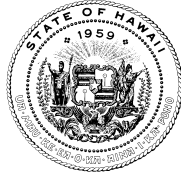


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DEPARTMENT OF HAWAIIAN HOME LANDS

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TESTIMONY OF KALI WATSON, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON JUDICIARY
HEARING ON FEBRUARY 27, 2024 AT 9:32AM IN CR 016

SB 3236 RELATING TO THE LAND TRUST ACT

February 27, 2024

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits testimony in strong support of this measure. 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. One initiative that DHHL is pursuing in an effort to accelerate the fulfillment of that goal is to create the opportunity for lower-income Native Hawaiians on the wait lists to access Hawaii Housing Finance & Development Corporation (HHFDC) funding involving Low-Income Housing Tax Credits (LIHTC) program. The program contributes private funds or federal/state subsidies to cover the costs for design and construction of single-family housing, multi-unit townhouses and high-rise condominiums.

With the use of LIHTCs, 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 this 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, both on O'ahu and Hawai'i island. The drawback is that the participants are not issued a homestead 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 Hawaiian Homestead 99-year lease. Unfortunately, if the "renter" dies before the 15-year conversion point, and their successor is less than 50% Hawaiian, the unit cannot be transferred to their heir and the heir receives nothing. A suggested solution to this "problem" is to separate the land from the housing or vertical improvements financed by the HHFDC funding. The "renter" upfront receives a Hawaiian Homestead lease 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 is

more importantly considered a homesteader with the issuance of the Homestead lease and can name a successor to their homestead lease, along with the right to step into their position involving the LIHTC financing program. With this change, the “Homesteader” now has a land 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 LIHTC types of 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 beneficial interests under such land trusts be clearly denoted real property. This measure clarifies that the beneficial interest under such land trust will be deemed real property rather than personal property. While we believe that this interpretation is implicit in the current law, we would like to make sure that it is abundantly clear.

In 1997, the Legislature made DHHL’s single-family and multifamily units for housing native Hawaiians initiative possible through the enactment of Act 196 (1997), which explicitly authorized the development of such units and is now recognized as Section 207.5 of the Hawaiian Homes Commission Act, 1920, as amended. We accordingly ask for the support of the Legislature and 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.