

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawai'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawai'i*



KALI WATSON
CHAIRMAN, HHC
Ka Luna Ho'okele

KATIE L. DUCATT
DEPUTY TO THE CHAIRMAN
Ka Hope Luna Ho'okele

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Āina Ho'opulapula Hawai'i

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF KALI WATSON, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
HEARING ON MARCH 19, 2024 AT 2:00PM IN CR 325

SB 3236, RELATING TO THE LAND TRUST ACT

March 19, 2024

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits testimony in strong support of this measure which clarifies that if no personal property designation appears in the recorded instrument, the interests of the beneficiaries shall be real property.

DHHL has been aggressively pursuing the fulfillment of its mission to fully support self-sufficiency for Native Hawaiians by providing the opportunity for homestead leases and homeownership. One initiative that DHHL is pursuing to accelerate the fulfillment of that goal is to create the opportunity for lower-income Native Hawaiians on the DHHL waiting list to access Hawaii Housing Finance & Development Corporation (HHFDC) funding involving Low-Income Housing Tax Credits (LIHTC). The LIHTC program contributes private funds or Federal/State subsidies to cover the cost for design and construction of single-family housing, multi-unit townhouses, and high-rise condominiums.

With the use of LIHTC, there is a 15-year compliance period whereby the participants must satisfy certain income restrictions, verification requirements, inspections, and tenancy occupancy restrictions. They are considered "renters" under this funding approach. At the end of this compliance period under DHHL's Rent with Option to Purchase program, the "renters" are given the option to purchase and own the units. DHHL has used this approach on several projects on both O'ahu and Hawai'i island. The drawback is that the participants are not issued a homestead lease until the 15-year compliance period is finished, at which point the renter takes out a loan to pay off the remaining debt and is then issued a Hawaiian Homestead 99-year lease. Unfortunately, if the "renter" dies before the 15-year conversion point, and their intended successor is less than 50% Hawaiian, the unit cannot be transferred to their heir and the heir receives nothing. A suggested solution to this "problem" is to separate the land from the housing unit or vertical improvements financed by the HHFDC funding. The "renter" receives a Hawaiian Homestead lease upfront for the land, and the vertical

improvements are part of a condominium property regime (CPR) which separates it from the land. The “renter” is still subject to the LIHTC 15-year compliance period but more importantly, they are considered a homesteader with the issuance of the Homestead lease and can name a successor to their homestead lease, along with the right to assume their position involving the LIHTC financing program. With this change, the “Homesteader” now has a land lease and is taken off the DHHL waiting list.

In devising a legal structure to accommodate this, DHHL has determined that it will be necessary to place certain Hawaiian Home Lands in a land trust. This will assist those participating in these kinds of LIHTC developments of single-family, multi-unit, and high-rise projects to obtain financing to build such projects and to attract more participants. Under this legal structure, it is critical that the beneficiary interest under such land trust be clearly denoted as real property. This measure clarifies that the beneficiary interest under such land trust will be deemed real property, rather than personal property. While we believe that this interpretation is implicit in the current law, we would like to make sure that it is abundantly clear.

In 1997, the Legislature made DHHL’s single-family and multifamily units for housing native Hawaiians initiative possible through the enactment of Act 196 (SLH 1997), which explicitly authorized the development of such units and is now recognized as Section 207.5 of the Hawaiian Homes Commission Act, 1920, as amended. We accordingly ask for the support of the Legislature again and respectfully request that this measure be passed and enacted as soon as possible to support this effort to provide housing opportunities for Native Hawaiian beneficiaries.

Thank you for your consideration of our testimony.