

DEPARTMENT OF HAWAIIAN HOME LANDS

Amendment and Compilation of Chapter 10-3
Hawaii Administrative Rules

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SUMMARY

1. A new subchapter 3.1, consisting of §§10-3-40.01 through 10-3-40.10, is adopted.
2. Chapter 10-3 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 3

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Historical Note: Chapter 3 of Title 10, Hawaii
Administrative Rules, is based substantially upon
Parts IV, V, VI, VII, VIII, and XI, Rules and
Regulations, Department of Hawaiian Home Lands. [Eff
8/18/72; am 10/25/73; am 4/10/76; am 11/14/77; am
11/18/79; 4/15/79; R 7/30/81]

SUBCHAPTER 1

APPLICATIONS FOR HOMESTEAD LEASES

§10-3-1 Application forms. Applications for residential, agricultural, or pastoral lot leases shall be made on forms provided by the department and shall be made under oath. Deliberate falsification of a material fact on an application form shall be grounds for removal of the applicant's name from the waiting list, or cancellation of any lease awarded the applicant, and may subject the applicant to prosecution for perjury. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§10-3-2 Qualifications of applicants. Applicants for residential, agricultural, or pastoral lot leases shall provide the department with documented proof that the applicant is:

- (1) At least eighteen years of age; and
- (2) A native Hawaiian. [Eff 7/30/81; am 1/20/86; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§10-3-2.1 Documentation. (a) Applicants shall provide the department with birth certificates or certifications issued by the department of health, or responsible government agency if the record is an out-of-state or foreign birth record. Out-of-state and foreign birth records shall be accompanied by a notarized affidavit from at least one named parent attesting to knowledge of the facts contained in the birth record and the veracity and accuracy of the contents of the record, as required by the department.

(b) If qualifications cannot be determined by birth records, the department may consider the following secondary documents:

- (1) Certified marriage certificates;
- (2) Certified death certificates;

- (3) Family history charts and documents such as marriage, divorce, and death records from the State of Hawaii Archives, state courts, public libraries or United States Census records;
- (4) Official baptismal records or other church documents identifying the race of applicant or applicant's ancestors;
- (5) Official records from the files of military services, schools, or hospitals;
- (6) Employment records;
- (7) Written statement from a physician knowledgeable of the facts or, in the case of a relative's death, a written statement from the mortuary which handled the burial;
- (8) Newspaper clippings from Obituaries and Vital Statistics sections; and
- (9) Other documents as may be requested by the department. [Eff 3/31/17; comp **DEC 23 2021**]
(Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§10-3-2.2 Genetic tests. (a) "Genetic test" or "'ohana test" means the testing of inherited or genetic characteristics (genetic markers) for the purpose of establishing biological parentage.

(b) If after submittal and processing of documentation described in section 10-3-2.1, there remains uncertainty regarding the applicant's biological parentage because, for example, the appropriate space on the applicant's birth certificate is blank or the listed parent is not the biological parent, the applicant may choose to obtain genetic testing to establish maternity or paternity. The following types of relationship testing shall be accepted:

- (1) Parent-child testing. The testing utilized must have a power of exclusion greater than ninety-nine per cent and a minimum combined

paternity or maternity index of five hundred to one.

- (2) Maternal or paternal lineage evaluation.
 - (i) Maternal lineage evaluation. If the alleged biological mother is deceased or unavailable, testing of the alleged mother's living sibling may be accepted as long as they share the same biological mother. Testing utilized must demonstrate shared mitochondria; or
 - (ii) Paternal lineage evaluation. If the alleged biological father is deceased or unavailable and the applicant is genetically male, testing of the alleged father's living brother may be accepted as long as they share the same biological father. Testing utilized must demonstrate shared Y chromosome.
- (3) Avuncular testing. If the alleged biological parent is deceased or unavailable and maternal or paternal lineage evaluation is not applicable, testing of the alleged parent's living full sibling may be accepted. The testing utilized must have likelihood ratio of no less than 50.0.

If the alleged biological parent is deceased, the applicant shall submit the death certificate. If the alleged biological parent is unavailable, the applicant shall submit an affidavit establishing the reason for the alleged biological parent's unavailability, such as the person being incarcerated, homeless, or having no known location or contact information. To add to the accuracy of the analysis, where the applicant has a known, living biological parent, that person shall also participate in the testing. The department shall accept only notarized and certified genetic test results with proper chain of custody directly from a relationship testing facility nationally accredited by the American Association of Blood Banks (AABB). All costs of

testing and any related expenses shall be borne by the applicant.

(c) Documentation submitted directly to the department from the testing facility shall include the original laboratory-certified and notarized genetic test results and chain of custody documents reflecting an acceptable and reliable chain of custody. Applicant shall submit an affidavit from the alleged parent or alleged parent's sibling setting forth facts establishing a reasonable possibility of parentage by the alleged parent.

(d) Genetic testing is entirely voluntary and is not required by the department. Undergoing genetic testing does not guarantee acceptance of the application.

(e) The department shall treat genetic test results as information related to medical history, diagnosis, condition, treatment, or evaluation protected under section 92F-14(b)(1), HRS. The department shall not disclose genetic test results to third parties without the prior written consent of those tested.

(f) A determination regarding parentage by the department is not intended to have evidentiary effect for purposes other than those of the department.

[Eff 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§10-3-3 REPEALED. [R 3/31/17]

§10-3-3.1 Application processing. (a)

Applications are processed in multiple stages, each with a different purpose and effect, as follows:

- (1) Receipt. Applications shall be date and time stamped upon receipt by the department. This first date and time stamp shall be used only to certify receipt by the department. An applicant may submit an application by

any method acceptable as provided by the instructions on the application form.

- (2) Completion. An application is complete when the application form has been filled in, signed by the applicant and notarized as required, and, following initial review by the department, it appears as though sufficient documentation has been provided to substantiate that the applicant meets or does not meet the Hawaiian home lands program qualifications. A complete application shall be date and time stamped a second time. This second date and time stamp shall be used to determine order on the waiting list should the application ultimately be accepted. An incomplete application shall be returned to the applicant with instructions necessary to complete the application properly.
- (3) Acceptance. Upon completion, the department shall review and investigate an application to verify documentation and determine whether the applicant is qualified. The determination shall be based upon the application form and birth certificates, as well as any secondary documents, and additional documentation as may be submitted to the department for verification and qualification. If the department determines, based upon the application form and documentation provided, that the applicant is qualified, the application shall be accepted and signed by an authorized department representative. An

accepted application shall be assigned a numerical designation and filed in order of completion, as determined by the second date and time stamp. The department shall notify the applicant in writing of the acceptance and provide the applicant with a copy of the accepted application. If the department determines that there is reasonable uncertainty regarding an application, the department shall request additional documentation in writing. The department shall, within thirty business days after the application is deemed complete, make an acceptance determination or give notice to the applicant of an extended determination date of thirty business days and the reason or reasons therefor. Failure to render a decision within a thirty day period, as may be extended, shall not result in automatic determination or acceptance by the department.

(b) The department shall maintain written communication with the applicant regarding the status of the application and any time extensions.

(c) An applicant who disagrees with the determination by the department shall have thirty business days from the postmark or e-mail time stamp on the written notice of the determination within which to **DEC 23 2021** the determination. [Eff 3/31/17; comp] (Auth: HHC Act §222) (Imp: HHC Act §207)

Historical note: §10-3-3.1 is based substantially upon §10-3-3. [Eff 7/30/81; am 10/26/98; R 3/31/17]

§10-3-4 Residential lot application. (a) The department shall establish and maintain an island-wide residential lot waiting list for each of the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu.

(b) A person may submit only one application for

a residential lot lease.

(c) A person may apply for a residential lot lease and an agricultural or pastoral lot lease, but not for both agricultural and pastoral lot leases. [Eff 7/30/81; am 1/20/86; comp 10/26/98; am 8/6/04; comp **DEC 23 2021**] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§10-3-5 Agricultural or pastoral lot application.

(a) Applications for an agricultural or pastoral lot lease may be made for any island of the State where lands are designated for those purposes. For application purposes, the department shall establish and maintain an island-wide agricultural lot waiting list for each of the islands of Hawaii, Kauai, Maui, Molokai, and Oahu, and an island-wide pastoral lot waiting list for each of the islands of Hawaii, Kauai, Maui, and Molokai.

(b) A lessee of a residence lot may apply for an agricultural or pastoral lot lease only on the island on which the lessee resides. [Eff 7/30/81; am 8/1/85; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§10-3-6 Island-wide waiting lists.

(a) The department shall maintain area waiting lists until the lists are exhausted. Applicants on a waiting list for any area will be placed on the respective island-wide residential lot, agricultural lot, or pastoral lot waiting list according to the date and time stamp described in section 10-3-3.1(a)(2). Applicants on a waiting list for an area will be considered first for award of any lots in the area. Applicants on the island-wide waiting list shall be considered for award according to the date and time stamp described in section 10-3-3.1(a)(2).

(b) Applicants wishing to transfer their completed application on one island-wide waiting list

to another island-wide waiting list may do so. Upon the completion of the transfer, the transfer date will replace the original date of application. No applications will be accepted for any area waiting list. [Eff 7/30/81; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-7 Priority and preference for award of leases. (a) Except as otherwise provided in section 10-3-11 relating to Lanai awards, applicants shall be considered for award in the order in which their completed applications were received by the department; provided that awards shall first be made according to ranking in existing priority I, II, and III waiting lists in that order until those waiting lists are exhausted. Thereafter, awards shall be based on numerical designation by date of completed application on the area waiting list, then on the island-wide waiting list, except as otherwise provided in this chapter.

(b) In making awards, the department shall give preference to an applicant who is not a lessee, or whose spouse is not a lessee.

(c) An applicant who is a lessee, or whose spouse is a lessee, shall be placed on a deferred status until each applicant given preference as provided by subsection (b) has been offered a lot; provided that an applicant who is a lessee, or whose spouse is a lessee, shall not be placed on a deferred status and may be offered a lot if the applicant or the applicant's spouse states in writing that the applicant or the applicant's spouse, as the case may be, will transfer an existing lease or surrender an existing lease to the department before, and as a condition for, the award of a new lease.

(d) An exception to subsection (c) may be made if the lessee of a residential lot or the spouse of a lessee of a residential lot is awarded a new

agricultural or pastoral lot which is unimproved and on which a residence cannot be constructed. In this case, the transfer or surrender of the residential lease may be postponed until such time as the new agricultural or pastoral lot is improved and a residence can be constructed on the new lot. [Eff 7/30/81; am 1/20/86; am and comp 10/26/98; am 8/6/04; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-8 Transfer of application rights. (a) An applicant may designate an individual relative who is at least eighteen years of age and a native Hawaiian from among the following to succeed to the applicant's application rights upon the death of the applicant:

- (1) Husband or wife;
- (2) Child;
- (3) Grandchild;
- (4) Father or mother;
- (5) Widow or widower of a child;
- (6) Brother or sister;
- (7) Widow or widower of a brother or a sister;
or
- (8) Niece or nephew.

To the extent possible, applicants shall designate a successor at the time that the application is filed at the department; provided that the designation shall be filed in writing at the department and the department shall acknowledge the designation in order for the designation to be deemed filed. An applicant may change the designation of successor at any time; provided that the applicant shall file the change of designation in writing at the department and the department shall acknowledge the change of designation in order for the change of designation to be deemed filed. The department shall determine whether a designated successor is qualified to be an applicant for a Hawaiian home lands lease. A designated successor shall be required to provide proof to the department that the individual is at

least eighteen years of age, a native Hawaiian, and a relative as identified in this subsection.

(b) If an applicant dies without designating a successor as provided in subsection (a), the commission may designate a successor applicant from only the following relatives of the applicant who are at least eighteen years of age, native Hawaiian, and who made a request to succeed to the application rights as provided in subsection (d):

- (1) Husband or wife; or
- (2) If no husband or wife requests, then a child; or
- (3) If no husband, wife, or child requests, then a grandchild; or
- (4) If no husband, wife, child, or grandchild requests, then from among the following relatives of the applicant who are native Hawaiian and at least eighteen years of age: father and mother, widows or widowers of the children, brothers and sisters, widows or widowers of brothers and sisters, or nieces and nephews.

Any individual who requests to succeed to the decedent's application rights shall provide proof to the department that the individual is at least eighteen years of age, a native Hawaiian, and a relative as identified in this subsection.

(c) Once every calendar year, the department shall publish a notice setting forth a list of the names of all applicants whom the department has reason to believe have died without designating a successor and whose names do not appear in a list previously published by the department. The notice shall also state briefly that individuals requesting to succeed to the application shall submit a request within the deadline established in subsection (d). The notice shall be published in a newspaper of general circulation in the State, once in each of two successive weeks.

(d) Requests for succession to application rights shall be made to the department in writing not later than one hundred eighty days after the date of

the last publication of the applicant's name; otherwise, the application will be canceled and the applicant's name shall be removed from the respective waiting list or lists, as the case may be. The commission, for good cause, may extend the time beyond one hundred eighty days in which requests for succession to an application may be made.

(e) The department shall determine whether an individual is qualified to succeed to the applicant's application not later than three hundred sixty five days following the one hundred eighty days after the date of the last publication of the applicant's name. The department shall submit a recommendation to the commission regarding the designation of a successor. If an individual who has requested to succeed to an application disagrees with the commission's designation of a successor, the individual may request a contested case hearing as provided in section 10-5-31. The department, for good cause, may extend the time beyond three hundred sixty five days in which it is to determine whether an individual is qualified to succeed to an application.

(f) An alleged qualified relative of an applicant may obtain genetic testing under section 10-3-2.2 to aid in establishing qualification as a successor to application rights. [Eff 7/30/81; am 8/1/85; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-9 Posting lease awards. The department shall post in district offices in the area where awards are made, the names and application dates of all who receive lease awards within two weeks after awards are made. The notice shall remain posted for a period of two months. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-10 Requirement for current information; placement on deferred status. (a) An applicant for a homestead lease shall notify the department, in writing or electronically, of any change in address within thirty calendar days of such change. If the applicant fails to notify the department and the department receives mail returned undeliverable as addressed with an official change of address label from the United States post office, the department shall attempt to reach the applicant at that new address. Whenever the department initiates action to award leases, all applicants whose addresses are not current and who cannot be contacted by mail shall be placed on deferred status.

(b) The department shall contact applicants at least once every two years to request updated information. Whenever an applicant does not respond to any two successive requests from the department for updated information, the department shall place the applicant on a deferred status until such time as updated information is received.

(c) A list of all applicants placed on deferred status and the reasons therefor shall be submitted to the commission, which shall act upon the matter at the meeting next following. [Eff 7/30/81; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-11 Lanai awards. (a) Except as hereinafter provided, in the making of Lanai homestead awards, preference shall be given to applicants then residing on the island of Lanai.

(b) In the making of the initial (hereafter Phase I) homestead award, the department will use the names of all applicants on any residential waiting list as of April 30, 2002 with a Lanai mailing address to form the first Lanai waiting list arranged as follows:

(1) Priority I Kupuna - applicants shall be

ranked by the following sub-priority preferences:

- (A) Applicants with documented genealogy to biological or legal ancestors who resided on the island of Lanai prior to 1900, ranked by age, are Lanai Kupuna.
 - (B) Those kupuna who are children of Lanai kupuna and ranked by age; and
 - (C) Those kupuna who fail to meet the above criteria in subparagraphs (A) and (B) will be ranked by age.
- (2) Priority II are Lanai resident families, under the age of 62, as of April 30, 2002, who are descendants of Lanai ancestors ranked by earliest source documents, then by age.
 - (3) Priority III are applicants who do not meet the criteria in paragraphs (1) and (2) ranked by date of application.
- (c) As used in this section:

"Kupuna" means any applicant who is at least 62 years of age.

"Resident" means an eligible applicant who resides on the island and can verify his or her residency acceptable to the department.

(d) In making subsequent awards, until the initial Lanai waiting list is exhausted, applicants will be considered in the order of preference established in subsection (b), provided:

- (1) Lanai residents registered on other application lists who accept a Lanai residential lease award in Phase I are presumed to have transferred their existing application to the Lanai Residence List. Upon lease award approval their residential application will be cancelled.
- (2) All other Lanai residents who fail to receive a lease award in Phase I and are currently registered on other established residential waiting lists must request to transfer their applications to the Lanai Island-wide Residential List in accordance

with section 10-3-6 no later than sixty days after Phase I lot selection to be eligible for future Lanai lease offerings. Further, failure to submit a request to transfer their application will result in the removal of their names from the Lanai Island-wide Residential List and the resumption of their respective residential application. [Eff 8/6/04; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207(b))

§§ 10-3-12 to 10-3-20 (Reserved)

SUBCHAPTER 2

LEASES TO NATIVE HAWAIIANS

§10-3-21 Award of leases. (a) Whenever homestead lots are available, the department shall award leases to applicants who meet the qualification requirements of section 10-3-2 and are selected in accordance with section 10-3-7.

(b) The department may hold an orientation meeting to inform applicants of the lots to be awarded and the lot selection procedures, before the lot selection meeting. The department shall notify applicants of the date, time, and place of the orientation meeting and of the lot selection meeting.

The department shall place applicants who fail to appear at the lot selection meeting or who fail to select a lot on a deferred status. [Eff 7/30/81; am 1/20/86; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-22 Award of leases with outstanding

indebtedness. No award of a residential, agricultural, or pastoral lot lease shall be made to an applicant who has not submitted sufficient evidence to the satisfaction of the department that the applicant is financially able to assume any indebtedness outstanding against the premises after the lease is awarded. [Eff 7/30/81; am 1/20/86; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-23 Awards to previous lessees, when. No award of a residence lot lease shall be made to an applicant who at the time of application has previously been a lessee of a Hawaiian home lands residence lot; or who at the time of consideration for award had become a lessee of a Hawaiian home lands residence lot through transfer or successorship; provided, that exceptions to this limitation may be made in the following conditions:

- (1) Award of a residence lot lease to an applicant who had been a lessee may be made if the department determines that the transfer or surrender of the previous lease was made under compelling circumstances and that denial of award of another residence lot lease would be unreasonably unfair to the applicant.
- (2) Transfer of a residence lot lease through successorship may be made to an otherwise qualified designated successor who had been a lessee if at the time of the designation the former lessee had already transferred or surrendered the lease and if the designation was filed with and approved by the department.
- (3) Award of a residence lot lease may be made to a present lessee of a residence lot if the department determines an emergency situation as follows:
 - (A) Due to circumstances beyond the control

- of and not caused by the lessee, the lessee's health, safety, and welfare are endangered by continued occupancy of the premises, or the further rehabilitation of the lessee is highly improbable without relocation to another residence lot;
- (B) The lessee has agreed to surrender the present lease and has waived all rights to the appraisal value of all improvements on the presently leased residence lot;
 - (C) The lessee has agreed and is financially able to pay all expenses for the move to the residence lot to be leased;
 - (D) The lessee is financially able to assume:
 - (i) The indebtedness outstanding against the residence lot to be leased; or
 - (ii) The indebtedness that must be incurred to enable the lessee to occupy the residence lot within one year after the lease is awarded; or
 - (E) The circumstances of the present lessee indicate sufficient need for relocation to justify the department's withholding of the residence lot to be leased from availability to qualified applicants, if any, for leases in that area and the department's awarding of a lease of that residence lot to the relocating lessee.
- (4) Exceptions to this limitation shall be made only after notice of the department's consideration of such action has been given through the posting of the agenda and after full disclosure of the material facts has

been made in a public meeting. [Eff
7/30/81; comp 10/26/98; comp **DEC 23 2021**]
(Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-24 Agricultural and pastoral leases. (a)

When agricultural or pastoral lots become available for award, the applicant shall be contacted in accordance with section 10-3-7.

(b) The department shall notify applicants of the date, time, and place of lot selection. The department shall defer applicants who fail to appear or select.

(c) Except for agricultural awards of not more than three acres and UXO lands, the applicant shall submit a plan for the development of the lot no later than three months following lot selection. The plan shall include but not be limited to:

- (1) Crops to be grown or livestock to be raised;
- (2) Estimated expenses;
- (3) Estimated gross income;
- (4) Method of financing;
- (5) Market plan;
- (6) Timetable for operation;
- (7) Purpose of farm - subsistence, supplemental, commercial, or otherwise; and
- (8) Other assistance needed in terms of:
 - (A) Labor, number of individuals, tasks to be performed; and
 - (B) Technical assistance.

(d) Decision for award of agricultural lots of more than three acres and pastoral lots shall be based upon:

- (1) Review and acceptance of the plan's feasibility; and
- (2) Evaluation of the general knowledge and experience of the applicant or the experienced individual who will assist in the development of the lot. That general knowledge or experience or combination

thereof may include but not be limited to the following:

- (A) Member of the Hawaii young farmer association or a future farmer of America graduate with two years of training with farming projects;
- (B) Satisfactory vocational agriculture course in high school;
- (C) Satisfactory completion of an agricultural curriculum at a university or community college leading to a bachelor of science or an associate degree in agriculture;
- (D) One year full-time work experience on a farm or ranch;
- (E) Completion of study at classes conducted by the University of Hawaii extension service; or
- (F) Persons who have had at least two years of experience as part-time farmers or ranchers.

(e) For agricultural awards of not more than three, lot size shall be determined in accordance with the current island plan as approved by the commission and lot quality factors such as topography, natural resource availability, and soil quality.

(f) In recognition of the shortage of available lands on the island of Oahu in relation to available lands in the State, an award of an agricultural lot on Oahu shall be made to applicants who are residing on the island of Oahu at time of application; provided further that a lessee of an agricultural lot on Oahu shall not be allowed to hold any other homestead lease. [Eff 7/30/81; am 2/3/83; am 8/1/85; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §207)

\$10-3-25 Award of additional acreage. (a) A lessee of an agricultural or pastoral lot may make a

written request for additional acreage of the same class.

(b) A lessee shall be contacted for an award in accordance with section 10-3-24(a).

(c) A lessee shall be eligible for lot selection provided the lessee has actively cultivated and used the agricultural or pastoral lot and is in compliance with all terms and conditions of existing leases.

(d) Following determination that a lessee is eligible for lot selection, the lessee shall be notified as provided in section 10-3-24(b).

(e) Following lot selection, the lessee shall submit a plan as required in section 10-3-24(c) incorporating into the plan, all existing acreage.

(f) Decision for award shall be based upon the provisions of section 10-3-24(d). [Eff. 7/30/81; am and comp 10/26/98; am 3/31/17; comp DEC 23 2021]
(Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-26 Residence on agricultural and on pastoral lots, when. (a) Upon award of an agricultural or pastoral lot, the applicant shall reside on the island on which the leasehold is located or move to that island within three years.

(b) A lessee of an agricultural lot of not more than three acres shall within three years:

(1) Reside and cultivate subsistence agriculture on the lot. Additional dwelling units shall be subject to department approval and infrastructure capacity. Residential and additional dwelling units shall be subject to the following:

(A) The residence or any additional dwelling units shall be built to county code; or

(B) The residence or any additional dwelling units may be exempted from county codes by the department provided that:

- (i) The plans for any non-conforming portion or portions are submitted to the department for approval;
- (ii) Any non-conforming portion or portions are certified as meeting industry standards for health and safety by a subject matter appropriate State of Hawaii licensed structural engineer or architect; and
- (iii) The units are in compliance with applicable laws and regulations including but not limited to environmental compliance, water, clean water, wastewater, and catchment,

provided further that the department shall not be held liable for any risk, loss, damage, or injury of any kind associated with undisclosed, unpermitted, or dwelling units exempted from conformance with county codes under this section.

- (C) Non-conforming and unpermitted dwellings and improvements that have not been exempted as provided above shall not be appraised for valuation by the department and shall not be included in the calculation of net proceeds pursuant to section 209 of the Act; or

- (2) Actively cultivate food crops or raise small livestock or both for subsistence agriculture purposes.

(c) Subject to subsection (d), one residence shall be permitted on agricultural lots of more than three acres or on pastoral lots. In addition, a workers' quarters may be permitted per lessee on agricultural lots of more than three acres and pastoral lots subject to the following conditions:

- (1) The lessee has actively cultivated or developed at least two-thirds of the

agricultural or pastoral tracts at all times;

- (2) The lessee shall submit a plan justifying the construction of a workers' quarters including but not limited to production processes and projections, number of workers and labor requirements, jobs to be performed, site and plot plan, house construction plans, and benefits accrued by the addition of a workers' quarters;
- (3) Approval by the commission;
- (4) Conformance to all state and county zoning and building requirements;
- (5) Adequate infrastructure, i.e., water, power, etc., shall be available to service the workers' quarters;
- (6) The lessee shall finance the construction of the workers' quarters and the department shall not loan or guarantee funds for construction of workers' quarters;
- (7) Removal of workers' quarters and related access and utility improvements at the expense of the lessee upon cancellation or surrender of agricultural or pastoral leases;
- (8) Upon transfer of agricultural or pastoral leases with workers' quarters, the transferee must justify the continued use of the workers' quarters, otherwise, removal of the workers' quarters and related access and utility improvements will be required at the expense of the transferor;
- (9) Not more than one workers' quarters shall be allowed per lessee, notwithstanding the size of the lot or lots, or the number of leases; and
- (10) Workers' quarters shall not be allowed for subsistence farming operations.

(d) A lessee possessing a residential lot lease may construct a residence on the lessee's agricultural lot or pastoral lot provided that the lessee complies with the following conditions:

- (1) The lessee makes prior arrangements to surrender or transfer the resident lot lease upon the completion of construction of the residence on the lessee's agricultural or pastoral lot. Should it be feasible, the lessee may relocate the present house;
 - (2) The lessee is financially able to assume the cost of relocation or construction of the new residence plus any related expenses necessary to maintain the agricultural or pastoral lot. The department may assist the lessee under sections 10-3-41 to 10-3-52; and
 - (3) In the event the lessee surrenders the residence lot lease, the net proceeds thereof shall be first credited to any loan granted by the department for the construction of a home on the agricultural or pastoral lot; and all other conditions imposed by this section and section 10-3-34.
- (e) The department shall not be liable for expenses incurred by the lessee for amenities brought to the lot. The department shall not provide nor be required to provide any amenities, except as it may determine in the planned development of its lands.
- (f) Upon cancellation or surrender of the agricultural or pastoral lot, the lessee shall relinquish the entire leasehold interest including the residence.
- (g) Subdivision and transfer of a portion of an agricultural lot lease of more than one acre or pastoral lot lease may be permitted upon commission approval for the remaining term of the lease to any individual who qualifies under the act, subject to the following conditions:
- (1) Upon such transfer, each resultant subdivided lot meets department criteria for designation as agricultural or pastoral and available infrastructure capacity;
 - (2) The lessee or transferee shall finance the construction of a residence on any transferred portion;

- (3) Plans for all residences to be constructed on transferred portions of leases shall be submitted to and approved by the department before construction thereof;
- (4) The lessee or transferee shall pay for any costs incurred in the processing and obtaining of the subdivision;
- (5) The department shall not be liable for expenses incurred by the lessee for amenities brought to the lot. The department shall not provide nor be required to provide any amenities except as it may determine in the planned development of its lands; and
- (6) A farm plan may be required of transferees for all transfers involving the subdivided agricultural lots of more than three acres or pastoral lots. Where required, the farm plan shall be submitted to, reviewed and accepted by the department. [Eff 7/30/81; am 9/24/83; am 11/17/84; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**]
(Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-27 Livestock and crops. (a) Lessees may raise animals intended for consumption on their agricultural leasehold to supply immediate family needs.

(b) Lessees may raise animals on a commercial basis on their agricultural leasehold only after the following conditions are met:

- (1) Submission of a plan for commercial production of animals which shall include, but not be limited to, projections for production, methods of production, sanitation control measures, and proximity to surrounding residences;
- (2) Approval by the commission;
- (3) Conformance to all state and county zoning and health laws and rules; and

(4) The operation is restricted to confined feeding and not for open grazing.

(c) Lessees with pastoral lots may raise crops for fodder to be used only for animals on the lot. A portion of the lot may be utilized to raise vegetables or fruit crops for consumption by the lessee's immediate family. [Eff 7/30/81; am 2/3/83; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §§207, 208)

§10-3-28 Lease cancellation. (a) The department may cancel a lease issued to a homesteader for the following reasons:

- (1) Violation by the lessee of a condition enumerated in sections 208 or 209 of the act;
- (2) Violation of a condition enumerated in a lease document;
- (3) Violation of a condition enumerated in this title; or
- (4) Intentional falsification of material information by the lessee on application for loan forms submitted to the department.

(b) No lease shall be cancelled without first affording the lessee the right to a hearing as prescribed in chapter 5. [Eff 7/30/81; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §§210, 216)

§10-3-29 Repealed. [R 10/26/98]

§10-3-30 Kuleana homestead leases. (a) The commission may establish a homestead program for settlement on unimproved available Hawaiian home lands to be known as the kuleana homestead program.

(b) The commission may set aside a tract or

tracts of unimproved "available lands" as defined in section 203 of the Act, for award under the kuleana homestead program. All lots awarded under this program shall be known as kuleana homestead lots.

(c) In determining whether a tract should be set aside for award as kuleana homestead lots, the commission shall consider the following:

- (1) Physical and environmental characteristics of the land;
- (2) Excessive cost to develop the tract for any reason including: the physical characteristics of the land, the distance of the land from existing electrical, water, waste water disposal, communications, and other utility systems;
- (3) Department land management plans and programs;
- (4) Applicant interest or proposals identifying tracts of land; and
- (5) Suitability for use by lessees who wish immediate access to the land for subsistence uses and who are willing to live on the land and accept an unimproved lot.

(d) The commission shall determine which homestead waiting list, or combinations thereof, may be used to make the awards and what list, or combinations thereof, may be used if the original list used to make the awards is exhausted.

(e) The department, together with interested applicants, shall develop a plan for settlement and development of the designated tract. All settlement plans shall be subject to approval by the commission. The plan shall include, but not be limited to the following:

- (1) Location and description of the tract of land;
- (2) Approximate size and number of lots to be awarded;
- (3) Approximate location of community center and common areas;
- (4) Preliminary conceptual proposals for

community management and economic development of adjacent department lands, if applicable;

- (5) Plan for the identification, protection and preservation of all significant historical, archaeological, and biological sites; and
- (6) Settlement timetable to commence after the award of the lots.

(f) The department shall provide the following for the kuleana homestead lots:

- (1) Metes and bounds descriptions of lots; and
- (2) An unpaved right-of-way to the awarded lots.
- (g) A lessee of a kuleana homestead lot shall be

subject to all applicable state codes, county ordinances, and departmental rules and policies governing land use, building, health, and safety unless and until the kuleana homestead association's building, health, and safety codes and permitting process become effective for that particular tract. The kuleana homestead association for that particular tract, in consultation with a licensed architect, registered in the State, may develop, adopt, and enforce its own zoning, building, and permitting process on the condition that standards contained in state health codes and health and safety sections and provisions contained in the Uniform Building Code are met and that a licensed architect, registered in the State, is willing to certify all building plans as part of the community developed permitting process. No kuleana homestead association developed zoning, building, health and safety codes and permitting processes shall be effective unless and until they are approved by the commission.

(h) All leases awarded by the department pursuant to the kuleana homestead program shall comply with this subchapter and subchapter 3 unless otherwise superseded by the settlement plan approved by the commission for a particular tract. In addition, all lessees shall comply with the following conditions:

- (1) Lessee agrees to participate as an active member in the kuleana homestead association for that particular tract and to comply with

- rules developed and agreements entered into by the kuleana homestead association;
- (2) Lessee agrees to accept the lot in its "as is" condition with no expectation of additional improvements beyond those specified in subsection (f); and
- (3) Lessee agrees to participate in the maintenance of the right-of-way to the kuleana homestead tract and lots. [Eff and comp 10/26/98; comp **DEC 23 2021**]
(Auth: HHC Act §§ 207, 219.1, 222) (Imp: HHC Act §§ 207, 219.7)

SUBCHAPTER 3

CONDITIONS IN LEASES

§10-3-31 Additional conditions, generally. In addition to the conditions in leases set forth in section 208 of the act, and in the lease document, all lessees shall be subject to the restrictions set forth in this subchapter. [Eff 7/30/81; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-32 Industrial activities. No industrial activities shall be allowed on homestead leaseholds. [Eff 7/30/81; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-33 Commercial activities. Except as may be otherwise provided, no homestead leasehold or portion thereof shall be used for commercial activities of such a nature as to constitute a nuisance or threat to health, safety, and environment. [Eff 7/30/81; am

2/3/83; comp 10/26/98; am 3/31/17; comp **DEC 23 2021**]
 (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-34 Building requirements. No building structure or improvement may be constructed on the premises without written approval from the department. Such an approval shall be considered only after submission of a plan as to design, materials, and probable value and use of the structure to be built on the leasehold. Building structures or improvements shall meet building and zoning codes and other ordinances and regulations of the respective counties except as otherwise provided by the department. [Eff 7/30/81; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-35 Contracts covering lease lands. No lessee may, without written approval from the commission, enter into any contract, joint venture, agreement or other arrangement of any sort with a third person on lands covered by lessee's lease for the cultivation of crops or the raising of livestock. [Eff 7/30/81; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-36 Transfer of homestead leases. (a) A lessee, with the written approval of the commission, may transfer the leasehold to any individual who is at least eighteen years old and qualified under the act provided that leases for vacant or undeveloped lots and undivided interests, or any interest therein, shall not be sold but may be transferred for no consideration or by succession.

(b) Lease transfers to qualified relatives of a lessee or to beneficiaries on a waitlist shall have

priority for processing over transfers to beneficiaries not on a waitlist.

(c) The transferee shall immediately occupy the residence lot or use or cultivate the agricultural, pastoral, or kuleana lot. Failure to occupy or use the lot within sixty days from date of transfer shall constitute grounds for cancellation of the lease.

(d) A transferee may own an interest in non-Hawaiian home lands real property, regardless of degree of ownership. [Eff 7/30/81; am 2/3/83; am 9/24/83; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-37 REPEALED. [R 1/20/86]

§10-3-38 Subdivision and transfer of a portion of residential lot leasehold. A lessee of a residential lot, with the approval of the commission, may subdivide and transfer a portion of the lot for the remaining term of the lease to any individual who is a native Hawaiian and is at least eighteen years old; provided that after the transfer, each lot conforms to county zoning standards. The department shall not be required to finance the construction of the house on the transferred portion. Plans for construction of the house shall be subject to the approval of the department. The department shall not be required to pay for any costs incurred in the processing and obtaining of the subdivision. [Eff 7/30/81; am 1/20/86; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-39 Occupancy and other requirements. (a)

The time period by which a lessee is required to occupy a residential lot or to commence to use or to cultivate an agricultural or pastoral lot shall be stipulated in the lease.

(b) Except as otherwise provided in the lease, the department may require a lessee of an agricultural lot of more than three acres or pastoral lot to have under development, cultivation, or use at least two-thirds of the useable acreage at all times.

(c) Lessees shall be responsible for maintaining their premises secure from fire, theft, and vandalism and shall comply with the requirements of their lease at all times.

(d) A lessee shall provide the department with a current mailing address and such other information as the department may require. The department shall be notified of a change of address in accordance with section 10-3-10(a). [Eff 7/30/81; am 1/20/86; comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40 (Reserved)

SUBCHAPTER 3.1

SUPPLEMENTAL DWELLING UNITS

§10-3-40.01 Purpose. The purpose of this subchapter is to provide qualified residential lessees 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 **DEC 23 2021**] (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 for use as his or her residence.

"Good-standing" means the status of a lessee who is in full 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.

"Supplemental dwelling unit (SDU)" means a dwelling unit that is supplementary to the primary dwelling, is attached or detached, is smaller in size, has a separate entry, and includes its own kitchen, bedrooms, and bathroom facilities. SDU includes "ohana dwelling unit" in Hawaii county, "additional dwelling unit" in the city and county of Honolulu and Kauai county, and "accessory dwelling" in Maui county. [Eff and comp **DEC 23 2021**] (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. The program shall be evaluated by the department after three years. If deemed successful, the department may continue the program, 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 if the SDU program is discontinued. [Eff and comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

\$10-3-40.04 SDU application and review. (a)

The lessee shall complete the department's SDU application. Within 30 days, the department shall notify the lessee to proceed with the respective county SDU application or if lease compliance matters must first be addressed. If the lessee fails within 30 days to address the lease compliance matters with the department, the application shall be cancelled.

(b) 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. Commission approval is required before construction may begin. The department shall notify the lessee of placement on the commission agenda.

(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. Failure shall result in cancellation of department approval of the SDU application. [Eff and comp

DEC 23 2021

(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 not landlocked;
- (3) The lot does not have more than one dwelling unit, attached or detached, already existing on the property;
- (4) Private covenants, conditions, and restrictions do not prohibit SDUs; and
- (5) Respective county requirements for a

supplemental dwelling unit on a residential lot. Unless otherwise provided in a memorandum of agreement with the respective county, the department may, with the approval of the chairman, authorize a case-by-case waiver of certain county regulatory requirements based upon specific area conditions, unique site characteristics, or other constraints related to the lot. [Eff and comp **DEC 23 2021**] (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 **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.07 Supplemental dwelling units. (a) Any SDU shall comply with the respective county's SDU area maximums for residential lots.

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

- (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 'ohana occupant may

contribute toward household expenses such as utilities and mortgage payments, if applicable, but rent shall not be charged. The lessee shall be ultimately responsible for the mortgage payments, utility charges, maintenance, and repairs of the SDU.

- (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 biological relationship to the lessee. The department shall prioritize rental SDU requests from lessees with a verifiable potential tenant currently on the applicant waitlist for a homestead.

- (A) Short term rentals shall be prohibited. The minimum rental period agreement on the unit shall be six months;

- (B) The lessee shall provide a lease agreement to the tenant that includes a prohibition on sublet and assignment unless to another native Hawaiian as verified and authorized by the department; and

- (C) Each agreement shall carry a rider provided 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 **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.08 Compliance with housing laws.

Lessees participating in the SDU program shall comply with all applicable federal, state, and local laws related to the provision or rental of housing including, but not limited to, the residential landlord and tenant code, HRS ch. 521, and section 804 of the fair housing act, 42 U.S.C. § 3604. Failure to comply with all applicable federal, state, and local laws shall be cause for lease cancellation pursuant to section 10-3-28. [Eff and comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.09 Existing structures, non-compliance.

Any structures on the lot that have not been approved by the department or are unpermitted, or both, shall be brought into compliance through the SDU process or be removed at the lessee's expense. [Eff and comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §208)

SUBCHAPTER 4

LOANS AND FUNDS

§10-3-41 Funds and accounts. There shall be established in the treasury of the State such revolving funds, special, and other funds as set forth in the act. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§10-3-42 Purposes of loans. The department may make loans from any loan fund to lessees, and where

applicable, to any cooperative association all of whose members are lessees. Such loans may be made for the following purposes:

- (1) The repair, maintenance, purchase, or erection of dwellings on Hawaiian home lands, and the undertaking of other permanent improvements thereon;
- (2) The purchase of livestock, swine, poultry, fowl, and farm equipment; and
- (3) Otherwise assisting in the development of tracts, and farm and ranch operations;
- (4) The cost of:
 - (A) Breaking up, planting, and cultivating land and harvesting crops;
 - (B) Purchase of seeds, fertilizers, feeds, insecticides, medicines, and chemicals for disease and pest control for animals and crops, and related supplies required for farm and ranch operations;
 - (C) The erection of fences and other permanent improvements for farm or ranch purposes; and
 - (D) Marketing farm or ranch products; and
- (5) To assist lessees in the operation or erection of theaters, garages, service stations, markets, stores, and other mercantile establishments, all of which shall be owned by lessees of the department or by organizations formed and controlled by lessees. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act \$222) (Imp: HHC Act \$214)

\$10-3-43 Authorized actions. For purposes authorized under the act, the department may:

- (1) Use moneys in the operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, to enter into such undertaking, agree to such

conditions, transfer funds therein available for such expenditure, and to do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;

- (2) Use available funds, except moneys from the Hawaiian home loan fund, to secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and to pay the interim interest or advances required for loans;
- (3) Contract private agencies to service loans made by the department to lessees or cooperative associations, the fees for such servicing shall be assumed by the lessee or cooperative association, or from a portion of the interest charged by the department on loans to lessees or cooperative associations;
- (4) Guarantee the repayment of loans made to homestead lessees of Hawaiian home lands by other governmental agencies or private lending institutions as provided by the act;
- (5) Combine available moneys from various revolving funds to make loans to lessees for the purposes enumerated in section 10-3-42; and
- (6) Exercise such other powers as authorized by the act. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §214)

§10-3-44 Loan applications. (a) Applications for a loan or a loan guarantee shall be made on forms provided by the department. All applications shall be filed with the department. The filing may be made with district offices of the department.

- (b) The applicant shall not be required to pay

any fees in connection with the filing of an application but shall be charged for the cost incurred by the department in obtaining credit reports and other financial information deemed necessary by the department.

(c) A holder of a homestead lease may apply to the department for the approval of a loan to be made by other government agencies or private lending institutions. Upon receipt of an application, the department shall review the application, and determine whether or not to guarantee the loan based on loan standards set forth in section 10-3-46. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act \$222) (Imp: HHC Act \$\$213, 214)

\$10-3-45 Application processing. Applications approved by the department shall be submitted to the commission within sixty working days of receipt by the department together with a summary of the applicant's financial situation including gross and net monthly income, outstanding indebtedness, and the number of dependents. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act \$222) (Imp: HHC Act \$\$213, 214)

\$10-3-46 Loan standards. Loans may be made to applicants who are residential lessees, based on the following criteria:

- (1) Income ratio: the relation that gross monthly income bears to monthly payment of principal and interest;
- (2) Family size: each person supported from the income of the lessee and co-applicant shall be counted as a family member for the purpose of computing and qualifying for a loan and term. The lessee shall submit to the department a notarized statement to this effect.

- (3) Applications for loans for any family receiving public assistance from the department of human services will be considered for approval if:
 - (A) The monthly payment for the loan is within the amount that is available for housing--shelter allowance minus anticipated utilities--in accordance with current department of human services standards; and
 - (B) The applicant is able to assume the financial obligation imposed by a loan;
- (4) Credit standing: the applicant shall have satisfactory credit standing in the community as determined by the department. The department may waive this requirement if upon consideration of all the circumstances surrounding the applicant's financial condition, it finds that the applicant will be able to repay the loan in accordance with the loan contract; and
- (5) If the loan applicant is found by the department to have sufficient resources or credit to secure financing from nondepartmental sources to undertake the purpose for which the loan is sought, no departmental loan shall be made. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§10-3-47 Loan conditions. (a) Generally, in determining the term of loans, the department shall consider the following:

- (1) The applicant's financial capacity; and
- (2) Age and condition of dwelling or building, based on the estimated expected remaining life span. The term of a loan shall be determined by the department, but in no

event be longer than the term as may be authorized by the act.

(b) Loans shall be made in an amount to be determined by the commission, but in no event be more than the amount authorized by the act.

(c) Loans shall bear interest at the rate authorized by the act and rules.

(d) Loan interest rates shall be determined based on the availability and source of funds as well as the current interest rate for such loans in the private sector; provided that the department, on a case-by-case basis, may establish such rates as it shall determine best effectuate the purposes of the individual borrower, and to offer loans of comparable interest rates to all borrowers.

(e) Interest on loans made by the department shall commence to accrue on the disbursed amount on the twentieth day of the month or on the day of actual disbursement following the twentieth day of the month in which the first disbursement of funds is made.

(f) Repayment of loans made by the department shall commence on the nineteenth day of the month following the month in which the first disbursement of funds is made.

(g) The borrower may be required to pay a monthly service fee when loan payments are made payable to, or collected by a private lending institution.

(h) The payment of any installment due may be postponed in whole or in part by the department for reasons as it deems good and sufficient and until such later date as it deems advisable. Postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.

(i) Whenever a borrower is delinquent with loan repayments, the department may demand that the borrower assign wages in part or all moneys due or to become due to such borrower by reason of any agreement or contract to which the borrower is a party, to the department to assure repayment of the loan.

(j) Whenever a borrower is more than one hundred twenty days delinquent on loan repayments, the

department may start garnishment proceedings in accordance with the applicable statute, or start cancellation proceedings as authorized under the act. [Eff 7/30/81; am and comp 10/26/98; comp DEC 23 2021] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214, 215, 216)

§10-3-48 Farm loans. (a) Farm loans shall be governed by sections 213, 214 and 215 of the act.

(b) The maximum loan for an individual agricultural lot lessee shall be determined by the commission, but in no event be more than the amount authorized by the act. For an agricultural cooperative association, the maximum amount shall be determined by the commission on the basis of proposed operations of the cooperative and the available security. Farm loans shall bear interest at the rates authorized by the act or these rules.

(c) Cost estimates from the supplier or material house for labor and for building requirements, materials, machinery, equipment, seed, etc., must be submitted to the department within thirty days after application for a farm loan is made for items or services to be purchased with the proceeds of the loans. An annual or monthly projected income for return of investment shall also be submitted along with the cost estimates.

(d) A feasibility study of repayment schedules to projected income from operations shall be submitted to applications for review and recommendation for loan approval. The department may establish repayment schedules that vary based on projected income from operations, the type of loan, and the amount of the loan.

(e) Each farm loan shall be subject to whatever concurrently executed security agreement is in current use by the department pursuant to HRS, chapter 490. [Eff 7/30/81; am and comp 10/26/98; comp DEC 23 2021] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§10-3-49 Borrowed funds. The department may borrow funds for the purpose of making loans to lessees of residence lots for purchasing, repairing, maintaining, erecting or improving homes on Hawaiian home lands. Such loans shall bear interest at the same rate of interest as that paid by the department to the lender, plus one-half of one percent per year. The term of such loans shall not exceed thirty years. [Eff 7/30/81; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§10-3-50 Additional funds. The department may make loans at such terms and conditions from any additional funds as the legislature may hereafter provide. In the event such additional funds are made available to the department without any specific terms, conditions, restrictions, such funds shall be subject to the conditions and restrictions imposed by sections 214 and 215 of the act. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§10-3-51 Operation of funds. The department may invest and reinvest any of its funds, not otherwise immediately needed for the purposes of the funds, in such bonds and securities as authorized by state law for the investment of sinking fund moneys. Any interest or other earnings arising out of such investment shall be credited to and deposited in such funds as may be authorized by the act. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §§213, 225)

§10-3-52 Hawaiian home receipts fund. (a) At the end of each quarter, all moneys in the Hawaiian home receipts fund shall be transferred as authorized

by the act. At the commission meeting immediately before or at the end of each quarter, the department or commission on its own motion may recommend for commission approval a plan for transfer of all moneys in the Hawaiian home receipts fund for that respective quarter. The plan for transfer shall take into consideration the department's budget projections as well as priorities established by the commission for the moneys.

(b) If the commission fails to approve a plan for transfer, all moneys in the Hawaiian home receipts fund shall be transferred at the end of that respective quarter as follows:

- (1) Nine per cent to the operating fund; and
- (2) Ninety-one per cent to the general loan fund. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §213)

§§10-3-53 to 10-3-60 (Reserved)

SUBCHAPTER 5

SUCCESSORS TO LESSEES

§10-3-61 Designation of successor. (a) As provided in section 209 of the act and in this section, the lessee shall designate the relative or relatives to whom the lessee directs the interest in the tract to vest upon the lessee's death from among the following relatives:

- (1) Husband, wife, children, or grandchildren who are at least one-quarter Hawaiian; or
- (2) Father, mother, widows or widowers of the children, brothers and sisters, widows or

widowers of the brothers and sisters, or
nieces and nephews who are native Hawaiian.

A lessee may designate a successor or successors at the time of execution of the lease; provided that the lessee shall file the designation in writing at the department and the department shall acknowledge the designation in order for the designation to be deemed filed. A lessee may change the designation of successor or successors at any time; provided that the lessee shall file the change of designation in writing at the department and the department shall acknowledge the change of designation in order for the change of designation to be deemed filed.

The lessee or designated successor shall provide documentation to establish eligibility of the designated successor and the department shall determine whether a designated successor is qualified to be a lessee of Hawaiian home lands.

(b) An alleged qualified relative of a lessee may obtain genetic testing under section 10-3-2.2 to aid in establishing qualification as a successor to the lease. [Eff 7/30/81; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §209)

§10-3-62 Reversion to the department. Where a lessee dies having failed to designate a qualified successor, the department may select a successor under the procedure provided in section 209 of the act. If no selection can be made, the lease shall be cancelled. As provided in section 209 of the act and in this subchapter, the department shall make any authorized payments to the appropriate recipient. The land subject to the lease shall resume its status as unleased Hawaiian home lands, and the department shall be authorized to lease the land to a native Hawaiian as provided in the act. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §209)

§10-3-63 Notice to successors. Upon the death of a lessee leaving no designated successor, the department shall publish a public notice at least once in each of four successive weeks in a newspaper of general circulation in the State. The notice shall state briefly that all persons claiming to be relatives of the lessee qualified to succeed to the lease shall present themselves at the department with proof of their qualifications, within four months from the first day of publication of the notice or be forever barred from succeeding to the lease. Those persons failing to present themselves within four months from the first day of publication of the notice shall be forever barred from succeeding to the lease in question. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §209)

§10-3-64 Appraisals. (a) As provided in the act and in this section, the department shall appraise the value of all improvements of the tract or tracts and growing crops and stock including aquacultural improvements or stock, if any, if:

- (1) A lessee surrenders his lease;
 - (2) A lessee dies leaving no person or persons qualified to be successor lessee or lessees;
 - (3) The department is unable to designate a successor; or
 - (4) The department cancels a lease.
- (b) An appraisal made pursuant to this section shall be made by one of the following methods:
- (1) By a disinterested appraiser hired and paid by the department;
 - (2) By a disinterested appraiser mutually agreed to by the department and the lessee or the deceased lessee's legal representative; provided that the cost of the appraisal shall be borne equally by the two parties; or,

- (3) By not more than three disinterested appraisers of which the first shall be hired and paid by the department. If the lessee or the deceased lessee's legal representative does not agree with the appraised value, the lessee or the deceased lessee's legal representative shall hire and pay for the services of a second appraiser. The second appraiser's report shall be submitted to the department not later than ninety days from the date of the first appraisal report. The first appraisal shall be used if the second appraiser is not hired within thirty days from the date the department transmits the first appraisal report to the lessee or the deceased lessee's legal representative. The first appraisal shall also be used if the second appraiser does not submit an appraisal report to the department within ninety days from the date of the first appraisal report. If the values of the first and second appraisals are different and the two parties do not agree to a compromise value between the first and second appraisals, a third appraisal shall be made. An appraiser who shall be appointed by the first two appraisers not later than ninety days from the date of the second appraisal report shall make the third appraisal. The third appraiser shall determine the final value. The cost of the third appraisal shall be borne equally by the two parties.

(c) The lessee or the deceased lessee's legal representative shall indicate, on a form provided by the department, which of the three appraisal methods described in subsection (b) shall be followed. The selection of appraisal method shall be made not later than thirty days from the date the form is provided to the lessee or the deceased lessee's legal representative by the department. If no selection of

appraisal method is made in thirty days, the department shall hire and pay for the services of a disinterested appraiser whose appraisal shall be used. [Eff 7/30/81; am and comp 10/26/98; comp (Auth: HHC Act §222) (Imp: HHC Act §209) **DEC 23 2021**]

§10-3-65 Payments. (a) The department shall pay to the appropriate recipient as specified in section 209 of the act or to the previous lessee, as the case may be, the appraisal value less:

- (1) Any indebtedness to the department;
- (2) Taxes;
- (3) Any other indebtedness the payment of which has been assured by the department;
- (4) Any costs incurred by the department for the upkeep and cleaning of the leased premises; and
- (2) Any costs incurred by the department for the removal of any crops or improvements.

(b) Payments provided in subsection (a) shall be made out of the loan funds and shall be considered an advance therefrom, reimbursable out of payments by the transferee or new lessee to the tract involved.

(c) The department may make the payment only after a new lessee is found and upon commencement of the new lease. [Eff 7/30/81; am 2/3/83; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §209)

§10-3-66 Cancellation and surrender. (a) Upon receipt of written notification of a lessee's intent to surrender the lessee's leasehold interest, the department shall process the same. The department may forego acceptance of a surrender until a new lessee is found and it is determined by the department that sufficient funds are available to meet the payments required. At all times until acceptance of surrender the lessee shall remain responsible for the demised

leasehold together with any improvements thereon, and shall remain liable for all taxes, assessments and charges of whatever kind and nature, on said tract and improvements thereon, and shall keep insured any structures thereon.

(b) Upon the cancellation or surrender of a homestead lease, if the department determines that any structure on the premises is in such disrepair that demolition of the structure is required, the lessee shall be allowed to sell the structure within ninety days from the date of the cancellation or acceptance of surrender; provided that any proceeds be first used to satisfy any indebtedness to the department, taxes, or any other indebtedness the payment of which has been assured by the department, or any costs incurred by the department for upkeep and cleaning of the leased premises. If the lessee does not sell or remove the structure, the department shall demolish the structure and the cost thereof shall be assessed the lessee. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 1981**] (Auth: HHC Act §222) (Imp: HHC Act §209)

\$10-3-67 Cancellation of lease when tract is abandoned. If a lessee has abandoned the tract by failing to use or occupy the premises or cannot be located after at least two attempts to contact the lessee by certified mail, the department shall publish a public notice at least once in each of four successive weeks in a newspaper of general circulation in the State. The notice shall direct the lessee to present himself or herself at the department within one hundred twenty days from the first day of publication of the notice. The notice shall also state that the lease will be canceled in accordance with sections 210 and 216 of the act and that the department shall appraise the value of the improvements and growing crops and stock, if any, if the lessee fails to respond by the date set by the public notice. In addition, the department shall post

a public notice on the abandoned tract. After cancellation of the lease and completion of the appraisal, the department shall make the payment in accordance with section 10-3-65 if there are any net proceeds and if the previous lessee is located. [Eff and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §209)

§§10-3-68 to 10-3-70 (Reserved).

SUBCHAPTER 6

COMMUNITY PASTURES, FEES, AND CHARGES

§10-3-71 Location of community pastures. The department when practicable and as authorized by the act may maintain community pastures in such locations as it may determine. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-72 Records. A record of all stock in the community pastures shall be kept by the department. [Eff 7/30/81; comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-73 Responsibilities. (a) The lessee shall be responsible for:

- (1) Permanently branding all animals with a registered brand of the lessee;
- (2) Worming, and testing all animals and confirming district origin;

- (3) Removing sick, diseased, or severely injured animals; and
- (4) Arranging for removal of animals at least forty-eight hours in advance of the move with the district manager.
- (b) The department shall be responsible for:
 - (1) Managing and supervising the operation;
 - (2) Providing and maintaining adequate fence, locked gates, water, salt and forage;
 - (3) Providing adequate facilities for working cattle;
 - (4) Notifying lessee of any disease, injury, theft, sickness or loss of weight with regard to any animal; and
 - (5) Identifying newborn calves with ear marks pending branding (Molokai only). [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-74 Liability for loss. The department shall not be held liable for any death, loss, injury, theft, sickness, or loss of weight to any animal. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-75 Community pasture terms and conditions.

- (a) The approximate number of heads to be carried in the community pastures shall be set by the chairman from time to time according to the carrying capacity of the pastures.
- (b) Until further action by the department, four head of cattle of any age per lessee shall be considered the maximum number of cattle in any community pasture.
- (c) In the case of extreme shortage of feed or the imminent lack of stock feed, all persons utilizing the pasture shall be required to remove the market

stock to the amount designated by the chairman, within ten days after notice.

(d) Holders of agricultural leases shall have first priority of running stock in community pastures. Other lessees may use residual quotas as determined by the department.

(e) Each lessee shall have one, and only one, brand which shall be registered with the department of agriculture. Lessee shall supply the department with a facsimile of the brand and shall brand cattle belonging to the lessee. All animals on community pastures shall be owned by lessees and shall be branded with the lessee's brand before entering the community pasture.

(f) Only one type of ear mark or tag shall be used by lessee; this ear mark or tag shall be registered with the department.

(g) At no time shall any of the lessees or their representatives be allowed to enter community pastures for purposes of removing or inspecting stock without first obtaining written permission from the authorized agent of the department. This written permission shall be presented to the pasture keeper, who shall then accompany the permit holder. Only such authority as is contained in the permit may be exercised by the holder thereof.

(h) One general drive shall be conducted in July on Molokai for the purpose of branding, castrating, counting and testing. Branding shall be allowed in the pasture only during this period. All stock owners shall assist in drives and properly identify stock belonging to them, either in person or by duly authorized representatives. All owners of livestock shall be notified one week in advance of each drive. Owners failing to attend shall be bound by the count of the department. [Eff 7/30/81; am and comp 10/26/98; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-76 Fees and charges. (a) The department shall assess fees for scaling services commensurate with local industry standard except that lessees may pay a reduced fee.

(b) To recover costs, the department may establish rental fees and service charges for the use of meeting rooms or halls, park facilities, and resource management areas subject to approval by the commission.

- (1) Fees and charges for use of meeting rooms or halls, and park facilities shall be based on:
 - (A) Actual operating costs including utilities, maintenance and repair, custodial services, and security; and
 - (B) Current capital costs, provided that recognized homestead community associations may use meeting rooms or halls, and park facilities to conduct association business for a rental fee of \$50 per twenty-four hours or fraction thereof, and a discounted fee schedule may be set for lessees. The department shall have priority use of department meeting rooms or halls even over prior existing reservations with at least fourteen calendar days notice.
- (2) As applied to resource management areas, a resource management plan shall be developed in consultation with beneficiaries to:
 - (A) Identify resource management area issues, concerns, and opportunities;
 - (B) Identify management actions to address resource management area issues, concerns and opportunities;
 - (C) Identify capital or operational costs or both to implement management actions;
 - (D) Calculate needed fees or service charges, or both, based on estimated capital or operational costs, or both, of identified management actions. The

department shall monitor the area to determine whether the management actions have been successful under the management plan. Future management prescriptions including re-evaluation of a fee schedule shall be based on evaluations of whether management actions have been successful.

(c) Patrons who have outstanding accounts, have provided false information when applying to use department facilities, or have previously misused the department's property, grounds, or facilities may be denied use of department facilities and resource management areas.

(d) Water from department systems shall be sold at rates established by the commission. The department shall establish the frequency of billing and may determine a minimum monthly charge.

(e) Fees and charges shall be revised when necessary and approved by the commission during the odd year of the fiscal biennium. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; am 3/31/17; comp **DEC 23 2021**] (Auth: HHC Act §222) (Imp: HHC Act §211)

Amendments and compilation of chapter 10-3,
Hawaii Administrative Rules, on Summary page dated
[], were adopted on [],
following a public hearing held on June 30, 2021,
after public notice was given in the Honolulu Star
Advertiser, Hawaii Tribune-Herald, West Hawaii Today,
and Garden Island News on May 26, 2021, and in the
Maui News on May 27, 2021.

These rules shall take effect ten days after
filing with the Office of the Lieutenant Governor.

William J. Aila, Jr.

WILLIAM J. AILA, JR.
Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:

/s/ Katie Lambert

Deputy Attorney General

David Y. Ige

DAVID Y. IGE
Governor
State of Hawaii

12/13/21

Date:

Filed

LIEUTENANT GOVERNOR'S
OFFICE

'21 DEC 13 P2:00

