This handout provides an overview of the various types of housing in Hawai‘i and the rights of tenants in each housing type. It also provides information on how to avoid problems that may lead to the loss of a family’s housing or housing subsidy.
Table of Contents:

Overview of Housing Law ................................................................. 2

The Basics of Private Landlord-Tenant Relationships ..................... 4

The Basics of Section 8 Vouchers .................................................... 7

The Basics of Public Housing and Other Subsidized Housing .......... 8

Summary of How to Avoid Housing Problems ................................. 10
I. IDENTIFYING THE DIFFERENT TYPES OF HOUSING
There are many different types of rental housing in Hawai‘i. For each type, different rules, regulations and procedures apply. When analyzing a housing issue, the landlord/tenant must determine which type of housing the tenant has, and identify the applicable laws.

A. Private Rentals (Unsubsidized Housing)
   1. Private Landlord
   2. No government involvement
   3. Hawai‘i’s Residential Landlord-Tenant Code (“the Code”) governs the relationship

In private rentals, the landlord is a private landlord and there is no government involvement in the tenancy, except that the landlord and tenant must comply the Code. The Code governs all residential rental leases/agreements between private landlords and tenants. The Code does not govern most federally-funded public housing, hotels, homeless/transitional shelters, and/or commercial leases.

B. HUD Subsidized Housing
There are a variety of different housing subsidies in Hawai‘i. If a tenant is unsure whether s/he lives in subsidized housing, or receives a housing subsidy, abnormally low rent and/or annual recertification generally indicates that s/he is in some form of subsidized housing. Most subsidized housing in the State of Hawai‘i is governed by federal law and regulations promulgated the U.S. Department of Housing and Urban Development (“HUD”).

1. Public Housing (“the projects”)
   In public housing, the landlord is a State of Hawai‘i agency titled the Hawai‘i Public Housing Authority (“HPHA”).
   a. A public housing tenant’s rent is usually set at 30% of his/her income.
   b. A public housing tenant’s subsidy is available only as long as s/he lives in the building. If the tenant moves, the subsidy is transferred to the new tenant.
   c. Federal statutes, HUD regulations, and HPHA administrative rules govern public housing tenancies. The Code does not apply to most public housing.
d. “Good cause” is needed to evict a tenant from public housing. Basically, this means that a tenant’s lease cannot be terminated merely by a lapse of time—there must be a good reason. Evictions are carried out pursuant to an administrative grievance process, and unfavorable decisions may be appealed to the Hawai‘i Circuit Court.

2. **HUD Buildings (“multifamily housing”)**

HUD Buildings are buildings that private developers build and/or operate with financial assistance from HUD.

a. In HUD buildings, the landlord is usually a private rental management company who has agreed with HUD to either keep rent low, or allow HUD to subsidize each tenant in the building.

b. Generally, both federal law and the Code applies to HUD buildings.

c. Like public housing, the subsidy that a tenant in a HUD Building receives is not “portable” (i.e., the subsidy cannot be taken with the tenant if s/he moves out, or is evicted).

d. Evictions are carried out pursuant to the regular State of Hawai‘i court process.

3. **Section 8 Vouchers**

Section 8 Vouchers are a subsidy by which the government pays a portion of the tenant’s rent directly to his/her private landlord.

a. For Section 8 Vouchers, the landlord is a private landlord.

b. Because the government is paying a portion of the rent, there is also a contract between the landlord and the government.

c. Generally, both federal law and the Code applies to Section 8 Vouchers.

d. Evictions are carried out pursuant to the regular State of Hawai‘i court process.

e. Federal laws that apply to Section 8 Vouchers are similar to public housing, except that “good cause” is not needed to evict the tenant after the expiration of the initial lease term.

C. **Other Forms of Subsidized Housing**

There are additional types of subsidized housing that are fairly uncommon in Hawai‘i. These include: 1) the Low-Income Housing Tax Credit program (governed by the IRS); 2) U.S. Department of Agriculture “Rural Housing”; and 3) State of Hawai‘i Housing programs established by the Hawai‘i State Legislature (operated by HPHA). The rules for these housing types are similar to the rules for other types of subsidized housing. “Good cause” is generally required to evict a tenant. Rents are either based on a percentage of the tenant’s income, or cannot exceed a certain rent ceiling. Generally, the Code applies to these housing types, as does federal and state laws governing the specific program under which the housing is subsidized.
The Basics of Private Landlord-Tenant Relationships  
*(See the Landlord-Tenant Code for more detail, HRS § 521)*

APPLYING FOR A RENTAL UNIT

A. Application fees cost approximately $10-25, and include costs associated with processing the application and running a credit check.

B. Past Residences

C. Employment History

D. Credit References

E. Bank/Credit Accounts

F. References

G. Emergency Contacts

H. Discrimination in the rental of a dwelling because of national origin, ancestry, age, race, color, familial status, marital status, HIV infection, disability, religion, or sex is illegal. Contact Legal Aid at (808) 527-FAIR (3247).

I. Landlord may use Criteria to Select Tenants—landlords may use legal criteria to select tenants, such as their past tenancy history, credit history, criminal history, and income. Landlords may also personal criteria in selecting tenants, such as purple hair, nose rings, etc. In some places, a landlord may even refuse to rent to certain prospective tenants because of their occupation.

TIPS:

- When viewing the rental unit, tenants should check the property thoroughly (e.g., ensure that the water runs, toilets flush, windows open and close, lights turn on and off, etc. BUT be respectful!).

- Tenants should prepare any and all information that s/he may be required furnish on their rental application, and bring it when them when viewing potential dwellings, including, references, employer, past residences, former landlords, etc.

- Tenants should be properly groomed, and neatly dressed when viewing potential dwellings. Children should be left at home to minimize distractions. The truth should always be told!

TYPES OF RENTAL AGREEMENTS

Fixed/Term Leases
For fixed/term leases, the lease automatically ends on the day that it says it ends. NOTE: no additional notice needed from the landlord. Fixed/term leases, may be cut short when…

By Landlord:
- Failure to pay rent (NOTE: the landlord must give the tenant written notice to pay back rent within (5) days, or to quit).
- Improper use and/or or violation of household rules (NOTE: the landlord must give the tenant written notice to cure the violation within (10) days, *unless* it involves a threat to safety)
- Tenant wrongfully leaves.

By Tenant:
- Failure to supply and maintain a fit premises by the landlord through no fault of the tenant.
- Illegal lock out of the tenant by the landlord over night.
Month to Month Leases
A month to month lease may be terminated by written notice from either the tenant or the landlord. Tenants must give (28) days notice prior to termination, and landlords must give (45) days notice prior to termination. NOTE: landlords may also adjust the rent by providing (45) days written notice to tenants.

Month to month leases may be cut short for the same reasons listed above for fixed/term leases.

TIPS:
- Potential tenants should READ and UNDERSTAND what they are signing. If they don’t understand a term, they should ask questions.
- Potential tenants who learn of a lease term that they don’t agree with should NOT sign the lease.

SECURITY DEPOSITS

A. Security deposits can be any amount, up to one months rent. A security deposit that exceeds one months rent is illegal under the Code.
B. Security deposits are used to insure that tenants fulfill the terms of their rental agreement/lease, and leave the dwelling in good condition.
C. Landlords may retain security deposits if tenants damage the dwelling “beyond normal wear and tear” (i.e., the dwelling is in worse condition than when the tenancy began).
D. Security deposits cannot be used for last months rent, unless the landlord and tenant agrees to such in writing.
E. Before paying the landlord the security deposit, the tenant should ensure that the deposit is referenced in his/her rental agreement/lease prior to signing.
F. By law, tenants should get their security deposit back within (14) days after they moves out, unless the landlord provides an accounting as to why the full deposit was not returned. NOTE: landlords must notify tenants in writing if they are keeping a portion of the deposit within (14) days after the tenant moves out, and provide an itemized bill specifying what the deposit will be used to pay for.
G. Tenants should be sure to inform their landlord of their forwarding address.

TIPS:
- Tenants should keep rental units clean (inside and out), dispose of garbage properly, and keep common areas clean!
- Tenants should do a detailed “move in inspection inventory” to protect themselves, keep a copy, and give a copy to their landlord.

REPAIRS

A. When tenants notice that something in their until needs repair, they should report it to their landlord in writing. The request for repair should be dated, and tenants should keep a copy.
B. In the State of Hawai’i, landlords must takes steps to repair sanitary and habitable living conditions (e.g., major appliances, necessary facilities, etc.) within (3) business days after receiving written notice to repair, unless the repairs were required because of misuse by the tenant. For all other non-emergency repairs, landlords must takes steps to repair within (12) business days after receiving written notice.
C. Repair and Deduct—in certain circumstances, tenants can make the repairs and deduct the costs from rent; however, tenants must follow the procedures listed in the Code. NOTE: tenants should
always obtain legal advice prior to withholding rent in any situation, because they may be evicted for withholding rent.

TIPS:

- Tenants should document all communications with their landlord in writing, and keep copies of all notices and/or letters you received from their landlord.
- Tenants should report maintenance problems to their landlord in writing, including damage or breakage they caused. Before tenants make repairs they should talk to their landlord, because their landlord may prefer to have a professional fix the problem.

RENT PAYMENTS

A. Tenants should always pay by check, cashier’s check, or money order, and keep copies for their records.
B. Tenants should always ask for a receipt from their landlord, and never give their landlord cash without a receipt!
C. Tenants should never withhold rent.

EVictions

An eviction occurs when the lease is terminated by the landlord in one of the ways mentioned above, and the tenant fails to move out.

“Self-Help” Evictions are Illegal—landlords must use the State of Hawai‘i court process to evict tenants. Landlords cannot change the locks, shut the utilities off, or otherwise physically act to remove tenants without going through the court process. NOTE: if a landlord engages in a self-help eviction, the tenant may be entitled to significant money damages. If a landlord threatens a self-help eviction, the tenant obtain a Temporary Restraining Order (“TRO”) to prevent the landlord from doing so.

Holdover Tenants—tenants who remain in the rental unit after the rental agreement/lease expires are holdover tenants. NOTE: holdover tenants may be liable to their landlord for two times their monthly rent under the previous rental agreement.
The Basics of Section 8 Vouchers

Overview: Essentially the same rules apply to Section 8 as to private landlord-tenant relationships, but there are a few extra issues. The main difference is that Section 8 pays a portion of the tenant’s rent to the landlord (the tenant usually pays only 30% of their income for rent).

Applications: On O’ahu, there are two separate places a person can apply for Section 8 assistance: 1) the City and County of Honolulu; and 2) HPHA. The waiting lists are extremely long, and are currently closed indefinitely (i.e., neither the City and County, nor HPHA are currently accepting applications for Section 8).

Eviction = Termination of Section 8: Generally speaking, if a tenant is evicted by their landlord, the tenant will lose his or her Section 8. This should be avoided at all costs. Once a tenant is terminated from Section 8, it is next to impossible to get assistance again. Often tenants can negotiate a settlement with their landlord to ensure that they are not “technically” evicted, which may allow them to preserve their Section 8. If a tenant’s lease merely expires, the tenant will have to move, but the tenant will be able to use their Section 8 somewhere else.

Due Process Rights: If a termination of a tenant’s Section 8 benefits is threatened, the tenant has the right to dispute the termination through an informal meeting followed by a hearing. However, the tenant must act promptly (i.e., with as little as 10 days) to dispute the decision and ensure that their rights are not forfeited.

Finding a Place in Time: A tenant only has a certain amount of time, usually (60) days, to find a place to rent with their voucher once it has been issued. If they cannot find a place in time, they will lose their Section 8 assistance. Also, the place must meet all the Section 8 requirements which include rigorous Housing Quality Standards (which require the unit to be in a certain physical condition).

Other Differences from Private Landlord-Tenant: Initially, the lease term must be either (6) months or (1) year. During the initial lease period, the landlord can only terminate the lease “for cause.” After the initial lease term expires, the landlord may convert the tenancy into a month-to-month, at which point the landlord will be able to terminate the lease within (45) days written notice.

There are additional notice requirements that the landlord must follow when trying to adjust a tenant’s rent or evict the tenant. For example, a landlord must provide (60) days notice to increase a tenant’s rent instead of (45) under the Code.

The Violence Against Women Act (“VAWA”): VAWA provides additional protections for tenants of public housing and Section 8 recipients who are victims of domestic violence, dating violence, or stalking.

Under VAWA, victims cannot be evicted or lose their housing subsidy for incidents of abuse against them. For example, if an abuser damages the unit of the victim, the victim cannot be evicted for a lease violation. If the abuser is part of the household, the abuser can be evicted and their subsidy terminated, while the victim is allowed to retain their housing and their subsidy.

Victims of domestic violence, dating violence, or stalking also cannot be denied housing based on their victim status. For example, a victim’s application should not be rejected because of damages caused by an abuser to a unit previously rented by the victim or because of a bad credit history caused by financial
abuse. VAWA is currently applicable to only public housing and Section 8. It does not apply to other housing subsidies. VAWA was enacted in January 2006. Because VAWA is relatively new, landlords and administrators of public housing and the Section 8 program may not be familiar with its requirements.

The Basics of Public Housing and Other Subsidized Housing

Overview: For public housing and other “project-based” housing subsidies, unlike Section 8, tenants reside in a certain building in which a housing subsidy is received. Tenants have the greatest protection from eviction or lease termination out of all types of housing. In fact, tenants may only be required to leave “for cause” (i.e., if they violated their rental agreement). Rent for most, but not all, tenants in public or subsidized housing, is capped at 30% of tenant income.

Applications: To apply for public housing, applicants need to apply with HPHA. There are other subsidized housing buildings managed by various private owners with which an applicant will need to apply directly. Legal Aid has information regarding these other subsidized housing opportunities. Applying at one site will not mean you will be considered for all available opportunities. The waiting lists for subsidized housing are generally long.

Application of the Landlord Tenant Code: The Code does not apply to public housing. Instead, separate HPHA rules apply along with federal laws and regulations. Tenants are evicted through an administrative process within HPHA instead of the court system. This process has additional protections for the tenant to ensure they are not improperly evicted. The Code applies to other types of subsidized housing. Tenants are evicted through the regular court process.

Eviction = Loss of Housing and Loss of the Subsidy: If a tenant is evicted from public or subsidized housing, they will lose both their housing and their subsidy with little chance of getting into subsidized housing again. Eviction must be avoided at all costs.

Due Process Rights: If eviction is threatened, the tenant has some due process rights to dispute the eviction. In public housing, tenants should make use of the grievance process, under which they are entitled to a hearing to dispute the eviction or any other adverse action taken against them by HPHA. In other types of subsidized housing, tenants are entitled to dispute the eviction in various ways, usually through an informal meeting with the landlord, and later through the court process.

VAWA: VAWA applies to public housing as well as Section 8. It does not apply to other housing subsidies. See the description of VAWA under the Section 8 program on page 7 for additional information.
Housing Assistance

A variety of services and assistance is available on O’ahu from several different agencies, including: assistance with permanent housing rent payments, permanent housing rental deposits, past due utility payments, utility deposits, housing search and placement, credit repair, budgeting assistance, case management, and legal assistance with evictions, landlord tenant disputes, habitability and repair issues, and more.

There are several programs that offer financial assistance and other services to prevent individuals and families from becoming homeless; and to help those who are experiencing homelessness to be quickly re-housed and stabilized. These programs change on a yearly basis depending on the funding available. Other restrictions may apply.

Typically, the funding available is administered through the following agencies. You should call the agency directly to see if you are eligible for financial assistance:

- Catholic Charities: (Tel) 521-4357
- Helping Hands: (Tel) 440-3835
- IHS: (Tel) 447-2863
- Kalihi Palama: (Tel) 791-4545
- Waianae Coast Comprehensive: (Tel) 697-3300, ext. 3594
SUMMARY OF HOW TO AVOID HOUSING PROBLEMS

MAKING SMART HOUSING CHOICES

1. **Pay Rent/Mortgage on Time**
   
   Failure to pay rent or a mortgage on time is the most frequent reason why people lose their housing. Paying for shelter costs should take priority over most other bills, especially in subsidized housing or for people that own their own homes. It is usually best to borrow money from elsewhere to pay your rent if you live in subsidized housing, or pay your mortgage if you own your home. Owing money to your landlord or the bank that holds your mortgage will inevitably result in losing your housing.

2. **Do Not Withhold Rent**
   
   Never withhold rent without first obtaining advice from an attorney or before you first carefully review and understand the applicable rules. Even if your landlord did something wrong, you can still be evicted if you withhold your rent.

3. **Request Rent Adjustments Promptly**
   
   If a tenant who receives a rent subsidy of some kind suffers a reduction in income, immediately request a rent adjustment. Adjustments not requested will not be made retroactively.

4. **Know the Rules and Follow Them**
   
   Don’t violate the rules of the lease and the house rules; you will eventually get evicted. Common violations include unauthorized guests or occupants, noise violations, and damaging the apartment. Read your lease before you move in. If your tenancy is subject to the landlord-tenant code, get a copy and read it before problems develop.

5. **Be a Good Neighbor**
   
   Most problems, other than those created by failure to pay rent, can be avoided by being pleasant to your landlord and your neighbors. Even when you disagree with your neighbors or your landlord, try to resolve the problem cordially by focusing on resolving the problem, not attacking the person you think created it.

6. **Be Conscientious**
   
   If there are any obligations that you have as part of your tenancy, it is important that you comply with those obligations and do so promptly. This is especially important in subsidized housing where tenants are required to periodically meet with their landlord and provide information regarding their income, assets, and family composition. Failing to promptly comply with these obligations can lead to eviction.

7. **Talk to Your Landlord if Problems Arise**
   
   If you run into problems keeping your obligations for your tenancy, often the best policy is to talk with your landlord to inform him or her of the problems so that you can try to work out a solution together. Of
course the approach you take will depend on your relationship with your landlord. It is common for people to avoid their landlord when problems arise, but doing so often makes landlords resentful.

8. **Maintain Your Home**

Keep your home clean and safe. If you own your home, maintaining it well will increase its value. If you rent, you are less likely to run into problems with your landlord if you take care of your rental. In extreme cases, families can be evicted for failing to properly maintain their home. Landlords will often refuse to return tenants’ security deposits for damages caused to the property.

9. **Keep Good Records**

It is importantly to keep track of all your rental documents (e.g., leases, house rules, rent receipts, etc.) in case you need to refer to them in the future. Never pay rent in cash unless the landlord will immediately provide you with a receipt—use checks or money orders if your landlord refuses to provide receipts.

**RECOGNIZING THREATS TO HOUSING**

1. **Know Your Rights**

A. **Fair Housing Act**
   - The Fair Housing Act prohibits discrimination in housing because of race or color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18), or handicap (disability). This act covers most housing but there are some exemptions for owner occupied buildings.
   - You may register a complaint against a landlord who violated federal Fair Housing provisions with the Legal Aid Society of Hawai‘i; on Oahu, call: 527-8024, Neighbor islands toll-free: 1-866-527-FAIR (1-866-527-3247).

B. **Landlord Tenant Code**
     - Available online at: [http://hawaii.gov/dcca/ocp/landlord_tenant](http://hawaii.gov/dcca/ocp/landlord_tenant)
     - Or call them at 586-2634 Monday Through Friday, 8am – noon

2. **Unusual Situations**

In a normal landlord-tenant relationship, there is often very little interaction between the landlord and tenant. Communication is usually limited to the tenant paying rent every month. If you receive any type of notice from your landlord saying that you have violated your lease, you should take it seriously.

If you are in violation of your lease, you usually have 5 to 10 days to cure the problem—make sure that you do it promptly and do not violate the lease again in a similar manner. If you do not agree that you have violated the lease, dispute the violation in writing and try to resolve the issue with your landlord. If you live in subsidized housing where a hearing is available to resolve disputes, immediately request a hearing.
3. **Illegal Discrimination**

Housing discrimination based on your race, color, national origin, religion, sex, family status, sexual orientation, marital status, perceived gender identity, HIV infection, or disability is illegal. If you feel like your landlord is discriminating against you for any of these reasons, you should seek help in filing a fair housing complaint. Examples of discrimination may include “I’m not sure you would feel comfortable in this neighborhood,” or “Families with children are not allowed to live on the second floor.”

*** For help with housing discrimination, call 527-FAIR (3247) or 1-866-527-3247 ***

4. **Housing Preservation**

Some tenants of subsidized housing projects may face the loss of their housing if their project is sold, demolished, or converted to market rentals. These problems are not always avoidable, and addressing them promptly is the only way that there will be a chance the housing can be preserved. If a tenant or advocate learns that affordable housing is going to be lost, they should seek help from an attorney immediately.

5. **Foreclosure Rescue Scams**

Some people prey on homeowners who are facing foreclosure. Be careful of people who contact you claiming that they want to help you save your home, especially if they come knocking on your door. The end result will often be that you will lose your home and all the equity in it, which will go to the person that offered to help you. Alternatively, the scammer will charge substantial fees for providing a service of little or no value. If you are facing foreclosure and need help, actively seek organizations that can help you and check into the background of the person offering you their assistance. Do not wait for help to come to your door or mailbox.

6. **Watch Out for Trouble Landlords**

Most landlords are good, understand their responsibilities as landlords, and treat their tenants well. However, there are some landlords who are overbearing and try to take advantage of their tenants. If you are unfortunate enough to get one of these landlords, your best option is to move. This is especially important if you have a Section 8 voucher where disputes with your landlord can result in termination of the voucher and loss of your housing subsidy.

If you live in subsidized housing, you generally do not have the option of moving. You should do everything you can to comply with your obligations as a tenant, even if you feel your landlord is not complying with theirs. Do not be afraid to contact others for help and stand up for your rights—just make sure that you are doing everything you need to in order to comply with your part of the bargain.

7. **If it Doesn’t Feel Right, it Probably Isn’t**

It is impossible to identify every housing-related problem that might arise for a tenant. As a rule of thumb, if something doesn’t feel right, it probably isn’t. The law often, though not always, protects against gross unfairness. If you believe you are being treated unfairly or that your rights are being violated, get help.
WHAT TO DO WHEN HOUSING IS THREATENED

1. **Act Promptly**
   One of the most important things to do is to take prompt action when any problem arises pertaining to your tenancy. In a normal landlord-tenant relationship, the tenant pays the landlord on time for each month’s rent and there is very little other interaction between the landlord and the tenant. If there is anything else that occurs—such as receiving a notice of a house rules violation(s), receiving a notice to pay rent, being told that your lease is terminating—take immediate action to try and remedy the problem. Problems become much more difficult to solve as time passes.

2. **Make a Paper Trail**
   If problems arise with your tenancy (e.g., if you receive a rule violation notice, if your landlord refuses to make requested repairs, etc.) send a letter to your landlord about the problems. If you are cited for a rule violation you did not commit, contest it in writing. Try to be cordial in your communications. Make sure you keep a copy of everything you send your landlord.

3. **Request a Hearing**
   If disputes arise for public housing tenants or tenants with Section 8 vouchers, the tenant will often have the right to a hearing. However, the hearing must be requested promptly or the tenant will forfeit their right. If a tenant receives a violation notice, unless the tenant does not dispute the violation and does not dispute that the violation should have adverse consequences, the tenant should request a hearing.

   Tenants of public housing who are facing eviction will be scheduled for an eviction hearing in front of a Hawaii Public Housing Authority Eviction Board. If the tenant does not attend the hearing, the tenant will be evicted. Some tenants have the false impression that if they tell the eviction board excuses for why they violated their rental agreement (e.g., why they didn’t pay their rent), the eviction board will be lenient and will give them another chance—this is not the case. The eviction hearing is a tenant’s final opportunity to dispute the eviction. Tenants should be prepared to present evidence and forcefully argue why they did not violate their lease as alleged. Similarly, for evictions carried out in court, judges will not be swayed by excuses for why the tenant violated the lease. Tenants must attend their court hearings and must be prepared to present evidence as to why they did not violate their lease.

4. **Get Help**
   Do not wait to get help with housing issues. People often wait until it is clear that they cannot resolve an issue on their own. Unfortunately, the issue may be irresolvable at that point and so the sooner that you seek help on issues that threaten your housing the better. Organizations that assist people facing housing problems have limited resources. Legal Aid, for example, can only represent a limited number of people in court. However, if you seek help early on, it will often take far less effort to resolve your problem and you will be more likely to receive the help you need.

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.

For more information or assistance call Legal Aid at 536-4302 or 1-800-449-4302 or access additional information at [http://www.legalaidhawaii.org](http://www.legalaidhawaii.org).