



Regulated Industries Complaints Office

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Risks and Responsibilities of Being an Owner-Builder

The building permit process. In the simplest of terms, **building codes** exist to ensure buildings meet minimum safety and structural standards. **Building permits** are the way counties and local municipalities ensure buildings are being constructed “to code.” Most homeowners may not give permitting or building codes much thought until an event like a fire or natural disaster occurs. Making sure a structure meets minimum construction standards can be the best way to avoid fire, structural failure, or a child from slipping through balcony railings that are set too far apart.

When is a building permit required? Each county has its own rules about when a building permit is required. Certain areas (like steep slopes) and certain conditions (like flood zones) may have additional permitting requirements.

State licensing law requirements. In the State of Hawaii, a contractor’s license is required for any project where the labor and materials is over \$1,500 or for any project that requires a building permit (regardless of the cost of labor and materials). If the project involves electrical work, a homeowner may also need to hire a licensed electrician. If the project involves plumbing, a homeowner may also need to hire a licensed plumber. Typically, during the permitting process, an applicant for a building permit must identify the building, electrical, or plumbing contractor who will be responsible for work on the project.

What is an owner-builder? Most homeowners let their contractors handle the permit process. However, the law also allows homeowners *who do the work themselves* to obtain their own permits. A permit obtained by a homeowner who is responsible for the work on the project is sometimes referred to as an “owner-builder” permit. A homeowner with an “owner-builder” permit is treated as the general contractor for the project and, as such, is responsible for ensuring the project meets county building codes, and complies with the permitting process, including having the project inspected by a county building inspector.

In addition to complying with county requirements, a homeowner with an owner-builder permit must also comply with state laws, including contracting, employment, and tax laws. Under State law, the owner-builder must supervise the construction, is responsible to ensure any subcontractors working on the project are properly licensed, and ensure work safety standards are met. The homeowner is also responsible for ensuring the project passes building codes and building inspections, and that the project complies with employment and tax laws for any persons working on the project who are not licensed. (For a complete list of requirements, homeowners are encouraged to carefully read Hawaii Revised Statutes chapter 444 and any other laws or rules relating to owner-builders in Hawaii.)

Hawaii law also requires owner-builders keep and maintain certain records for up to three years after project completion, including copies of building permits and applications, copies of contracts with the names of all persons who performed work on the project, and proof of payment to employees, subcontractors, and the like.

Restrictions on sale or lease. Hawaii’s owner-builder law is designed to give homeowners who want to be their own contractors a way to get a permit. The law is limited to *owner-occupants*, therefore, when built under the owner-builder exemption, a structure can only be used by the owner-occupant, not the general public. A home built or renovated under an owner-builder permit cannot be sold or leased for a year following the final inspection (or verifiable date of completion). An owner-builder can apply to the Contractors License Board for a hardship exemption, such as the need to sell a property because of a divorce.

Penalties for violating State law. The fines for violating State owner-builder laws are steep – homeowners who fail to comply with owner-builder requirements can be fined up to \$5,000 or 50% of the permit value of the work to be performed, whichever is greater. Subsequent violations can result in a fine of \$10,000 or 60% of the permit value of the work to be performed, whichever is greater. Homeowners who violate the owner-builder requirements are also prohibited from applying for new owner-builder permits for three years.

Can I hire anybody to work on my project? It's an owner-builder's responsibility to make sure anyone working on the project is properly licensed. This includes architects, engineers, subcontractors, electricians, and plumbers. As the owner-builder, you are also responsible for supervising, scheduling, and paying them. Any person working on the project who is not working as a subcontractor must be an employee. As the employer, the owner-builder is required to comply with employment and tax laws, which includes deducting Federal Insurance Contributions Act (F.I.C.A.), withholding taxes, and providing workers' compensation. **Again, electrical or plumbing work requiring a license must be performed by licensed contractors, electricians, and plumbers.**

Can I hire someone to manage my project? Be wary of "consultants," "construction managers," and other unlicensed individuals who may try to talk you into becoming an owner-builder as a way to save money. As the permit holder, **you** are responsible for the project and must supervise the construction. The bottom line: as an owner-builder, responsibility for the project shifts to you.

YOUR POSSIBLE RISKS...

Mistakes can be costly. Like anything in life, there's a lot to be said for experience. Unless you're knowledgeable about construction, mistakes can be costly and can result in delays and additional expense.

Avoid liens. A subcontractor or supplier who doesn't get paid on time may file a mechanic's lien against your property. Educate yourself about mechanic's liens and learn how to prevent them.

Ouch that hurts. If an employee is injured, you may be required to pay for medical care and rehabilitation costs. You may also be responsible for any injuries sustained by an employee of an unlicensed subcontractor.

Insurance. As an owner-builder, you should be aware of the requirements and legalities involved in properly insuring your project, including injuries to employees and subcontractors working on your job.

You are restricted from selling or leasing the structure for one year. If you build under an owner-builder permit, you cannot sell or lease (or even offer to sell or lease) the structure for one year after it's completed.

What should you do? Start by reading the owner-builder permit application carefully and reviewing Chapter 444 of the Hawaii Revised Statutes. Talk to your insurance company or agent about coverage for both worker's compensation and general liability issues. Monitor the job and keep required records...remember, you're responsible for every phase of your project and its integrity. And, remember, **the buck stops with you.** If you aren't satisfied with the final product, there's no one to complain to but yourself.

Resources

The Department of Commerce and Consumer Affairs (DCCA), and its Regulated Industries Complaints Office (RICO), offer tools, tips, and services you can use to check out an individual or business. Information is available by calling (808) 587-4272 or online at cca.hawaii.gov/businesscheck. For information about filing a complaint or to report unlicensed activity, call RICO's Consumer Resource Center at (808) 587-4272 or visit us online at cca.hawaii.gov/rico. To call Oahu-RICO, dial the following toll free numbers: Kauai 274-3141, extension 74272; Maui 984-2400, extension 74272; Big Island 974-4000, extension 74272; Molokai and Lanai 1-800-468-4644, extension 74272, followed by the # sign.

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