

ATTORNEY DISASTER TOOLKIT

This toolkit is designed to give you an overview of the common legal problems experienced by disaster survivors. If you have additional questions or need more assistance, please feel free to contact Legal Aid Disaster Resource Center <https://www.ladrc.org/> or Hungry Heroes Hawaii <https://www.hungryheroeshawaii.com/> and ask for Sesie Bonsi.

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DISASTER DECLARATIONS

WHAT IS A DISASTER?

A disaster is a sudden calamitous event causing great damage, loss, or destruction. It can be something that affects a lot of people (river flooding, hurricane, earthquake), something that affects a smaller location (such as flash flooding or a tornado), or something that affects an individual (such as a house or apartment fire).

WHAT HAPPENS WHEN A DISASTER OCCURS?

Each county in Hawaii, including Maui County, has its own emergency management agency responsible for preparing, responding to, and recovering from disasters. The specific protocol for Maui County would be managed by the Maui Emergency Management Agency (MEMA). When a disaster threatens or occurs, Maui County activates its Emergency Operations Center (EOC). The EOC serves as the central command and control facility responsible for carrying out emergency preparedness, response, and recovery functions. The County Emergency Manager will investigate the situation, conduct damage assessments, and determine what resources the county has available to handle the situation.

(This does not happen in individual disasters such as a house or apartment fire). If the Emergency Manager determines that the county does not have enough resources, the Emergency Manager will ask the governor to authorize state resources to assist. If the governor approves the request, the governor will issue a state disaster declaration for that county. The governor will then determine if the state has sufficient resources to handle the situation. If the governor determines that the state does not have enough resources, the governor will ask the president to authorize federal resources to assist. If the president approves the request, the president will issue a presidentially declared federal disaster for that county.

DO ALL STATE DISASTER DECLARATIONS MEAN THAT THERE IS GOVERNMENT ASSISTANCE AVAILABLE FOR INDIVIDUALS AFFECTED BY THE DISASTER?

No, not all Hawaii state disaster declarations automatically mean that there is government assistance available for individuals affected by the disaster. When the Governor of Hawaii issues a state disaster declaration, it provides a mechanism to mobilize state resources to assist local governments. It may also serve as a prerequisite to request federal assistance.

DO ALL PRESIDENTIALLY DECLARED FEDERAL DISASTER DECLARATIONS MEAN THAT THERE IS GOVERNMENT ASSISTANCE AVAILABLE FOR INDIVIDUALS AFFECTED BY THE DISASTER?

No. Individual assistance is only available if the president activates the Individuals and Households Program. The president may activate assistance that is only available to states, counties, or cities to repair public works.

FEDERAL DECLARED DISASTER DECLARATIONS WITH INDIVIDUAL ASSISTANCE

WHAT IS A PRESIDENTIALLY DECLARED FEDERAL DISASTER DECLARATION?

A presidentially declared federal disaster declaration activates the Federal Emergency Management Agency (FEMA).

There are two types of federal disaster declarations:

1. Emergency Declarations: Federal help goes to state and local emergency services. No FEMA benefits are given to individuals. 44 C.F.R. §206.35
2. Major Disaster Declaration:
 - a. Individual Assistance: This is assistance available to individuals and households affected by the disaster. FEMA and most disaster responders refer to this as an “IA or IHP Declaration.” 44 C.F.R. §206, subparts D-F
 - b. Public Assistance: This assistance is available to State, Tribal, and local governments and certain private nonprofit organizations for emergency work and the repair or replacement of disaster-damaged facilities. No individual assistance is available. 44 C.F.R. §206, subparts G-I
 - c. Hazard Mitigation: This assistance is available to State, Tribal, and local governments and certain private nonprofit organizations for actions taken to prevent or reduce long term risk to life and property from natural hazards. No individual assistance is available. 44 C.F.R. §206, subpart N

WHAT ARE SOME OF THE FEMA BENEFITS AVAILABLE FOR INDIVIDUALS AND HOUSEHOLDS AFFECTED BY THE DISASTER?

2. Individuals and Households Program:
 - a. Temporary Housing Assistance 44 C.F.R. §206.110 et seq.
 - b. Repair Assistance 44 C.F.R. §206.117(b)(2)
 - c. Replacement Assistance 44 C.F.R. §206.117(b)(3)
 - d. Other Needs and Assistance 44 C.F.R. §206.119
3. Disaster Unemployment Assistance 44 C.F.R. §206.141
4. Disaster Supplemental Nutrition Assistance Program (Disaster Food Stamps) 44 C.F.R. §206.151
5. Small Business Administration (SBA) loans 13 C.F.R. part 123

WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR FEMA’S INDIVIDUALS AND HOUSEHOLDS PROGRAM?

In order to be eligible for FEMA benefits, the applicant or a member of the household must be a US citizen, a non-citizen national, or a qualified alien. If the adults are undocumented, but a household child is a U.S. citizen, a non-citizen national, or a qualified alien, an application can be made in the child’s name.

The damaged property must be the applicant’s permanent residence or the place where the applicant resides for the majority of the year. 44 C.F.R. §206.113

It is important to remember that FEMA only covers expenses not covered by insurance. FEMA does not provide for a “duplication of benefits.” 44 C.F.R. §206.110(b). All applicants will need to file a claim with their insurance companies and will need to show FEMA if they were denied insurance coverage. Because of the need for immediate assistance after a disaster, it is common for FEMA to award benefits while the applicant’s insurance claim is pending. In this

scenario, the applicant will need to repay FEMA for any FEMA benefits that they received which were later covered by insurance.

FEMA considers everyone residing together at the time of the disaster as one household. Only one application will be allowed per household. For example, two roommates shared an apartment at the time of the disaster. The roommate who first applies will be treated by FEMA as the applicant and the second roommate will be treated as a household member. Only one FEMA application will be accepted and only one award of assistance. It will be up to the roommates to share and allocate the money between the two. FEMA expects a pre-disaster household to remain the same household composition after a disaster. 44 C.F.R.

§206.117(b)(1)(i)(a)

DO FEMA BENEFITS UNDER THE INDIVIDUALS AND HOUSEHOLDS PROGRAM NEED TO BE PAID BACK?

FEMA assistance is a grant and does not need to be paid back. An applicant can only use their FEMA benefits for the purposes stated in the FEMA award letter. Applicants need to keep receipts for how they spent their FEMA money for three years from the date of the disaster declaration. FEMA may audit individual cases and will ask to review the receipts. If the FEMA assistance was not used for the stated purpose, the applicant may have to repay FEMA for the assistance that they received.

DOES THE RECEIPT OF FEMA BENEFITS UNDER THE INDIVIDUALS AND HOUSEHOLDS PROGRAM COUNT AS INCOME OR AN ASSET FOR ELIGIBILITY FOR OTHER GOVERNMENT PROGRAMS?

FEMA assistance is not considered taxable income. It is not counted as income or as a resource for eligibility for any needs-based federal governmental assistance such as Supplemental Security Income, food stamps, etc. 44 C.F.R. §206.110(f). It is also exempt from garnishment or levy by creditors. 44 C.F.R. §206.110(g)

WHAT IS TEMPORARY HOUSING ASSISTANCE?

Temporary housing assistance is available to applicants whose primary residence cannot be safely lived in after the disaster. The money can be used to rent another place to live while repairs are being made on the damaged property. It can also be government-provided housing, such as FEMA trailers. This assistance can be available for up to 18 months from the date of the disaster declaration if the applicant can show a continuing need. The money cannot be used to pay to stay with friends or family. 44 C.F.R. §206.110, 114, and 117

WHAT IS REPAIR ASSISTANCE?

This is money provided to a homeowner to repair disaster-related damage to their home. It includes both labor and the cost of materials. The goal is to make the home safe, sanitary, and functional, not to restore the home to the condition that it was in before the disaster. The money cannot be used to repair the house to a better condition than it was before the disaster unless it is required by current housing and building codes. 44 C.F.R. §206.117(2)

WHAT IS REPLACEMENT ASSISTANCE?

This is money provided to a homeowner to replace their home destroyed in the disaster that is not covered by insurance. 44 C.F.R. §206.117(3)

WHAT IS OTHER NEEDS ASSISTANCE?

This is assistance paid for other necessary and serious needs caused by the disaster. It can be medical or dental expenses, funeral costs, replacement of personal property, storage, etc. 44 C.F.R. §206.119

WHAT ARE SMALL BUSINESS ADMINISTRATION LOANS?

Sometimes insurance proceeds and FEMA assistance is not sufficient to repair a damaged home to a safe condition or to buy a new home. The Small Business Administration (SBA) makes low-interest loans available to disaster survivors to repair or replace their homes. Because the disaster survivor needs to repay their loans, they are often not practical for low- or moderate-income applicants. 13 C.F.R. part 123

WHAT ARE DISASTER UNEMPLOYMENT INSURANCE BENEFITS?

The president can also authorize disaster unemployment insurance benefits as part of the relief available in the disaster declaration. Disaster unemployment insurance benefits are unemployment benefits available to those who are not able to return to work due to the disaster. This program covers more people (such as self-employed persons, farmers, etc.) than traditional unemployment benefits.

To be eligible for disaster unemployment insurance benefits, the applicant must have lost their job as a direct result of the disaster and be ineligible for traditional unemployment insurance benefits. Applicants must not be able to return to work for one of the following reasons: there is no job available for them, they can no longer get to the job, their place of employment is closed because of the disaster, they are the new head of the household looking for work after the former head of the household died in the disaster, or they have a disaster-related injury. The disaster must be the direct cause of why the applicant cannot return to work.

Applications for disaster unemployment insurance benefits can be submitted to Hawaii Disaster unemployment assistance at <https://labor.hawaii.gov/ui/assistance-programs/disaster-unemployment-assistance-dua/>.

FEMA has created a Disaster Unemployment Benefit factsheet which can be accessed at: https://www.fema.gov/media-library-data/1465336714741f617be7a9e71010a462128b8a2d5117f/FACT_SHEETDisasterUnemploymentAssistance2016.pdf

Applicants for disaster unemployment benefits have the same appeal rights as applicants for traditional unemployment benefits. If the applicant disagrees with the initial fact-finding decision, the applicant has a right to file a written request for a hearing in front of an administrative law judge within ten days of the date of the fact-finding decision. An applicant can appeal a decision of the administrative law judge to the Employment Appeal Board by filing a written request within 15 days of the date of the administrative law judge's decision. An applicant can either request a rehearing with the Employment Appeal Board by filing a written request within twenty days of the Employment Appeal Board decision or by filing a petition for judicial review.

WHAT ARE DISASTER FOOD STAMPS (DISASTER SNAP BENEFITS)?

The president can also authorize disaster food stamps as part of the relief available in the disaster declaration. Disaster food stamps are also called the Disaster Supplemental Nutritional Assistance Program (D-SNAP). When this program is activated, it allows disaster survivors who were eligible for food stamps at the time of the disaster to replace the food that was lost during the disaster by reissuing that month's food assistance allotment. If the household needs additional food assistance because of a loss of income or due to damage expenses, the household can apply for supplemental food assistance. The amount that they receive in assistance will be capped at the maximum amount allowed for a household of their size. Supplemental food

assistance is for one month of food assistance. After that month, the applicant will receive the amount of food stamps they qualify for under the traditional food stamp program. 7 C.F.R. part 280

Disaster survivors not traditionally eligible for food assistance may be eligible for disaster food stamps. They are eligible if they had disaster-related expenses, had to repair their home, had to move to a new place, or lost their job due to the disaster. They will be eligible for one month of disaster food stamps.

People can apply for disaster food stamps through the Hawaii Department of Human Services. <https://humanservices.hawaii.gov/bessd/snap/>

Disaster food stamps come on an Electronic Benefit Transfer (EBT) card and can be used like a debit or credit card to buy groceries. It can be used to buy food products such as bread, fruits, vegetables, meats, and dairy products. It cannot be used to purchase alcohol, drugs, and other nonfood items (such as soap and personal hygiene products).
<https://www.fns.usda.gov/disaster/hawaii-disaster-nutrition-assistance>

HOW DO YOU APPEAL A FEMA DECISION?

FEMA will issue a written decision telling the applicant if they are eligible for assistance, for what programs (except disaster food stamps and unemployment which require a separate application with a state agency), and for how much money. If the applicant disagrees with the decision, they have the right to file a written appeal. The appeal needs to be postmarked or faxed within 60 days of the date of the decision.

The appeal should be sent by certified mail to:
FEMA Individuals and Households Program
National Processing Center
P.O. Box 10055
Hyattsville, MD 20782-8055

The appeal can also be faxed to 1-800-827-8112 (Attn: FEMA Individuals and Households Program).

The first page of the appeal letter needs to contain the following information:

- The applicant's full name;
- current address;
- address of damaged property;
- date of birth;
- place of birth;
- the last four digits of their Social Security number;
- the FEMA disaster number; and
- the FEMA application number.

The appeal letter needs to include the following information:

- A written explanation of why the applicant does not agree with the decision;
- Any new or additional information the applicant has to support their case (photos of the damage, repair estimates, damage assessments, length of time to complete repairs, receipts for repairs already completed); and

-The letter must be signed by the attorney and the applicant's signature must be notarized.

FEMA appeals are governed by 44 C.F.R. 115

WHAT IS FEMA RECOUPMENT?

During the three-year period after the disaster, FEMA will conduct random audits of cases. FEMA may determine that the applicant was overpaid benefits. The most likely scenario that triggers this audit is if the applicant receives an insurance settlement after they received their FEMA award. FEMA considers this a duplication of benefits and requires that the FEMA assistance be paid back. It can also happen if FEMA changes the way they interpret their rules and policies. In a recoupment case, FEMA is not alleging that the applicant did anything wrong or fraudulent in the application process, but that FEMA made an error in processing the application. 44 C.F.R. §206.116

The recoupment process starts when an applicant receives a Notice of Debt letter. The letter states that the applicant was overpaid FEMA benefits and needs to repay these benefits. One major problem that arises is that FEMA often only has the temporary address that the applicant provided them when they applied immediately after the disaster. This address may no longer be valid for the applicant when FEMA sends out the recoupment letter years later. Therefore, it is important to remind applicants to keep FEMA advised of their current address. If the applicant disagrees with FEMA's decision, the applicant can file an appeal. FEMA recoupment is governed by 44 C.F.R. §206.116, 6 C.F.R. Part 11, and 31 C.F.R. Parts 900-904.

HOW DO YOU CHALLENGE A FEMA RECOUPMENT?

If the applicant disagrees with the Notice of Debt, the applicant can appeal in writing. The applicant has sixty days from the date of the letter to file their appeal. The appeal should be sent by certified mail to:

FEMA Individuals and Households Program
National Processing Center
P.O. Box 10055
Hyattsville, MD 20782-8055

The recoupment appeal can also be faxed to 1-800-827-8112 (Attn: FEMA-Individuals and Households Program).

The appeal letter should include the following information:

1. A written explanation of why there was not a duplication of benefits if the applicant also received an insurance settlement. It is helpful to include the total cost of the repairs and how the insurance and FEMA proceeds were used. For example, it may cost \$50,000 to repair the home. The insurance company paid \$5,000 for sewer backup coverage. FEMA provided \$15,000 in repair assistance. The applicant can argue that it was not a duplication of benefits because the FEMA money was not used for the same repairs as the insurance proceeds.
2. The letter needs to be signed by both the attorney and the applicant. The applicant's signature should be notarized.
3. The letter should include a photocopy of a state-issued identification card.

4. The applicant needs to include their full name, the last four digits of their Social Security Number, and their disaster and FEMA application number on every page of the submission.

WHAT HAPPENS IF THE APPLICANT WAS OVERPAID OR THE APPEAL IS UNSUCCESSFUL?

The disaster survivor owes a debt to a federal agency. FEMA will request that the applicant immediately repay them or FEMA will utilize the recourses available to it to collect on a federal debt (wage garnishment, property liens, seizure of tax refunds, etc.). The applicant can enter into a reasonable payment plan with FEMA to stop collection efforts. Often the applicant is in no position to repay FEMA. The applicant can request in writing that FEMA not collect this debt from them. The applicant will need to complete a FEMA financial form showing their income and expenses. The applicant will need to write a letter explaining why it would be a hardship for them to repay this debt. FEMA can waive collection on all of the debt, some of the debt, or none of the debt. The Disaster Assistance Recoupment Fairness Act governs this procedure. This is a time-limited law that has been continually extended each year. Applicable regulations can also be found at 44 C.F.R. 206.116(b) and 44 C.F.R. 11.1 *et seq.*

HOW LONG SHOULD FEMA DOCUMENTS AND RECEIPTS BE KEPT?

FEMA documents and any receipts showing how the money was used should be kept for 3 years from the date of the disaster proclamation.

WHAT ARE SOME CONCERNS WITH FEMA ASSISTANCE?

While FEMA provides crucial disaster assistance in many situations, some homeowners might be hesitant or skeptical about receiving aid due to several potential reasons. Focusing on concerns related to losing ownership of their home or property, here are some reasons:

1. **Debt Accumulation:** Homeowners might worry about incurring debt. While some FEMA aid is provided as grants, other forms of assistance, like SBA (Small Business Administration) loans, require repayment. Homeowners might fear that if they cannot repay these loans, they might risk losing ownership of their properties.
2. **Property Liens:** Tied to the above point, there could be concerns that accepting assistance might lead to liens being placed on their properties. This could potentially make selling or refinancing the property in the future more challenging.
3. **Eligibility Restrictions:** Homeowners might be concerned about the terms and conditions attached to FEMA assistance. These could come in the form of restrictions on how the property can be used, rebuilt, or modified in the future.
4. **Duplication of Benefits:** Homeowners with insurance might be wary of "duplication of benefits," which is when FEMA reduces assistance by the amount received from insurance. Homeowners may not want to navigate the complexities or potential disputes between FEMA and their insurance claims.
5. **Privacy Concerns:** Some might be apprehensive about sharing personal and financial information with a federal agency. They could be concerned about data breaches or their information being used in ways they did not anticipate.
6. **Fear of Future Insurance Rate Increases:** Homeowners might worry that taking FEMA assistance will flag their property as being in a high-risk area. This could lead to higher insurance premiums in the future.

7. **Restrictions on Future Building:** After a disaster, FEMA might update hazard zone maps or introduce new building codes and regulations to reduce future risks. Homeowners might fear that accepting aid would obligate them to adhere to these new, potentially costly standards.
8. **Loss of Autonomy:** Some homeowners might feel that by accepting federal assistance, they would be giving up some control over their property. They might not want to be beholden to federal guidelines or mandates.
9. **Mistrust of Government:** In certain situations, some individuals harbor distrust towards government agencies, thinking there might be hidden agendas or potential pitfalls in the aid process.
10. **Relocation Concerns:** There might be a perception that FEMA could require homeowners to relocate if their properties are deemed too hazardous for rebuilding. They might want to avoid any potential forced relocation.

TENANT RIGHTS IN A DISASTER

DOES HAWAII LANDLORD-TENANT LAW APPLY IN A DISASTER?

Yes. In Hawaii, landlord-tenant relationships are primarily governed by the Hawaii Revised Statutes (HRS) Chapter 521, known as the Residential Landlord-Tenant Code. This code does not cease to apply during a disaster.

WHAT IF THE RENTAL UNIT IS UNINHABITABLE AND THE TENANT WANTS TO MOVE OUT?

If the property is no longer habitable, the tenant can terminate the rental agreement and move to a new place. The tenant needs to write a letter to the landlord stating that they have been forced to move from the home because it is not habitable. The letter should state the date that the tenants were forced to move out. The letter should also request the return of any prepaid rent and the security deposit and provide an address where these funds can be mailed to. Prepaid rent is any rent paid from the date that the tenant had to move out until the end of the month. For example if the tenant paid \$400 rent on June 1, and had to evacuate on June 15, the tenant should receive \$200 from the landlord. It is advisable that the letter be mailed or handed to the landlord within 14 days of the date that the tenants had to leave their home.

The landlord has 14 days from the date they receive the letter to return the prepaid rent and security deposit. The landlord can deduct certain charges from the security deposit. They can deduct any back rent owed or any damages caused by the tenant (not disaster-related damages unless the tenant caused the damage).

WHAT IF THE RENTAL UNIT IS ONLY PARTIALLY HABITABLE AND THE TENANT WANTS TO STAY?

If occupancy is lawful, the tenant has the right to stay. If the tenant's use of the property is greatly limited due to the disaster, the tenant's rental amount should be based on the fair market value of the portion of the home that is usable. The change in the amount of rent due is as of the date that the damage took place. A tenant in this situation will want to communicate with their landlord and document all communications in writing. It is important that the tenant immediately notify the landlord of the damage and the part of the rental unit that is unusable. The landlord needs to be given a reasonable opportunity to make repairs. The tenant should then

communicate with the landlord about the amount of rent that is due. If the landlord does not agree, the landlord could try to evict the tenant for underpaying the rent. In court, the tenant will need to show that the fair market value of the rental unit was lessened due to the disaster. Pictures of the damage will be very helpful in this situation. A tenant should hold onto the remaining amount of the rent. A court may order that the tenant pay the full rental amount to the Clerk of Court until the court can decide how much rent is actually owed. Paying less than the monthly rent can be a risky proposition for a tenant unless the tenant and the landlord have agreed on the new rental amount.

CAN THE TENANT PROVIDE HIS OR HER OWN ESSENTIAL SERVICES IF THE LANDLORD DOES NOT PROVIDE THEM?

Yes. the tenant has the right to obtain heat, water, hot water, or other essential services if the landlord does not provide them. If the tenant is lawfully able to live in the rental unit, but repairs need to be made to the structure, electrical system, plumbing or other essentials, the tenant shall notify the landlord in writing and request that the repairs be made. The tenant should keep a copy of the letter. If the landlord refuses to make the repairs in a reasonable time, the tenant can procure the essential service themselves and deduct the cost from their rent. Under Hawaii law, there are limits to the cost of the repairs that can be deducted for essential services. The deduction can't exceed the amount of one month's rent, and the tenant can't use this remedy more than once in any six-month period. Generally costs over one month should be negotiated with the landlord beforehand. The tenant needs to keep all receipts and provide them to the landlord with the rent payment. An example of this provision is if the water heater in the tenant's home was damaged from fire. The tenant asks the landlord to repair, but the landlord does not. It will cost \$700 to have a plumber install a new water heater. The monthly rent is \$1,000. The tenant should notify the landlord in writing that the tenant will hire a plumber to install the water heater and will deduct the cost from the rent. The tenant should then pay the \$300 rent and provide a copy of the plumber's receipt for the other \$700.

The tenant may also be able to recover damages for the diminution of fair market value of the rental unit because of the lack of the essential service. If rent was already paid, the tenant may be able to recover any rent already paid for the period of the landlord's noncompliance. The rent shall be reimbursed on a pro rata basis.

The tenant's rights under Hawaii law do not arise until the tenant gives notice to the landlord of the need for repair. The tenant cannot use this provision of the law if the tenant (or their guests) caused this situation by their deliberate or negligent act or omission.

Even if the tenant follows the correct procedure, it will be up to the judge to decide whether these repairs met the statutory requirements and whether the costs were justified. This approach involves some significant risks. The tenant may have to justify and prove their actions in court.

CAN THE TENANT MAKE OTHER REPAIRS (NON-ESSENTIAL SERVICES) IF THE LANDLORD DOES NOT?

Yes but it depends. Hawaii law allows a tenant to make their own repairs and deduct the cost from the rent in certain circumstances, however firstly, the tenant should refer to their rental or lease agreement. It may contain clauses regarding repairs and maintenance responsibilities. In the absence of a clear provision in the rental agreement, the Hawaii Residential Landlord-Tenant Code provides guidelines, though it primarily addresses essential services and habitability. The repair must be one that the landlord is responsible for and must seriously affect health and safety. The cost of the repair cannot exceed one month's rent.

The tenant must notify the landlord in writing that the tenant intends to have the repair made and will deduct the cost of the repair from the next month's rent. It is best if the tenant hires someone to do it. The tenant should keep any receipts. If the tenant does the work themselves, the tenant should keep track of the hours and any out-of-pocket costs. All repairs, whether done by a repair person or the tenant, must be done well and at reasonable cost. The tenant should then deduct the cost of the repair from the rent and pay any remaining balance. The tenant should provide the landlord with a copy of the receipts for the work done.

The landlord may feel that the tenant has not paid their full rent and may try to evict the tenant for nonpayment of rent. Therefore, it is very important that the tenant follow the above procedure. Even if the tenant follows the correct procedure, it will be up to the judge to decide whether these repairs met the statutory requirements and whether the costs were justified. This approach involves some significant risks. The tenant may have to justify and prove their actions in court.

HOMEOWNER RIGHTS IN A DISASTER

FORECLOSURE

DOES A HOMEOWNER HAVE TO CONTINUE TO PAY THEIR MORTGAGE WHEN THE PROPERTY HAS BEEN DAMAGED OR DESTROYED IN A DISASTER?

Yes. The homeowner has to continue to pay the mortgage. The fact that the house is damaged or destroyed does not end the homeowner's responsibility to pay on the house.

DOES THE MORTGAGE COMPANY HAVE TO WORK WITH THE HOMEOWNER?

Generally the mortgage company does not have to work with the homeowner. However, the homeowner should always reach out to the mortgage company to see if they will work with them. The mortgage company may be willing to do so since the mortgage company does not want to have to make the repairs. The homeowner should make sure to get all the terms of any agreement put into writing. It is often difficult to get a written agreement, but even an email with the terms laid out is helpful if there is a disagreement later.

WHAT HAPPENS IF THE HOMEOWNER CANNOT MAKE THE MORTGAGE PAYMENTS?

If the homeowner cannot make the payments, the mortgage company can start foreclosure proceedings. The mortgage company will start the foreclosure process by sending a Notice of Default to the borrower. The Notice must be in writing and it must give a detailed statement of the default, including the amount owed and a breakdown of how that amount was arrived at, including the amount of late fees and other costs. The notice means that if the homeowner pays the amount stated in the letter within 20 days of receiving the letter, the homeowner can reinstate their loan and continue with the payments just as if they had never defaulted.

If the homeowner cannot pay the full amount to cure the default, the homeowner can call the mortgage company or their attorney to see whether they can make a smaller payment and then pay the rest over a period of time.

If the homeowner does not cure the default within the 20 days, then the mortgage company can proceed with a foreclosure. The mortgage company will file a petition for foreclosure in the county where the property is located. An answer needs to be filed within 20 days of the date that the original notice was served. The answer should contain all the defenses that the homeowner has to the foreclosure action.

Before a judgment is issued, the homeowner can file a “Demand for Delay of Sale” with the court to delay a Sheriff’s sale of the house. The Demand for Delay of Sale must be in writing and must request that the Sheriff’s sale be delayed. It must be filed before a judgment is entered so it is good practice to file it immediately after receiving the foreclosure papers, along with the Answer.

ARE THERE ANY OPTIONS FOR A HOMEOWNER TO SAVE THEIR HOME?

Yes. One option is for the homeowner to reinstate their mortgage. At any time prior to the Sheriff’s sale, the homeowner can ask for a “reinstatement quote.” This amount will include any money that the homeowner owes to the mortgage company (principal and interest payments, escrow amounts, late fees, attorney fees, court costs, etc.). If the homeowner can pay this amount to the mortgage company, the homeowner is said to have reinstated the mortgage. Future mortgage payments will then continue as normal.

The homeowner can refinance the mortgage with another lending company. If another mortgage company is willing to enter into a mortgage agreement with the homeowner, the new mortgage company will pay off the existing mortgage to the old mortgage company. The homeowner would then have a new note and mortgage with the second mortgage company. This is difficult to do because the homeowner will usually have poor credit due to the foreclosure action. It may be possible if someone else is willing to act as a cosigner.

The homeowner can try to enter into a loan modification with the mortgage company. The loan modification will generally result in lower monthly payments for the homeowner. However, the delinquent amount will usually be added to the principal balance, with the mortgage extended to 30 to 40 years to make the payments affordable. Conventional mortgages may receive hardship assistance through programs offered by the mortgage company. Regulations of the Consumer Financial Protection Bureau also provide some protections. 12 CFR 1024.41. [Homeowners interested in alternatives to foreclosure can contact Hawaii Homeowners Assistance Fund https://dbedt.hawaii.gov/hhfdc/assistance-for-homeowners/](https://dbedt.hawaii.gov/hhfdc/assistance-for-homeowners/)

HOME REPAIR CONTRACTS

WHAT SHOULD A REPAIR CONTRACT CONTAIN?

A good repair contract should contain a thorough discussion of the scope of the work, what labor and materials will be needed, and an itemization of the cost to complete the work. The contract should identify if any subcontractors will be hired and if so, that lien releases will be obtained from all subcontractors prior to final payment. The contract should contain the beginning and ending dates of the project and what happens if the project is not completed timely. The contract should contain a payment schedule. The contract should require that the contractor and all subcontractors be licensed, have liability insurance, and will pull the appropriate permits. The contract should contain information on how to make modifications or how either party can terminate without penalty.

WHAT RIGHTS DOES A HOMEOWNER HAVE IF THE CONTRACTOR DOES NOT COMPLETE THE JOB?

This is governed by basic contract law. First, the court will look to the contract. If the court finds that the contracted performance was not completed, the court will consider available remedies. One remedy is specific performance where the contractor would be required to complete the job. This is a disfavored remedy. The most likely remedy would be ordering the contractor to pay damages to the homeowner. The court will look to put the homeowner in the same position that they would be in if the work was completed. The contractor will be given value for the work completed (if any) and will be required to return any unearned payments. If the delay in completion caused harm to the homeowner, the contractor may be required to reimburse the homeowner for these damages. If there are penalty clauses in the contract for the failure to complete work timely, the homeowner can ask the court to enforce these provisions.

WHAT RIGHTS DOES A HOMEOWNER HAVE IF THE REPAIR WORK IS NOT COMPLETED PROPERLY?

This is governed by contract law. In this situation, the homeowner should be put in the position that they would be in if the contract had been properly performed. They would generally be entitled to the difference between what they received and what they should have received. The damages are generally the cost of correcting the defects or completing the omissions.

WHAT IF THE GENERAL CONTRACTOR DOES NOT PAY THE SUBCONTRACTORS?

The subcontractors could file a mechanic's lien against the property.

MECHANIC'S LIENS

WHAT IS A MECHANIC'S LIEN?

A mechanic's lien is a lien placed on a property by a contractor/subcontractor who has performed work on a property, but has not been paid. Mechanic's liens are governed by Hawaii Revised Statutes (HRS) Chapter 507. Two common ways this issue arises is if: 1) a homeowner hires someone to perform work on their residence and then does not pay for the work that was done, or 2) a homeowner hires a general contractor to work on his/her home and the general contractor does not pay the subcontractors who performed work on the home.

A homeowner will receive notice if a mechanic's lien is placed on his/her property. The lien registry administrator will either mail a copy to the homeowner or the homeowner will be personally served with notice. The lien lasts for two years and ninety days. Any action to enforce a mechanic's lien shall be brought within two years from the expiration of ninety days after the date on which the last of the material was delivered or labor was performed.

HOW DOES A CONTRACTOR OBTAIN A MECHANIC'S LIEN?

In Hawaii, a contractor (or subcontractor or supplier) can obtain a mechanic's lien to secure payment for labor, materials, or equipment provided for a construction project. Here's a step-by-step breakdown based on the Hawaii Revised Statutes (HRS) Chapter 507:

1. Contractual Agreement:

Before any lien rights exist, there must be a contractual agreement where the contractor agrees to furnish labor, materials, or equipment for a construction project.

2. Notice:

In certain circumstances, the contractor or subcontractor might need to serve preliminary notices to the property owner to inform them of their right to a mechanic's lien should they not receive payment. This step is critical to preserving lien rights.

3. Non-Payment:

If the contractor or subcontractor has fulfilled their contractual obligations and has not received payment, they can move forward with filing a mechanic's lien.

4. Filing the Lien:

The mechanic's lien must be filed in the bureau of conveyances within the county where the property is located. The lien should include specific details such as:

- The amount claimed.
- A description of the labor or materials provided.
- A description of the property.
- Names of the property owner and the hiring party.

5. Deadline:

The mechanic's lien generally needs to be filed within 45 days after the completion of the contract or the final furnishing of labor, materials, or equipment – whichever comes last.

6. Enforcement:

If the lien isn't satisfied (i.e., the contractor isn't paid), the contractor will need to enforce the lien by filing a lawsuit to foreclose on the lien. There are strict deadlines for this, often within three to six months from the date of filing the lien.

7. Release:

Once payment is received, the contractor should file a release of the mechanic's lien.

INSURANCE

There are many insurance issues that can arise after a disaster. The answers will depend on the type of disaster that occurred and the type of coverage that the disaster survivor has. Insurance is a contract between the company and the insured person. The benefits that the

insured has will depend on their particular insurance policy and the limits of their coverage. The Insurance Declarations page is generally the first place to start. It will show the type of policy, the policy limits, the deductibles, and any additional policy riders.

Traditional homeowners and renters insurance policies specifically include coverage for fire-related damages. In areas prone to wildfires, some insurance companies might have different terms, conditions, or premiums related to fire coverage, or they might exclude it altogether (though this is rare). Homeowners in these areas might need to purchase a separate policy or endorsement to ensure adequate coverage.

After a disaster, it is important that the homeowner or renter report the damage to their insurance company as soon as possible. An insurance adjuster will be sent to inspect the damage. The insurance company will generally pay for reasonable costs to repair the covered damage up to the policy limits.

If the insured does not agree with the insurance company's decision, their remedy is to appeal within the insurance company, file a complaint with the Hawaii insurance Division of the Department of Commerce and Consumer Affairs, or file a lawsuit against the insurance company.

EDUCATION ISSUES

WHERE CAN A DISPLACED STUDENT ATTEND SCHOOL?

Children who are displaced by a disaster have the same rights as homeless children under federal law. The McKinney-Vento Act (42 U.S.C. §§ 11431 et seq.) provides for the education of homeless children.

WHAT CHILDREN ARE CONSIDERED HOMELESS AND ELIGIBLE FOR MCKINNEYVENTO PROTECTION?

Children (ages 3-21) are considered homeless if:

1. They lack a fixed, regular, and adequate nighttime residence;
2. They have lost housing and are now staying with friends and family (doubling up);
3. They are living in the following places:
 - a. in an emergency shelter (including Red Cross disaster shelter or FEMA mobile home);
 - b. in a transitional shelter;
 - c. in a motel;
 - d. in a domestic violence shelter;
 - e. abandoned at a hospital;
 - f. in a campground;
 - g. in a car;
 - h. on the street;
 - i. in an abandoned building;
 - j. in a bus or train station (or somewhere similar);
4. Any child who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
5. A migratory child;

6. A child that has run away or been forced to leave his/her home.

WHAT RIGHTS DO CHILDREN HAVE UNDER THE MCKINNEY-VENTO ACT?

After the disaster, displaced survivors have the choice to send their children back to the last school they attended (school of origin), or they can send them to the local school where they are now living. The children have the right to immediately enroll in school even if their school records have been destroyed. The children have the right to attend school while the parents and school officials work to find their school records and immunization records. If the children are living with a caretaker (other than their parents), the school cannot require that the caretaker obtain a guardianship over the children.

Homeless children are entitled to the same right to transportation as other children. This means that they have the right to school transportation to and from their school of origin. They have the same rights to special education and other special services. They have the right to free or reduced meals if they are eligible. The school district cannot have a school or classroom specifically designed for homeless children. Children in preschool have the same rights to attend preschool as other children.

WHAT IF THE SCHOOL WILL NOT ENROLL THE STUDENT CHILD?

If the school is not acting in compliance with the McKinney-Vento Act, the first step is to complain to the principal. If that does not work, the next step is to involve the school district's homeless liaison person. Under federal law, every school district has to have a person designated as the district's homeless liaison. This information is often available on the district's website or through a call to the superintendent's office. Depending on the size of the school district, the person may work full-time as the homeless liaison or it may be one of many hats that they wear.

WHERE CAN I FIND ADDITIONAL INFORMATION?

<https://homelessness.hawaii.gov/main/minors-experiencing-homelessness-or-unstable-housing/>

REPLACING LOST DOCUMENTS

HOW DOES A DISASTER SURVIVOR REPLACE THEIR HAWAII DRIVER'S LICENSE?

The person can go to any Department of Motor Vehicle office in their county. It costs \$6 to replace a driver's license. The person will need to provide other identification documents to the DMV to obtain a new driver's license. Some acceptable forms of documentation include: birth certificate, passport, permanent resident card, another document that shows your full name and Social Security number (Social Security card, paystub, W-2 etc.) and two documents showing your current address. More information can be found at:

<https://www.mauicounty.gov/1518/DuplicateReplacement-License> If the person does not have any of these other forms of identification, they can call the Maui Motor Vehicle and Licensing at [\(808\) 270-7363](tel:8082707363).

HOW DOES A DISASTER SURVIVOR REPLACE A LOST BIRTH CERTIFICATE?

The person can apply for a new copy of their birth certificate from the State of Hawaii Department of Health Vital Records. The application can be found at: <https://vitrec.hawaii.gov/vitalrecords/>. Applications can be done online (highly recommended), or mail.

HOW DOES A DISASTER SURVIVOR REPLACE A LOST SOCIAL SECURITY OR MEDICARE CARD?

A person can complete an Application with the Social Security Administration to request a new card. The application can be obtained from: <http://www.socialsecurity.gov/forms/ss5.pdf>. New cards can be requested in person at the local Social Security Administration Office or by mailing the application to the local office. All applications must be accompanied by a photo identification card (or a copy if mailing). There is no fee for requesting a new card. The Social Security Administration will replace the card up to 3 times a year, with a 10-card lifetime maximum. The local Social Security Administration office can be found at: <https://secure.ssa.gov/ICON/main.jsp>.

Medicare cards can be ordered online. To do so, the person needs to use this link to sign into their “My Social Security” account: <https://secure.ssa.gov/RIL/SiView.do>.

HOW DOES A DISASTER SURVIVOR REPLACE LOST IMMIGRATION DOCUMENTS?

In order to replace their Permanent Resident Card or “Green Card,” the disaster survivor needs to complete an I-90 form. An I-90 form can be found at the following website: <http://www.uscis.gov>. The instructions for completing an I-90 form are complex and applicants may benefit from the assistance of an attorney in completing the document. Instructions to complete the form can be found at: <https://www.uscis.gov/i-90>. It costs \$365 to file for a replacement plus an \$85 dollar biometric fee. Applicants can request a fee waiver upon a showing of financial hardship.