

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 3

NATIVE HAWAIIAN REHABILITATION PROGRAM

SUBCHAPTER 3.1

SUPPLEMENTAL DWELLING UNIT

**§10-3-40.01 Purpose.** The purpose of this subchapter is to provide residential lessees who qualify with the option to build a supplementary dwelling unit that could help ease certain housing issues facing native Hawaiian families like need, overcrowding, and financial strain. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.02 Definitions.** As used in this subchapter, unless context clearly provides otherwise, "Dwelling unit renter" means the native Hawaiian who rents, from the lessee, either the primary dwelling unit or SDU individually, or with the native Hawaiian's immediate family, maintaining a common household to the exclusion of others.

"Good-standing" means the status of a lessee who is in compliance with all obligations contained in the residential homestead lease, the act, and this title.

"Ohana occupant" means the qualified relative under section 209(a) of the act who resides in either the primary dwelling or the ohana SDU individually or with the ohana occupant's immediate family.

"Supplemental dwelling unit (SDU)" means a dwelling unit that is supplementary to the primary dwelling, is smaller in size, has a separate entry, and includes its own kitchen, bedroom, and bathroom facilities. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.03 Pilot program.** Upon promulgation of this subchapter, the SDU program shall commence as a five-year pilot program on the islands of Oahu and Hawaii. The program shall be evaluated after three years. If deemed successful, the department may continue the program and expand to other islands, or the program shall terminate at the end of the five-year pilot period. Any SDU completed under the pilot program shall remain subject to this subchapter and any lease amendments made in furtherance of the program, even though the SDU program is discontinued or not expanded to other islands or both. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.04 SDU application and review.** (a) The lessee shall complete the application and return it to the department. Within 30 days, the department shall review the application for completeness and notify the lessee whether the application is complete or incomplete. If an application is deemed incomplete, it will be returned to the lessee with further instruction about how to revise. If the lessee fails to revise the application in accordance with the instructions provided and return the application to the department within 30 days, the application shall be cancelled.

(b) All applications require written approval from the commission before construction may commence. Such approval shall be considered only after a completed application has been submitted to the department, including a plan as to design, material, probable value of the SDU structure and related improvements, and any other information required by the department. The SDU structure and related improvements shall be permitted by and meet all building codes or other ordinances and regulations of the respective counties, except as otherwise provided by the commission. The department may take up to 60 days to render a decision on a completed application and notify the lessee of placement on the commission agenda or of the reasons for denying the application.

(c) The department shall not be required to finance construction of the SDU nor shall the department be liable for any cost or expense incurred in the processing and obtaining of the necessary county permits and approvals.

(d) The lessee shall complete construction of the SDU within one year after receiving notice that commission approval has been granted. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.05 Lot requirements.** A residential lot may qualify for the SDU program if it meets the following requirements:

- (1) Constructing an SDU on the lot is compatible with the island plan and the area plan;
- (2) The lot is at least 3,500 SF;
- (3) The lot is not landlocked;
- (4) The lot does not have more than one dwelling unit, attached or detached, already existing on the property;
- (5) Private covenants, conditions, and restrictions do not prohibit SDUs; and
- (6) Respective county requirements for an

additional dwelling unit. The department may, with the approval of the chairman, authorize a waiver of certain county regulatory requirements based upon specific area conditions, unique site characteristics, or other constraints related to the lot. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.06 Lessee obligations, generally.** (a) To participate in the SDU program, the lessee shall be in good-standing at all times.

(b) The lessee shall reside in either the primary dwelling or in the SDU. If the lessee moves into the SDU, the lessee shall provide the department with an updated mailing address in accordance with section 10-3-10(a).

(c) Failure of the lessee to maintain good-standing shall be cause for lease cancellation pursuant to section 10-3-28. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.07 Supplemental dwelling units.** (a) Any SDU shall fall within the following floor area maximums: 400 square feet (for lots with an area of 3,500 to 4,999 square feet) and 800 square feet (for lots with an area of 5,000 square feet or more).

(b) A lessee may apply for one of the following programs at the time of application:

- (1) Ohana SDU is specifically for non-rental, ohana use purposes. The ohana occupant shall establish the required biological relationship to the lessee to the satisfaction of the department before taking occupancy. The department may allow the ohana occupant to contribute toward

household expenses such as utilities and mortgage payments, if applicable, but rent shall not be charged.

- (2) Rental SDU is specifically for rental purposes, to supplement income for the lessee and potentially help to provide housing for native Hawaiians. The dwelling unit renter shall be qualified under the act by the department but is not required to establish a qualified relationship to the lessee. The department shall prioritize applications from lessees with a verifiable potential tenant currently on a waitlist.
  - (A) The minimum rental period agreement on the unit shall be six months;
  - (B) The lessee shall provide a standard lease agreement to the tenant; and
  - (C) Each agreement shall carry a rider written by the department and signed by the lessee and dwelling unit renter that provides the general obligations of the department, waiver of liability, and guarantees made by the lessee.

(c) The lessee shall submit a request to the department if the lessee wants to change the program use of the unit. The department shall provide a response to the lessee within 30 days of receipt of the request. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.08 Landlord-tenant code compliance.**

The residential landlord and tenant code, HRS ch. 521, is applicable only so far as it does not conflict with the act, this title, and the lease itself. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.09 Fair housing act compliance.** Lessee must remain in compliance with the section 804 of the fair housing act, 42 U.S.C. §3604 insofar as it does not conflict with the act, this title, and the lease. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)

**§10-3-40.10 Existing structures, non-compliance.** If one or more structures that have not been approved by the department or are unpermitted, or both, exist on the lot, the lessee may be allowed to come into compliance through the SDU process. However, if the existing structure or structures are unsafe for human habitation, the lessee may be required to bring the structure into compliance with county building codes, including demolition of the structure at the lessee's expense. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §208)