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**DEPARTMENT OF HAWAIIAN HOME LANDS**  
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TESTIMONY OF KALI WATSON, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE HOUSE COMMITTEE ON FINANCE  
HEARING ON MARCH 28, 2024 AT 2:00PM IN CR 308

**SB 3236, HD 1, RELATING TO THE LAND TRUST ACT**

March 28, 2024

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits testimony in strong support of SB3236, HD1 which proposes to amend HRS Chapter 558-7 to clarify that if no personal property designation appears in the recorded instrument, the interests of the beneficiaries shall be real property.

DHHL has been aggressively pursuing the fulfillment of its mission to fully support self-sufficiency for Native Hawaiians by providing the opportunity for homestead leases and homeownership. Pursuant to section 207.5 of the Hawaiian Homes Commission Act., 1920, as amended, DHHL is authorized to develop and construct single family and multifamily units for housing native Hawaiians. The method of disposition, including rentals, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of single-family and multifamily units shall be prescribed by rules adopted by DHHL pursuant to chapter 91.

One initiative that DHHL is pursuing to accelerate the fulfillment of that goal is to create the opportunity for lower-income native Hawaiians on the DHHL waiting list to access Hawaii Housing Finance & Development Corporation (HHFDC) funding through the Low-Income Housing Tax Credit (LIHTC) program. LIHTC contributes private funds or Federal/State subsidies to cover the cost for the design and construction of single-family houses, multi-unit townhouses, and high-rise condominiums.

With the use of LIHTC, there is a 15-year compliance period whereby the participants must satisfy certain income restrictions, verification requirements, inspections, and tenancy occupancy restrictions. They are considered "renters" under this funding approach. At the end of the 15-year LIHTC compliance period, under DHHL's Rent with Option to Purchase program, the "renters" are given the option to purchase and own the units. DHHL has used this approach on several projects on O'ahu and Hawai'i island.

The drawback is that the participants are not issued a Hawaiian Home Land (HHL) lease until the 15-year compliance period is finished, at which point the “renter” takes out a loan to pay off the remaining debt and is then issued a 99-year HHL lease. Unfortunately, if the “renter” dies before the 15-year conversion point and their intended successor is less than 50% native Hawaiian as defined in sections 201, 208, and 209 of the HHCA, the unit cannot be succeeded to their intended successor and the intended successor gets nothing.

A suggested solution to this “problem” is to separate the land from the housing unit or vertical improvement that was financed with LIHTC funding through the HHFDC. The “renter” receives a HHL lease upfront for the land, and the vertical improvements are part of a condominium property regime (CPR) which separates it from the land. The “renter” is still subject to the LIHTC 15-year compliance period but more importantly, they are considered a lessee beneficiary with the issuance of a HHL lease and can designate a successor to the lease along with the right to assume the lessee’s position involving the LIHTC financing program. With this change, the “homesteader” now has a HHL lease and is taken off the DHHL waiting list.

In devising a legal structure to accommodate this, DHHL has determined that it will be necessary to place certain Hawaiian Home Lands in a land trust. This will assist those participating in these kinds of LIHTC developments of single-family, multi-unit, and high-rise projects, to obtain financing to build such projects and to attract more participants. Under this legal structure, it is critical that the beneficiary interest under such land trust be clearly denoted as real property. This measure clarifies that the beneficiary interest under such land trust will be deemed real property, rather than personal property. While DHHL believes that this interpretation is implicit in the current law, we would like to ensure that it is abundantly clear.

DHHL respectfully request that this measure be passed and enacted as soon as possible to support this effort to provide housing opportunities for Native Hawaiian beneficiaries. Thank you for your consideration of our testimony.