
A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 208, Hawaiian Homes Commission Act,
2 1920, as amended, is amended to read as follows:

3 "**§208. Conditions of leases.** Each lease made under the
4 authority granted the department by section 207 of this Act, and
5 the tract in respect to which the lease is made, shall be deemed
6 subject to the following conditions, whether or not stipulated
7 in the lease:

8 (1) The original lessee shall be a native Hawaiian, not
9 less than eighteen years of age. In case two lessees
10 either original or in succession marry, they shall
11 choose the lease to be retained, and the remaining
12 lease shall be transferred, quitclaimed, or canceled
13 in accordance with the provisions of succeeding
14 sections.

15 (2) The lessee shall pay a rental of \$1 a year for the
16 tract and the lease shall be for a term of ninety-nine
17 years; except that the department may extend the term



1 of any lease; provided that the approval of any
2 extension shall be subject to the condition that the
3 aggregate of the initial ninety-nine year term and any
4 extension granted shall not be for more than one
5 hundred ninety-nine years.

6 (3) The lessee may be required to occupy and commence to
7 use or cultivate the tract as the lessee's home or
8 farm or occupy and commence to use the tract for
9 aquaculture purposes [~~as the case may be,~~] within one
10 year after the commencement of the term of the lease.

11 (4) The lessee thereafter [~~for at least such part of each~~
12 ~~year as the department shall prescribe by rules,~~]
13 shall occupy and use or cultivate the tract on the
14 lessee's own behalf[-] for at least such part of each
15 year as the department shall prescribe by rules.

16 (5) The lessee shall not in any manner transfer to, or
17 otherwise hold for the benefit of, any other person or
18 group of persons or organizations of any kind, except
19 a native Hawaiian or Hawaiians, and then only upon the
20 approval of the department, or agree so to transfer,
21 or otherwise hold, the lessee's interest in the tract;



1 except that the lessee, with the approval of the
2 department, [~~also~~] may also transfer the lessee's
3 interest in the tract to the following qualified
4 relatives of the lessee who are at least one-quarter
5 Hawaiian: husband, wife, child, or grandchild. A
6 lessee who is at least one-quarter Hawaiian who has
7 received an interest in the tract through succession
8 or transfer may, with the approval of the department,
9 transfer the lessee's leasehold interest to a brother
10 or sister who is at least one-quarter Hawaiian. Such
11 interest shall not, except in pursuance of such a
12 transfer to or holding for or agreement with a native
13 Hawaiian or Hawaiians or qualified relative who is at
14 least one-quarter Hawaiian approved of by the
15 department or for any indebtedness due the department
16 or for taxes or for any other indebtedness the payment
17 of which has been assured by the department, including
18 loans from other agencies where such loans have been
19 approved by the department, be subject to attachment,
20 levy, or sale upon court process. The lessee shall
21 not sublet the lessee's interest in the tract or



1 improvements thereon; provided that a lessee may be
2 permitted, with the approval of the department, to
3 rent to a native Hawaiian or Hawaiians, lodging either
4 within the lessee's existing home or in a separate
5 residential dwelling unit constructed on the premises.
6 (6) Notwithstanding the provisions of paragraph (5), the
7 lessee, with the consent and approval of the
8 commission, may mortgage or pledge the lessee's
9 interest in the tract or improvements thereon to a
10 recognized lending institution authorized to do
11 business as a lending institution in either the State
12 or elsewhere in the United States; provided the loan
13 secured by a mortgage on the lessee's leasehold
14 interest is insured or guaranteed by the Federal
15 Housing Administration, Department of Veterans
16 Affairs, or any other federal agency and their
17 respective successors and assigns, which are
18 authorized to insure or guarantee such loans, or any
19 acceptable private mortgage insurance as approved by
20 the commission. The mortgagee's interest in any such
21 mortgage shall be freely assignable. Such mortgages [7



1 ~~to be effective,~~] must be consented to and approved by
2 the commission and recorded with the department [-] to
3 be effective.

4 Further, notwithstanding the authorized purposes
5 of loan limitations imposed under section 214 of this
6 Act and the authorized loan amount limitations imposed
7 under section 215 of this Act, loans made by lending
8 institutions as provided in this paragraph, insured or
9 guaranteed by the Federal Housing Administration,
10 Department of Veterans Affairs, or any other federal
11 agency and their respective successors and assigns, or
12 any acceptable private mortgage insurance, may be for
13 such purposes and in such amounts, not to exceed the
14 maximum insurable limits, together with such
15 assistance payments and other fees, as established
16 under section 421 of the Housing and Urban Rural
17 Recovery Act of 1983 which amended Title II of the
18 National Housing Act of 1934 by adding section 247,
19 and its implementing regulations, to permit the
20 Secretary of Housing and Urban Development to insure
21 loans secured by a mortgage executed by the homestead



1 lessee covering a homestead lease issued under
2 section 207(a) of this Act and upon which there is
3 located a one to four family single family residence.

4 Appraisals for such mortgages and other purposes
5 shall identify the leasehold market value in
6 conformance with methods and standards applicable to
7 other leasehold properties across the State and may
8 identify the replacement cost value appraisal approach
9 when market comparable sales data is insufficient.

10 (7) The lessee shall pay all taxes assessed upon the tract
11 and improvements thereon. The department may pay such
12 taxes and have a lien [~~therefor~~] as provided by
13 section 216 of this Act.

14 (8) The lessee shall perform such other conditions, not in
15 conflict with any provision of this Act, as the
16 department may stipulate in the lease; provided that
17 an original lessee shall be exempt from all taxes for
18 the first seven years after commencement of the term
19 of the lease."



1 SECTION 2. Section 209, Hawaiian Homes Commission Act,
2 1920, as amended, is amended by amending subsection (b) to read
3 as follows:

4 "(b) The appraisal of improvements and growing crops~~[,]~~ or
5 stock~~[, if any,]~~ shall be made by any one of the following
6 methods:

7 (1) By a disinterested appraiser hired by the department;
8 provided that the previous lessee or deceased lessee's
9 legal representative shall not be charged for the cost
10 of the appraisal; or

11 (2) By ~~[one]~~ a disinterested appraiser mutually agreeable
12 to both the department and the previous lessee or the
13 deceased lessee's legal representative, with the cost
14 of appraisal borne equally by the two parties; or

15 (3) By not more than three disinterested appraisers of
16 which the first shall be contracted for and paid by
17 the department. If the previous lessee or the
18 deceased lessee's legal representative does not agree
19 with the appraised value, the previous lessee or the
20 deceased lessee's legal representative shall contract
21 with and pay for the services of a second appraiser



1 whose appraisal report shall be submitted to the
2 department not later than ninety days from the date of
3 the first appraisal report; provided that the first
4 appraisal shall be used if the second appraiser is not
5 hired within thirty days from the date the department
6 transmits the first appraisal report to the previous
7 lessee or the deceased lessee's representative. If
8 the appraisal values are different and a compromise
9 value between the two appraisals is not reached, a
10 third appraisal shall be made by an appraiser
11 appointed by the first two appraisers not later than
12 ninety days from the date of the second appraisal
13 report and the third appraiser shall determine the
14 final value. The cost of the third appraisal shall be
15 borne equally by the department and the previous
16 lessee or the deceased lessee's legal representative.

17 Unless otherwise determined through the adoption of federal
18 regulations, the appraisal shall identify the replacement cost
19 or leasehold market value and shall conform to methods and
20 standards applicable to other leasehold properties across the
21 State.



1 The department may adopt rules not in conflict with this
2 section to establish appraisal procedures, including the time
3 period by which the department and the previous lessee or the
4 deceased lessee's legal representative shall act on appraisal
5 matters."

6 SECTION 3. Section 210, Hawaiian Homes Commission Act,
7 1920, as amended, is amended to read as follows:

8 "§210. Cancellation of leases. Whenever the department
9 has reason to believe that any condition enumerated in section
10 208, or any provision of section 209, of this title has been
11 violated, the department shall give due notice and afford
12 opportunity for a hearing to the lessee of the tract [~~in~~] with
13 respect to which the alleged violation relates or to the
14 successor of the lessee's interest therein, as the case demands.
15 If upon such hearing the department finds that the lessee or the
16 lessee's successor has violated any condition [~~in~~] with respect
17 to the leasing of such tract, the department may declare the
18 lessee's interest in the tract and all improvements thereon to
19 be forfeited and the lease [~~in respect thereto canceled, and~~
20 ~~shall thereupon~~] canceled. The department shall then order the
21 tract to be vacated within a reasonable time[-]; provided that



1 the department shall not cancel a lease based solely on a loan
 2 delinquency or default, unless all loan servicing procedures
 3 identified in the loan servicing manual adopted pursuant to
 4 section 216 of this Act have been exhausted. The right to the
 5 use and occupancy of the Hawaiian home lands contained in such
 6 tract shall thereupon revert in the department and the
 7 department may take possession of the tract and the improvements
 8 thereon.

9 For the purposes of this section, "due notice" means
 10 written notice served by certified mail or personal service."

11 SECTION 4. Section 216, Hawaiian Homes Commission Act,
 12 1920, as amended, is amended to read as follows:

13 **"§216. Insurance by borrowers; acceleration of loans; lien**
 14 **and enforcement thereof[-]; loan servicing manual; requirements.**

15 (a) The department may require the borrower to insure, in such
 16 amount as the department may prescribe, any livestock,
 17 aquaculture stock, swine, poultry, fowl, machinery, equipment,
 18 dwellings, and permanent improvements purchased or constructed
 19 out of any moneys loaned or assured by the department; or, in
 20 lieu thereof, the department may directly take out such



1 insurance and add the cost thereof to the amount of principal
2 payable under the loan.

3 (b) Whenever the department has reason to believe that the
4 borrower has violated any condition enumerated in paragraph (2),
5 (4), (5), or (6) of section 215 of this Act, the department
6 shall give due notice and afford opportunity for a hearing to
7 the borrower or the successor or successors to his interest, as
8 the case demands. If upon such hearing the department finds
9 that the borrower has violated the condition, the department may
10 declare all principal and interest of the loan immediately due
11 and payable notwithstanding any provision in the contract of
12 loan to the contrary[-], subject to the policies and procedures
13 provided in the loan servicing manual developed pursuant to
14 subsection (e).

15 (c) The department shall have a first lien upon the
16 borrower's or lessee's interest in any lease, growing crops,
17 aquacultural stock, either on his tract or share in any
18 collective contract or program, livestock, swine, poultry, fowl,
19 aquaculture stock, machinery, and equipment purchased with
20 moneys loaned by the department, and in any dwellings or other
21 permanent improvements on any leasehold tract, to the amount of



1 all principal and interest due and unpaid and of all taxes and
 2 insurance and improvements paid by the department, and any other
 3 indebtedness of the borrower, the payment of which has been
 4 assured by the department. Such lien shall have priority over
 5 any other obligation for which the property subject to the lien
 6 may be security. The department shall have the authority to
 7 authorize second position loans on homestead leases by approved
 8 lenders and United States Treasury-certified community
 9 development financial institutions.

10 (d) The department may, subject to this Act [~~and~~],
 11 procedures established by rule, and the loan servicing manual
 12 developed pursuant to subsection (e), enforce any lien by
 13 declaring the borrower's interest in the property subject to the
 14 lien to be forfeited, any lease held by the borrower canceled,
 15 and shall thereupon order such leasehold premises vacated and
 16 the property subject to the lien surrendered within a reasonable
 17 time. The right to the use and occupancy of the Hawaiian home
 18 lands contained in such lease shall thereupon revert in the
 19 department, and the department may take possession of the
 20 premises covered therein and the improvements and growing crops
 21 or improvements and aquaculture stock thereon; provided that the



1 department shall pay to the borrower any difference which may be
2 due ~~[him]~~ to the borrower after the appraisal provided for in
3 section 209 has been made.

4 (e) The department shall develop and implement a loan
5 servicing manual, subject to approval by the commission, that
6 adopts loan loss mitigation policies, procedures, and methods,
7 including but not limited to:

- 8 (1) Financial counseling;
- 9 (2) Mitigation analysis;
- 10 (3) Forbearance;
- 11 (4) Loan modification;
- 12 (5) Loan assumption, sale or transfer; and
- 13 (6) Other options to ensure lessees and borrowers or their
14 successors avoid default, cure delinquencies, and
15 avoid cancellation or foreclosure;

16 provided that the loan services manual shall incorporate all
17 appropriate federal rules and regulations. The department shall
18 document all loan loss mitigation activities between the
19 borrower and the department pursuant to the loan servicing
20 manual.



1 The loan servicing manual shall contain a section regarding
2 the oversight of lenders that file claims on federally
3 guaranteed or insured loans or other approved lenders where the
4 department has authorized a mortgage, to ascertain compliance
5 with minimum loan loss mitigation procedures.

6 (f) For the purposes of this section and any rule or
7 procedure adopted thereunder, "due notice" means written notice
8 served by certified mail or personal service."

9 SECTION 5. The provisions of the amendments made by this
10 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
11 declared to be severable, and if any section, sentence, clause,
12 or phrase, or the application thereof to any person or
13 circumstances is held ineffective because there is a requirement
14 of having the consent of the United States to take effect, then
15 that portion only shall take effect upon the granting of consent
16 by the United States and effectiveness of the remainder of these
17 amendments or the application thereof shall not be affected.

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 7. This Act shall take effect on January 1, 2050.



Report Title:

Hawaiian Homes Commission Act; Department of Hawaiian Home Lands; Hawaiian Homes Commission; Appraisal; Lease Cancellation; Loan Default; Loan Delinquency; Second Position Loans; Loan Loss Mitigations; Loan Servicing Manual

Description:

Amends the Hawaiian Homes Commission Act to require appraisals of improvements to identify the replacement cost or the leasehold market value. Grants authority to DHHL, to authorize second position loans on homestead leases by approved lenders. Requires DHHL to develop and implement a loan servicing manual, subject to commission approval, to standardize loan loss mitigation policies, procedures, and methods. Clarifies that DHHL shall not cancel a lease solely based on a loan default or delinquency unless all loan loss mitigation procedures are exhausted pursuant to the loan services manual. Effective 1/1/2050. (SD1)

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