HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 2923

A BILL FOR AN ACT

RELATING TO NINE HUNDRED NINETY-NINE YEAR HOMESTEAD LEASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 171-99, Hawaii Revised Statutes, is amended to read as follows:

"**§171-99 Continuation of rights under existing homestead leases, certificates of occupation, right of purchase leases, and cash freehold agreements.** (a) Issuance of land patents to occupier or lessee of homestead lands. A fee simple patent shall be issued to every existing occupier under a certificate of occupation issued heretofore, and to every lessee under a nine hundred and ninety-nine year homestead lease issued heretofore, of public lands, where the lands have been improved under the certificate or lease, or have been used as a place of residence by the occupier or lessee for an aggregate continuous period of not less than ten years upon payment to the board of land and natural resources of a fair market price, disregarding the value of the improvements made by the occupier or lessee, which price shall be determined by appraisal as provided for in this chapter; provided that the board may exclude from these patents areas required as roadways to other lots.

(b) Issuance of patent, lessee of right of purchase lease. The lessee of any existing right of purchase lease, at a time and under conditions that are contained in the lease, shall be entitled to a land patent from the board conveying to the lessee a fee simple title to the land described in the lessee's lease upon the payment of the fair market price of the land as determined by appraisal as provided for in this chapter; provided that the lessee has reduced to cultivation twenty-five per cent of the premises and has resided thereon not less than two years and has substantially performed all other conditions of the lessee's lease.

(c) Cash freeholds, agreement, patent, conditions. At the end of three years from the date of the payment of the first installment, the holder of a freehold agreement [~~is~~] shall be entitled to a land patent for the premises described therein, if the following conditions, in addition to those set forth herein, have been substantially performed:

(1) Payment of the balance of the purchase price in equal installments, in one, two, and three years respectively, from the date of the freehold agreement with interest annually at the rate of four per cent; provided that the freeholder may pay the installment

before it is due and thereby stop the corresponding interest;

(2) Cultivation of not less than twenty-five per cent of the area of the premises, and the planting and care of not less than an average of ten timber, shade, or fruit trees per acre, if agricultural land, at any one time before the end of the third year, or fencing in the premises if pastoral land within that time; provided that if the premises are classed as pastoral-agricultural land, the foregoing alternative conditions shall apply respectively to the two kinds of land;

(3) Maintenance by the freeholder of the freeholder's home on the premises from the end of the first to the end of the third year;

(4) Conditions for the prevention of waste, the planting of trees or the protection of trees growing or to be planted on the premises, or for the destruction of vegetable pests that may be on the premises or the prevention of the future introduction of pests thereon;

(5) Payment of all taxes that may be due on account of the premises.

The holder of a freehold agreement shall allow the land agents to enter and examine the premises at all reasonable times to see that the conditions are being performed. The holder shall not assign or sublet, conditionally or otherwise, the holder's interest or any part thereof, under the freehold agreement, without the written consent of the board indorsed on the agreement; and provided further that freeholders having the whole interest in a freehold agreement, at any time when all the conditions thereof to be performed by the freeholder up to that time shall have been substantially performed, may surrender to the government the interest by delivery of the freehold agreement to the land agent, with the intention to surrender the interest clearly indorsed thereon and signed by them and duly attested. The surrender shall release the freeholders from all further duty or performance of the conditions of the instrument surrendered. But no surrender shall be permitted if any freeholders are under the age of eighteen years, unless the minors are represented by statutory guardians; and provided further that any freeholder over the age of eighteen may assign the freeholder's interest to the freeholder's cotenants.

(d) Right of purchase lease; termination, forfeiture, or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of the lease or a freehold agreement, the board, in its discretion and within the limit of its authority, may open the premises or any part thereof for disposition in the manner or for the uses as provided in this chapter. Before the disposition, the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of finance shall pay the amount of the valuation upon the requisition of the board out of the funds.

[~~(e) Assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's family.~~

1 ~~For the purposes of this section, "family" means the~~
2 ~~spouse, reciprocal beneficiary, children, parents, siblings,~~
3 ~~grandparents, grandchildren, nieces, nephews, a parent's~~
4 ~~siblings, children of a parent's siblings, and grandchildren of~~
5 ~~a parent's siblings, of the occupier or lessee.~~
6 ~~All the successors shall be subject to the performance of~~
7 ~~the unperformed conditions of the certificate of occupation or~~
8 ~~the homestead lease.~~]
9 (e) Interests, descent; certificate of occupation or
10 homestead lease. In case of the death of any occupier or lessee
11 under an existing certificate of occupation or existing
12 homestead lease, all the interest of the occupier or lessee, any
13 conveyance, devise, or bequest to the contrary notwithstanding,
14 in land held by the decedent by virtue of the certificate of
15 occupation or homestead lease shall vest in the relations of the
16 decedent as follows:
17 (1) In the widow or widower;
18 (2) If there is no widow or widower, then in the children;
19 (3) If there are no children, then in the widows or
20 widowers of the children;
21 (4) If there are no such widows or widowers, then in the
22 grandchildren;

(5) If there are no grandchildren, then in the parents or surviving parent;

(6) If there are no parents or surviving parent, then in the sisters and brothers;

(7) If there are no sisters or brothers, then in the widowers or widows of the sisters and brothers;

(8) If there are no such widowers or widows, then in the nieces and nephews;

(9) If there are no nieces or nephews, then in the widowers or widows of the nieces and nephews;

(10) If there are no such widowers or widows, then in the grandchildren of the sisters and brothers;

(11) If there are no grandchildren of any sister or brother, then in the State.

All the successors, except the State, shall be subject to the performance of the unperformed conditions of the certificate of occupation, or the homestead lease, in the same manner as the decedent would have been subject to the performance if the decedent were still alive; provided that if a widow or widower in whom the interest vests, thereafter marries again and then dies, leaving a widower or widow and a child or children of the first marriage surviving, the interest of the deceased shall

1 vest in the child or children; and provided further that in case
2 two or more persons succeed together to the interest of any
3 occupier or lessee, according to the foregoing provisions, they
4 shall hold the interest by joint tenancy so long as two or more
5 survive, but upon the death of the last survivor, the estate
6 shall descend as provided in paragraphs (1) to (11).
7 (f) Option of cotenant to compel others to buy or sell.
8 In case two or more persons become cotenants under any existing
9 right of purchase lease, certificate of occupation, or homestead
10 lease by inheritance or otherwise, any one or more of the
11 persons, less than the whole number, may file in the office of
12 the land agent an offer to the remainder of the persons to buy
13 their interest in the premises or to sell them their own
14 interest therein at a stated price, according to the proportion
15 of the respective interest in question, and may deposit with the
16 land agent the amount of the offered price in money, with a fee
17 of $10. The land agent shall thereupon notify the persons to
18 whom the offer is made of the nature of the offer and order them
19 to file with the land agent their answer within sixty days
20 whether they will buy or sell according to the offer. If the
21 persons to whom the offer is made file with the land agent
22 within sixty days of the time of their receiving the

notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to the persons the amount of the consideration deposited with the land agent according to their individual interest; and the interest of the persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee.

If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer [~~,~~]is[~~,~~] mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit the amount representing the value of the interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent of them individually or their respective representatives upon application. In such case, the fact of the transfer shall be recorded and indorsed as above provided.

In the event that any funds held by the land agent hereunder are not paid to the persons to whom properly payable, because of the inability of the land agent to locate those persons, the funds, after the expiration of one year, shall be deposited in the department of budget and finance of the State and there abide the claim of any person thereto lawfully entitled; provided that no claim to the funds shall be allowed unless the claim is made within five years after the deposit. Payment of any claim duly filed may be made if the department of budget and finance and the board concur in finding the claim valid and proper, but if the claimant fails to obtain concurrency of the department of budget and finance and the board within sixty days of the filing of the claimant's claim, the claimant may present a petition to the circuit court of the first judicial circuit in that behalf, notice whereof shall be given to the attorney general, who may appear and defend on behalf of the State, and if the court renders a judgment in favor of the claimant, the department of budget and finance shall pay the amount due without interest.

But if the persons to whom the offer is made, within sixty days from the time of the notification, shall make answer to the land agent that they will buy the interest of the offering

1 parties and shall deposit within sixty days with the land agent
2 the amount required for the purpose according to the terms of
3 the offer, the land agent shall indorse and record the fact of
4 the sale as above provided, and pay to the offering parties the
5 amount according to their individual interest; and the interest
6 of the offering parties shall thereupon vest in the answering
7 parties. In such case, the consideration money deposited by the
8 offering parties shall be returned to them.
9 (g) Forfeiture; existing certificate of occupation or
10 homestead lease. The violation of any of the conditions of any
11 existing certificate of occupation or homestead lease shall be
12 sufficient cause for the board, upon failure of the occupier or
13 lessee within a reasonable period of time to remedy the default,
14 after notice thereof in the manner provided in section 171-20,
15 to take possession of the demised premises without demand or
16 previous entry, with or without legal process, and thereby,
17 subject to section 171-21, terminate the estate created.
18 (h) Forfeiture; cash freeholds. In the case of default in
19 the payment of any of the installments due on any cash freehold
20 agreement for thirty days after the installments are due, or
21 failure of performance of any other conditions, the board may
22 take possession of the premises, upon failure of the freeholder

within a reasonable period of time to remedy the default, after notice thereof in the manner provided in section 171-20, without demand or previous entry, with or without legal process, and thereby subject to section 171-21, terminate the estate created.

(i) Mortgage of homestead leases. Whenever an existing homestead lease is mortgaged pursuant to section 171-22, the consent to mortgage from the board of land and natural resources may contain a condition exempting the lease from subsection (e) for the duration of the mortgage."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2008.

INTRODUCED BY: _____

JAN 22 2008

Report Title:
999-year Homestead Leases; Line of Succession

Description:
Reverts to the original intent that, notwithstanding any rights of the occupier or lessee, conveyance, devise, or bequest to the contrary, in the case of the death of any occupier or lessee under an existing certificate of occupation or homestead lease, the land will vest in the relations specified by law.