



Making a Claim and Possible Legal Actions

You can make a claim by writing a letter to your neighbor requesting reimbursement, or work through Kuikahi Mediation Center for mediation with your neighbor or to take legal action by filing a lawsuit. Whatever path you decide to take will depend on your relationship with your neighbor and also consideration of what kind of relationship you would like with your neighbor in the future, as well as the evidence that you have to support your claim against your neighbor.

Writing a Letter

A letter to your neighbor can simply state the damage that was caused to your home, that they had received notice of the potential damage and the cost that you are seeking to receive. Ask for the name of your neighbor's insurance agent and insurance company so that you may make a claim to them. In some cases, this may be enough to get your damages covered.

Mediation

When living next to each other, mediation is sometimes the best way to resolve these issues. You can contact Kuikahi Mediation Center at 935-7844 for more assistance. A brochure on their services is also available.

Lawsuit

The final legal remedy would be to file a lawsuit against your neighbor. This is the most time consuming and difficult of the three legal courses of action.

If the damages that you had were less than \$5,000, you can proceed in Small Claims Court. Small Claims Court is a more informal process where the judge will engage in discussion with the litigants.

For damages between \$5,000—\$40,000, you may file your action in District Court using a Regular Claim

Assumpsit form. A District Court proceeding is more formal than a Small Claims Court proceeding in that the rules of evidence will apply.

For damages greater than \$40,000, a Circuit Court case will need to be filed. While you may pursue this type of case on your own, you may want to consult with attorney for assistance.

Court Forms can be found at: http://www.courts.state.hi.us/self-help/courts/forms/court_forms.html

Considerations

While you may have all of the evidence that will show that your neighbor was negligent and the court awards damages in your case, receiving payment will be another aspect which you should be aware of. If your neighbor does not show up to court and the only information you have is on the neighboring property, your only remedy may be to put a lien on the property. If your neighbor does show up, but fails to pay, you may need to take more court action to receive your damages.

Additional Resources

Visit www.lawhelp.org/hi for more resources and easy to understand interviews to help you through the process.



Phone: 808-536-4302
www.legalaidhawaii.org
www.lawhelp.org/hi



DISASTER LEGAL ASSISTANCE

Tree Damage

From Hurricane Iselle



Provided as a community service by Legal Aid Society of Hawaii, the Hawaii State Bar Association, the Hawaii County Bar Association and the West Hawaii Bar Association



This is meant to be an informational brochure, and is not intended to take the place of legal counsel. The distribution of this brochure by the Legal Aid Society of Hawaii does not imply that an attorney-client relationship has been formed. This brochure is not intended to be a complete statement of law nor intended to fully describe or evaluate your options.

Fallen trees from a storm create a multitude of problems for homeowners. In the recent Hurricane Iselle, much of the home damage was caused by albizia trees falling on homes. This is a guide aimed at assisting homeowners who faced damage to their homes.

Documenting the Damage and Cost of Repairs

Critical to any claim whether it be through homeowner's insurance or litigation, is a good documentation of the damage that was caused. This means pictures of the damage, documentation of personal items that may have been ruined, receipts for temporary living quarters, debris removal, and any other costs related to not being able to live in the home and doing research on the cost to repair. While an insurance adjuster may have come to your property to document the damage, you should also be sure to maintain your own records of the damage.

Homeowner's Insurance

There is no general rule as to what is covered under a homeowner's policy or the dollar amount of coverage provided. The coverage provided may differ significantly from one policy to another. You must read your



the policy to determine the coverage it provides. Homeowners policies usually provide separate coverage for the building structure and for the building contents. The policy limits **for each type of coverage are stated on the Declaration Page** with a separate monetary amount for each. **The insurance policy usually contains the name of the insurance company and the insurance broker on the Declarations page.** If you do not understand any part of the policy, call the insurance company to request an explanation.

Likewise, if you cannot find your policy, call the insurance agent who sold you the policy for a copy

Many homeowners' policies also provide coverage for various kinds of "supplemental benefits" for out of pocket costs. Again, you must read your policy to determine whether your policy provides this coverage.

More detailed assistance on insurance can be found in the Insurance brochure or materials from United Policyholders.

No Homeowner's Insurance

If you did not have homeowner's insurance and the damage was caused by trees from your own property, there are currently no remedies available. However, it is still important that you document the damage (through pictures and in writing) and the cost to fix it as there may be future assistance available through federal agencies other than FEMA, state and county government.

Unknown Neighbor



In the Puna area, there are a large number of absentee landlords and undeveloped land. If you do not know who your neighbor is, you can locate them at: http://qpublic9.qpublic.net/hi_hawaii_search.php. Here you can choose to locate your neighbor either by map or by address. You can find out your neighbor's name and most recently registered address as well as the value of the property.

Damages Caused by Neighbor's Trees

If the damage to your home was caused by your neighbor's trees, there are two different avenues that may be available to you:

Neighbor's Homeowner's Insurance

If damage was caused by your neighbor and/or your neighbor's property, ask your neighbor for the name of their insurance agent and/or insurance company, and then call the agent and/or insurance company and request a copy of the insurance policy when you make a claim. Similar to a claim through your homeowner's insurance, coverage will be limited to what **insurance** was paid for by the neighbor. Be aware that it is likely that a neighbor's homeowner's insurance policy will challenge covering your home. **Thus, it is important to document the damage, and how the damage occurred before whatever caused the damage is moved.**

Legal Action

In some cases your neighbor's homeowner's insurance may not be adequate to cover the damage caused to your home or your neighbor may not have homeowner's insurance. In this case, you may need to take legal action in order to recover the cost of repairs and any out of pocket costs caused by the damage.

Negligence

Be aware that to obtain recovery for your damages through legal action based upon your neighbor's negligence, requires that your neighbor knew or should have known of the dangerous condition (albizia trees) and that the trees could cause danger to others. Your neighbor may claim that there was no negligence, rather, it was an "Act of God" that caused the tree to fall, not anything that they did which will hold them responsible

It would be up to a judge or jury to decide whether the neighbor "knew or should have known of the dangerous condition" and that the trees could cause damage to the neighbor's home. If your neighbor had notice of the potential danger either through a notice that was sent through a homeowner's association, a letter that you sent directly to them about the potential danger, or if you know that the county sent notice requiring removal under the ordinance passed last year (see back cover), or even an article in the newspaper about damage being caused by the albizia trees, you will have stronger evidence that your neighbor is liable for the damage caused by the fallen trees.

If you are unsure if the neighbor received notice, any pictures you may have of the property before the storm which shows trees that should have been removed could help to show that your neighbor knew or should have known about the potential damage.

You could also refer to the County ordinance as evidence of notice which the property owner should have been aware of.



Unsafe Flora Ordinance

Last year the County of Hawaii passed an ordinance effective November 6, 2013 which declared that albizia trees within 100 feet of any public street or highway would need to be cleared. It further authorized the mayor to require property owners upon request of residents within 500 yards of that property to determine after investigation to remove any unsafe flora that posed an imminent danger for fire, health, safety, property damage or crime hazard. §20-21 - 20-22 of the Hawaii County Code.