

JAN 22 2021

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, shall
13 occupy and use or cultivate the tract on the lessee's
14 own behalf.

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



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



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1 the approval of the department, to rent to a native
2 Hawaiian or Hawaiians, lodging either within the
3 lessee's existing home or in a separate residential
4 dwelling unit constructed on the premises.

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



1 to be effective, must be consented to and approved by
2 the commission and recorded with the department.

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



1 207(a) of this Act and upon which there is located a
2 one to four family single family residence.

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

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

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

19 SECTION 2. Section 209, Hawaiian Homes Commission Act,
20 1920, as amended, is amended by amending subsection (b) to read
21 as follows:



1 (b) The appraisal of improvements and growing crops, or
2 stock, if any, shall be made by any one of the following
3 methods:

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

8 (2) By one disinterested appraiser mutually agreeable to
9 both the department and the previous lessee or the
10 deceased lessee's legal representative, with the cost
11 of appraisal borne equally by the two parties; or

12 (3) By not more than three disinterested appraisers of
13 which the first shall be contracted for and paid by
14 the department. If the previous lessee or the
15 deceased lessee's legal representative does not agree
16 with the appraised value, the previous lessee or the
17 deceased lessee's legal representative shall contract
18 with and pay for the services of a second appraiser
19 whose appraisal report shall be submitted to the
20 department not later than ninety days from the date of
21 the first appraisal report; provided that the first



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

14 The appraisal shall identify the replacement cost or
15 leasehold market value and shall conform to methods and
16 standards applicable to other leasehold properties across the
17 State, unless otherwise determined through the adoption of
18 federal regulations.

19 The department may adopt rules not in conflict with this
20 section to establish appraisal procedures, including the time
21 period by which the department and the previous lessee or the



1 deceased lessee's legal representative shall act on appraisal
2 matters."

3 SECTION 3. Section 210, Hawaiian Homes Commission Act,
4 1920, as amended, is amended to read as follows:

5 "§210. Cancellation of leases. Whenever the department
6 has reason to believe that any condition enumerated in section
7 208, or any provision of section 209, of this title has been
8 violated, the department shall give due notice and afford
9 opportunity for a hearing to the lessee of the tract in respect
10 to which the alleged violation relates or to the successor of
11 the lessee's interest therein, as the case demands. If upon
12 such hearing the department finds that the lessee or the
13 lessee's successor has violated any condition in respect to the
14 leasing of such tract, the department may declare the lessee's
15 interest in the tract and all improvements thereon to be
16 forfeited and the lease in respect thereto canceled, and shall
17 thereupon order the tract to be vacated within a reasonable
18 time[-]; provided that the department shall not cancel a lease
19 based solely on a loan delinquency or default, unless all loan
20 servicing procedures identified in the loan servicing manual
21 adopted pursuant to section 216 of this Act have been exhausted.



1 The right to the use and occupancy of the Hawaiian home lands
2 contained in such tract shall thereupon revert in the department
3 and the department may take possession of the tract and the
4 improvements thereon.

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

7 SECTION 4. Section 216, Hawaiian Homes Commission Act,
8 1920, as amended, is amended to read as follows:

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

11 (a) The department may require the borrower to insure, in such
12 amount as the department may prescribe, any livestock,
13 aquaculture stock, swine, poultry, fowl, machinery, equipment,
14 dwellings, and permanent improvements purchased or constructed
15 out of any moneys loaned or assured by the department; or, in
16 lieu thereof, the department may directly take out such
17 insurance and add the cost thereof to the amount of principal
18 payable under the loan.

19 (b) Whenever the department has reason to believe that the
20 borrower has violated any condition enumerated in paragraph (2),
21 (4), (5), or (6) of section 215 of this Act, the department



1 shall give due notice and afford opportunity for a hearing to
2 the borrower or the successor or successors to his interest, as
3 the case demands. If upon such hearing the department finds
4 that the borrower has violated the condition, the department may
5 declare all principal and interest of the loan immediately due
6 and payable notwithstanding any provision in the contract of
7 loan to the contrary[-], subject to the policies and procedures
8 provided in the loan servicing manual identified herein.

9 (c) The department shall have a first lien upon the
10 borrower's or lessee's interest in any lease, growing crops,
11 aquacultural stock, either on his tract or share in any
12 collective contract or program, livestock, swine, poultry, fowl,
13 aquaculture stock, machinery, and equipment purchased with
14 moneys loaned by the department, and in any dwellings or other
15 permanent improvements on any leasehold tract, to the amount of
16 all principal and interest due and unpaid and of all taxes and
17 insurance and improvements paid by the department, and any other
18 indebtedness of the borrower, the payment of which has been
19 assured by the department. Such lien shall have priority over
20 any other obligation for which the property subject to the lien
21 may be security. The department shall have the authority to



1 authorize second position loans on homestead leases by approved
2 lenders and United States Treasury-certified community
3 development financial institutions.

4 (d) The department may, subject to this Act, [and]
5 procedures established by rule, and the loan servicing manual
6 identified in this section, enforce any lien by declaring the
7 borrower's interest in the property subject to the lien to be
8 forfeited, any lease held by the borrower canceled, and shall
9 thereupon order such leasehold premises vacated and the property
10 subject to the lien surrendered within a reasonable time. The
11 right to the use and occupancy of the Hawaiian home lands
12 contained in such lease shall thereupon revert in the
13 department, and the department may take possession of the
14 premises covered therein and the improvements and growing crops
15 or improvements and aquaculture stock thereon; provided that the
16 department shall pay to the borrower any difference which may be
17 due him after the appraisal provided for in section 209 has been
18 made.

19 (e) The department shall develop and implement a loan
20 servicing manual, subject to approval by the commission, that
21 adopts loan loss mitigation policies, procedures, and methods,



1 including financial counseling, mitigation analysis,
2 forbearance, loan modification, loan assumption, sale or
3 transfer, and other options to ensure lessees and borrowers, or
4 their successors, avoid default, cure delinquencies, and avoid
5 cancellation or foreclosure; provided that the loan services
6 manual shall incorporate all appropriate federal rules and
7 regulations; and provided further that the department shall
8 document all loan loss mitigation activities between the
9 borrower and the department pursuant to the loan servicing
10 manual.

11 Further, the loan servicing manual shall contain a section
12 regarding the oversight of lenders that file claims on federally
13 guaranteed or insured loans or other approved lenders where the
14 department has authorized a mortgage, to ascertain compliance
15 with minimum loan loss mitigation procedures.

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

19 SECTION 5. The provisions of the amendments made by this
20 Act to the Hawaiian Homes Commission Act, 1920, as amended, are
21 declared to be severable, and if any section, sentence, clause,



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1 or phrase, or the application thereof to any person or
2 circumstances is held ineffective because there is a requirement
3 of having the consent of the United States to take effect, then
4 that portion only shall take effect upon the granting of consent
5 by the United States and effectiveness of the remainder of these
6 amendments or the application thereof shall not be affected.

7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:





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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.

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