



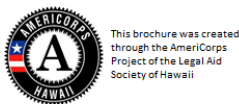
LEGAL AID SOCIETY OF HAWAI'I



ILLEGAL LOCKOUT COURT FORM (FIFTH CIRCUIT: KAUAI COUNTY)

Use this form if you have been locked-out of your unit illegally.

A landlord cannot change the locks of your rental unit or otherwise forbid you access without a court order, even if you have not been able to pay your rent. “Self-help” evictions by landlords are not permitted in Hawaii. A landlord is subject to paying you damages of up to 2 months rent, costs, and attorney fees if the landlord is found to have illegally locked out a tenant.



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May 11, 2020, H7d. Housing: Illegal Lock-out Court Form Fifth Circuit Kauai County

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. For questions, please contact Legal Aid's Hotline at 808-536-4302 (Oahu) or 1-800-499-4302 (Neighbor Islands). Visit www.legalaidhawaii.org.

Illegal Lockout

- You can try to engage with the landlord first to see if they will fix the lockout.
 - See the sample letter below – you can send it or drop it off or email it, but it is not required that you notify the landlord before you file in Court.
 - Tenant: Signature required on page 2 of the form which is your declaration of what happened.
 - Attorney or tenant must sign page 1 – a tenant must physically file with the Court Clerk – if you have an attorney, they can file electronically and are entitled to attorney fees if you prevail. You can seek to do this on your own, or with a private attorney, or you can call Legal Aid to see if you qualify for free legal representation.
- * For the Illegal Lockout form, if you are able to open it in adobe, the form will be fillable on the computer, otherwise you can print it out and fill it in by hand.
- If you cannot afford a filing fee, you can file to ask the Court to waive your filing fee, using the Court form linked below:
 - Fifth Circuit (Kauai County) - Request for Relief from Court Costs Form 5DC13
<https://www.courts.state.hi.us/docs/form/kauai/5DC13.pdf>
 - If the Order is granted, then you need to arrange for service.
 - The police or sheriff can serve your Temporary Restraining Order. If they do not, you can hire a private process server or ask an adult who is 18 or over and is not a party to the case.
 - You will be given a Court date at which you can prove the illegal utility shutoff and ask for damages.
 - You may need to go to Court for the hearing.

TENANT'S NAME
TENANT'S ADDRESS

To: _____ (LANDLORD'S NAME)
_____ (LANDLORD'S ADDRESS)

DATE

Re: Illegal Lockout

Dear _____ (LANDLORD'S NAME),

This letter is to advise you of my legal rights as a tenant under Hawai'i's Residential Landlord-Tenant Code.

Under the Landlord-Tenant Code, it is against the law for a landlord to remove or exclude a tenant from the premises overnight without cause or without a court order (illegal lockout). Hawai'i Revised Statutes (H.R.S.) § 521-63(c). If a landlord does an illegal lockout, the tenant is entitled to recover an amount equal to two months rent or free occupancy for two months, and the cost of the suit, including reasonable attorney's fees; and, the court may also order any injunctive or other equitable relief it deems proper. H.R.S. § 521-63(c).

I have not received a writ of possession, and you have not removed or excluded me from the premises for cause.

I request that you immediately restore possession to me.

If you refuse to do so, I am prepared to file a court action against you.

Sincerely,

(TENANT'S SIGNATURE)
(TENANT'S PRINTED NAME)

**PETITION FOR EMERGENCY EX PARTE TEMPORARY
RESTRAINING ORDER AND FOR INJUNCTION AGAINST
UNLAWFUL REMOVAL OR EXCLUSION FROM RENTAL
PREMISES (ILLEGAL LOCKOUT);
DECLARATION OF PETITIONER; TEMPORARY
RESTRAINING ORDER AGAINST UNLAWFUL REMOVAL
OR EXCLUSION FROM RENTAL PREMISES (ILLEGAL
LOCKOUT); AND NOTICE OF HEARING**

IN THE DISTRICT COURT OF THE FIFTH CIRCUIT STATE OF HAWAI‘I	
Petitioner(s)	Reserved for Court Use
	Civil No.
Respondent(s) (if known, list Address, Telephone, and e-mail for each respondent)	Petitioner(s)/Petitioner(s)’ Attorney (Name, Attorney Number, Firm Name (if applicable), Address, Telephone, Facsimile Number)

PETITION FOR EMERGENCY EX PARTE TEMPORARY RESTRAINING ORDER AND FOR INJUNCTION AGAINST UNLAWFUL REMOVAL OR EXCLUSION FROM RENTAL PREMISES (ILLEGAL LOCKOUT)

This Petition is made pursuant to Hawai‘i Revised Statutes § 521-63(c), Hawai‘i Rules of Civil Procedure Rule 65, and the following statement:

- The Petitioner is a resident of the Division of the above District and Circuit, State of Hawai‘i.
- Based upon the attached Declaration of Petitioner, Petitioner asks for:
 - An emergency ex parte temporary restraining order enjoining Respondent(s) and any other person(s) acting on Respondent(s)’ behalf from:

removing or excluding (locking out) Petitioner from the rental premises without cause or without a court order so authorizing.
 - An order of an Injunction, enjoining Respondent and any other person(s) acting on Respondent’s behalf from committing those acts set forth in paragraph 2a. hereof.
 - An order permitting Petitioner to (*choose one*) ☐ recover possession **OR** ☐ terminate the rental agreement; an amount equal to two months’ rent or free occupancy for two months; and, the cost of suit, including reasonable attorney’s fees; and, such further relief as the Court deems just and appropriate.

Date:	Signature of Filing Party (Attorney or Petitioner):
	Print/Type Name:

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

DECLARATION OF PETITIONER

Petitioner states the following is true:

1. The Petitioner resides at _____, hereinafter, the “rental premises.”
 2. Respondent is ☐ the record title owner of the rental premises, or ☐ has a legal right to occupy the rental premises.
 3. The Petitioner has resided at the rental premises pursuant to a ☐ written, or ☐ oral rental agreement with the Respondent, which began on or about _____ on a ☐ month to month, ☐ year to year, or ☐ other basis (_____ to _____)
 4. A true and correct copy of Petitioner’s rental agreement is ☐ attached herein, and incorporated as “Exhibit 1,” or, ☐ will be provided to the Court at the hearing on this matter.
 5. Petitioner’s monthly rent is \$ _____.
 6. Petitioner has not been removed or excluded from the rental premises for cause or by a court order.
 7. Respondent unlawfully removed or excluded Petitioner from the rental premises on _____ by:
 - ☐ physically removing Petitioner from the rental premises;
 - ☐ changing the locks;
 - ☐ removing or disposing of Petitioner’s personal belongings.
- ☐ Unless Respondent’s wrongful conduct is stopped or prevented by order of the Court, Petitioner will suffer immediate and irreparable injury, loss, or damage.

I have read the Petition and Declaration, know their contents, and verify that the statements contained therein are true to my personal knowledge and belief.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAI‘I THAT THE FACTS AND CIRCUMSTANCES STATED IN THE PETITION AND DECLARATION ARE TRUE AND CORRECT.

Date:	Signature of Petitioner: Print/Type Name:
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TEMPORARY RESTRAINING ORDER AGAINST UNLAWFUL REMOVAL OR EXCLUSION FROM RENTAL PREMISES (ILLEGAL LOCKOUT)

Based upon the attached Petition for Emergency Ex Parte Temporary Restraining Order and For Injunction Against Unlawful Removal or Exclusion from Rental Premises (Illegal Lockout) and Declaration of Petitioner and pursuant to **Hawai'i Revised Statutes § 521-63(c)**, the Court finds there is probable cause to believe:

Respondent unlawfully removed or excluded (locked out) Petitioner from the rental premises without cause or a court order. It appears to the Court that a Temporary Restraining Order should be granted and is necessary to prevent acts of unlawful removal or exclusion (lockout) of Petitioner from the rental premises. Accordingly, IT IS ORDERED that Respondent(s) shall appear before the Judge in the above-entitled proceeding at the date, time and place indicated in the Notice of Hearing below. Pending the hearing on this Petition, Respondent(s) is/are ordered as follows.

TO THE RESPONDENT:

YOU AND ANYONE ACTING ON YOUR BEHALF ARE ORDERED AS FOLLOWS:

Do not unlawfully remove or exclude (lock out) Petitioner from the rental premises by:

- ☐ physically removing Petitioner from the rental premises;
- ☐ changing the locks;
- ☐ removing or disposing of Petitioner's personal belongings.

This Order becomes effective upon its signing and filing and shall remain in effect for fifteen (15) days, unless extended or terminated by the Court.

ANY KNOWING VIOLATION OF THIS TEMPORARY RESTRAINING ORDER AGAINST UNLAWFUL REMOVAL OR EXCLUSION FROM RENTAL PREMISES (ILLEGAL LOCKOUT) SHALL BE PUNISHABLE AS CRIMINAL CONTEMPT UNDER HAWAI'I REVISED STATUTES § 710-1077.

Date:

Judge of the above-entitled Court:

NOTICE OF HEARING

TO RESPONDENTS: _____

NOTICE IS GIVEN that the Petitioner above named has filed the foregoing Petition for Emergency Ex Parte Temporary Restraining Order and for Injunction Against Unlawful Removal or Exclusion from Rental Premises (Illegal Lockout).

YOU ARE COMMANDED to appear before the Presiding Judge of the above-entitled Court, the District Court of the above Circuit, at _____, on _____, 20____ at _____.

Prior to the scheduled hearing date, you or your attorney may file a written response explaining, excusing, justifying, or denying the alleged act or acts of unlawful removal or exclusion of Petitioner from the rental premises (illegal lockout). At the hearing, the parties shall be prepared to testify, call and examine witnesses, present any documents, and give legal or factual reasons why the Injunction should or should not be granted. Each party may be represented by an attorney and shall be prepared to proceed at the hearing. **IF YOU OR YOUR ATTORNEY FAIL TO ATTEND AT THE TIME AND PLACE DESIGNATED, AN ORDER GRANTING PETITION FOR INJUNCTION AGAINST UNLAWFUL REMOVAL OR EXCLUSION FROM RENTAL PREMISES (ILLEGAL LOCKOUT) WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE PETITION.**

The Court shall receive all evidence that is relevant at the hearing, and may make independent inquiry.

This Order shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the above-entitled Court permits, in writing on this Order, personal delivery during those hours.

Date:

Clerk of the above-entitled Court:

In accordance with the **Americans with Disabilities Act** if you require an accommodation for your disability, please contact the District Court Administration Office at PHONE NO. 482-2347, FAX 482-2509, OR TTY 482-2533 at least (10) working days in advance of your hearing or appointment date.