

ACT 30

H.B. NO. 1313

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Between 1895 and 1921, a number of families throughout Hawaii were granted long-term nine hundred ninety-nine-year leases to public lands. There are approximately fifty-one families that still hold these nine hundred ninety-nine-year leases today. Due to the unique structure of the nine hundred ninety-nine-year leases, with absolute restrictions against mortgage or transfer, a descent scheme set out by statute, and other features, many families are unable to maintain homes or otherwise effectively use the land. The nature of the leases has also caused significant conflict among several families. The history of the nine hundred ninety-nine-year leases and the problems related to the leaseholds are detailed in the January 10, 1994, report: "Analysis of the 999 Year Homestead Lease Program: Current Problems and Possible Solutions", prepared for the seventeenth legislature and the office of Hawaiian affairs.

Who holds a rightful interest in the nine hundred ninety-nine-year leases is determined by the application of the descent scheme set forth in section 171-99(e), Hawaii Revised Statutes. After nearly one hundred years, there is frequently lack of documentation and uncertainty regarding the identity of the rightful holders of the nine hundred ninety-nine-year leases. This uncertainty exacerbates many of the

problems experienced by lessees and their families, and created significant barriers to implementing solutions. Furthermore, determining the rightful holders of the leaseholds is necessary for the exercise of certain rights held by the lessees.

Families desiring to clarify or legally establish their rights have few resources and options. Under current law, the only means of determining the interests of lessees is through a probate court determination of heirs. Obtaining a court determination of heirs can be expensive and creates a difficult and often insurmountable barrier for some families.

In addition to the nine hundred ninety-nine-year lease families, there are a number of other persons of Hawaiian heritage for whom legal entitlements rest significantly upon genealogy determinations. These persons, likewise, face a lack of resources and cumbersome processes for determining genealogies, descents, blood quantum, and other related facts. If the successor determination program for the nine hundred ninety-nine-year lease holders proves effective, it could serve as a model for other situations.

The purpose of this Act is to statutorily authorize a successor determination program within the office of Hawaiian affairs which would allow for a range of services including genealogy research guidance and assistance, genealogy research, and an arbitration program for determining leasehold interests under section 171-99(e).

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§171- Successor determination program. (a) The office of Hawaiian affairs may establish a successor determination program to assist persons with an interest or presumed interest in a nine hundred ninety-nine-year homestead lease to determine their legal interests under the provisions of section 171-99(e).

(b) The successor determination program may provide:

- (1) Genealogy data and information;
- (2) Assistance and guidance regarding genealogy research;
- (3) Research services;
- (4) Mediation services; and
- (5) Binding and nonbinding arbitration.

(c) The arbitration program shall:

- (1) Establish a panel of persons knowledgeable in matters of genealogy who will be available as arbitrators for the arbitration program;
- (2) Within one hundred twenty days of the effective date of this Act, adopt written procedures under chapter 91 for the conduct of arbitrations under this section; provided that if no such written procedures are adopted within one hundred twenty days, the commercial arbitration rules of the American Arbitration Association shall apply to the extent not inconsistent with this section until such time as other written procedures are adopted; provided further, that any proceedings that are commenced under the commercial arbitration rules of the American Arbitration Association shall be completed under those rules;
- (3) Provide for notice of the arbitration proceeding in the same manner as required for a probate court determination of heirs;
- (4) Provide an opportunity for all persons claiming an interest in the subject nine hundred ninety-nine-year leasehold to participate;
- (5) Provide for binding arbitration if all participants who respond to a notice of arbitration indicate that they desire the arbitration to be binding. If any participant fails to indicate, or indicates that the participant desires nonbinding arbitration, the arbitration shall be nonbinding;

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- (6) Apply section 171-99(e), to determine the legal interests of the participants in the subject nine hundred ninety-nine-year lease;
- (7) Provide a written arbitration award setting forth the legal interests of the participants in the subject nine hundred ninety-nine-year lease; and
- (8) Conduct arbitrations under and subject to the provisions of chapter 658, and subject to confirmation by the circuit court upon application of any participant in the arbitration pursuant to section 658-8.’’

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1995.)

Note

1. Edited pursuant to HRS §23G-16.5.