

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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LAND  
STATE PARKS

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the House Committee on  
WATER, LAND & OCEAN RESOURCES**

**Monday, February 23, 2009  
9:30 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 921  
RELATING TO PUBLIC LANDS**

House Bill 921 proposes to allow 999-year homestead lease to be assigned to land trusts created for the purposes of managing and holding the homestead leasehold estate for the benefit of the lessee and lessee's family members. The Department of Land and Natural Resources (Department) does not support this bill.

One of the requirements for a homestead lessee is to maintain his/her residence on the premises. A land trust is a legal entity created to hold interest in real property. The Department doubts if such trust can legally maintain its residence on the premises.

If the bill is approved, designating beneficiaries in the trust still requires agreement from all affected family members. Majority of the conflicts in the family centers on the respective share of interest for each family member, and their legitimate status of being an heir of the deceased homestead lessee. Pursuant to Section 171-100, Hawaii Revised Statutes (HRS), the Office of Hawaiian Affairs may establish a successor determination program to help the families under homestead leases, including an arbitration program. The Department believes Section 171-100, HRS, is capable of addressing the issue of successorship of a homestead lease under its provisions.

Setting up a land trust to hold the leasehold interest of a homestead lease cannot relieve the conflict among family members, thus the Department finds this bill not necessary.

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES  
ATTN:Ken Ito, Chair and Sharon E. Har, Vice-Chair

Testimony of Laulani Teale  
NHBA/NHLC Peacemaking Project  
Supporting House Bill 921, Relating to Public Lands  
Conference Room 325  
February 23, 2009

Aloha Chair Ito, Vice-Chair Har, and Members of the Committee:

My name is Laulani Teale. I am the Project Coordinator for the Native Hawaiian Bar Association/Native Hawaiian Legal Corporation Peacemaking Project. Our project is directly involved with families who are working together to hold some of Hawai'i's last remaining 999-year leases, and to develop cooperative family solutions in order to address the many challenges currently faced by these lessees. I am in strong support of HB921, because it offers a realistic means for families to meet these challenges by working together.

The passage of this bill would be a win-win situation all around, with no loser. It simply creates an additional option for families -- one that has the potential to help families to cooperatively address some very serious problems that currently exist in these leaseholds.

As you may know, the 999-year lease program began in 1901, and at its peak, 750 leases had been awarded. At the last count done by OHA in 1994, only 51 of these leases remained. The majority of these were Hawaiian families, many of whom are struggling with the many challenges presented by this unique, complex and rather confusing leasehold system.

Some of the most common of these many challenges include the following:

Legal:

1) Under the original lease program established in 1900, successorship was pre-determined by law. When a lessee died, the lease automatically passed to his or her spouse, and then to all of the children of the new lessee, with right of survivorship. This meant that the *last surviving sibling* inherited the lease, which then passed to that person's children, and so on. As no one knew who the last survivor would be, this sometimes laid the groundwork for very serious conflict within families.

2) In order to address this problem, many families drafted quit-claim deeds that served to voluntarily place the lease with a person of the whole family's choosing. These deeds were commonly stamped and filed by DLNR, and families have presumed them valid for generations. Some of these transfers were further confirmed in probate. However, no actual new lease documents were issued, and the Attorney General's office has recently

opined that the successor under the original statute's structure *may* in fact be able to attempt to assert a claim to the lease. The resulting potential for conflict is alarming, particularly in consideration of other lease requirements (such as continuous occupancy) that the non-resident claimant would not meet, and issues over houses or other improvements built by the resident. In other words, any attempt to assert a claim from outside could well result in a horrific, drawn-out court battle that could go on for years with no one winning, draining the family's resources (along with the State's) and possibly putting the lease itself in jeopardy.

3) The law changed in 2000 to standard intestate succession, and assignment was allowed. While the change was helpful in some ways, one side effect was additional complexity, in that there were now two sets of rules; a detailed timeline (along with a thorough knowledge of the issues involved) is often needed in order to keep the picture straight.

4) These leases are all on ceded lands, adding the legal implications of this issue.

Financial:

5) There is no way to secure a loan on these properties. For this reason:

- a) many houses are substandard and/or in very serious disrepair.
- b) some families have engaged in desperate alternate financing strategies (such as paying for construction with high-interest signature loans and/or credit cards), resulting in terrible debt.
- c) family conflict may is often exacerbated by the financial pressure involved.

6) Taxes are charged at the same rate as surrounding properties, at full market value.

7) The original intent of the lease program was to enable subsistence farming. Some of the families have continued the practice, at least to some degree, until today, and live closely with the land. For this reason, it is especially difficult for them to meet the financial challenges presented by the situation.

There are many other issues to consider as well; in short, the 999-year lease program has, after a hundred years, become a rather complicated tangle of legal and financial matters that are not easily resolved.

**While HB921 does not provide a “magic bullet” to solve these problems, it gives real hope to families by allowing them to pool their energies and resources to solve them together, themselves. It also creates a strong incentive for cooperation and positive participation, and perhaps most importantly of all, it allows them to dream together, to establish a collective vision of what is possible, and to ask themselves integral questions, such as, “what would our kupuna want?”**

With the help of programs such as ours (we provide ho'oponopono, agreement-building and negotiation assistance at almost no cost to families) and the support of agencies such

as the Office of Hawaiian Affairs (who have also been long involved in addressing this issue), the realization of 'ohana vision is very possible. It is our hope that these cooperative solutions may in fact provide an important model for family land-sharing in general, and will have lasting, positive results for future generations.

We ask that you pass HB921 as an important step in this endeavor.

Mahalo for this opportunity to testify. Please feel free to contact me at any time, with whatever questions you may have.

Me ka 'oia'i'o,

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**Testimony for HB921 on 2/23/2009 9:30:00 AM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Friday, February 20, 2009 7:13 PM

**To:** WLOtestimony

**Cc:** nihipali\_la@hotmail.com

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Testimony for WLO 2/23/2009 9:30:00 AM HB921

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Larry Nihipali

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Submitted on: 2/20/2009

**Comments:**

I believe that this bill will help families to hold lands with the family of the original leasee of Hawaiian Home Lands and 999 years leases.

It will help reduce stress and headaches for these families.

Thank You.

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