

For More Information Or Assistance Call The Legal Aid Office In Your Community:

STATEWIDE INTAKE HOTLINE



MONDAY - FRIDAY
9:00AM - 11:30AM OR
1:00PM - 3:30PM

OAHU: 536-4302
MAUI: 242-0724
HILO: 934-0678
KONA: 329-8331
KAUAI: 245-7580
LANAI: 565-6089
MOLOKAI: 553-3251

Visit us on the web at

WWW.LEGALAI DHAWAII.ORG

REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different.

The Legal Aid Society of Hawaii

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Honolulu, Hawaii 96813

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www.legalaidhawaii.org

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SOCIETY OF HAWAII

Helping the people of Hawaii since 1950

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EVICTI ON - THE COURT PROCESS

EVICTI ON - THE COURT PROCESS BROCHURE

This brochure describes what a private landlord and tenant go through when the landlord is trying to evict the tenant. If you are preparing for trial, pick up Legal Aid Society of Hawai'i's Answer and Counterclaim Packet for more detailed information.

IMPORTANT

- If you live in "low-rent housing," either
- you live in a Hawai'i Housing Authority building,
 - you receive a Section 8 certificate or voucher,
 - you live in a HUD building,

...you have extra rights and protections. Call the Legal Aid Society of Hawai'i for more information or visit us on the web at www.legalaidhawaii.org



The Legal Aid Society of Hawaii is the state's largest public-interest legal service provider, dedicated to helping Hawaii's low to medium income population with their critical civil legal needs.

Overview: How Can My Landlord Evict Me?

Your landlord must go through a court process to evict you from your unit. It is illegal for the landlord to personally remove you from the rental unit unless the landlord first has a "Writ of Possession" from the court, which must be "served" (given to you) by a sheriff or police officer. A Writ of Possession is a judgment by the court that officially gives the unit back to the landlord.

1. Notice: Your landlord must give you written notice that you have to leave, unless your lease has expired. The notice must give you a certain number of days to either leave or correct the problem.

PROPER NOTICE

To be proper, a notice must be written and it must give you a specified amount of time within which to fix the problem.

Non-payment of rent 5 business days
Violation of rules or lease 10 days
Termination of rental
(for reasons except non-payment)
month-to-month..... 45 days lease
week-to-week 10 days
no notice if lease expired

There are other time limits. Call Legal Aid Society of Hawai'i for more information.

2. Court Action: If you do not move out, your landlord must go to court and start a court action by filing a "Complaint for Summary Possession." Summary Possession means the landlord wants to regain possession of the unit.

3. Court Papers Served: After filing the complaint, the landlord must have a sheriff, police officer, or someone over 18 years who is not a part of the eviction "serve" (give you) the court papers. The court papers do not have to be served to you personally, as long as it is given to a responsible person at your home. Or the court may allow the notice to be "posted" (taped to your door). These papers tell you what the landlord wants and when to go to your first court date.

4. Answer Date: The "Answer Date" is the first court date for you to attend. At this hearing, you and the landlord go before the judge. The judge wants to hear your response to what the landlord said in the complaint. Most people enter a plea of "General Denial" and deny the complaint.

5. Pre-Trial, if you are in Honolulu: The next date, if you are in Honolulu, is the "Pre-Trial." At this hearing, you and the landlord both tell the judge which witnesses and what evidence you will use at trial. If you are NOT in Honolulu, skip to the next step, the Trial.

6. Trial: The final date is for the Trial. At the trial, both you and the landlord will present your evidence and witnesses, and have a chance to question each other's witnesses.

7. Damages (Proof) Hearing: There may be a separate hearing to determine how much money you owe the landlord. This hearing occurs after the trial and decides if you owe the landlord money damages.

WHAT IS IN THE COURT PAPERS?

When you get the court papers, they will contain both a Complaint and a Summons. In the Complaint, the landlord can ask for the judge to order you to move out. The Complaint may also ask the judge to order you to pay back rent, court fees, and attorney's fees. If the Complaint asks for damages, that just means your landlord wants you to pay rent for the days after the eviction notice expired. It does not mean that you are accused of causing physical damage.

The final part of the Complaint is called the Summons. The Summons is almost always on the last page of the Complaint. The Summons is a command from a judge for you to appear at the first hearing, the "Answer Date." The Summons will either (1) tell you to come to a specific court on a specific time, date, and place, or (2) tell you to come to court on the fifth day after you receive the document. If it tells you to come on the fifth business day, start counting the day after you received it. Do **NOT** include weekends or holidays.

Example: if you received it on a Monday, you should start counting on Tuesday: Tuesday, Wednesday, Thursday, Friday, Monday. Show up on the following Monday.

How long will it take before I am evicted? It depends. It can take as long as three weeks, but it can be shorter depending on how you answer or if you attend the hearings.

Honolulu: After you receive your first court papers (Complaint & Summons), your Answer Date is scheduled for 5 working days from when you received it. If you do not attend, or if you admit you owe any rent, you will be evicted immediately, although the judge may give you time to get your things together. If you enter a General Denial, a Pre-Trial will usually be scheduled for the following Monday. If you attend the Pre-Trial, a Trial will be scheduled for 1 day to 2 weeks later. At Trial, the judge may issue a Judgment of Possession and Writ of Possession, which allows the sheriff to physically remove you.

County Courts (outside Honolulu): It depends on when the next trial date is scheduled for that district. Usually the courts hear housing cases on one day a week. This means you will probably have your Answer Date one week and your Trial on the same day of the next week.

WHAT SHOULD I DO NOW?

Decide: You need to decide if you want to move out or not. You may have some reasons why you want to stay. Your landlord may be wrongfully trying to make you move out. If you fight in court and lose, you may have to pay more than your back rent. You need to think about which option is best for you.

Look for new housing: If you have received court papers, start looking for new housing as soon as possible. If the landlord wins, the judge may let you have a little time to move out, but he does not have to. The sheriff can remove you as soon as the "Writ of Possession" is issued.

Prepare for your next hearing: Your next hearing could be the Answer Date, the Pre-Trial (for Honolulu only), or the Trial. This brochure covers each of those areas.

What can I do if the landlord locks me out or shuts off my utilities without court papers?: If your landlord locks you out overnight, shuts off your utilities, or removes your things, the landlord is breaking the law. Your landlord is required to go to court to evict you, even if you have not paid your rent. If you are locked out, your utilities are shut off, or if you fear that your landlord may try to do these things, you may be able to take your landlord to court to force your landlord to let you back in or prevent your landlord from locking you out in the first place. Legal Aid has self-help packets that can stop a lockout or utility cut-off and may get you money damages. Call Legal Aid Society of Hawai'i for more information. Ask about Housing TRO packets for Illegal Lockouts and Utility Shut-offs.

The Answer Date: The Answer date is simply a time when you go before the judge and respond to the landlord's complaint. The judge uses the Answer Date to determine whether or not this case needs to go to trial. You can call Legal Aid Society of Hawai'i because we have an Answer and Counterclaim Packet you can fill out. There are **5 important things to remember.**

1. Show up on time or lose: 1. Show up on time or lose if you do not show up for your Answer Date, or any other hearing, you could lose. The landlord will get everything she or he asked for, and you could be evicted that day. This is called a Default Judgment. It is a good idea to visit the court before your court date to find out where you go. To be safe, arrive early for your hearing. Leave plenty of time to find parking (feed the meter for at least 1 1/2 hours).

2. Find your case: Go to the Courtroom at least a half hour before the time of the hearing and bring the Complaint and Summons. Find the case list and make sure your case is on it so you know you are in the right place on the right day. You can find out the date, time, and location of your hearing on your Summons. Try to arrive about a half-hour earlier than your hearing time.

These are some court times for Oahu courts: (Double check with the court to see if these times are current.)

Honolulu..... Daily at 8:30
Ewa Fridays at 8:30
Koolaupoko-Koolauloa..... Thursdays at 8:30
Wahiawa/Waialua 1st & 3rd Wednesdays at 9:00
Waianae 1st & 3rd Tuesdays at 9:00

2. (Find Your Case - Continued): When you arrive, check the case list which is on the calendar inside the courtroom. You need to look at this to make sure your case is on it. If it is not, then check with the clerk to see who you need to call. Let the clerk know that your hearing is not on the calendar. For all Oahu courts, you must call the Honolulu court office (538-5151) to find out what is wrong.

3. Wait for your case to be called: After you make sure that you are in the right place, check with the clerk of the court to let them know you are there for your case. Wait inside the courtroom until your case is called. The cases are not necessarily heard in any order. The Judge may skip around to different cases on the Judge's list. Generally, responses to complaints are heard first. Hearings or trials are heard later. You should not leave the room at any point because your case could be called at any time. If you are not present when the judge calls your case, you may lose by default. When your case is called by the court clerk, answer "Here" and go up to the Judge.

4. Enter a "General Denial": On the Answer Date, all the Court wants to hear is your answer to the Complaint. If you disagree to anything mentioned in the Complaint and you want a chance to tell your side before being evicted, you should tell the judge you want to enter a "General Denial" and request a trial. Asking for a trial is your chance to tell your side of the story.

If you enter a General Denial, the landlord must then prove his or her case during a trial and you can explain your side of the story. You cannot be legally evicted until after the trial, however going to trial may mean you have to pay additional costs, such as your landlord's attorney fees.

If you admit (agree) to anything mentioned in the Complaint, the Judge may decide on the spot that the landlord is the winner and may order you to leave your unit immediately. For example, if the case is about nonpayment of rent and you admit that you owe any money to the landlord, you could lose and be evicted as soon as the order is entered.

5. Note Your Next Hearing: When you enter a General Denial, the Judge will set a specific date and time for the next hearing. Make sure you write down the day and time. If you are in the Honolulu District Court, then your next hearing will be a Pre-Trial Hearing set for the following Monday. If you are at any other courthouse, you will be given a specific date for the Trial, usually the following week.

Defenses and Counterclaims: A **defense** is the response to the landlord's claims, which fights your eviction. (your side of the story). If you win you can generally stay in the unit. Sample defenses include: I paid the rent; eviction was retaliatory. To present a defense, gather witnesses, documents, and photographs that support your claim.

A **counterclaim** is a separate court action you file in response to your landlord's claims, which fights your eviction and asks the court to award you money compensation. It is like a counter-suit. Legal Aid has an Answer and Counterclaim packet that you can use. You need to file and serve your landlord after you receive the complaint and summons BUT before your answer date hearing. If your answer date has already passed, you need to ask the court's permission (request "leave of the court") to do the paperwork afterwards. If the court says no, you can file a separate claims case in small claims or regular claims court. Call Legal Aid for more assistance.

I Missed a Hearing: If you miss any of your court dates (answer date, pre-trial hearing, or trial), you could lose by default. Everything in the landlord's complaint will be seen as true, and you will be evicted. You may be able to ask the judge to give you another hearing if you have a good reason for being late or not appearing. You must file these forms as soon as possible:

- Motion to Set Aside Judgment and
- Motion to Stay the Writ of Execution.

To do this, you can pick up forms for these at Legal Aid Society of Hawai'i, or pick up a form for the Motion to Set Aside Judgment at the District Court. Fill these out and file them the same day if possible.

PRE-TRIAL: (for Honolulu cases only; if you had your hearing at another courthouse, skip to the Trial stage.) At the Pre-Trial, you and the landlord must each tell the Court what witnesses and evidence you will use at the trial. At your Pre-Trial, you and your landlord may meet with a mediator before the hearing to see if you can settle the issues. If you do, you can ask the mediator to write up the agreement.

If no settlement is reached during the Pre-Trial Hearing, the Judge will set a date for the trial. If a settlement is reached at the Pre-Trial Hearing or before it, go to court anyway and then you and the landlord can ask to enter the agreement on the court record.

Mediation: Before the Trial or Pre-Trial, the Judge could ask you and your landlord to meet with a mediator from the Neighborhood Justice Center. The mediator's job is to help you and the landlord settle the lawsuit. The mediator should listen to your side of the story as well as the landlord's.

To prepare for this meeting, think about the kind of settlements that you would be willing to accept from the landlord. It might be a good idea to write these down in a note to yourself. In the middle of a meeting it is easy to get sidetracked or swayed by what others are saying. Do not accept a settlement that is not fair to you.

You do **NOT** have to reach an agreement at the mediation. You have the right to go to trial and have your story heard by the judge.

TRIAL: Normally, within 1 week after either the Answer Date or the Pre-Trial Hearing, the Judge will set a date for the start of the trial to decide the eviction dispute. See Legal Aid Society of Hawai'i's brochure Eviction Trial Packet to help you prepare for trial.

At the trial, there will be no jury. The Judge will decide the case based on (1) the evidence, testimony, and exhibits presented during the trial, and (2) the Judge's understanding of the law. Both you and the landlord will have a chance to present witnesses and arguments before the Court. You and the landlord will also be able to cross-examine (ask questions of) each other's witnesses.

What happens after the trial, if I lose? If you lose at the trial, the judge will issue a Writ of Possession and a Judgment for Possession. Either a sheriff or a police officer must "serve" you (give you) the Judgment and the Writ. Generally the sheriff will give you some time, usually a day, to move. After you receive the Writ, the sheriff or the police officer has the power to remove you, anyone living with you, and your property from the rental unit. If you don't remove your property on your own, the landlord may remove your belongings and place them in storage. To get your belongings back, you would have to remove them from storage and pay the cost of moving and storing them. If you do not reclaim your belongings within a certain time, your landlord may sell them or dispose of them.

TRIAL (continued):

How much will I have to pay, if I lose? There may be a separate hearing, called a damages hearing, or it may be determined at your trial. The court decides how much you owe and orders you to pay it. If you have claims about what the landlord did, that may offset some of the amount awarded to the landlord. The costs you may have to pay include:

- **Rent and late fees** the landlord claims you owe.
- **Landlord's attorney fees**, usually 25% of the amount of rent owed to the landlord as determined by the Judge. These can be collected only if the landlord hired an attorney.
- **Landlord's court costs** such as the filing fee and the sheriff's fee for serving the court papers.
- **Holdover Rent** is a penalty for staying in the rental unit after you should have gone. The judge usually decides the amount. Holdover rent is normally twice the normal rent and is "prorated" from the time the rental agreement terminated to the time that you actually leave the rental unit. "Prorated" means that the monthly rent is broken down to a day-by-day rate.
- **Cost of repair** for any damages to the unit.
- **Interest** (look this up)

The District Court has **concurrent** jurisdiction (i.e. has the power to hear the case also) over disputes involving security deposits in situations where the landlord filed a Summary Possession action against the tenant in District Court. What this means for the tenant is that the District Court will hear the dispute about the security deposit as part of the damages portion of the eviction, rather than the small claims court. If you file a complaint in the Small Claims division for return of your security deposit while you are being evicted, your claim will be "joined" with the other Summary Possession. If you've moved out and your landlord didn't file a complaint in District Court to have you evicted, but there is merely a dispute over your security deposit, **then** you can file a claim in Small Claims Court.

If I lose, is there any way to change the court's order? If there are extreme circumstances such as fraud or new evidence which was not available before, you may be able to ask the court to change its ruling. Call Legal Aid or a private attorney for more information on this. You will have to file a Motion for Reconsideration with the court. This does not stop the enforcement of the Writ of Possession, unless this is requested in the motion.

How can the landlord collect the money from me? If the landlord wins the case, the landlord will have a judgment against you which allows the landlord to collect money owed by you. If you have little or no assets, you may be considered judgment-proof.

This means the landlord cannot collect from you because you make too little to take. For more information, see Legal Aid Society of Hawai'i's Debt Collection brochure. If you have a job, or make over \$154.50 a week, the landlord can "garnish" (take) some of your wages. The landlord must follow certain steps to garnish your paycheck. For more information, see

Legal Aid Society of Hawai'i's Garnishment brochure. The landlord could also follow the legal process to put a "lien" on any property you have. This would mean the landlord would get any profits from the sale of those things, such as a house, car, or boat. For more information, call Legal Aid Society of Hawai'i.

Will I have to pay to stay? Rent Trust Fund

If the Judge decides that it is necessary or if the landlord requests it, the Judge may order you to deposit any disputed rent as it becomes due, not including past rent, into a trust fund (held by the Court). If you cannot put up the money, then the landlord could automatically win the case and you may be evicted. If this happens, call Legal Aid immediately. See the numbers at the back of this brochure.

If the Judge plans to set up a trust fund, object on the ground that the landlord did not ask for a trust fund in the original complaint. If the landlord did ask for one in the original complaint, say it violates "due process" because you can be evicted for not paying into the trust fund without the chance to present a defense.

If you can pay, you can stop the eviction. If you pay all back rent, attorney's fees, court costs, and interest you can keep the judge from issuing the Writ of Possession when you are evicted for nonpayment of rent. Bring a check or cash with you to Court so you can pay the landlord the money in front of the judge as soon as the judge gives the ruling. This way you can show the judge that you have paid your debt, and you can keep from being evicted. REMEMBER, you must do this before the Judge signs the Writ of Possession.

Can my landlord do that ?

Just because your landlord owns the property does not mean he or she can do anything. Illegal actions include:

- overnight lockout
- utility shut off
- eviction in retaliation
- discrimination
- taking your personal property

If you feel your landlord evicted you illegally, call the Legal Aid Society of Hawai'i. There are two packets which you may be able to use to assert your rights: **Lockouts and Utility Cut-offs** and **Answer and Counterclaim.**

LEGAL TERMS

Answer
the defendant's response to a complaint, filed in the court

Complaint
the paper filed with the court to start a lawsuit

Counterclaim
filed by the defendant to defeat the plaintiff's action and to ask for money

Damages
amounts owed, not the same as physical damage

Defendant
one against whom a complaint is filed

LEGAL TERMS (continued)

Default judgment
a judgment entered against the defendant due to the defendant's failure to respond to the complaint or appear at trial; generally grants everything the plaintiff requested

Eviction
court process to remove a tenant from a landlord's property, called "summary possession" in Hawai'i

File
to deliver documents to the clerk at the court

Garnishment
taking a portion from your wages to satisfy a money judgment

Judgment
the decision the court enters which is legally enforceable

Mediation
when a third person comes between two parties to try and encourage a settlement

Parties
the persons actively taking part in the prosecution and defense of a legal proceeding

Plaintiff
the one who starts a lawsuit

Pro Se
representing yourself without a lawyer

Serve
to deliver a copy of something you file with the court to the other part to the suit

Summary Possession
court process to remove a tenant from a landlord's property, also called "eviction"

USEFUL NAMES & NUMBERS

DISTRICT COURT

OAHU: 538-5151
MAUI: 244-2800

BIG ISLAND:
Hilo: 961-7470
Kona: 322-2022
Hamakua: 885-4615

KAUAI: 246-3330 or 246-3337
MOLOKAI: 553-5451
LANAI: 565-6447

Office of Consumer Protection's Landlord/Tenant Hotline

Oahu 586-2634

From the Neighbor Islands (toll free)

Big Island 974-4000 ext. 62634
Kauai 274-3141 ext. 62634
Maui 984-2400 ext. 62634
Molokai & Lanai 1-800-468-4644 ext. 62634

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