

STATE OF HAWAII
HAWAIIAN HOMES COMMISSION

March 19, 2012

To: Chairman and Members, Hawaiian Homes Commission
From: HHC Ad Hoc Committee on Administrative Rules
Subject: Monthly Committee Report

At its regular meeting of August 15, 2011, the Hawaiian Homes Commission approved a process for the consideration of administrative rules, policy decision-making on related issues, and the development of new administrative rules and rule amendments. Upon further consideration of the rules/policy approval process, this committee recommends a revised process.

Effective today, the committee will present a monthly report to the commission at each regular meeting. This report will include a summary of any committee activities occurring in the previous month, as well as a list of the policy issues to be considered at the next regular commission meeting. The committee will also announce in these reports a preliminary position on each issue and these positions will be available online for comments for two weeks following the announcement. The committee and department staff will consider these comments in preparing the final submittal on the policy issue.

Also, the committee will post online a list of all future issues to be considered by the commission. Members of the public, including beneficiaries, may comment on any of the issues for up to 30 days following the posting date. The committee and department staff will consider these comments in preparing the preliminary positions and final submittals on these policy issues.

While this revised process extends the original time line for the development of administrative rules amendments, this will help beneficiaries, and other members of the public, to better prepare testimony on the policy issues. These testimonies and comment periods are not the full beneficiary consultation process. Beneficiary consultation will take place once all the rule amendments are drafted (as noted in the original process approved in August).

To summarize, these are the opportunities in our administrative rules development process for the public to provide input:

- 30-day comment period on all future issues (new);
- 14-day comment period on preliminary positions posted the month prior to commission action (new);
- Testimony on the submittals at the regular commission meetings (part of 8/15/11 process);
- Statewide beneficiary consultation on all proposed rule amendments (part of 8/15/11 process); and
- Public hearings on rulemaking required by HRS Chapter 91 (part of 8/15/11 process).

Issues and Preliminary Recommended Positions for April 2012

For the next regular meeting, the commission will re-consider the issues of the treatment of previous lessees, the one chance concept, and will consider for the first time the issue of the sale of leases. Below are our preliminary recommended positions:

- ***Treatment of Previous Lessees***

The Hawaiian Homes Commission should adopt a policy that clarifies:

1. that a native Hawaiian may submit a single application for each type of homestead lease in his/her lifetime; and
2. that an applicant who has previously been a lessee who has succeeded to a deceased family member's application rights not be treated as a "previous lessee."

The existing rules leave room for various interpretations by different administrations, commissions, and staff over time. This purpose of this recommendation is to clarify the existing rules by eliminating subjective exemptions and potential arbitrary decisions or treatment of any beneficiary.

- ***"One Chance"***

The Hawaiian Homes Commission should adopt a policy that limits a previous lessee from immediately accepting another lease by requiring previous lessees 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. Exceptions similar to those in HAR §10-3-23 may be permitted.

This type of policy limits previous lessees from holding multiple leases over a lifetime in the interest of making homestead opportunities available to more native Hawaiians. The growth rate of the applicant waitlist exceeds the rate at which the department delivers homestead awards. This policy addresses the practice of beneficiaries repeatedly purchasing a lease and transferring it to a family member,

while applicants who have never accepted an award are bypassed. The imposed waiting period corresponds with the time a new applicant must wait before receiving a lease award from the department.

- ***Sale of Leases***

The Hawaiian Homes Commission should adopt a policy that prohibits the sale of leases, or the transfer of a lease to another native Hawaiian in exchange for monetary compensation. Exceptions may be permitted upon approval by the commission.

The purpose of this recommendation is to support the intent of the Hawaiian Homes Commission Act of returning native Hawaiians to homestead lands in a long-term manner, and discourage the sales of leases for personal gain and profit.