



HAWAIIAN HOME LANDS
HAWAIIAN HOMES COMMISSION · DEPARTMENT OF HAWAIIAN HOME LANDS

NEWS RELEASE

Information Regarding DHHL Loss Mitigation and Foreclosure Prevention Programs

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KAPOLEI, HAWAII – The Department of Hawaiian Home Lands (DHHL) has recently received inquiries from beneficiaries as well as the media regarding its loss mitigation and foreclosure prevention programs which service our beneficiaries. We hope this information is helpful to you.

What is Act 48 and Act 182 and can it help me if I have defaulted on my loan?

Act 48 and Act 182 relate primarily to foreclosure prevention, they do not apply to DHHL lease cancellations. By law, land owned by DHHL cannot be mortgaged by lessees. Therefore, such lands are not subject to foreclosure. Private lender interests are instead secured by guarantees for payment issued by DHHL. Therefore, when a lessee/borrower defaults on a private lender loan, the lenders look to DHHL for payment. This, however, typically does not occur without lenders having gone through work out steps. If DHHL is required to make good on its guarantee, the lessee remains on the land while DHHL tries to work out payment with the lessee. If this is unsuccessful, then there is a very lengthy hearings and appeals process during which the lessee is afforded ample time and opportunity to enter into an acceptable settlement with DHHL.

DHHL is reviewing Acts 48 and 182 to determine to what extent, if any, its foreclosure prevention principles might be incorporated into DHHL's already existing mitigation processes.

What kind of help is available if I am at risk of defaulting or have defaulted on my loan?

It should be noted that DHHL already has programs and mechanisms to assist homesteaders who are at risk of defaulting, or have defaulted on their loans. Recognizing the need to provide beneficiaries with the tools for financial success, the department is developing its HALE Program, modeled after the financial education program that was terminated in 2011, implementing a Lease Cancellation Prevention Program as well as developing a lessee payment/work out plan with the possibility to refinance under certain circumstances. In addition, the department also makes available contact information to lessees for the five organizations who received mortgage settlement monies to conduct loss mitigation/foreclosure prevention in Hawaii. They include Legal Aid Society of Hawaii, Hawaii Homeownership Center, Hawaiian Community Assets, Hale Mahaolu and Consumer Credit Counseling Services of Hawaii.

Would a moratorium on lease cancellations be in the best interest of beneficiaries?

DHHL continues to look for ways to improve its assistance programs. As we discuss below, however, a blanket moratorium on lease cancellations would be misguided and contrary to DHHL's legal obligation to prudently manage its financial resources.

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First, DHHL (which includes the Commission that heads DHHL) is obligated to manage its resources prudently. When DHHL does not cancel leases that are in default, it places its financial resources at risk – resources that are sorely needed to develop homesteads for those on the waiting list.

Second, lease cancellations involve a lengthy process in which lessees are provided full opportunity to participate and have ample time in which to provide payment or enter into an acceptable payment plan. The Hawaiian Homes Commission Act allows DHHL to cancel leases that are in default, only after a contested case hearing. The contested cases are usually heard first by an appointed hearings officer, and then presented to the full Commission. During contested case proceedings, lessees are given full due process rights, including notice and a hearing, before DHHL may cancel their leases. All final orders, including lease cancellations, may be appealed to the State Circuit Courts and higher. Since 2011, 143 cases have been scheduled for lease cancellation before the Commission. Of those cases, only three have been cancelled with the homes returned to inventory for award to another lessee on the applicant wait list.

Third, DHHL welcomes any constructive suggestions that stakeholders and other interested parties may offer as to potential loss mitigation and counseling programs. However, the implication that DHHL leases are being cancelled without any foreclosure prevention efforts is **simply not true**. Loss mitigation occurs at many different levels when DHHL leases are concerned.

The vast majority of lease cancellations involve homesteaders who have defaulted on loans from a private lender. In these cases, the private lenders conduct their own loss mitigation efforts directly with the lessees. If the loans were guaranteed by DHHL, DHHL is required to pay the lenders on behalf of the lessees. At that point, the lenders assign the loans to DHHL for further loss mitigation and collection efforts. **DHHL can only recover its payment to the lenders by either collecting from the lessee or cancelling the lease and re-leasing it to the next person on the waiting list.**

What type of loss-mitigation services does the staff provide to beneficiaries who have defaulted on loans?

Once DHHL is assigned a delinquent loan, staff conducts a financial assessment with the intent of developing a payment plan, refers lessees to contracted service providers for lease cancellation prevention and explores options to maintain the homestead lease within the family. In many cases, staff attempts to work with delinquent lessees for months before DHHL pursues lease cancellation.

The HALE program is currently being developed and financed through the Native Hawaiian Housing Block Grant fund. The program planning and design are ongoing and will be presented later this calendar year for Commission approval. Once implemented, the program will aid beneficiaries with financial literacy and homeownership readiness; assisting lessees with financial management planning as a means of preempting loss mitigation and lease cancellation actions.

Lease cancellation prevention services are currently offered to beneficiaries through two service providers, Helen N. Wai, LLC and Hale Mahaolu. They provide case management services that include meeting with the lessee to determine the specifics of their situation, conducting a financial assessment to determine the lessees' financial resources in resolving the payment issue and developing recommendations for a lessee payment/workout plan.

Payment/work out plans are offered to delinquent lessees at anytime throughout the loss mitigation and HRS 91 contested case hearing process.

Once cancellation proceedings are initiated, lessees are offered further opportunities to resolve their delinquent loans, including possible payment plans and financial assistance available through charitable organizations.

Finally, if all efforts have failed, DHHL staff presents the case to the Hawaiian Homes Commission for potential lease cancellation. In the case that a lease is cancelled there is a ten day reconsideration period where a settlement can still be achieved.

Lease cancellation prevention services were previously provided under the HOAP program. Why was the financial education program terminated?

The lease cancellation prevention services program offered under HOAP was cancelled by the previous departmental Administration (Chair Nahale-a/Deputy Director Ka'uhane) in July 2011. The prior administration did not allocate funding in their annual budget for either the HOAP or lease cancellation foreclosure prevention services programs.

Lease cancellation prevention services were resurrected by the current administration with the hiring of two service providers.

Does DHHL invest in HUD-certified lease cancellation service providers?

To our knowledge, there is no HUD certification, however, there are "HUD approved counseling agencies." These are non-profit organizations approved by HUD to provide free counseling services. These organizations are paid directly by HUD.

From HUD's website: "Foreclosure prevention counseling services are provided free of charge by nonprofit housing counseling agencies working in partnership with the Federal Government. These agencies are funded, in part, by HUD and NeighborWorks® America. There is no need to pay a private company for these services."

There is no "investing" in HUD approved counseling agencies. However, DHHL does refer beneficiaries to these free services, as appropriate. If we did pay a HUD approved counseling agency for their services, we would run the risk of double payment. As mentioned earlier, we have two service providers for lease cancellation prevention services to our beneficiaries. DHHL's contested case hearing process, collections process, and the policies it operates under, are unique to DHHL and under certain circumstances require more specialized, one-on-one counseling than what a HUD approved housing counseling agency can provide.

Who determines loss mitigation requirements for private lenders of HHL loans?

HUD institutes loss mitigation requirements for their loan programs, FHA and ONAP (HUD 184A) that the servicing lenders must adhere to. As these loan programs are under the purview of HUD, the federal agency dictates loss mitigation requirements.

What is DHHL's loss mitigation process regarding a defaulted loan from a private lender?

In the case of defaulted HHL loans from a private lender a lessee has five separate and distinct loss mitigation opportunities to resolve their delinquency. The private lender would begin by conducting its loss mitigation process. Failing to reach a settlement, loss mitigation efforts are turned over to DHHL's Homestead Services Division – Loan Services Branch where staff would then conduct its loss mitigation effort prior to any contested case hearing being scheduled. If no resolution is achieved, a contested case hearing is scheduled with a hearings officer where a work out settlement is again pursued. If a resolution has not been reached, a contested case hearing before the Hawaiian Homes Commission is scheduled to consider lease cancellation. In the case a lease is cancelled, there is a reconsideration process where the lessee has 10 additional days to propose a settlement. Throughout the entire process, DHHL strives to reach a settlement that will keep lessees in their homes while adequately compensating the department.

What is DHHL doing to improve the loss mitigation process with the federal government?

HUD establishes the loss mitigation requirements on private lenders as a condition of participation with their federal program.

DHHL is constantly looking at ways to better serve its beneficiaries. To that end, Chair Masagatani met with Federal Housing Administration (FHA) officials in Washington in August and initiated discussions to improve the loss mitigation efforts and intervene earlier in the process to better assist beneficiaries with FHA 247 loans. These initial discussions may lead to the amendment of the FHA-DHHL MOU on 247 loans.

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