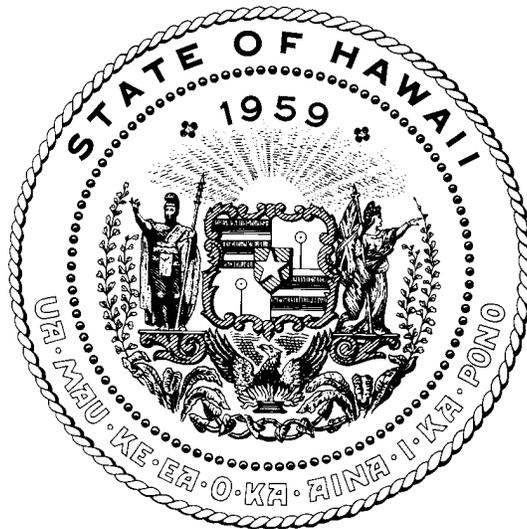


REPORT TO THE 2004 LEGISLATURE

RELATING TO

HOUSE CONCURRENT RESOLUTION NO. 119



Prepared by

State of Hawaii
Department of Hawaiian Home Lands

December 2003

REPORT TO THE 2004 LEGISLATURE

RELATING TO HOUSE CONCURRENT RESOLUTION NO. 119 REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO REVIEW THE SALE OF LEASES AND SUBMIT RECOMMENDATIONS TO THE LEGISLATURE FOR THE ADOPTION OF POLICIES THAT ARE FAIR TO AWARDEES, LEASE PURCHASERS, AND TO THE STATE

BACKGROUND:

Section 208(5) of the HHCA allows for the transfer of a homestead lease to a “native Hawaiian or Hawaiians” with the approval of the department. The practice of “transferring” one’s homestead lease to another native Hawaiian for compensation, i.e. “selling” one’s homestead lease, has come under increasing scrutiny and debate in recent years. Some beneficiaries, legislators and others have questioned the propriety and fairness of allowing a lessee to “sell” the leasehold interest in the lease.

LEGAL AUTHORITY:

Section 208(5), Hawaiian Homes Commission Act of 1920, as amended (HHCA):

"The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and only upon approval of the department, or agree to transfer, or otherwise hold, the person's interest in the tract; except that the lessee, with the approval of the department, also may transfer the lessee’s interest in the tract to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild. A lessee who is at least one-quarter Hawaiian who has received an interest in the tract through succession or transfer, may, with the approval of the department, transfer the lessee’s interest to a brother or sister who is at least one-quarter Hawaiian..."

Title 10, Hawaii Administrative Rules (HAR):

“Section 10-3-36 Transfer of Homestead Leases. A lessee, with the written approval of the department, may transfer the leasehold interest to any individual who qualified under the Act and is at least eighteen years old. The transferee shall immediately occupy the residence lot or use or cultivate the agricultural or pastoral lot. Failure to occupy or use the lot within sixty days from the date of the transfer shall constitute grounds for cancellation of the lease. A transferee may own an interest in non-Hawaiian home lands real property, regardless of degree of ownership.”

DISCUSSION:

Discussions were held with representatives from the State Council of Hawaiian Homestead Associations (SCHHA), representing homestead lessees, and Hu`i Kako`o `Aina Hoopulapula, representing applicants on the Hawaiian home lands waiting lists. A summary of major discussion points include the following:

- The current requirements under the HHCA and HAR do not prohibit a lessee from transferring or “selling” the leasehold interest in the homestead to any native Hawaiian; that is, any individual who can verify at least fifty percent native Hawaiian blood quantum.
- Allowing the sale or transfer of homestead leases circumvents the waiting list. It enables a native Hawaiian who is not on the list or is far down on the list to obtain a homestead ahead of other applicants.
- The sale of homestead leases provides an unfair advantage to those who can afford to pay.
- The market for homestead properties is not regulated, creating the opportunity for abuse.
- Lease transfers (or sales) should only be permitted in specific situations, such as divorce, economic hardship, or in order to keep the property in the family.
- Homestead lessees who sell their leases should be prohibited from getting back on the waiting list and receiving another award.
- The ability to transfer or “sell” one’s lease can provide a benefit to a lessee facing economic or social hardships, i.e. individuals with financial problems or kupuna who are no longer able to maintain the lease property.
- Prohibiting the sale of leases would prevent transfers between family members as a way of keeping the homestead in the family.
- Hawaiian homesteaders should have the same right as other owners of leasehold property to transfer or sell their leases, however, the transfer or sale should be restricted to one of the qualified relatives of the lessee who is eligible to receive the homestead by way of transfer or succession as provided for in the HHCA.

FINDINGS:

- There is no clear agreement on how best to resolve this issue, although there is general consensus that DHHL should explore options to curtail or limit this practice.
- The ability to transfer or “sell” one’s homestead lease may be desirable and should be permitted in certain circumstances.
- DHHL should review its policies to prohibit a homestead lessee who sells his interest in the lease from obtaining another award.
- Policy changes to address this practice can be implemented through amendments to the Hawaii Administrative Rules; amendments to the HHCA are not needed.

RECOMMENDED ACTIONS

Based on these discussions and findings, DHHL has determined the following:

1. Legislative action is not needed to address the issue of selling homestead leases; appropriate actions can be taken through proposed administrative rule changes approved by the Hawaiian Homes Commission and the Governor;
2. DHHL will initiate proposed amendments to Title 10, Hawaii Administrative Rules, to address the issue of selling homestead leases. Proposed changes may include the following:
 - a. Restricting the sale of homestead leases to the class of qualified relatives of the lessee who are eligible to receive the homestead by way of transfer or succession as provided for in the HHCA;
 - b. Prohibiting lessees who sell their homestead leases from receiving another award;
 - c. Prohibiting the transfer or sale of homestead leases to non-family members for a specified period following lease award, i.e. within 3-5 years;
 - d. Other appropriate changes, as deemed necessary, based on review by the Hawaiian Homes Commission and further beneficiary input received;