

#### IV. Building Repairs

It is best to deal with licensed contractors when repairing damages done to your property because licensed contractors have met the standards of training, skill, insurance coverage, and financial responsibility required to be licensed by the State of Hawaii. For more information, visit the Department of Commerce and Consumer Affairs website: [www.hawaii.gov/dcca/areas/rico/licensedcontractor](http://www.hawaii.gov/dcca/areas/rico/licensedcontractor)

##### Tips to Consider

###### **Get several bids.**

Try to get written bids or estimates from at least three different contractors.

###### **Check out the contractor.**

- Get the contractor's full name, address and phone number.
- Ask for references and call them.
- Check with the Better Business Bureau and courthouse for criminal history and civil cases against the contractor.
- You can contact the State to determine if the person you want to hire is licensed by calling the Professional and Vocational Licensing Branch at:(808) 586-3000 or by visiting: <http://pvl.chawaii.gov/pvlsearch/app>

###### **Get it in writing.**

- Get a written contract.
- Specify the work to be done.
- Specify the price.
- Don't sign anything you don't understand.

###### **Control the money.**

- Do not pay for the entire job up front.
- Try to pay as little as possible up front.
- It is against the law for contractors in disaster areas to take any money up front unless they have a local office in your county or one county over for at least one year.
- Insist on waiting to pay the full amount until after the work is finished.
- Do not make the final payment until you have inspected the work. Make sure you are completely satisfied with the repairs.

#### V. TAX LIABILITY REDUCTION

##### A. Casualty Loss

A casualty occurs when your property is damaged as a result of a disaster such as a storm, fire, car accident, or similar event. A casualty is the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected or unusual. A sudden event is one that is swift, not gradual or progressive. An unexpected event is one that is ordinarily unanticipated and unintended. An unusual event is one that is not a day-to-day occurrence and that is not typical of the activity in which you were engaged. Generally, casualty losses are deductible during the taxable year that the loss occurred.

##### B Proof of Loss

To deduct a casualty loss you must be able to show that there was a casualty and be able to support the amount you take as a deduction. You must be able to show the type of casualty, the loss was a direct result of the casualty, that you were the owner of the property or contractually liable for the damage, whether a claim for reimbursement exists for which there is a reasonable expectation of recovery.

##### C. Special Rules

There are special rules for areas that are federally declared disaster areas. A federally declared disaster is a disaster that occurred in an area declared by the President to be eligible for federal assistance. You must deduct a casualty loss in the year it occurred, however in a disaster area you can choose to deduct the loss on your return or amended return for the tax year immediately preceding the tax year in which the disaster happened. The IRS may postpone for up to one year certain tax deadlines of taxpayer who are affected by a federally declared disaster area.



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#### DISASTER LEGAL ASSISTANCE

## Real Property



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



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## **I. MORTGAGE PAYMENTS**

### **A. Inability to Make Payments**

If the borrower is unable to make mortgage payments, contact the lender and discuss the situation. Most lenders will be reasonable and will work with the borrower if the financial difficulties are due to a disaster. The following options should be explored with the lender:

1. a moratorium on payments for a specific amount of time or an indefinite period;
2. a reduction in monthly payments for a specific amount of time or an indefinite period, and
3. given the severity of damage, the possibility of abandoning the property to the lender.

The lender may have other options available. Remember that others have probably already called or written with the same concerns and problems. The borrower should not be afraid to contact the lender to explore options. Also, be aware that the government may offer some assistance during times of widespread and severe disaster.

If the borrower is interested in option I.A.1. or I.A.2., be sure to find out whether interest will continue to accrue during the moratorium or the period during which the reduced payments are being made. If possible, negotiate for no interest accrual during the time period involved. If interest does continue to accrue, the loan balance could be drastically increased during the period of reduced payments or no payments

If option I.A.3. seems appropriate given the situation, please see Paragraph B below regarding the consequences and considerations in deciding whether to abandon property to a lender.

### **B. Abandoning Property to the Lender**

If the property is damaged to such an extent that the

borrower cannot afford to repair it, the option of abandoning the property should be discussed. This is usually done by way of a "deed in lieu of foreclosure."

If the lender agrees to take the property back, be assured in writing that it is taking the property in full satisfaction of the debt and that it is waiving any deficiency claim it may have against the borrower. If such assurances are not obtained, the lender may be able to sue for the difference between what it is able to sell the property for and what is owed (i.e. the deficiency). Note that the lender may not want a deed in lieu of foreclosure if there are other liens affecting the property, such as other mortgages or tax liens.

What if the lender refuses to take the property back? If this is the case, the borrower may want to retain an attorney. However, if the attorney is unable to persuade the lender that a deed in lieu is the best alternative, the borrower should be aware that if a lender elects to foreclose on the home, and if the proceeds from the foreclosure sale is insufficient to cover the lender's principal, interest and cost, the lender may be able to obtain a deficiency judgment against the borrower.

### **C. Credit Concerns**

If the property goes back to the lender, either by deed in lieu of foreclosure or by a judicial or non-judicial foreclosure, negative credit reports could be made to the credit reporting agencies by the lender.

If a deed in lieu of foreclosure has been negotiated, insist that the lender report to the credit reporting agencies that the loan was "satisfactorily retired" (or other similar language).

If the lender forecloses, this will probably be reported to the credit reporting agencies and adversely affect the borrower's credit.

## **II. DESTRUCTION OF PARTY WALLS**

A party wall (a.k.a. "wall in common", "common wall", or "shared wall") is a wall or fence built for the common benefit and convenience of adjoining properties. The party wall takes

the place of two walls that would have otherwise been erected by adjoining landowners and is used jointly by adjoining landowners. If the adjoining owners have a written agreement governing the party wall, then the agreement should be reviewed for provisions covering destruction and repair. Otherwise, adjoining landowners whose properties are divided by a party wall owe, as between themselves, equal duties to the general public to correct a dangerous condition in their party wall. However, total destruction of a party wall by no fault of either party ordinarily terminates adjoining landowners' party wall rights and obligations.

## **III. LATERAL AND SUBJACENT SUPPORT**

Subjacent support is that support which the surface of the earth receives from its underlying strata. Lateral Support is the support received by a parcel of real property from the adjacent land. Each adjoining landowner is entitled to the lateral and subjacent support which his or her land receives from the adjoining land in its natural state.

Lateral and subjacent supports are sometimes governed by written agreement. In the absence of an agreement, a landowner is under a duty of inspection and a duty to take such action as a reasonable person would take to ensure that adjoining property has the appropriate lateral and subjacent support. The landowner has the duty to maintain slopes and retaining walls protecting the adjoining property. Thus, corrective action may be required following an earthquake or natural disaster that disturbed the lateral or subjacent support. Note, however, that liability is for failing to properly shore up the supports. Liability does not exist for damage done by the movement. Liability for the movement only exists if there were negligent acts by the landowner which played a part in the damage. Notice should be given to adjacent property owners prior to any excavation to repair damages.