PROPOSED CHANGES TO TITLE 10, HAWAII ADMINISTRATIVE RULES

HAWAIIAN HOMES COMMISSION MEETING
JULY 20-21, 2015, KAPOLEI, O'AHU
HOKULEI LINDSEY, HAWAIIAN HOME LANDS ADMINISTRATIVE RULES OFFICER
Overview:

- Administrative Rules.
- DHHL Process.
- Chapter 91, Hawaii Revised Statutes.
ROADMAP

- Policy and the draft rule changes.
- “Housekeeping” and updates.
- Substantive changes.
OVERVIEW
“Filling in the details.”

- Implement legislative acts.
- Establish operating procedures for state agencies.

Rulemaking is governed by Ch. 91, HRS.
DHHL PROCESS

- Staff prepares draft rule(s)
- HHC Workshop
- HHC preliminary approval of draft rule(s)
- Beneficiary consultation
- HHC approval of draft rules
- Ch. 91
CHAPTER 91, HRS

Hawaii Administrative Procedure Act.

Ensures uniformity and openness in the procedures used by state agencies.

Rulemaking:
CH. 91 RULEMAKING PROCESS

AG’s & LRB’s review
Governor’s approval
Public hearing process
DHHL consideration of public comments
HHC adopts final version
AG’s final approval
Governor’s final approval
Filing and publication

ITEM NO. B-1
POLICY & THE DRAFT RULE CHANGES
Physical addresses and contact information.
New definitions.
Rulemaking procedures.
THREE PRIORITY POLICIES

- Genetic testing.
- Agricultural subsistence lots.
- Transfer of homestead leases.
GENETIC TESTING

Whether results of genetic tests should be accepted as part of the application and verification process for the Hawaiian Homes program.
GENETIC TESTING

Why?

- Pang Kee v. Masagatani.

Applicant situations:

- Adoption, hanai, only one parent listed on birth certificate, alternative reproductive technology.
GENETIC TESTING

Approach:

- Existing approaches.
- Reliable testing and reliable results.
- Protect the parties.
- Ease of implementation.
- Clarify application processing.
GENETIC TESTING - OUTCOMES

Mother

Child

Alleged Father

AF is excluded

AB

CD
GENETIC TESTING - OUTCOMES

Mother

?  

Child

BD

CD  Alleged Father

AF is not excluded
GENETIC TESTING
13 CORE ‘CODIS’ MARKERS – MOTHER NOT TESTED

EXAMPLE

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<td>PROBABILITY OF EXCLUSION</td>
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Mother: AB

Alleged Father: BC

Child: AC

AF is not excluded

ITEM NO. B-1
**GENETIC TESTING**

13 CORE ‘CODIS’ MARKERS – MOTHER IS TESTED

## EXAMPLE

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### Genetic Testing

**Motherless Testing**

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**Father is not excluded**

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**Father is excluded**
### GENETIC TESTING
UNDERSTANDING LIKELIHOOD RATIOS

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<th>COMBINED LH RATIO</th>
<th>SUPPORT OF HYPOTHESIS</th>
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<td>10 – 100</td>
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<td>100 – 1,000</td>
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<td>&gt;1,000</td>
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**ITEM NO. B-1**
Degree of certainty:

“...a power of exclusion of greater than ninety-nine point zero per cent (99.0%) and a minimum combined paternity or maternity index of five hundred to one.”
Genetic Testing

Key aspects of the draft rule:

- Definition of “genetic tests.”
- Timing: when in the application process.
- Define the conditions/circumstances under which testing becomes an option.
- Degree of certainty of the results.
How can the department better respond to beneficiaries’ increasing interest in leases that promote a rural lifestyle?
AGRICULTURAL SUBSISTENCE LOTS

Why?

- Hawaiian Homes Agricultural Task Force and Beneficiaries Survey.
- DHHL General Plan and Island Plans.
- Maximize use of agricultural lease and minimize non-compliance.
Approach:

- Respond to beneficiary interest in rural/subsistence lifestyle.
- Integrate vision of the Hawaiian Homes Agricultural Task Force.
- Address urban and rural housing demand.
Key aspects of the draft rule:

- Differentiates between agricultural awards of 1.0 acres or less and awards of greater acreage.
- Requires lessee reside on a lot of 1.0 acres or less.
- Maintains existing rules for awards of greater than 1.0 acres.
Whether the department should engage in greater due diligence before presenting lease transfer requests to the Hawaiian Homes Commission.
TRANSFER OF HOMESTEAD LEASES

Why?

- Beneficiary concerns.
- Information from beneficiary focus groups.
- Significant number of requests to transfer.
TRANSFER OF HOMESTEAD LEASES

Approach:

- Data.

- How do other native trusts address transfers and sales of leases by its beneficiaries.

- Balance and fairness in the spirit of the trust.
TRANSFER OF HOMESTEAD LEASES

Key aspects of the draft rule:

- Vacant or undeveloped lots and undivided interests can only be transferred by gift or succession.
- Transferee must be a qualified family member or a beneficiary on the waiting list.
- Maximum sales price for developed lots set at the appraised value of improvements.