

DEPARTMENT OF HAWAIIAN HOME LANDS

Adoption of Chapter 10-7
Hawaii Administrative Rules

[AUG 17 2019]

SUMMARY

Chapter 10-7, Hawaii Administrative Rules,
entitled "Planned Communities, Multi-Family Complexes,
and Rental Housing", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 10-7

PLANNED COMMUNITIES, MULTI-FAMILY COMPLEXES, AND
RENTAL HOUSING

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SUBCHAPTER 1

GENERAL PROVISIONS

§10-7-1 Definitions. As used in this chapter and any k^ān^āwai or governing documents unless otherwise required by the context:

"Assessments" means funds collected by an association from association members to operate and manage the association, maintain property within the planned community or multi-family complex for the common use or benefit of association members, or provide services to association members.

"Association" means a nonprofit, incorporated, or unincorporated organization made up of all of the lessees within a Hawaiian home lands planned community or multi-family complex existing pursuant to covenants running with the land. In certain circumstances, the department may be part of the association.

"Board of directors" or "board" means the governing board or other body, regardless of name, designated in the governing documents to act on behalf of the association.

"Declarant" means the department or any person or entity to which the department has assigned any or all of the rights and obligations of the declarant set forth in the governing documents.

"Declaration" means any recorded instrument, however denominated, that creates a Hawaiian home lands planned community or multi-family complex, including any amendments to the instrument.

"Developer" means a person or entity who is contracted by the department to undertake development of a planned community or multi-family complex for, or in partnership with, the department.

"Governing documents" means the articles of incorporation or other document creating the association, the bylaws of the association, the declaration or similar organizational documents and any exhibits thereto, any rules related to use of common areas, architectural control, maintenance of units, restrictions on the use of units, or payment of money as regular assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or common areas, as well as any amendments made to the foregoing documents.

"Lot" means any plot of land designated as a lot upon any recorded subdivision map of the development property and upon which a dwelling unit could be or has been constructed in accordance with all relevant Hawaii law. Lot shall not include the common areas.

"Member" means the lessee of a lot under a residential lease from the department, or anyone included in the definition of a member under

the governing documents.

"Multi-family complex" means a residential development on Hawaiian home lands that is subject to chapter 514A and 514B, HRS, as applicable, insofar as it does not conflict with this title and the act.

"Planned community" means a residential development on Hawaiian home lands that is subject to chapter 421J, HRS, insofar as it does not conflict with this title and the act.

"Property management company" means a person or entity that is contracted by the department or the developer to enter in to rental agreements with renters and undertake daily operations and management of a Hawaiian home lands rental housing development.

"Record" or "recorded" means to record in the bureau of conveyances in accordance with chapter 502, HRS, or to register in the land court in accordance with chapter 501, HRS, as appropriate.

"Rental agreement" means all written agreements, between a renter and the property management company or department, or both, which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit and premises, and may include an option to purchase.

"Rental housing development" means a Hawaiian home lands housing development, which may be comprised of single family lots or multi-family housing complex, or both, for which rental agreements govern the terms and conditions of use and occupancy of the units. A rental housing development shall be managed by a property management company.

"Renter" means a native Hawaiian who occupies a dwelling unit for dwelling purposes under a rental agreement as part of a Hawaiian home lands rental housing development.

"Unit" or "dwelling unit" means any portion of property, as improved, intended for use and occupancy as a residence within a planned community or multi-family complex. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-2 Applicability of chapter. (a) This chapter shall apply to all planned community and multi-family complex developments on Hawaiian home lands that are designated as residential use in the relevant island plan and for which the declaration is recorded after the effective date of this chapter.

(b) This chapter may apply to an association for which the declaration was recorded before the effective date of this chapter if adopted by a majority vote of the association. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-3 Method of disposition. (a) The department may award residential leases under the authority of this chapter.

(b) Any combination, or all of the department, the developer, and the property management company may enter into contracts of sale or rental agreements with native Hawaiians as verified by the department.

[Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-4 Native Hawaiian cultural values. (a) The governing documents shall take in to account and embody native Hawaiian cultural values as appropriate for the location, development, and lessees.

(b) General parameters and guidelines shall be developed by the department through beneficiary consultation. The finalized document shall be approved by the commission and included in the declaration. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-5 Interpretation This chapter and any governing documents subject hereto shall be implemented and interpreted within the spirit of the act, including to promote native Hawaiian values and sense of place in the best interest of the lessees, renters, and residents living in planned communities, multi-family complexes, or rental housing developments on Hawaiian home lands. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§§10-7-7 to 10-7-9 (Reserved)

SUBCHAPTER 2

THE DECLARATION

§10-7-10 Establishment of the declaration. (a) The declarant shall cause the declaration to be drafted according to the following:

- (1) The declaration shall be in conformity with all relevant Hawaii law; and
- (2) The declaration shall include the document developed under subsection 10-7-4(b) and accordingly take in to account and embody native Hawaiian cultural values as appropriate for the location and development.

(b) Upon approval of the declaration by the commission, the declarant shall record the declaration. The declaration shall be recorded prior to the execution of any lease or sales contract.

(c) The declaration shall inhere in the land and shall bind subsequent lessees. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

\$10-7-11 Supplemental provisions of the declaration. The declarant is authorized to adopt supplemental provisions in accordance with this chapter to implement and carry out the purposes of this chapter; provided that any of the supplemental provisions adopted shall not conflict with the act and this title. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

\$§10-7-13 to 10-7-15 (Reserved)

SUBCHAPTER 3

THE ASSOCIATION

\$10-7-16 Establishment of the association. The declarant shall establish the association not later than the date upon which the first unit in the planned community or a multi-family complex is ready for occupancy. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

\$10-7-17 Period of declarant control. (a) As appropriate for the development and when provided in the declaration, the declarant may maintain a class B membership in the association for a fixed period while units are being awarded and first occupied. This period shall be known as the period of declarant control and shall terminate not later than the time at which all units or lots have been transferred to lessees.

(b) During the period of declarant control, the declarant may appoint and remove the members of the board.

(c) Not later than four months before the termination of any period of declarant control, the members shall elect a board of directors as provided in the governing documents. The declarant and the department shall coordinate with the newly member-elected board to transition from declarant control in a transparent manner that ensures the member-elected board is equipped and prepared to govern the association. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-18 Membership. The association may be made up of lessees and the declarant, and divided in to two membership classes.

- (1) Lessees shall maintain a class A membership.
- (2) The declarant may maintain a class B membership for a fixed period. Class B membership shall terminate and may convert to a class A membership not later than the time at which the period of declarant control terminates. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-19 Voting. Class A membership and class B membership shall have voting powers as set by the declarant in the declaration, provided each class A member shall have one vote and, during the period of declarant control, class B membership shall have a greater number of votes per lot or unit than class A membership. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-20 Vacant lots. (a) Assessments rates shall be set after the lots have been designed and

plotted, number of lots in the development are finalized, and preliminary budget determined. Lots intended to be vacant due to engineering constraints or health and safety concerns shall not be included in calculating the pro-rata assessment amounts. If a lot becomes unsuitable for a residence, assessments shall be recalculated to exclude the unsuitable lot.

(b) Assessments due on vacant lots that are awarded as owner-builder or self-help are the responsibility of the lessee upon the signing of the lease. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

\$10-7-21 Unoccupied units. (a) The department shall use all due diligence to fill developed units that become unoccupied. The department shall not be responsible for assessments due on those units unless the assessments lost due to the number of empty units threatens the viability of the association.

(b) An association with unoccupied units shall report annually to the department regarding income and projected economic viability. If economic viability is threatened, the association may request payment of future assessments from the department until the empty units are filled. Such request is subject to approval by the commission. If approved, amounts due shall accrue from the date of receipt by the department, as indicated on the date and time stamp, of the request from the association. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

\$10-7-22 Budget. Each association shall adopt a budget and rate schedule, according to the governing documents, and submit the budget and rate schedule to the department between June 1 and June 30 of each year. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

§§10-7-23 to 10-7-25 (Reserved)

SUBCHAPTER 4

OBLIGATIONS OF THE LESSEE

§10-7-26 Planned community education. (a) To facilitate informed decision-making by residential applicants, before award letters are mailed, the department shall notify the appropriate applicant field of a mandatory planned community orientation. This orientation shall provide an overview of rights, responsibilities, obligations, and benefits of planned community living, as well as possible consequences for non-compliance. If there is an existing association, that association shall participate in the orientation.

(b) Prior to signing a lease, the future lessee of a new planned community shall attend a planned community education training program approved by the department, which shall include training specific to the development regarding member and association obligations and rights, and community planning and governance.

(c) The association shall develop and conduct an orientation for lessees, transferees, and successors moving into an existing planned community. The department shall notify the association of lease transfers and successorships to facilitate the orientation process conducted by the association.

[Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-27 Association membership. (a) Upon signing the lease, the lessee shall become a member of the association. By signing the lease, lessee also agrees to abide by the governing documents.

(b) Lessees shall ensure that members of their family who reside with the lessee, and guests and invitees of such lessee, observe and perform the provisions regarding use and occupancy set forth in the governing documents. [Eff **AUG 17 2019**]
(Auth: HHC Act §222) (Imp: HHC Act §207.5)

\$10-7-28 Payment of assessments. The lessee shall pay assessments to the association in accordance with the governing documents. [Eff **AUG 17 2019**]
(Auth: HHC Act §222) (Imp: HHC Act §207.5)

\$10-7-29 Alteration of the unit prohibited. The lessee shall not construct or alter any improvements on the property except in accordance with the governing documents and with written approval of the department under section 10-3-34. [Eff **AUG 17 2019**]
(Auth: HHC Act §222) (Imp: HHC Act §207.5)

§§10-7-30 to 10-7-34 (Reserved)

SUBCHAPTER 5

ENFORCEMENT OF GOVERNING DOCUMENTS

\$10-7-35 Compliance required. The association, all lessees, and other persons lawfully in possession and control of any property interest shall comply with the bylaws, any rules lawfully adopted by the

association, and any covenant, condition, and restriction set forth in any recorded document to which they are subject. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-36 Enforcement. (a) The declaration shall include a formal process for the association to enforce the governing documents, including collection of delinquent assessments and any lease violations.

(b) The association shall adopt a collection policy with formal procedures whereby the lessee shall have the opportunity to settle amounts owed the association, including but not limited to delinquent assessments, penalties, late fees, and associated costs, before private legal action to collect the debt is taken under the authority of the association and section 10-7-37.

(c) If collection of the debt is unsuccessful through private legal action under the authority of the association and section 10-7-37, the association may petition the commission for a contested case hearing for lease cancellation pursuant to this title. The decision and order of a contested case hearing may direct the department to assume the outstanding debt on the unit, including but not limited to delinquent assessments, penalties, late fees, and associated costs.

(d) The association shall adopt formal procedures for the enforcement of lease violations other than delinquent assessments whereby the lessee shall have at least 90 days to cure the violation. If the lessee fails to cure the violation within the time provided, the association may petition the commission for a contested case hearing for lease cancellation pursuant to this title. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-37 Civil action. Any violation is grounds

for the association, any lessee, or lawful interest holder to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action. The department shall not be party to any civil suit related to the violation of or noncompliance with the bylaws, any rules lawfully adopted by the association, or any covenant, condition, and restriction set forth in any recorded document. [Eff **AUG 17 2019**] (Auth: HHC Act S222) (Imp: HHC Act S207.5)

SS10-7-38 to 10-7-40 (Reserved)

SUBCHAPTER 6

RENTAL HOUSING

S10-7-41 Rental housing offers. (a) If rental housing is available, the department and the property management company shall coordinate to offer the rental housing to native Hawaiians. Project-specific parameters shall be provided to the applicant pool as soon as practicable.

- (1) The department shall notify residential applicants on the respective area or island wide waiting lists of the rental housing opportunity.
- (2) The department shall provide the property management company with the list of native Hawaiians, who replied to the notice in paragraph (1), in rank order according to the appropriate waiting list.
- (3) The property management company shall identify qualified potential renters from the list based upon the rental program

- parameters and notify the department.
- (4) The department shall verify the application status of those native Hawaiians identified by the property management company as qualified for the rental program. Upon verification, the department or the property management company, or both, shall make the rental housing offers. [Eff **AUG 17 2019**]
(Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-42 Kupuna housing. (a) A native Hawaiian, fifty-five years or older may be eligible for kupuna housing. If kupuna housing is available, the department shall notify native Hawaiians that would meet the age requirement for the kupuna housing development. The department and the property management company shall then proceed under section 10-7-41, as applicable.

(b) If a lessee accepts a kupuna housing offer, the lessee shall immediately occupy the kupuna housing unit and, within six months, either transfer or surrender his or her lease. Upon accepting a kupuna housing offer, the lessee becomes a renter and a previous lessee under section 10-3-23.

(c) If the list compiled under subsection (a) has been exhausted and units are still available, the property management company may accept as renters native Hawaiians that are not applicants on a waitlist, lessees, or previous lessees if the potential renter is:

- (1) Verified by the department as eligible for Hawaiian home lands under the act; and
- (2) Qualified for the kupuna housing development by the property management company.

(d) The renter's spouse may reside in the unit with the renter. An additional occupant, including an adopted minor or a legal caregiver, may also reside

with the renter in the unit as allowed by applicable state or federal law. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

\$10-7-43 Rental agreement controlling. The department shall review the property management company's final rental agreement. The rental agreement shall control the rights, responsibilities, and obligations, including eviction, between the renter and the property management company. The rental agreement shall comply with the Hawaii landlord and tenant code, chapter 521, HRS, and the Fair Housing Act insofar as they do not conflict with the act. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

\$10-7-44 Successorship. (a) If the renter is an applicant on a waitlist, a successor under section 10-3-8 may succeed to the rental agreement; provided the successor meets the rental program requirements that apply to the specific unit. If the successor does not meet the rental program requirements or refuses the unit, the successor shall succeed to the application as provided in section 10-3-8.

(b) For kupuna housing, a spouse eligible to succeed under section 209 of the act and qualified for the kupuna housing unit may succeed to the kupuna housing rental agreement. [Eff **AUG 17 2019**] (Auth: HHC Act \$222) (Imp: HHC Act \$207.5)

\$10-7-45 Vacant units. To ensure units do not become vacant for unnecessarily long periods of time, the property management company shall request from the department, as appropriate, names of additional

potential renters. Upon such request, the department and the property management company shall proceed under section 10-7-41. If parameters of the previous offering have not changed, the department shall provide notice to the list of applicants in rank order from the application date of the last applicant previously contacted for the rental housing development. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

§10-7-46 Conversion to lessee. A renter who is an applicant on a waitlist shall remain an applicant during the rental period. The renter's application and rank on any waiting list shall be maintained without regard to his or her status as a renter. The renter shall become a lessee upon signing a lease. [Eff **AUG 17 2019**] (Auth: HHC Act §222) (Imp: HHC Act §207.5)

DEPARTMENT OF HAWAIIAN HOME LANDS

Chapter 10-7, Hawaii Administrative Rules, on Summary Page dated [**AUG 17 2019**], following public hearings held on February 27, 2019, and on March 6, 11, and 13, 2019, after public notice was given on January 27, 2019 in the Honolulu Star-Advertiser, The Maui News, West Hawaii Today, Hawaii Tribune-Herald, and The Garden Island.

The adoption of chapter 10-7 shall take effect ten days after filing with the Office of the Lieutenant Governor.



WILLIAM J. AILA, JR., Chairman
Hawaiian Homes Commission

APPROVED:



DAVID Y. IGE, Governor
State of Hawaii

Dated: 08-07-2019

APPROVED AS TO FORM:



Deputy Attorney General

Filed

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