



LEGAL AID SOCIETY OF HAWAI'I



ILLEGAL UTILITY SHUTOFF COURT FORM (FIFTH CIRCUIT: KAUAI COUNTY)

Use this form if your water, electric, gas, or other essential utility was
shutoff to your unit illegally by your landlord.

A landlord cannot shutoff your utilities – hot or cold water, electric, gas, or other essential service without a court order, even if you have not paid your rent. “Self-help” evictions by landlords are not permitted in Hawaii. **Please be aware that if a Utility is billed in your name and is shutoff you should check with the Utility Provider to determine if the Utility Company shutoff the Utility or whether your Landlord shutoff the Utility.** A landlord is subject to paying you damages of a minimum of 3 months rent or \$1,000, whichever is greater, if the landlord is found to have illegally shutoff a utility and the landlord may be liable for costs, and attorney fees.



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May 11, 2020, H9d. Housing: Illegal Utility Shutoff TRO Court Form 5th Cir. 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 Utility Shutoff

- You can try to engage with the landlord first to see if they will turn the utilities back on. o 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 may be entitled to attorney fees if you prevail (Under HRS Chapter 480). 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:
 - o 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.
 - o 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.
 - o 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 Utility/Essential Service Shutoff

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, as well as your duties as a landlord under the Code.

Under the Landlord-Tenant Code, it is against the law for a landlord to try to recover or take possession of a dwelling unit by willfully interrupting or lessening running water, hot water, electric, gas, or other essential service unless the dwelling unit has been abandoned or surrendered by the tenant. Hawai'i Revised Statutes (H.R.S.) § 521-74.5. If a landlord does willfully interrupt or lessen an essential service, the landlord has engaged in an unfair method of competition or unfair and deceptive acts or practices under H.R.S. § 480-2. A landlord is subject to a civil penalty under H.R.S. § 480-3.1 (a sum of not less than \$500 nor more than \$10,000 for each violation) in addition to minimum damages of three times the monthly rent or \$1,000, whichever is greater. H.R.S. § 521-74.5.

In addition, per H.R.S. § 521-42, the landlord must supply and maintain fit premises, including maintaining "all electrical, plumbing, and other facilities and appliances supplied by the landlord in good working order and condition, subject to reasonable wear and tear." H.R.S. § 521-42(a)(4).

I have not received a writ of possession, and have not abandoned nor surrendered my unit.

I request that you immediately restore the running water, hot water, electric, gas, or other essential service.

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

Sincerely,

(TENANT'S SIGNATURE)

(TENANT'S PRINTED NAME)

Template Prepared by the Legal Aid Society of Hawai'i

**PETITION FOR EMERGENCY EX PARTE TEMPORARY
RESTRAINING ORDER AND FOR INJUNCTION AGAINST
WILFUL INTERRUPTION OR DIMINUTION OF RUNNING
WATER, HOT WATER, OR ELECTRIC, GAS, OR OTHER
ESSENTIAL SERVICE (ILLEGAL UTILITY SHUTOFF);
DECLARATION OF PETITIONER; TEMPORARY
RESTRAINING ORDER AGAINST WILFUL INTERRUPTION
OR DIMINUTION OF RUNNING WATER, HOT WATER, OR
ELECTRIC, GAS, OR OTHER ESSENTIAL SERVICE
(ILLEGAL UTILITY SHUTOFF); AND NOTICE OF HEARING**

IN THE DISTRICT COURT OF THE FIFTH CIRCUIT STATE OF HAWAI‘I	
Petitioner	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 WILFUL INTERRUPTION OR DIMINUTION OF RUNNING WATER, HOT WATER, OR ELECTRIC, GAS, OR OTHER ESSENTIAL SERVICE (ILLEGAL UTILITY SHUTOFF) This Petition is made pursuant to Hawai‘i Revised Statutes §§ 521-74.5, 521-42, and 480-2, Hawai‘i Rules of Civil Procedure Rule 65, and the following statement: 1. The Petitioner is a resident of the Division of the above District and Circuit, State of Hawai‘i. 2. Based upon the attached Declaration of Petitioner, Petitioner asks for: a. An emergency ex parte temporary restraining order enjoining Respondent(s) and any other person(s) acting on Respondent(s)' behalf from: recovering or taking possession of Petitioner's dwelling unit by the wilful interruption or diminution of running water, hot water, or electric, gas, or other essential service (illegal utility shutoff) contrary to the rental agreement or H.R.S. § 521-42. b. 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. c. An order permitting Petitioner to recover minimum damages of three times the monthly rent or \$1,000, whichever is greater; 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 “dwelling unit.”
 2. Respondent is ☐ the record title owner of the dwelling unit, or ☐ has a legal right to occupy the dwelling unit.
 3. The Petitioner has resided at the dwelling unit 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 abandoned or surrendered the dwelling unit.
 7. Respondent has unlawfully recovered or taken possession of Petitioner’s dwelling unit on _____ by the wilful interruption or diminution of:
 - ☐ running water
 - ☐ hot water
 - ☐ electric
 - ☐ gas
 - ☐ other essential service
- ☐ 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 HAWAII THAT THE FACTS AND CIRCUMSTANCES STATED IN THE PETITION AND DECLARATION ARE TRUE AND CORRECT.

Date:

Signature of Petitioner:

Print/Type Name:

TEMPORARY RESTRAINING ORDER AGAINST WILFUL INTERRUPTION OR DIMINUTION OF RUNNING WATER, HOT WATER, OR ELECTRIC, GAS, OR OTHER ESSENTIAL SERVICE (ILLEGAL UTILITY SHUTOFF)

Based upon the attached Petition for Emergency Ex Parte Temporary Restraining Order and For Injunction Against wilful Interruption or Diminution of Running Water, Hot Water, or Electric, Gas, or Other Essential Service (Illegal Utility Shutoff) and Declaration of Petitioner and pursuant to **Hawai'i Revised Statutes §§ 521-74.5, 521-42, and 480-2**, the Court finds there is probable cause to believe: Respondent unlawfully recovered or took possession of Petitioner's dwelling unit by the wilful interruption or diminution of running water, hot water, or electric, gas, or other essential service (illegal utility shutoff) contrary to the rental agreement or H.R.S. § 521-42.

It appears to the Court that a Temporary Restraining Order should be granted and is necessary to prevent the unlawful recovery or possession of the dwelling unit by the wilful interruption or diminution of running water, hot water, or electric, gas, or other essential service (illegal utility shutoff). 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:

To restore all essential services and utilities for Petitioner's dwelling unit and to not unlawfully recover or take possession of Petitioner's dwelling unit by the wilful interruption or diminution of:

- ☐ running water
- ☐ hot water
- ☐ electric
- ☐ gas
- ☐ other essential service

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 WILFUL INTERRUPTION OR DIMINUTION OF RUNNING WATER, HOT WATER, OR ELECTRIC, GAS, OR OTHER ESSENTIAL SERVICE (ILLEGAL UTILITY SHUTOFF) 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 wilful Interruption or Diminution of Running Water, Hot Water, or Electric, Gas, or Other Essential Service (Illegal Utility Shutoff).

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 act of unlawful recovery or possession of the dwelling unit by the wilful interruption or diminution of running water, hot water, or electric, gas, or other essential service (illegal utility shutoff). 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 part 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 WILFUL INTERRUPTION OR DIMINUTION OF RUNNING WATER, HOT WATER, OR ELECTRIC, GAS, OR OTHER ESSENTIAL SERVICE (ILLEGAL UTILITY SHUTOFF) 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.