



HAWAIIAN HOME LANDS

HAWAIIAN HOMES COMMISSION · DEPARTMENT OF HAWAIIAN HOME LANDS

Lease Successorship

November 21, 2022

HHCA SECTION 209: SUCCESSORS TO LESSEES

- Section 209 of the *Hawaiian Homes Commission Act, 1920*, as amended (Act), provides that upon the death of a lessee, the decedent's interest in the lease shall vest in a relative from among the following relatives:
 - A spouse, children, grandchildren, or siblings who are of not less than 25 percent Hawaiian ancestry; **or**
 - Parents, widows or widowers of children, widows or widowers of siblings, or nieces and nephews who are of no less than 50 percent Hawaiian ancestry.
 - Lease successors need not be eighteen years of age. [Note, however, probate court must appoint a conservator to handle the financial affairs of a minor which includes the execution of a DHHL lease, for example.]



HHCA SECTION 209: DESIGNATION OF SUCCESSOR

- The designation shall be in writing, may be specified at the time of execution of the lease with a right in the lessee in similar manner to change the beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest the interests in the successor or successors so named.



SECTION 10-3-61 HAR: DESIGNATION OF SUCCESSOR

- 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 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.



TENANCY

- When a lessee designates more than one successor to his or her lease, the lessee must choose a tenancy under which the successors will hold the lease:
 - **Joint Tenancy** – Successors are entitled to equal undivided interests in the leasehold interest, with the right of survivorship;
 - **Tenancy by the Entirety** – Successors are husband and wife and are entitled to equal undivided interests in the leasehold interest, with the right of survivorship;
 - **Tenancy in Common** – Successors are entitled to separate and distinct interests which may or may not be of equal proportions, but with unity of possession. Each successor will have the right to name the successor(s) to his or her interest.



SUCCESSORSHIP PROCESS: WHICH ONE?

- There are two separate processes by which an individual or individuals may succeed to a lease in the event of a lessee's passing—processes which are triggered solely by whether the lessee named a qualified designated successor prior to death.



WHERE A QUALIFIED NAMED SUCCESSOR EXISTS ...

- The successorship process begins with the family submitting a death certificate for the deceased lessee.
- Staff checks for a successor designation on file.
- Staff reviews documentation of the designee to ensure successor meets the requisite familial relationship to the decedent and the appropriate Hawaiian ancestry quantum per Section 209 of the Act.
- *Transfer Through Successorship* lease document drafted and reviewed by staff and the Department of the Attorney General.
- Successor signs the lease; Chairman executes on behalf of the department and the document is recorded.



PUBLIC NOTICE

§ 10-3-63 HAR Notice to successors.

- **Where a lessee passes away with no designated successor**, the department publishes a public notice at least once in each of four successive weeks in a newspaper of general circulation in the State.
- To fulfill the § 10-3-63 HAR publication requirement, the department publishes legal notices in the Honolulu Star-Advertiser, the Hawaii Tribune Herald, West Hawaii Today, the Maui News and the Garden Island newspapers.



PUBLIC NOTICE (CONT.)

- The notice states 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.



WHERE THERE IS NO NAMED SUCCESSOR...

- The successorship process begins with the family submitting a death certificate for the deceased lessee.
- Staff checks for a successor designation on file.
- If there is no named successor, the department follows the public notice process provided in Section 10-3-63 HAR.
- A respondent to the notice shall submit a request to succeed along with proof of qualification within four (4) months from the first date of publication or be forever barred from succeeding to the lease in question.



WHERE THERE IS NO NAMED SUCCESSOR... (CONT.)

- Staff reviews the documentation of a respondent to ensure he or she meets the requisite familial relationship to the decedent and the appropriate Hawaiian ancestry quantum per Section 209 of the Act.
- Department drafts submittal recommending the Commission designate the qualified respondent(s) as successor(s) to the lease in question.
- *Transfer Through Successorship* lease document drafted and reviewed by staff and Department of the Attorney General.
- Designated successor(s) sign(s) the lease; Chairman executes on behalf of the department and the document is recorded.



LEASE SUCCESSORSHIP

Questions?

