



# The National Agricultural Law Center

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Farm Ownership & Corporate Farming Laws:

*Hawaii*



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# A National Agricultural Law Center Research Publication

## Farm Ownership & Corporate Farming Laws: Hawaii

### Fast Find:

- 1) Prohibition: HI Organic Act § 73(f); HI Rev. Stat. § 171-68
- 2) Permission: Not Expressly
- 3) Reporting: None
- 4) Corporate Farming: None

### HI Organic Act § 73(f) HI Rev. Stat. § 171-68

*Current through laws passed by the 2024 Regular Session of the Hawaii State Legislature. Some statute sections may be more current.*

#### **HI Organic Act § 73. Commissioner of public lands.**

(a) That when used in this section -

(1) The term "commissioner" means the commissioner of public lands of the Territory of Hawaii;

(2) The term "land board" means the board of public lands, as provided in subdivision (1) of this section;

(3) The term "public lands" includes all lands in the Territory of Hawaii classed as government or crown lands previous to August 15, 1895, or acquired by the government upon or subsequent to such date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; except (1) lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, (2) lands set apart or reserved by Executive order by the President, (3) lands set aside or withdrawn by the governor under the provisions of subdivision (q) of this section, (4) sites of public buildings, lands used for roads, streets, landings, nurseries, parks, tracts reserved for forest growth or conservation of water supply, or other public purposes, and (5) lands to which the United States has relinquished the absolute fee and ownership, unless subsequently placed under the control of the commissioner and given the status of public lands in accordance with the provisions of this Act, the Hawaiian Homes Commission Act, 1920, or the Revised Laws of Hawaii of 1915; and

(4) The term "person" includes individual, partnership, corporation, and association.



(b) Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in subdivision (a) of this section, shall, whenever used in this section, if not inconsistent with the context or any provision of this section, have the same meaning as given it by such definition or description.

(c) The laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide. Subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain, and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii, between the 7th day of July, 1898, and the 28th day of September 1899, are hereby ratified and confirmed. In said laws "land patent" shall be substituted for "royal patent"; "commissioner of public lands," for "minister of the interior," "agent of public lands," and "commissioners of public lands," or their equivalents; and the words "that I am a citizen of the United States," or "that I have declared my intention to become a citizen of the United States, as required by law," for the words "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," or "that I have received letters of denization under the Republic of Hawaii," or "that I have received a certificate of special right of citizenship from the Republic of Hawaii."

(d) No lease of the surface of agriculture lands or of undeveloped and public land which is capable of being converted into agricultural land by the development, for irrigation purposes, of either the underlying or adjacent waters, or both, shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than sixty-five years. Each such lease shall be sold at public auction to the highest bidder after due notice as provided in subdivision (i) of this section and the laws of the Territory of Hawaii. Each such notice shall state all the terms and conditions of the sale. The land, or any part thereof so leased, may at any time during the term of the lease be withdrawn from the operation thereof for homestead or public purposes, upon the payment of just compensation for such withdrawal. Every such lease shall contain a provision to that effect: Provided, That the commissioner may, with the approval of the governor and at least two-thirds of the members of the land board, omit such withdrawal provision from, or limit the same in, the lease of any lands whenever he deems it advantageous to the Territory of Hawaii, and land so leased shall not be subject to such right of withdrawal, or shall be subject only to a right of withdrawal as limited in the lease.

(e) All funds arising from the sale or lease or other disposal of public land shall be appropriated by the laws of the government of the Territory of Hawaii and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July 7, 1898.



(f) No person shall be entitled to receive any certificate of occupation, right of purchase lease, cash freehold agreement, or special homestead agreement who, or whose husband or wife, has previously taken or held more than ten acres of land under any such certificate, lease, or agreement made or issued after May 27, 1910, or under any homestead lease or patent based thereon; or who, or whose husband or wife, or both of them, owns other land in the Territory, the combined area of which and the land in question exceeds eighty acres; or who is an alien, unless he has declared his intention to become a citizen of the United States as provided by law. No person who has so declared his intention and taken or held under any such certificate, lease, or agreement shall continue so to hold or become entitled to a homestead lease or patent of the land, unless he becomes a citizen within five years after so taking.

(g) No public land for which any such certificate, lease, or agreement is issued after May 27, 1910, or any part thereof, or interest therein or control thereof, shall, without the written consent of the commissioner and governor, thereafter, whether before or after a homestead lease or patent has been issued thereon, be or be contracted to be in any way, directly or indirectly, by process of law or otherwise, conveyed, mortgaged, leased, or otherwise transferred to, or acquired or held by or for the benefit of, any alien or corporation; or before or after the issuance of a homestead lease or before the issuance of a patent to or by or for the benefit of any other person; or, after the issuance of a patent, to or by or for the benefit of any person who owns, or holds, or controls, directly or indirectly, other land or the use thereof, the combined area of which and the land in question exceeds eighty acres. The prohibitions of this paragraph shall not apply to transfers or acquisitions by inheritance or between tenants in common.

(h) Any land in respect of which any of the foregoing provisions shall be violated shall forthwith be forfeited and resume the status of public land and may be recovered by the Territory or its successors in an action of ejectment or other appropriate proceedings. And noncompliance with the terms of any such certificate, lease, or agreement, or of the law applicable thereto, shall entitle the commissioner, with the approval of the governor before patent has been issued, with or without legal process, notice, demand, or previous entry, to retake possession and thereby determine the estate: Provided, That the times limited for compliance with any such approval upon its appearing that an effort has been made in good faith to comply therewith.

(i) The persons entitled to take under any such certificate, lease, or agreement shall be determined by drawing or lot, after public notice as hereinafter provided; and any lot not taken or taken and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which is hereby authorized, may be disposed of upon application at not less than the advertised price by any such certificate, lease, or agreement without further notice. The notice of any sale, drawing, or allotment of public land shall be by publication for a period of not less than sixty days in one or more



newspapers of general circulation published in the Territory: Provided however, That

(1) lots may be sold for cash or on an extended time basis, as the Commissioner may determine, without recourse to drawing or lot and forthwith patented to any citizen of the United States applying therefor, possessing the qualifications of a homesteader as now provided by law, and who has qualified for and received a loan under the provisions of the Bankhead-Jones Farm Tenant Act, as amended or as may hereafter be amended, for the acquisition of a farm, and

(2) with or without recourse to drawing or lot, as the commissioner may determine, lots may be leased with or without a right of purchase, or may be sold for cash or on an extended time basis and forthwith patented, to any citizen of the United States applying therefor if such citizen has not less than two years' experience as a farm owner, farm tenant, or farm laborer: And provided further, That any patent issued upon any such sale shall contain the same restrictive provisions as are now contained in a patent issued after compliance with a right of purchase lease, cash freehold agreement, or special homestead agreement.

The Commissioner may include in any patent, agreement, or lease a condition requiring the inclusion of the land in any irrigation project formed or to be formed by the Territorial agency responsible therefor and making the land subject to assessments made or to be made for such irrigation project, which assessment shall be a first charge against the land. For failure to pay the assessments or other breach of the condition the land may be forfeited and sold pursuant to the provisions of this Act, and, when sold, so much of the proceeds of sale as are necessary therefor may be used to pay any unpaid assessments.

(j) The commissioner, with the approval of the governor, may give to any person

(1) who is a citizen of the United States or who has legally declared his intention to become a citizen of the United States and hereafter becomes such, and

(2) who has, or whose predecessors in interest have, improved any parcel of public lands and resided thereon continuously for the ten years next preceding the application to purchase, a preference right to purchase so much of such parcel and such adjoining land as may reasonably be required for a home, at a fair price to be determined by three disinterested citizens to be appointed by the governor. In the determination of such purchase price the commissioner may, if he deems it just and reasonable, disregard the value of the improvements on such parcel and adjoining land. If such parcel of public lands is reserved for public purposes, either for the use of the United States or the Territory of Hawaii, the



commissioner may with the approval of the governor grant to such person a preference right to purchase public lands which are of similar character, value, and area, and which are situated in the same land district. The privilege granted by this paragraph shall not extend to any original lessee or to an assignee of an entire lease of public lands.

(k) The commissioner may also, with such approval, issue, for a nominal consideration, to any church or religious organization, or person or persons or corporation representing it, a patent for any parcel of public land occupied continuously for not less than five years heretofore and still occupied by it as a church site under the laws of Hawaii.

(l) No sale of lands for other than homestead purposes, except as herein provided, and no exchange by which the Territory shall convey lands exceeding either forty acres in area or \$15,000 in value shall be made. Leases may be made by the commissioner of public lands, with the approval of two-thirds of the members of the board of public lands, for the occupation of lands for general purposes, or for limited specified purposes (but not including leases of minerals or leases providing for the mining of minerals), for terms up to but not in excess of sixty-five years. There shall be a board of public lands, the members of which are to be appointed by the governor as provided in section 80 of this Act, and until the legislature shall otherwise provide said board shall consist of six members, and its members be appointed for a term of four years: Provided, however, That the commissioner shall, with the approval of said board, sell to any citizen of the United States, or to any person who has legally declared his intention to become a citizen, for residence purposes lots not exceeding three acres in area; but any lot not sold after public auction, or sold and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which consent is authorized, may upon application be sold without further public notice or auction within the period of two years immediately subsequent to the day of the public auction, at the advertised price if the sale is within the period of six months immediately subsequent to the day of the public auction, and at the advertised price or the price fixed by a reappraisal of the land, whichever is greater, if the sale is within the period subsequent to the said six months but prior to the expiration of the said two years: and that sales of Government lands or any interest therein may be made upon the approval of said board for business uses or other undertakings or uses, except those which are primarily agricultural in character, whenever such sale is deemed to be in the interest of the development of the community or area in which said lands are located, and all such sales shall be limited to the amount actually necessary for the economical conduct of such business use or other undertaking or use: Provided further, That no exchange of Government lands shall hereafter be made without the approval of two-thirds of the members of said board, and no such exchange shall be made except to acquire lands directly for public uses: Provided further, That in case any lands have been or shall be sold pursuant to the provisions of this paragraph for any purpose above set forth and/or subject to any



conditions with respect to the improvement thereof or otherwise, and in case any said lands have been or shall be used by the United States of America, including any department or agency thereof, whether under lease or license from the owner thereof or otherwise, for any purpose relating to war or the national defense and such use has been or shall be for a purpose other than that for which said lands were sold and/or has prevented or shall prevent the performance of any conditions of the sale of said lands with respect to the improvement thereof or otherwise, then, notwithstanding the provisions of this paragraph or of any agreement, patent, grant, or deed issued upon the sale of said lands, such use of said lands by the United States of America, including any department or agency thereof, shall not result in the forfeiture of said lands and shall result in the extension of the period during which any conditions of the sale of said lands may be complied with for an additional period equal to the period of the use of said lands by the United States of America, including any department or agency thereof.

(m) Whenever twenty-five or more persons, having the qualifications of homesteaders who have not therefore made application under this Act shall make written application to the commissioner of public lands for the opening of agricultural lands for settlement in any locality or district, it shall be the duty of said commissioner to proceed expeditiously to survey and open for entry agricultural lands, whether unoccupied or under lease with the right of withdrawal, sufficient in area to provide homesteads for all such persons, together with all persons of like qualifications who shall have filed with such commissioner prior to the survey of such lands written applications for homesteads in the district designated in said applications. The lands to be so opened for settlement by said commissioner shall be either the specific tract or tracts applied for or other suitable and available agricultural lands in the same geographical district and, as far as possible, in the immediate locality of and as nearly equal to that applied for as may be available: Provided, however, That no leased land, under cultivation, shall be taken for homesteading until any crops growing thereon shall have been harvested.

(n) It shall be the duty of the commissioner to cause to be surveyed and opened for homestead entry a reasonable amount of desirable agricultural lands and also of pastoral lands in the various parts of the Territory for homestead purposes on or before January 1, 1911, and he shall annually thereafter cause to be surveyed for homestead purposes such amount of agricultural lands and pastoral lands in various parts of the Territory as there may be demand for by persons having the qualifications of homesteaders. In laying out any homestead the commissioner shall include in the homestead lands sufficient to support thereon an ordinary family, but not exceeding eighty acres of agricultural lands and two hundred and fifty acres of first-class pastoral lands or five hundred acres of second-class pastoral lands; or in case of a homestead, including pastoral lands only, not exceeding five hundred acres of first-class pastoral lands or one thousand acres of second-class pastoral lands. All necessary expenses for surveying and opening



any such lands for homesteads shall be paid for out of any funds of the territorial treasury derived from the sale or lease of public lands, which funds are hereby made available for such purposes.

(o) The commissioner, with the approval of the governor, may by contract or agreement authorize any person who has the right of possession, under a general lease from the Territory, of agricultural or pastoral lands included in any homestead, to continue in possession of such lands after the expiration of the lease until such time as the homesteader takes actual possession thereof under any form of homestead agreement. The commissioner may fix in the contract or agreement such other terms and conditions as he deems advisable.

(p) Nothing herein contained shall be construed to prevent said commissioner from surveying and opening for homestead purposes and as a single homestead entry public lands suitable for both agricultural and pastoral purposes, whether such lands be situated in one body or detached tracts, to the end that homesteaders may be provided with both agricultural and pastoral lands wherever there is demand therefor; nor shall the ownership of a residence lot or tract, not exceeding three acres in area, hereafter disqualify any citizen from applying for and receiving any form of homestead entry, including a homestead lease.

(q) All lands in the possession, use, and control of the Territory shall hereafter be managed by the commissioner, except such as shall be set aside for public purposes as hereinafter provided; all sales and other dispositions of such land shall, except as otherwise provided by the Congress, be made by the commissioner or under his direction, for which purpose, if necessary, the land may be transferred to his department from any other department by direction of the governor, and all patents and deeds of such land shall issue from the office of the commissioner, who shall countersign the same and keep a record thereof. Lands conveyed to the Territory in exchange for other lands that are subject to the land laws of Hawaii, as amended by this Act, shall, except, as otherwise provided, have the same status and be subject to such laws as if they had previously been public lands of Hawaii. All orders setting aside lands for forest or other public purposes, or withdrawing the same, shall be made by the governor, and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory; the provisions of this paragraph may also be applied where the "public purposes" are the uses and purposes of the United States, and lands while so set aside may be managed as may be provided by the laws of the United States. The commissioner is hereby authorized to perform any and all acts, prescribe forms of oaths, and, with the approval of the governor and said board, make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this section and the land laws of Hawaii into full force and effect.

All officers and employees under the jurisdiction of the commissioner shall be appointed by him, subject to the Territorial laws of Hawaii



relating to the civil service of Hawaii, and all such officers and employees shall be subject to such civil service laws.

Within the meaning of this section, the management of lands set aside for public purposes may, if within the scope of authority conferred by the legislature, include the making of leases by the Hawaii aeronautics commission with respect to land set aside to it, on reasonable terms, for carrying out the purposes for which such land was set aside to it, such as for occupancy of land at an airport for facilities for carriers or to serve the traveling public. No such lease shall continue in effect for a longer term than fifty-five years. If, at the time of the execution of any such lease, the governor shall have approved the same, then and in that event the governor shall have no further authority under this or any other Act to set aside any or all of the lands subject to such lease for any other public purpose during the term of such lease.

(r) Whenever any remnant of public land shall be disposed of, the commissioner of public lands shall first offer it to the abutting landowner for a period of three months at a reasonable price in no event to be less than the fair market value of the land to be sold, to be determined by a disinterested appraiser or appraisers, but not more than three, to be appointed by the governor; and, if such owner fails to take the same, then such remnant may be sold at public auction at no less than the amount of the appraisal: Provided, That if the remnant abuts more than one separate parcel of land and more than one of the owners of these separate parcels are interested in purchasing said remnant, the remnant shall be sold to the owner making the highest offer above the appraised value.

The term "remnant" shall mean a parcel of land landlocked or without access to any public highway, and, in the case of an urban area, no larger than five thousand square feet in size, or, in the case of a suburban or rural area, no larger than one and one-half acres in size.

Any person or persons holding an unpatented homestead under a special homestead agreement, entered into prior to the effective date of this paragraph, excluding those homesteads under the control of the Hawaiian Homes Commission as provided in section 203 of the Hawaiian Homes Commission Act, 1920, shall be entitled to a reamortization of the indebtedness due the Territory of Hawaii on account of such special homestead agreement upon filing an application for the reamortization of said indebtedness with the commissioner within six months after the effective date of this paragraph. Upon the filing of any such application, the commissioner shall determine the balance due the Territory in the following manner: The amount of the principal which would have been paid during the full period of payment provided for in the special homestead agreement had the agreement been duly performed according to its terms and the amount of the interest which would have been paid under the special homestead agreement prior to the effective date of this paragraph had the agreement been duly performed according to its terms shall be computed and added together; from



the sum of these amounts there shall be deducted all moneys that have been actually paid to the Territory on account of the special homestead agreement, whether as principal or as interest. The balance thus determined shall be the total amount remaining due and payable for the homestead covered by such special homestead agreement, any other terms, conditions, or provisions in any of said agreements, or any provisions of law to the contrary notwithstanding: Provided, however, That nothing herein contained shall be deemed to excuse the payment of taxes and other charges and assessments upon unpatented homestead lands as provided in said agreements, nor to excuse or modify any term, condition, or provision of said agreements other than such as relate to the principal and interest payable to the Territory. The total amount remaining due, determined as hereinabove provided, shall be payable in fifteen equal biennial installments. Simple interest at the rate of three per centum per annum shall be charged upon the unpaid balance of such installments, whether matured or unmatured, said interest to be computed from the effective date of this paragraph and to be payable semi-annually. The first payment on account of principal shall be due two years subsequent to the effective date of this paragraph, and thereafter the due dates of principal payments shall be at regular two-year periods; the first payment on account of interest shall be due six months subsequent to the effective date of this paragraph, and thereafter the due dates of interest payments shall be at regular six-month periods. In case of default in payments of principal or interest on the due dates as hereby fixed the commissioner may, with the approval of the governor, with or without legal process, notice, demand, or previous entry, take possession of the land covered by any such special homestead agreement and thereby determine the estate created by such agreement as hereby modified, whereupon liability for payment of any balance then due under such special homestead agreement shall terminate. When the aforesaid payments have been made to the Territory of Hawaii, and all taxes, charges, and assessments upon the land have been paid as provided by said agreements, and all other conditions therein stipulated have been complied with, except as herein excused or modified, the said special homestead agreements shall be deemed to have been performed by the holders thereof, and land-patent grants covering the land described in such agreements shall be issued to the parties mentioned therein, or their heirs or assigns, as the case may be.

Neither the Territory of Hawaii nor any of its officers, agents or representatives shall be liable to any holder of any special homestead agreement, past or present, whether or not a patent shall have issued thereon, or to any other person, for any refund or reimbursement on account of any payment to the Territory in excess of the amount determined as provided by the preceding paragraph, and the legislature shall not recognize any obligation, legal or moral, on account of such excess payments.

#### **HI Rev. Stat. § 171-68. Applicants; qualifications of.**

(a) A person shall be eligible to apply for a farm if the person has the qualifications as follows:



(1) The person has been a resident in the State at any time for at least three years;

(2) The person is a bona fide farmer:

(A) Who has not less than two years' experience as a full-time farmer; or

(B) Who was an owner-operator of an established farm conducting a substantial farming operation and who for a substantial period of the person's life resided on a farm or depended on farm income for the person's livelihood; or

(C) Who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the person's application obtained the major portion of the person's income from farming operations; or

(D) Who has a college degree in agriculture; or

(E) Who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm; or

(F) Who has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended, for the acquisition of a farm; or

(G) Who is displaced from employment in an agricultural production enterprise; or

(H) Who is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects; or

(3) The person meets such other qualifications as the board of land and natural resources may prescribe pursuant to section 171-6.

(b) No person shall be entitled to apply for a farm:

(1) Who, or whose husband or wife, has previously taken or held land for farm or homesteading under any certificate, lease, or agreement or under any homestead lease or patent based thereon; or

(2) Who, or whose husband or wife, or both of them, owns in fee simple other land in the State, the combined area of which with the land in question exceeds eighty acres; provided that:

(A) The ownership of a residence lot or tract, not exceeding three acres in area, shall not disqualify any person otherwise qualified from applying for and receiving any form of farm;



(B) Any person who would otherwise qualify to take a farm lot shall not be disqualified by reason of taking, holding or owning land for farm or homesteading or otherwise, if the land so taken, held or owned becomes unusable for the purpose of farming as defined in section 171-65.

(c) The terms “farm” and “farmer” as used herein also mean ranch and rancher respectively for the purposes of this section.

