

Q & A COVID-19 Impact: Housing Issues

The Legal Aid Society of Hawaii is a non-profit, public interest law firm dedicated to increasing access to justice for the state's most vulnerable and disadvantaged people.

The legal information provided below does not replace legal advice that is specific to your situation and does not create an attorney-client relationship. Please continue to check other reliable sources as changes to the law may occur.

These are extraordinary times and many are fearful of losing their housing or have questions about their mortgage. There is currently a federal eviction moratorium under the CARES (Coronavirus Aid, Relief, and Economic Security) Act. Hawaii state courts have an effective moratorium on evictions as District Courts are not taking summary possession cases (exceptions for health and safety) until after April 30, 2020.

The Q&A below are examples of common questions that may occur. For legal help, please contact the Legal Aid Society of Hawaii.

Eviction: Notice to Vacate & Landlord Access

Q? I was given a notice to move out. What are my options if I don't move out during this emergency?

Applicable law: HRS § 521-71(e).

- Determine what type of lease you have and if proper notice is given.
- Usually when a tenant wishes to stay past their lease expiration date, they can simply ask the landlord for an extension.
- If the landlord, agrees to extend the lease, then the tenancy continues with the landlord's consent.
- If a tenant needs to stay longer because they or any member of their household has a disability such as an impairment that makes them more susceptible to COVID-19 and it is unsafe for them to move, they may ask for a lease extension under the Fair Housing Act and Hawaii Revised Statutes Chapter 515.
- Otherwise, if a tenant holds over and a landlord charges holdover rent, it will be up to a judge to decide whether given the circumstances the landlord tenant holdover provisions apply.
- District Court will not take summary possession hearings until after April 30, 2020.
- If you receive a federal subsidy in some form to help pay for your rent, you must have a 30-day notice for failure to pay rent and cannot be evicted until July 26, 2020.

Q? My lease is ending soon and the landlord wants to show the unit in an open house. During this emergency, can I refuse to have people enter the unit? Is the 48-hour requirement still intact?

Applicable law: HRS § 521-53(a).

- The landlord tenant code not only requires 48-hour notice, but that it also requires that requests for access be reasonable.
- During this emergency and given the recommendations of social distancing, the landlord's request may not be seen as reasonable and the tenant can refuse entry to the unit.
- If the tenant suffers from a disability that makes them more susceptible to the dangers of COVID-19, they can request that the landlord enforce that others do not enter the premises as a disability-related reasonable accommodation under H.R.S. § 515 and the Fair Housing Act.

Eviction: Rental Assistance

Q? Do I still need to pay my rent?

YES, Rent is still due and accrues and is owed.

- However, the tenant cannot be evicted if they qualify under Federal moratorium protection until after July 26, 2020 if tenant has a federal subsidy or if tenant is in property with a Federally backed mortgage loan.
- State courts have an effective moratorium until April 30, 2020 for eviction cases (exceptions for health and safety).
- If you do not pay your rent, you can be evicted at the end of the moratorium or you can try to work out a payment plan with your landlord.

Q? What happens if I can't pay my rent because of this emergency?

- If you cannot pay your rent, there may be community agencies that can provide short-term assistance.
- Contact Aloha United Way at 211 for assistance statewide.
- You can also try community organizations such as Catholic Charities, the Institute for Human Services (Oahu), MEO (Maui), Family Life Center (Maui) which may be able to provide assistance based on availability.
- When the State Court moratorium on evictions ends (as of now April 30), if you cannot pay your rent, then you would be subject to an eviction if the Landlord gives you 5 business days notice of non-payment unless you qualify under the Federal moratorium protection, you would have 30 day notice for non-payment, that cannot be sent until at least July 26, 2020.

Q? I need help paying my rent because I lost my job?

- If you cannot pay your rent, there may be community agencies that can provide short-term assistance. Contact Aloha United Way at 211 for assistance statewide.
- Also, you can apply online for unemployment assistance. Please go online at <https://huiclaims.hawaii.gov/#/>

Eviction: Illegal Lock-outs and Utility Shut-offs

Q? Can my landlord threaten to turn off our electricity or lock us out of our apartment during this emergency?

Applicable law: Illegal Shut off and Illegal Lock-out: HRS § 521-74.5.

- NO. Self Help eviction and utility shut-offs are illegal. The landlord cannot threaten to turn off your utilities or threaten to lock you out of your unit without a court order.
- The landlord may also receive a penalty of whatever is higher: 3 times the monthly rent or \$1000 for shutting of your utilities illegally.
- If the landlord does lock you out, you may be entitled to 2 month's rent or free occupancy for 2 months.
- If you think your landlord will lock you out, you should keep proof of your tenancy at all times (a copy of your lease, recent mail, etc.).
- You can call the police for help re-entering the unit or contact Legal Aid

Public Housing, Section 8, and Federal Eviction Moratorium

Applicable law: Under the CARES Act, the Federal eviction moratorium requires a 30-day notice of nonpayment rather than the 5-day notice required by State law. It is in effect until July 26, 2020 (120 days after Federal act signed on March 27). Highlights include:

- No evictions for nonpayment of rent until July 26, 2020.
- No late fees or penalties for the March 27 to July 26, 2020 moratorium period.
- Landlord cannot give notice of evicting for nonpayment until at least July 26, 2020 and must give at least 30-day notice of quit or pay (rather than 5 days required by State law).
- The effect is no notice of eviction until July 26, 2020 if tenant has a federal subsidy or if tenant is in property with a Federally backed mortgage loan.

For State Courts, no Summary Possession/Eviction cases until after April 30, 2020. Please visit the Hawaii State Judiciary website at <https://www.courts.state.hi.us/> for updates.

Q? Who qualifies under the Federal Eviction Moratorium?

If a tenant has virtually any Federal housing subsidy, including Section 8, HPHA, or any other tenancy subject to the Violence Against Women Act, which is almost all Federally subsidized housing, including LIHTC (Low Income Housing Tax Credit), such tenant is protected by the moratorium.

Also, a tenant who lives in a property that is financed by a loan (by the Landlord or property owner) that is backed in any way backed by the Federal government – such as, a loan backed by Fannie Mae, Freddie Mac, FHA, VA, USDA.

If you do not know if you live in a property with a Federally backed mortgage loan, you may ask the landlord or check with the Bureau of Conveyances.

Q? Do I have to pay my rent during the Federal Eviction Moratorium?

- YES, Rent is still due and accrues and is owed during the moratorium (late fees and penalties do not apply).
- However, the tenant cannot be evicted until after July 26, 2020 if the tenant has a federal subsidy or if the tenant is in property with a Federally backed mortgage loan.
- If you cannot pay your rent, you can be evicted at the end of the moratorium or you can try to work out a payment plan with your landlord.

Q? Will my rent be reduced because I lost my job?

- YES, if you have a federal subsidy based on your income, you can and should report the decrease to your subsidy provider so that your portion of the rent is reduced and document your attempts to report the income loss.
- Also, be prepared to report your unemployment benefits once you receive them if your housing subsidy is based on your income.
- NO, if you do not have a federal subsidy, there is no reduction in rent due to job loss provided by the Federal eviction moratorium – presumably the moratorium is to allow time for unemployment benefits to be paid to assist you. Your other choice is to try to negotiate with your landlord.

Q? I lost my job and I live in Section 8 Housing; do I have to tell them I can't pay my part of the rent?

- You should let your Section 8 case worker know that you have lost your job.
- You should also contact your Section 8 case worker by email and also by phone to confirm.

- They will then process an interim adjustment so your portion of next month's rent will be lowered.
- Do not ignore the problem but communicate with your Section 8 case worker and landlord.

Q: I have a Section 8 voucher and I am having a hard time finding housing because of my disability-related condition?

- All federally funded housing programs are required to provide reasonable accommodations for individuals with disability if they will not alter the program's fundamental operations.
- Depending on your circumstances you may qualify for accommodations such as extensions of search times, moderate increases in voucher sizes or assistance locating housing.

MORTGAGE FORBEARANCE

Q? What is the effect of a mortgage forbearance on Federally backed mortgage loans under the CARES Act?

- You can choose to not make your mortgage payment during the forbearance period, if you have a Federally backed mortgage loan
- Normal interest will continue to accrue during forbearance and will be owed when forbearance ends.
- Taxes and insurance will still be due during the forbearance period.

Q. What type of mortgage qualifies for a forbearance - residential?

- The mortgage loan can be: FHA, Fannie Mae, Freddie Mac, VA, Indian Housing, USDA, or a Reverse Mortgage (HECM) guaranteed by FHA. The loan must be for 1-4 living units.
- The loan can be delinquent/in default or current. It does not matter whether the property is vacant or abandoned (if loan is not in forbearance and the property is vacant or abandoned, it still can be foreclosed upon).
- Normal interest will continue to accrue during forbearance and will be owed when forbearance ends. Taxes and insurance will still be due during the forbearance period.
- For Multifamily (5+ units) federally backed mortgage loans, the loan must be current as of February 1, 2020 to be eligible for forbearance.

Q? How do I get a mortgage forbearance?

- Applying for a forbearance is simple. You need to submit the request to the servicer; and affirm (that is, state in good faith) that you, the borrower, are experiencing a financial hardship during the COVID-19 emergency.
- You should make your request in writing.
- For Multifamily (5+ units) federally backed mortgage loans, the hardship must be documented and the loan must be current as of February 1, 2020.

Q? Does the servicer have to grant the forbearance of a Federally backed mortgage loan?

- Yes, for a residential loan, if you have applied as required, the servicer must grant your forbearance with no fees, costs, or penalties, other than that interest continues to accrue, and cannot ask for more documentation.
- For Multifamily (5+ units) federally backed mortgage loans, the forbearance is granted only if documentation supports the request.
- If the forbearance is granted (or not) the Eviction Moratorium still applies since it is a federally backed mortgage loan.

Q? How long does the forbearance last?

- The forbearance lasts for 180 days, but can be extended for another 180 days, if requested during the original forbearance period.
- The forbearance period can also be shortened and ended at any time by the borrower.
- Be sure to ask for extension or shortening of forbearance period in writing.
- For Multifamily (5+ units) federally backed mortgage loans, the forbearance is for an initial day period and can be extended for two additional 30-day periods.

FORECLOSURE MORATORIUM

Q? What is the effect of the Federal Foreclosure Moratorium?

Except for vacant or abandoned property, a servicer of a Federally backed mortgage may not, for at least 60-days beginning March 18 until May 17, 2020:

- Initiate a new foreclosure;
- Move for foreclosure judgment (this is the Motion for Summary Judgment, often filed by the servicer/lender);
- Move for order to sell property (this happens after you lost the motion for summary judgment);
- Execute a foreclosure-related eviction; or
- Execute a foreclosure sale.

The effect is that if you have been threatened with a foreclosure and your mortgage is Federally backed, your servicer/lender cannot start a foreclosure.

Q? How do I tell if my mortgage is Federally backed?

- If you do not know if your mortgage is Federally backed, you can ask your servicer or look at the bottom of the mortgage, if you have a copy, and see if the mortgage form has an indication at the bottom that it is a federal form.
- If you are already in foreclosure, you can ask the attorneys for the servicer/lender or look at the mortgage that is included with the court papers for the source of the mortgage at the bottom of the form.

COVID-19 Impact: FAIR HOUSING Disability

Q? What if I need help with a reasonable accommodation?

- Legal Aid may be able to assist you with a request for a reasonable accommodation.
- If your disability is not apparent and your need for an accommodation is not apparent you will need a letter from your medical provider, social worker or other reliable third party to verify that you have a disability and that the specific accommodation is needed.

Q? I have a disability and because of the COVID-19 emergency I need a temporary care-provider or live-in aide but my housing provider doesn't allow guests.

- If your request for a guest to stay with you is needed because of your disability and otherwise reasonable you may be able to make this request as a reasonable accommodation.
- A reasonable accommodation is a change to the policy, practice, rules, or services of a housing provider that does not impose an undue financial or administrative burden or fundamentally alter the operations of the housing provider.

Q? What if I am immunocompromised and have specific concerns about sanitation, cleaning and social distancing.

- Any tenant can address issues of health and safety with their landlord.
- Landlords have a duty to provide safe and habitable housing.
- If you have specific disability-related concerns that includes a reasonable request to change a rule, policy or practice of the housing provider, you can request such a change as an accommodation.

- If the landlord cannot agree to your request because it would create an undue financial or administrative burden or fundamental change in operations, but another accommodation could be possible, they should engage in a discussion with you to try to reasonably meet your needs.