


STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

February 21, 2012

To: Chairman and Members, Hawaiian Homes Commission
From: Dreana Kalili, Policy and Program Analyst 
Subject: Policy Development for Amendments to HAR Title 10 -
"One Chance"

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission set a policy based on a recommendation from the Hawaiian Homes Commission Ad Hoc Committee on Administrative Rules to limit the number of homestead leases a native Hawaiian can hold over his/her lifetime.

DISCUSSION

In an effort to better serve Hawaiian Home Lands beneficiaries and to improve management of the trust, the Department of Hawaiian Home Lands is reviewing its programs and operations to determine how best to improve operational efficiency and delivery of services to beneficiaries of the trust; provide native Hawaiian beneficiaries with an opportunity for home ownership or land stewardship on homestead lands through the development of various award programs; and prioritize use of resources while updating its Administrative Rules.

At its regular meeting in August 2011, the commission approved a process for the development of amendments to the department's Administrative Rules (HAR Title 10). The crux of the process is the exploration and discussion of these issues by the commission ad hoc committee on Administrative Rules followed by a committee recommendation for action.

Below, the two issues are summarized and options for policy decisions are outlined.

Summary of the Issue: "One Chance"

Hawaii Administrative Rules (HAR), Title 10, is clear that a lessee may hold only one residential lease and either one agricultural or one pastoral lease at any given time, but both

the Hawaiian Homes Commission Act and the Administrative Rules are silent on how many leases a beneficiary may hold over a lifetime.

HAR §10-3-23 restricts the award of a lease to a previous lessee unless the department determines that certain circumstances exist. Also, HAR §10-3-7 also prohibits the department from award a lease to a previous lessee until all applicants on the island-wide list for that type of lease award (e.g., residential, agricultural, or pastoral) have been offered an award. However, the existing rules do not restrict the number of times a native Hawaiian may receive a lease through transfers or successorship.

From 1999 to 2009, the total number of applications for homestead awards has increased 32%. In the same time period, 2,939 awards were made. The growth rate of the waitlist compared against the ability of the department to deliver homestead awards raises concerns of how best to manage trust resources to better serve beneficiaries and whether to limit the number of times a beneficiary should benefit from this homesteading program. This is the crux of the "one chance" issue.

These concerns raise the question of what is the responsibility of this trust and what is fair and equitable. If the commission adopts a policy that allows a beneficiary just one chance to hold each type of lease, will the commission meet its trust responsibility? The adoption of a "one chance" policy would likely result in more homestead opportunities available to applicants and a reduced workload for the department.

- ***Option 1: No action***

If this commission considers the status quo fair and equitable, and the ability of a beneficiary to hold any number of leases over a lifetime, then no change in policy is necessary.

- ***Option 2: Adopt a "One Chance" policy***

If this commission finds that it is able meet its trust obligations by offering each native Hawaiian one opportunity to hold each type of lease over the lifetime, then this "one chance" policy is appropriate. This means that once a beneficiary becomes a lessee, regardless of how he/she acquired the lease, once he/she relinquishes the right to that lease, he/she is prohibited from becoming a lessee (of that type of lease) again. This may be met by opposition from beneficiaries, but it promotes fairness and may make more homestead opportunities available for applicants. Exceptions similar to those found in HAR §10-3-23 would also be adopted for extenuating circumstances.

- ***Option 3: Adopt a policy that restricts previous lessees from re-applying for another award***
 If this commission is open to adopting a policy that restricts previous lessees from re-applying, then it should vote to either prohibit the department from accepting an application from a previous lessee, or vote to require a previous lessee to wait a specified period of time (e.g., 10 years or 20 years), before he/she may submit another application for the type of lease award he/she previously held.

- ***Option 4: Adopt a policy that limits a previous lessee from holding another lease***
 If this commission is open to adopting a policy that limits previous lessees from holding multiple leases over a lifetime in the interest of making homestead opportunities available to more native Hawaiians, then it should vote to require a previous lessee to wait a specified period of time (e.g., 15 years), from the time he/she relinquishes interest in a lease to the time he/she may acquire another of the same kind of lease. For example, if a lessee holds a residential lease and transfers it to another native Hawaiian, this lessee may not acquire another residential lease (through a transfer, successorship, or new application) for a period of 15 years. Exceptions similar to those found in HAR §10-3-23 would also be adopted for extenuating or compelling circumstances.

Recommendation

Option 4 is likely the preferred response that addresses the question of fairness, mitigates the problem of applicants being passed over, and is reasonable for lessees.

The commission may consider the recommendations of the ad hoc committee, input provided by the commission counsel, and any testimony from the public in developing a policy on this issue. The commission may consider the recommendations of the ad hoc committee, input provided by the commission counsel, and any testimony from the public in developing a policy on this issue.

Next Steps

Once the commission makes agrees to a policy decision on these issue, staff will begin to draft rules based on the decision. A complete draft of the rules verbiage will be presented to the commission for preliminary approval once all decisions have been made. Once approved, these draft rules will be available to beneficiaries through beneficiary consultation.