



LEGAL AID SOCIETY OF HAWAI'I



HOW TO COUNTERCLAIM IF YOU ARE FACING EVICTION

IMPORTANT

Use this brochure if you have received court eviction papers (*Complaint & Summons*) and you want to *counterclaim* against your landlord. This should be read together with our brochure, *Eviction: The Court Process*. If you have questions about your housing issue, please call the Legal Aid Society of Hawai'i. *See the back of this brochure for contact information.*

This brochure covers: 1) How to fill out an Answer and Counterclaim, and
2) How to file and serve an Answer and Counterclaim



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Aloha United Way

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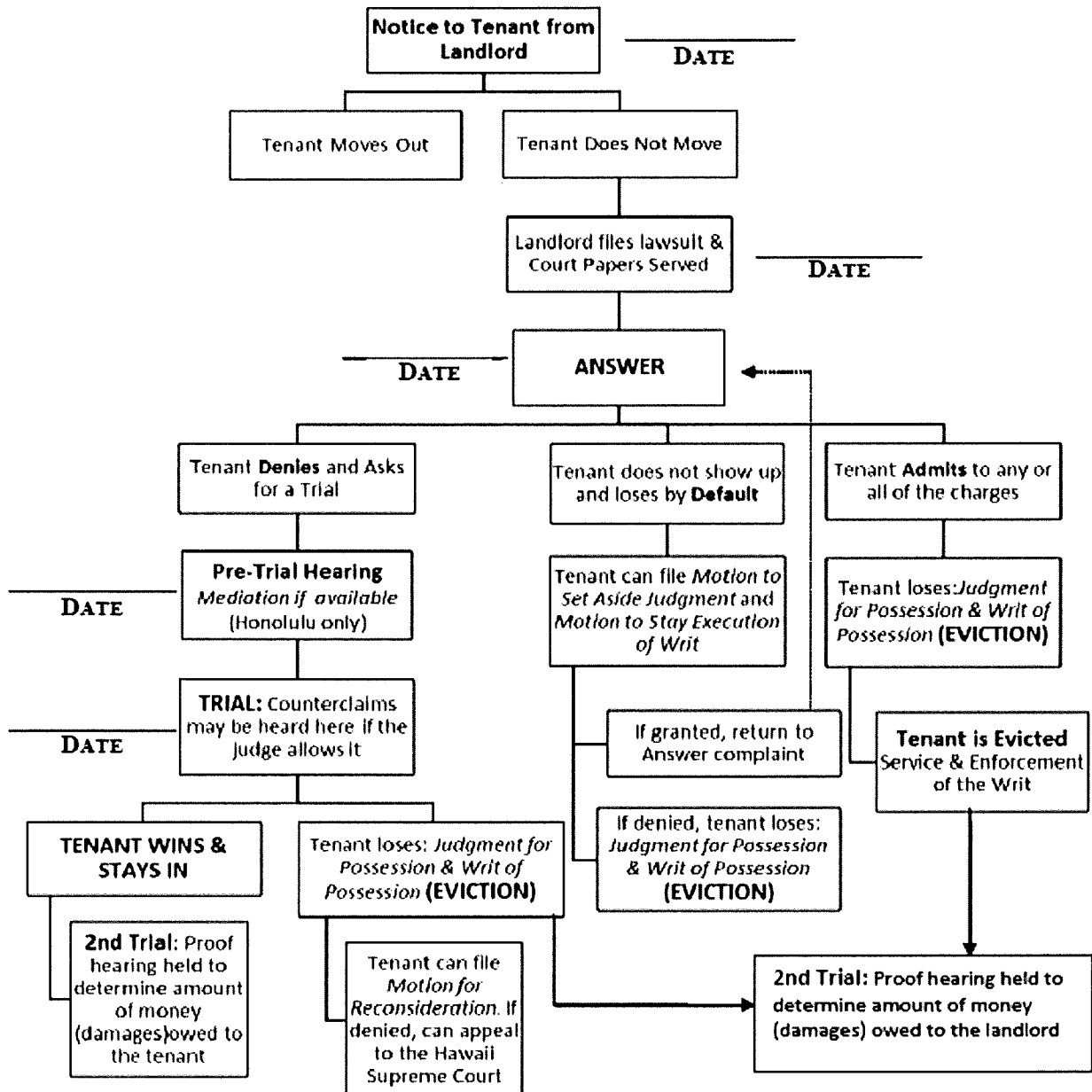
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LANDLORD-TENANT EVICTION CHART

Use this page as a checklist in your eviction case.
Write in the dates and add notes to each event that applies to you.



PART I: WHAT TO EXPECT IF YOU COUNTERCLAIM

WHAT IS A COUNTERCLAIM?

In order to evict you, your landlord must do three (3) things:

- 1) Give proper written notice stating when he/she wants you to move out of the unit;
- 2) Serve you with court eviction papers (*Complaint & Summons*);
- 3) Win a court eviction hearing before a judge and obtain a court order forcing you out of the unit (*Writ of Possession*).

The eviction process can take between two weeks to one month depending on how you respond to the court eviction papers.

Once you receive court eviction papers, you have three (3) options:

- 1) You can find a new place to live and move out.
If you owe back rent, or if you agree with your landlord's claims against you, you should start looking for a new place to live immediately. If you are interested in learning how to "buy time" to look for a new place to live, this packet may be of no use to you. Call the Legal Aid Hotline for more information.
- 2) You can **Answer** the complaint you received.
This means you will defend your position in court to either:
 - a. Reduce the amount of money your landlord claims you owe, and/or
 - b. Dispute your landlord's charges against you
- 3) You can **Counterclaim** against your landlord for problems he/she may have caused during your tenancy. If you win your counterclaim hearing, you may be entitled to collect "damages" (money).

HOW TO COUNTERCLAIM: AN OVERVIEW

- 1) Complete the *Answer and Counterclaim* form at the back of this brochure. Then, make five (5) copies.
- 2) File all five (5) copies of your *Answer and Counterclaim* in District Court (see the back of this brochure for addresses and contact information). "Filing" means the court clerk will file-stamp all five (5) copies. He/She will keep one (1) copy for the court's records, and then immediately return four (4) file-stamped copies of your *Answer and Counterclaim*.

NOTE: FILING A COUNTERCLAIM COSTS MONEY (“FILING FEE”). When you go to file your five (5) copies at court, you can either pay the filing fee directly to the clerk, or you can submit a fee waiver application (*Ex Parte Application for Relief from Costs*). The *Ex Parte Application for Relief from Costs* can be found at District Court in your Circuit. The court must first approve your fee waiver application before you can file your counterclaim free of charge. Typically, this takes twenty-four (24) hours. Complete the *Ex Parte Application for Relief from Costs* and drop it off at District Court. Return the following day to see if it has been approved. If the court approves your fee waiver application, you should provide a copy to the clerk when you go to file your counterclaim.

- 3) Serve a file-stamped copy of your *Answer and Counterclaim* on your landlord. If your landlord has an attorney, serve the file-stamped copy directly on your landlord’s attorney. You can serve the documents by sending them in the mail (return receipt requested), or delivering them in person. Serve the documents on the same day they were file-stamped in District Court. At the very latest, you may serve your landlord or your landlord’s attorney on the day of your Answer Date hearing.

PART II: FILLING OUT THE ANSWER AND COUNTERCLAIM

STEP 1: PREPARE THE REQUIRED DOCUMENTS

Find the form at the back of this brochure called, “*Defendant(s)’ Answer and/or Counterclaim To Complaint For Summary Possession; Declaration; Certificate of Service; Exhibits.*” Then, gather the following documents and items:

- Lease or Rental Agreement (if you have one);
- Rental Receipts (any payments you made to your landlord);
- Written Notice (letter from your landlord);
- *Complaint & Summons* (court eviction papers from your landlord);
- Typewriter or BLACK pen to complete the forms

STEP 2: FILL IN THE BASIC INFORMATION

Follow the instructions on the *Answer and/or Counterclaim* form. The instructions are in shaded (grey) print.

STEP 3: FILL IN PART A (“DEFENSES BASED ON JURISDICTION AND/OR DUE PROCESS”)

“Jurisdictional defenses” means your landlord failed to take the steps necessary to evict you in court. If your landlord did not follow the proper eviction method, the judge MAY dismiss your case and order your landlord to start the process over from the beginning. Read the following descriptions of jurisdictional defenses and place a check mark next to those that apply to your situation.

- 1A. “Landlord has not given me the required notice before starting this action.”**
Check this box if your landlord did not give proper written notice of his/her intent to evict you.

Proper Notice Requirements

1. All notices must be written.
2. The notice should give you the correct amount of time after you RECEIVE the notice to either resolve the problem, or move out.

If you have a written lease or an oral agreement to rent monthly, or if your lease expired and you have paid rent for two (2) months without signing a new rental agreement, you are entitled to the following notice requirements:

- | | |
|---|--------------------|
| • NON-PAYMENT OF RENT..... | 5 Business Days |
| • VIOLATION OF HOUSE RULES | 10 Days |
| • NO SPECIFIC REASON | |
| * Month-to-Month Lease | 45 Days |
| *Six-Month, or One Year Lease, AND | |
| a) Lease Expired | No Notice Required |
| b) Paid two month’s rent after lease expired..... | 45 Days |
| * Week-to-Week Lease..... | 10 Days |
| • LANDLORD IS DEMOLISHING UNIT/PROPERTY..... | 120 Days |
| • LANDLORD IS CONVERTING UNIT TO CONDOMINIUM.... | 120 Days |

If you have a week-to-week lease, or if you work in exchange for rent, call the Legal Aid Intake Hotline to learn more about your situation. *See numbers at the back of this brochure.*

- 1B. “Landlord failed to properly serve the *Summons & Complaint*.”**
Check this box if the court papers were NOT hand-delivered by a sheriff OR someone over eighteen who is not your landlord.
- 1C. “Small Claims Court has jurisdiction over Security Deposit disputes.”**
Look at line nine (9) on your landlord’s *Complaint*. If it says your landlord wants to keep your security deposit, then you may want to check this box.

NOTE: Security deposit disputes are handled in Small Claims Court. Since your eviction case belongs to the regular claims division of District Court, the judge will dismiss the security deposit portion of your landlord’s *Complaint* and reassign it to Small Claims Court. The remaining issues will be handled in District Court.

- 1D. “Other.” (Usually this box is left unchecked)**
Do not check this box unless an attorney has informed you that you have additional jurisdictional defenses not listed above.

STEP 4: FILL IN PART B (“AFFIRMATIVE DEFENSES & COUNTS OF THE COUNTERCLAIM”)

This section informs the judge of any unfair actions made by your landlord during your tenancy. REMEMBER: You will have to prove each box that you check in court.

- 1. “My place is not fit to be lived in (Implied Warranty of Habitability & HRS §521-42).”**
Check this box if you feel your unit was unsafe or unsanitary.

HOW TO PROVE YOUR UNIT IS UNINHABITABLE IN COURT

- Take photos of the uninhabitable conditions in the unit
- Provide copies of any/all repair receipts
- Ask witnesses to testify or provide written testimony
- Provide copies of government agency citations for code violations

NOTE: Call the agencies listed below to get your unit inspected. Ask for a copy of the inspection report. The report can be used as evidence to prove your unit is uninhabitable in court.

	<u>Electric</u>	<u>Plumbing</u>	<u>Vector Control</u>
Oahu:	523-4391	523-4396	483-2535
Maui:	243-7255	243-7368	243-7375
Hilo:	961-8331	961-8331	933-4551
Kona:	329-4857	329-4857	775-9533 (Honokaa) 322-7011 (Kealahou)
Kauai:	Private Contractor	Private Contractor	241-3306

- 2. “I should be reimbursed for the cost of repairs I made (HRS §521-64, Unjust Enrichment).”**
Check this box if you have made repairs to the unit for which you have not been reimbursed.

If you made repairs, you may be entitled to recompense under the Repair and Deduct statute. Generally, this involves providing your landlord with a written request for repairs, which he/she must act upon within a fixed amount of time. If you are interested in learning more about the proper steps for making repairs, see Legal Aid's brochure called "*Repair and Deduct*." However, if you did not take the proper steps to making repairs, you may claim that your landlord has been UNJUSTLY ENRICHED by your occupation. This means that your repairs increased the value of the unit and your landlord benefitted financially as a result.

HOW TO PROVE YOU MADE REPAIRS IN COURT

- Photos of the repairs (before and after)
- Repair receipts

NOTE: If you made repairs yourself, estimate how many hours you spent and multiply that number by the average hourly wage of a private contractor.

3. "My landlord willfully interrupted the service of my utilities (HRS §521-74.5) AND/OR locked me out of my dwelling overnight (HRS §521-63)."

Check this box if your landlord locked you out overnight and/or shut off your utilities OR if he/she has threatened to do so.

It is illegal for your landlord to lock you out overnight or cut off your utilities unless he/she has a court order to do so (*Writ of Possession*). If you check this box, you may be entitled to collect "damages" (money). If your landlord cut off your utilities, you may be awarded three (3) times your monthly rent, or \$1,000.00, whichever is greater. See HRS §521-74.5. If your landlord locked you out overnight, you may be awarded two (2) times your monthly rent, or free occupancy for two months, plus the cost of the lawsuit, including reasonable attorney's fees. See HRS §521-63.

IMPORTANT: If your landlord is currently threatening to lock you out and/or cut off your utilities, you can seek immediate relief by filing a Temporary Restraining Order (TRO) in District Court. Legal Aid has a packet with information and forms that can help you get a TRO against illegal lockout and/or utility cut off. Call the Legal Aid Intake Hotline for more information.

HOW TO PROVE YOUR LANDLORD LOCKED YOU OUT AND/OR CUT OFF YOUR UTILITIES

- Contact your utility company and request a copy of your landlord's order to cut them off.
- If you were locked out, keep a list of witnesses who may know something about how/when your landlord changed the locks.
- Document the date and time when you contacted the police to gain access to your unit.

- 4. “My landlord gave me notice to quit or filed the complaint to retaliate against me (HRS §521-74).”**

Check this box if your landlord took action to evict you after you complained to a government agency, requested repairs, or made other attempts to assert your rights under the Landlord-Tenant Code. This is known as a “retaliatory eviction.”

If you successfully show that the eviction is in retaliation for something you have done that is within your rights under the Landlord-Tenant Code, then you may be awarded reasonable attorney’s fees and/or the judge may order the landlord to continue your tenancy for a fixed period of time.

HOW TO PROVE YOUR LANDLORD IS RETALIATING AGAINST YOU IN COURT

- Witness testimony
- Documentation of actions you have taken during your tenancy and/or instances when you asserted your rights under the Landlord-Tenant Code.

- 5. “My landlord gave me notice to quit or filed the complaint to discriminate against me.”**

Check this box if you believe your landlord is trying to evict you for discriminatory reasons such as, race, gender, age, sexual orientation, or familial status. This constitutes a violation of the Fair Housing Act.

If you believe your landlord is discriminating against you, call the following agencies to open an investigation:

- Legal Aid Society of Hawai`i Fair Housing Unit: 527-8024
- Hawaii Civil Rights Commission: 586-8640
- Federal Discrimination Hotline: 1-800-347-3739
- Honolulu Fair Housing Officer: 527-5972

- 6. “My landlord has interfered with my use of the property (HRS §521-53, Covenant of Quiet Enjoyment).”**

Check this box if your landlord has harassed you or interfered with your right to the quiet and peaceful enjoyment of your rental unit. This includes actions like, entering your unit without notice or consent, threatening you, physically attacking you, etc.

- 7/8. “Other.”**

Check these boxes if you have any other complaints against your landlord not covered in #1 through #6. Examples of such complaints are listed below:

- **My landlord illegally increased the rent (HRS §521).**

If your landlord has ever increased rent without first providing a written 45-day notice, then he/she owes you the difference between the new rent amount and the original rent amount times the number of overpayments made.

- **My landlord took possession of my personal property (Trespass to Chattels, Conversion, & HRS §521-56).**
If your landlord has taken possession of your personal property without your permission, even in the case that you owe back rent, then you can recover the stolen property and possibly collect “damages” (money). Make sure to document the value of the property, or similarly, how much it would cost to replace it.
- **My landlord has intentionally or negligently inflicted emotional distress upon me through his/her conduct.**

STEP 5: FILL IN PART C (“DEFENSES TO COMPLAINT”)

This section is your chance to dispute specific claims made in the *Complaint*. Read the *Complaint* again and direct your attention to “Statement #6.”

If “**Unpaid Rent**” is checked and you disagree, check:

- 1. “I dispute the amount of money owed to the landlord.”**
Check this box if your landlord calculated your back rent incorrectly, or if he/she claims that you did not pay rent for a given month. To effectively prove that you paid rent for the months in question, you will need to submit copies of your rental receipts as evidence.

If “**Other**” is checked and your landlord claims that you failed to maintain the unit, check:

- 2. “I have kept up and maintained my rental unit (HRS §521-51).”**
To demonstrate to the court that you maintained the unit during your tenancy, provide photos of the unit taken the day you moved in and hold them side-by-side to photos taken leading up to the hearing. You may also want to ask friends, roommates, or family members to provide witness testimony during the hearing.

If “**Other**” is checked and your landlord claims that you violated a house rule, check:

- 3. “I have not violated any house rules (HRS §521-52).”**
Obtain a copy of your rental agreement and locate the paragraph(s) stating house rules. If there are no written house rules, you can argue that no violation occurred since you did not agree to any specific set of rules when you entered into the rental agreement. Ultimately, it will be your word against your landlord’s in a dispute over house rules. You might want to add witness testimony to help you persuade the judge.

STEP 6: FILL IN PART D (“REMEDIES: WHAT I WANT THE COURT TO DO”)

This section is your chance to tell the court what you want to happen and/or ask the court to award you money damages.

1. “The Court should allow me to stay in the unit.”

Check this box if you want remain in the unit.

Do not check this box if you wish to relocate. On the day of the hearing, explain to the judge that you are willing to move out but you want to resolve the damages stated in your landlord’s *Complaint*.

2. “The Court should award me court costs and/or reasonable attorney fees.”

Check this box if you had to pay court costs, including filing fees, and/or you had to hire a private attorney to represent you.

3. “The Court should order the landlord to make repairs.”

Check this box if you want your landlord to make repairs to the unit. Even if you plan to move out, you may still request that your landlord make repairs. This will improve the quality of the unit for future tenants.

4. “The Court should award me (DAMAGES).”

Generally, “damages” refers to *money*, which the court may award as repayment for problems your landlord caused during your tenancy. CHOOSE CAREFULLY FROM THE FOLLOWING:

4a. Statutory Damages: Check this box if your landlord illegally locked you out of your unit, or cut off your utilities without first obtaining a court order to do so.

Utility Cut Off: You are entitled to three (3) times your monthly rent, or \$1000.00, whichever is greater, for each occurrence. Calculate this amount and enter it on the form.

Illegal Lockout: You are entitled to two (2) times your monthly rent, or free occupancy for two months, PLUS the cost of the lawsuit, including reasonable attorney’s fees. Calculate this amount and enter it on the form.

4b. Actual Damages: Actual damages differ from statutory damages in that the amount of money you are requesting is not predetermined by law. Instead, you have the job of trying to determine how much damage you have suffered. You should be able to explain and defend the dollar amount you are requesting in Court.

Examples of Actual Damages include:

- Repair costs;
- The cost of finding a new place to live;
- The amount you have overpaid to occupy the unit. "Overpayments" can occur if the unit is listed above the fair market price, or if it is unfit/unsafe.

HOW TO CALCULATE REPAIR COSTS

1. Gather repair receipts.

Calculate the total amount of repair costs by adding up any/all repair receipts. Provide the court with an itemized list of repairs and their corresponding receipts.

2. Estimate the value of repairs for which you do not have receipts.

If you made repairs yourself, calculate the cost of repairs by multiplying the number of labor hours, and the hourly wage a private contractor would have charged.

HAVE I OVERPAID FOR MY UNIT?

Ask neighbors, friends, or family members, who live in comparable units, how much they pay in rent each month. You may also consult with a rental agency or research online. If you find that you're rent is significantly higher than that of comparable units, you may be paying too much.

Calculate the amount of actual (rental) damages as follows:

$(\text{Agreed Rental Amount}) - (\text{Fair Market Price}) \times (\text{Number of Monthly Payments}) = \text{Rental Damages}$

- 5. "The Court should order other relief as it believes just."**

This is a catchall request. Check this box if you want the judge to consider awarding additional damages that you did not think to request or are not listed on this form.

- 6/7. "Other."**

Check these boxes if you want to request specific action/relief, or if you want the judge to award punitive damages. "Punitive damages" are meant to punish and/or deter your landlord from committing similar violations in the future. They are seldom awarded, unless you can prove your landlord acted with malice, criminal indifference to civil obligation, or conscious indifference to the consequences of his/her actions.

STEP 7: FILL IN THE CERTIFICATE OF SERVICE

Enter the date in the blank space provided. Place an "X" next to "hand-delivery" if you plan to serve your landlord or your landlord's attorney directly. Place an "X" next to "Mail, Postage Prepaid" if you plan to serve the form by mail. Fill in the address where you served your landlord or your landlord's attorney. Write the date, print and sign your name in the boxes provided. Essentially, by signing the Certificate of Service, you are telling the court that you will serve a file-stamped copy on your landlord or your landlord's attorney.

STEP 8: FILL IN THE DECLARATION

Sign and date the form in the boxes provided. By signing the form you are telling the court that you believe everything in the document is true and accurate under the penalty of perjury.

PART III: FILE AND SERVE YOUR ANSWER AND COUNTERCLAIM

Now that you have completed your Answer and Counterclaim, you need to (1) file it in District Court, and (2) serve a file-stamped copy on your landlord or your landlord's attorney. It is best to do this BEFORE your Answer Date. If you can't file your counterclaim before the Answer Date deadline, you may ask the judge for "leave of the court to file a counterclaim."

CHECKLIST: FILING YOUR ANSWER AND COUNTERCLAIM

- Make five (5) copies of your completed Answer and Counterclaim.
- Gather money to pay the filing fee, or complete and submit the *Ex Parte Application For Relief From Costs; Declaration* form.

NOTE: The counterclaim filing fee is subject to change. Call the District Court in your Circuit and ask how much it will cost to file your counterclaim. (*See the back of this brochure for important contact information*).

HOW TO FILL OUT THE EX PARTE APPLICATION FOR RELIEF FROM COSTS

The *Ex Parte Application* form can be found at District Court in your Circuit. Answer all of the questions. Sign and date where necessary. Fill out the entire form except for the "Order" section on the last page; this is where the judge will sign.

IMPORTANT: FILE YOUR *EX PARTE APPLICATION* FORM AT LEAST ONE DAY (24 HOURS) BEFORE YOU FILE YOUR COUNTERCLAIM.

HOW TO FILE YOUR EX PARTE APPLICATION FOR RELIEF FROM COSTS

Go to the District Court in your Circuit between 7:45 a.m and 4:15 p.m., Monday through Friday. (*See the back of this brochure for contact information*). Give the court clerk your completed *Ex Parte Application*. The clerk will ask for a phone number where you can be reached. Once a judge has made a decision on your application, the clerk will try contacting you. If you do not receive a response from the clerk, go to District Court the following day and ask the clerk for the court's decision.

- File all five (5) copies of your Answer and Counterclaim in District Court.
To file, go to the District Court in your Circuit with the following items: (1) all five (5) copies of your completed Answer and Counterclaim, (2) either cash or credit card to pay the filing fee, OR a copy of your approved *Ex Parte Application*. Hand the court clerk all five (5) copies of your Answer and Counterclaim, as well as your approved *Ex Parte Application* if you have one. The clerk will file-stamp all five (5) copies. He/She will keep one for the court’s records and immediately return four (4) file-stamped copies of your Answer and Counterclaim.

SERVING YOUR ANSWER AND COUNTERCLAIM

Once the clerk returns file-stamped copies of your Answer and Counterclaim, you need to serve it on your landlord or your landlord’s attorney within twenty-four (24) hours, preferably on the same calendar date. You can do this by registered mail (return receipt requested), or in-person. The address at which you may serve a file-stamped copy on your landlord or landlord’s attorney should be listed on the *Complaint*.

NOTE: If the Answer Date is less than forty-eight (48) hours away, you should hand-deliver your file-stamped Answer and Counterclaim, rather than sending it by mail. If you send it by mail, then your landlord or your landlord’s attorney may argue that they were not served on or before the Answer Date, and therefore, did not have sufficient notice. The judge could strike (disallow) your counterclaim from the case document list.

NOTE: If you can’t file or serve your Answer and Counterclaim on or before the Answer Date, then you should ask the judge for “leave of court to file a counterclaim.” In other words, you are asking for more time in which to complete, file, and serve the forms. The judge may grant or deny your request.

PART IV: THE COURT PROCESS

After you file and serve your Answer and Counterclaim, you will have to go through the court process. (See *Legal Aid’s brochure, “Eviction: The Court Process”*). An abbreviated checklist of the court process is provided below. Use the checklist to help you stay organized. Write down your hearing dates in the blank spaces provided.

1) ANSWER DATE HEARING DATE | TIME: _____

You **MUST** attend your Answer Date hearing. If you do not attend your hearing, the court will rule in favor of your landlord and enter a “default judgement.” You could be evicted from your unit within 24-48 hours. If you failed to attend your Answer Date hearing, call the Legal Aid Intake Hotline immediately.

COMPILING EVIDENCE: WITNESS TESTIMONY & IMPORTANT DOCUMENTS

If you suspect a key witness will not appear at your trial hearing, you can subpoena that witness. A *Subpoena* is a court order to appear in trial. If you want the witness to bring important documents to court with them, you should use a *Subpoena Duces Tecum*. The *Subpoena* form (#1DC49) is available at District Court. The court clerk can provide general assistance, but will not give legal advice.

Once you complete and file the *Subpoena*, you must serve it on your witness. You may serve the *Subpoena* in one of three ways: (1) you can hire a Sheriff, (2) you can ask a friend over 18 years of age, who is not a party to the case, or (3) you can serve it by registered mail (return receipt requested). You alone are responsible for serving the *Subpoena* on your witness. This means you must properly serve the person, and pay all expenses. If the witness is not properly served, he/she is not required to appear or submit requested documents.

4. TRIAL (FOR SUMMARY POSSESSION)

DATE | TIME: _____

The judge will name a Trial date. If the Trial date conflicts with your schedule, speak up and suggest an alternative.

The purpose of the trial is to determine whether you have violated your lease agreement. Even if you win your counterclaim, your landlord will win possession of the unit if he/she successfully proves that you have violated your lease agreement.

PREPARING FOR TRIAL

- Read our brochures: “*How to Represent Yourself*” and “*Eviction: The Court Process*”
- Gather evidence and prepare your Exhibits.
- List every argument your landlord can/will make against you in court. Write out your defense to each argument and provide supporting evidence.

IF YOU LOSE YOUR EVICTION TRIAL

The judge will issue a *Writ of Possession* (a court order to vacate the unit). Your landlord can hire a sheriff to execute the *Writ of Possession*, which means he/she will remove you from the unit. In some cases, the landlord and/or sheriff may allow you to clean out the unit within 24 hours if you have not already done so.

The judge will also name a date for the Proof/Damages hearing. Generally, the Proof/Damages hearing takes place about one month later. At that hearing, the court will determine how much money, if any, you owe to your landlord.

IF YOU WIN YOUR EVICTION TRIAL

The judge will find that you have not violated your lease agreement, and you are thereby entitled to remain in the unit.

The judge will also name a date for the Proof/Damages hearing (about one month later). At that hearing, the court will determine how much money, if any, your landlord owes you on account of your counterclaims.

5. PROOF/DAMAGES HEARING

DATE | TIME: _____

This is the final hearing you will have to attend. You will present your arguments to the judge using the same evidence you submitted in your Eviction Trial. The same guideline obtains for your landlord. The judge will determine which party owes damages, and in what amount.

IF YOU WIN YOUR PROOF/DAMAGES HEARING

The court staff will inform you of the process by which you can collect your money damages.

IF YOU LOSE YOUR PROOF/DAMAGES HEARING

Your landlord will have a judgement against you for the amount awarded. If you have little or no assets, however, you may be considered “judgement-proof.” This means your landlord cannot garnish your wages or pursue other methods to collect the debt. Call the Legal Aid Intake Hotline for more information regarding debt collection.

USEFUL CONTACT INFORMATION

O`AHU (FIRST CIRCUIT)

1111 Alakea Street
Honolulu, HI 96813
(808) 538-5767

MAUI (SECOND CIRCUIT)

2145 Main Street
Wailuku, HI 96793-1679
(808) 244-2706

KAUA`I (FIFTH CIRCUIT)

3970 Ka`ana Street
Lihu`e, HI 96766
(808) 482-2300

HAWAI`I (THIRD CIRCUIT)

Kona Courthouse

79-1020 Haukapila Street
Kealahou, HI 96750
(808) 322-8700

Hilo Courthouse

777 Kilauea Avenue
Hilo, HI 96720-4212
(808) 961-7440

Legal Aid Society of Hawai'i

924 Bethel Street
Honolulu, HI 96813

www.legalaidhawaii.org

Legal Aid's Hotline:

O`ahu: 808.536.4302
Neighbor Islands: 1.800.499.4302

REMEMBER:

This brochure is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.

Hawai'i Immigrant Justice Center *at the* Legal Aid Society of Hawai'i

www.hijcenter.org
www.legalaidhawaii.org

Legal Aid's Hotline:

O`ahu: 808.536.4302
Neighbor Islands: 1.800.499.4302

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This is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.

APPENDIX
BLANK FORMS FOR YOUR USE

- DEFENDANT'S ANSWER AND/OR COUNTERCLAIM

**DEFENDANT(S)' ANSWER AND/OR COUNTERCLAIM TO COMPLAINT
FOR SUMMARY POSSESSION; DECLARATION; CERTIFICATE OF
SERVICE; EXHIBITS**

<p align="center">IN THE DISTRICT COURT OF THE _____ CIRCUIT same as in <i>Complaint</i> _____ DIVISION STATE OF HAWAII</p>	<p>Oahu = First Circuit Maui = Second Circuit Big Island = Third Circuit Kauai = Fifth Circuit</p>
<p>Plaintiff(s) (Your Landlord's Name) Same as name in the <i>Complaint</i></p>	<p>Reserved for Court Use</p>
<p>Defendant(s) (Your Name) Same as name in the <i>Complaint</i></p>	<p>Civil No. Same as number in the <i>Complaint</i></p>
<p>Street Address, City, State, ("the property"): Address of place you were renting</p>	<p>Defendant(s)/Defendant(s)' Attorney (Name, Attorney Number, Address, Telephone and Facsimile Numbers) Your name and address</p>
<p>Defendant Pro Se</p>	

ANSWER AND COUNTERCLAIM

I, Your Name (1) generally deny each statement of the Plaintiff's Complaint, (2) ask leave of Court to file a Counterclaim, and (3) answer and defend the Complaint filed in this cause of action as follows:

Check all the boxes that apply to your situation.

A. Defenses Based On Jurisdiction And/Or Due Process

1. This case should be dismissed because:

- a. Landlord has not given me the required notice before starting this action.
- b. Landlord failed to properly serve the Summons & Complaint (DCRCP 4).
- c. Small Claims Court has jurisdiction over Security Deposit disputes (DCSCR 4).
- d. Other

continued on reverse side

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(6/98)

SEE REVERSE SIDE

I certify that this is a full, true, and correct copy of the original on file in this office.
Clerk, District Court of the Above Circuit, State of Hawai'i

Check all the boxes that apply to your situation.

B. Affirmative Defenses & Counts of the Counterclaim

- 1. My place is not fit to be lived in (Implied Warranty of Habitability & HRS § 521-42.)
- 2. I should be reimbursed for the cost of repairs I made. (HRS § 521-64, Unjust Enrichment.)
- 3. My Landlord willfully interrupted the service of my utilities (HRS § 521-74.5) AND/OR locked me out of my dwelling overnight (HRS § 521-63).
- 4. My Landlord gave me notice to quit or filed the complaint to retaliate against me. (HRS § 521-74.)
- 5. My Landlord gave me notice to quit or filed the complaint to discriminate against me.
- 6. My Landlord has interfered with my use of the property. (HRS § 521-53, Covenant of Quiet Enjoyment.)
- 7. Other:
- 8. Other:

C. Defenses To Complaint

- 1. I dispute the amount of money owed to the Landlord.
- 2. I have kept up and maintained my rental unit (HRS § 521-51.)
- 3. I have not violated any house rules (HRS § 521-52.)

D. Remedies: What I Want The Court To Do

- 1. The Court should allow me to stay in the unit.
- 2. The Court should award me court costs and reasonable attorney's fees.
- 3. The Court should order the Landlord to make repairs.
- 4. The Court should award me:
 - Statutory Damages totalling: \$ _____
(Three months rent for utility cut-off, two months rent for lock-out)
 - Actual Damages, totalling: \$ _____
 - Other: \$ _____
- 5. The Court should order other relief as it believes just.
- 6. Other:
- 7. Other:

CERTIFICATE OF SERVICE

Put a check below next to the type of delivery you used.

I hereby certify that a copy of this document was served on Opposing Party(s) or his/her/their attorney at their last known address(es) on _____ write the date you served your landlord _____ by ___hand-delivery or ___ Mail, Postage Prepaid, at the following address(es):

Write the address where you served your landlord

Date:	Sign and print your name (Print/Type Name and Signature of) Defendant(s)/Defendant(s)' Attorney
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DECLARATION

I have read this Motion, Answer, and Counterclaim, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAII THAT THE FOREGOING IS TRUE AND CORRECT.**

Date:	Sign and print your name (Print/Type Name and Signature of) Declarant
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In accordance with the **Americans with Disabilities Act** if you require an accomodation or assistance, please contact the District Court- Administration Office in your Circuit at least ten (10) working days in advance of your hearing or appointment date. **OAHU:** 538-5121; TTY: 539-4853 **BIG ISLAND:** Hilo: 961-7470 Kona: 322-2022 Hamakua: 885-4615 **MAUI:** 244-2800 **KAUAI:** 246-3330