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**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
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March 31, 2020

The Honorable David Y. Ige  
Governor, State of Hawai'i  
Executive Chambers, State Capitol  
Honolulu, Hawai'i 96813

**RE: Eviction Relief for Hawai'i Renters**

**VIA: E-Mail**

Aloha e Governor Ige,

As COVID-19 continues to spread in Hawai'i, with new cases being identified every day, the need to protect the safety and well-being of our citizens is becoming increasingly urgent. The Administration of the Office of Hawaiian Affairs (OHA) commends the critical actions and work of your administration during these unprecedented times. While the steps you have already taken go a long way towards safeguarding the people of Hawai'i, additional steps – in particular as it relates to ensuring that people with homes can stay sheltered – are needed immediately. **With today being March 31, 2020, rent for many of Hawai'i's families are due imminently, and we accordingly write to you to respectfully but strongly recommend executive action to provide eviction protection for the many households that may be unable to pay rent in the coming months and do not qualify for protection via the federal moratorium in the Coronavirus Aid, Relief, and Economic Stability Act.<sup>1</sup>**

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<sup>1</sup> OHA notes that tenants with federal subsidies or that live in properties purchased with federally backed mortgage loans may be protected from eviction under a Federal moratorium until after July 26, 2020; however, this protection may be limited. Additionally, the Act provides forbearance of residential mortgage loan payments for properties purchased with federally backed loans and may provide complementary relief for many of Hawai'i's property owners.

In furtherance of the recommendations of the United States Center for Disease Control and Prevention (CDC) to reduce the spread of COVID-19 and the stay-at-home requirements of your Third Supplementary Emergency Proclamation,<sup>2</sup> **OHA urges you to swiftly adopt a broad moratorium on residential evictions.** Such a moratorium is critical to ensuring compliance with social distancing requirements, preventing displacement from the very homes we need people to remain in, and thereby protecting all of the people of Hawai‘i. As you know, keeping individuals at home is key to slowing the community spread of COVID-19. However, for the many, many renters whose incomes have been severely diminished or lost as a result of the pandemic, evictions due to their inability to pay rent may make this impossible. Not only will eviction actions make it nearly impossible to comply with the governors stay at home orders, activities required to move out of a residence and find alternative housing will only increase the need for person-to-person contact, as well as place additional stress and instability on evicted tenants and their families, and potentially place further pressure on already tapped government programs.

While the state, as a whole, is seeing unprecedented levels of unemployment and diminished incomes, Native Hawaiians are at particular risk of suffering even greater financial hardship, including possible eviction, from the negative economic impacts from the COVID-19 pandemic. Native Hawaiians have fewer financial resources to weather financial emergencies due to their already lower per capita income (\$25,590) in comparison to the total state population (\$35,255); and their lower median household income (\$75,708) compared to the total state population (\$80,212). In fact, 12.3% of all Native Hawaiians live in poverty, compared to 8.8% of the total state population. Additionally, Native Hawaiians also have less access to financial services, which provide credit and capital in times of economic crisis. Finally, like other Hawai‘i residents, many Native Hawaiians rely on the service and tourist industries to financially support their families—23.6% of working Native Hawaiians are employed in service occupations, which are currently the occupations most impacted by the economic conditions resulting from the spread of COVID-19. With Native Hawaiians’ disproportionately low homeownership rate and higher reliance on the rental housing market, compared to state residents generally, these financial challenges and impacts greatly increase the likelihood that the Native Hawaiian community may be particularly impacted by eviction actions over the coming months.

**Despite public statements to the contrary, there are insufficient protections against residential evictions in existing state emergency proclamations and court orders.** Upon careful review of your proclamations and their supplements, it appears that the only "protection" for tenants are found in Hawai‘i Revised Statutes (HRS) § 127A-30(a)(2); **however, this section**

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<sup>2</sup> Federal and state directives indicate that COVID-19 is spread through person-to-person contact and the CDC specifically recommends creating sufficient distance between individuals, in particular those already sick, once there has been evidence of community spread, which we already have seen evidence of in Hawai‘i. Likewise, the March 23, 2020, Third Supplementary Proclamation, requires all persons in the state to stay at home or in their place of residence (with exceptions), urges the homeless to obtain shelter, and urges government and other entities to make shelter available.

**explicitly allows landlords to terminate tenancies for material breach, which includes failure to pay rent.** Again, with the unprecedented financial hardship Hawai'i's families are facing and will continue to struggle with, the termination of leases and evictions due to the failure to pay rent are the very issues that must be addressed. Additionally, even though the Chief Justice issued a court order suspending all civil hearings until April 30, 2020, it does not prohibit actions at every stage of the eviction process, including the service of eviction notices, and the responses that this may entail. In other words, eviction actions that do not rely on an actual court hearing can still take place. Finally, while OHA notes that the federal moratorium on certain evictions may protect renters with federal subsidies or who live on properties with a federally backed mortgage loans, it is unclear how many of Hawai'i's renters will be eligible for this protection, and it may be difficult for tenants to determine if their landlords have federally backed mortgage loans.<sup>3</sup>

Accordingly, OHA urges the adoption of a broad moratorium on residential restrictions that lasts throughout the emergency period and beyond, to provide time for tenants to access relief options and get back on their feet. Specifically, OHA suggests the following to be put into place during the emergency period, plus an additional six months beyond the emergency:

- Suspension of HRS chapter 666, which allows landlords to recover possession of a property after the termination of a tenancy;
- Suspension of applicable sections of the landlord tenant code (HRS Chapter 521) that allows landlords to terminate landlord-tenant relationships (e.g. HRS §§ 521-68 and -71);
- Define the following activities as unfair and deceptive practices pursuant to HRS Chapter 480:
  - terminating a landlord-tenant relationship;
  - collecting any debt for the rental of residential property covered by HRS Chapter 521;
  - threatening to terminate a HRS Chapter 521 landlord-tenant relationship, including any form of an eviction notice (either orally or in writing); and
  - charging or threatening to charge any late fees, penalties, or other charges related to late payment of rent; and
- Suspension of HRS §127A-30(a)(2), which specifically allows landlords to terminate tenancies during emergencies for material breach.

We also recommend prohibiting landlords from charging or threatening to charge any late fees, penalties, or other costs related to late payment of rent during the applicable period.

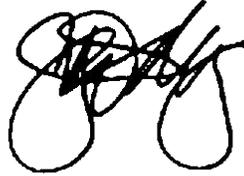
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<sup>3</sup> Determining if a property has a federally-backed mortgage loan may be done by reviewing the contents of mortgages, deeds of trust, or other instruments recorded for a property; however, that information is not readily available to tenants and moreover, not all federally-related loans will have a public filing that identifies the loan as federally-backed.

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The OHA appreciates your timely attention to this matter and stand ready to assist in any way that we can.

‘O wau iho nō,

A handwritten signature in black ink, appearing to be 'Sylvia M. Hussey', written over a circular stamp or seal.

Sylvia M. Hussey, Ed.D.  
Ka Pouhana, Chief Executive Officer  
Office of Hawaiian Affairs

cc:

- (1) - OHA Board of Trustees
- (2) - The Honorable Senator Donovan M. Dela Cruz, Chair  
Senate Special Committee on COVID-19
- (3) - The Honorable Speaker Scott K. Saiki, Speaker and Co-Chair  
House Select Committee on COVID-19 Economic and Financial Preparedness