 135