

DIVORCE LAW IN HAWAII
A PUBLIC EDUCATION PROGRAM
PRESENTED BY THE FAMILY COURT
OF THE FIRST CIRCUIT OF THE STATE OF HAWAII
AND THE MEDIATION CENTER OF THE PACIFIC

PROGRAM OVERVIEW

The Divorce Law in Hawai'i program is presented by the Family Court of the First Circuit and the Mediation Center of the Pacific to teach those going through divorce, and others helping them, how to get ready for divorce, make reasonable and fair proposals to settle divorce issues, and resolve divorce concerns without conflict or needless cost. The program covers the following topics.

Divorce Law in Hawai'i

- The legal parts of a Hawai'i divorce.
- Hawai'i law on custody, property division, child support, alimony, and other divorce issues.

Getting a Hawai'i Divorce

- The legal steps in a Hawai'i divorce.
- Contested vs. uncontested divorce.
- Addressing causes of delay and conflict.

Preparing for Divorce

- How to promote responsible agreements.
- Dealing with difficult situations.
- Organizing divorce documents.

Divorce Mediation

- How divorce mediation works.
- When to use mediation.
- How to schedule mediation.

Places to Get More Help

- Hawai'i Judiciary's web site.
- Family Court Information Center.
- Mediation Center of the Pacific.
- Hawai'i Divorce Manual.

Please kindly be aware that the materials presented in this program do not necessarily reflect what the Family Court would do in a particular case, and they should not be construed as legal advice. If you need professional help with your divorce, you are encouraged to get it.

DIVORCE LAW IN HAWAI‘I

The Parts of a Hawai‘i Divorce

- Hawai‘i is a “no fault” state. The divorce itself is granted upon either spouse’s affirmation that “the marriage is irretrievably broken.”
- The requesting (Plaintiff) spouse must be a Hawai‘i resident. New residents must wait six months. There is also a three month circuit residency requirement.
- The divorce concludes when a Family Court judge signs and files a Divorce Decree. A Divorce Decree for a family with children must address all of the following.

A. Custody and Visitation

- Involves post-divorce legal custody (decision making authority) and physical custody (time sharing).
- There are no Family Court guidelines for time sharing.
- Custody and visitation orders in a Divorce Decree are modifiable.

B. Property Division and Debt Allocation

- Divorce property division formula (based on “marital partnership principles”) applies.
- Property division is not modifiable.

C. Child Support

- Family Court guidelines determine monthly child support.
- No Family Court guidelines for child health care.
- No Family Court guidelines for educational expenses.
- All aspects of child support are modifiable.

D. Alimony

- There are some guidelines for alimony eligibility.
- There are no guidelines for alimony amount, or duration.
- Alimony is modifiable in certain circumstances.

CUSTODY AND VISITATION

Family Court Philosophy About Custody

- Parents can and should always try to together decide what is best for their children.
- Fighting about custody is very harmful to children.
- Custody disputes should not be litigated in Family Court except as a last resort.

Change in Circumstances

- Custody can be reviewed when circumstances change.
- Family Court can order review in best interests of child.

Time Sharing

- There are no Family Court custody time sharing guidelines.
- 2010 child support guidelines define “normal” time sharing by non-primary caretaker as up to 143 days out of 365 days.
- Before 1998 “normal” time sharing was up to 100 days.
- The parents can agree to any time sharing schedule in the best interest of the children.
- Family Court, if it must decide, has wide discretion.
- Children don’t vote.
- Parenting coordinators, custody evaluators, and guardians ad litem can be appointed for minor children.
- Most custody orders have a limited life span. Fighting about custody leads to more fighting.

Legal Custody

- Usually the primary caretaker becomes the sole legal custodian.
- Parents can agree to joint legal custody.
- Family Court can order joint legal custody.
- Joint legal custody usually fosters non-primary caretaker involvement and support.
- Joint legal custody confers little veto power.
- Sole legal custody still has limits.

PROPERTY DIVISION

Property Division Formula Applies

- Best to start with property division when addressing divorce money issues because (1) existing rules cover most property division issues, and (2) property division affects cash flow, which is the key consideration in support negotiations.
- Hawai'i recognizes and enforces premarital agreements and post-nuptial agreements.
- Simple Family Court property division formula mathematically divides all assets and debts at the time of the divorce.
- Formula calculates exactly how much of current family "net worth" each spouse gets in total assets post divorce.
- Formula considers (1) each spouse's assets and debts at the date of marriage, (2) each spouse's gifts and inheritances received during the marriage, and (3) all current assets and debts ("the marital estate"), and nothing else.
- Hawai'i defines the marital estate broadly to include "everything of present and prospective value."

How Formula Works

- Give Spouse #1 from existing marital estate assets equal in value to (1) Spouse #1's net worth at the time of marriage (so-called Category 1 property) plus (2) Spouse #1's gifts and inheritances received during marriage, at their values when received (so-called Category 3 property).
- Do the same for Spouse #2.
- Divide what is left 50/50.

Formula Does Not Consider Marital Fault

- Except for "waste" or "fiscal irresponsibility in the time of the divorce" the Family Court cannot consider fault by either party during the marriage in dividing property.
- There are no guidelines defining "waste" or "fiscal irresponsibility in the time of the divorce."
- The Family Court can "equitably" deviate from the formula result in certain exceptional circumstances.

CHILD SUPPORT

Monthly Child Support

- Family Court's mandatory mathematical formula for child support considers (1) time sharing ratio, (2) gross incomes of both parents, (3) child care payments, and (4) medical insurance for children premium payments, and nothing else.
- Guidelines amount must be paid absent "exceptional circumstances."
- Guideline support in excess of a child's needs is "exceptional circumstances."
- Almost all else is not "exceptional circumstances."
- Support is paid through the Hawai'i Child Support Enforcement Agency by income withholding unless agreed and ordered otherwise.

Child Health Care

- Divorce decree must address responsibility for maintenance of health care insurance for children.
- Uninsured health care expenses are often shared pro rata based on income of parents.
- No guidelines exist.

Child Educational Expenses

- No Family Court guidelines exist.
- Few other legal guidelines exist.
- Unless otherwise provided primary caretaker pays educational expenses (tuition, fees, books).
- Special rule for children already in private school.
- Law on adult dependent children is changing.

Change in Circumstances Affecting Support

- Either parent can ask for child support review when circumstances change after divorce, and at other times too.
- Family Court or Child Support Enforcement Agency (CSEA) can both decide on review and modification of child support.
- Threshold for review is low.

ALIMONY

Purpose and Types of Alimony

- Alimony and/or “equitable deviation” in property division can be used to compensate the less financially-advantaged spouse.
- Temporary alimony is support received prior to divorce.
- Transitional alimony is support received while the less advantaged spouse is adjusting to a lower standard of living.
- Rehabilitative alimony is support received while the less advantaged spouse is acquiring new skills.
- Permanent alimony is support received for the rest of the life of the less advantaged spouse.
- Alimony can be reserved.

Rules for Granting Alimony

- Applicant must show cannot support self at marital standard.
- Applicant must show that other spouse has more than needed for his or her own marital-level expenses.
- Family Court must then decide in its discretion whether alimony is “just and equitable,” and if so, in what amount.
- No rules or guidelines governing the duration of alimony exist.

Other Alimony Considerations

- Alimony is taxed unless otherwise agreed; property division is not.
- Alimony cannot be discharged in bankruptcy; property division usually can be.
- In Hawai‘i most lower earner spouses do not qualify for alimony because most higher earner spouses do not have more income than they need to pay their debts, support their children, and live at the marital standard.
- Alimony defeats the objective of a final and complete split. Alimony can be modified; property division cannot.
- Alimony promotes conflict. Both the payor and the recipient of alimony can continue to investigate the other party’s financial situation throughout the alimony period.
- In Hawai‘i alimony is the exception not the rule.

GETTING A HAWAII DIVORCE

Family Court Philosophy About Divorce

- Spouses should if at all possible make responsible agreements for the benefit of their children.
- Fighting is inevitably bad for the children, and the parents, no matter the reason.
- Family Court by law must approve child support, custody, and alimony.
- Family Court rarely rejects an agreement voluntarily made by the parents after adequate information is exchanged and discussed.
- Mediation is helpful on at least some issues in almost all divorces.
- Family Court should decide only if parties cannot, and only as a last resort.

The Steps in the Legal Process of Divorce

- Husband or Wife files complaint for divorce.
- Family Court can grant pre-divorce orders.
- Family Court can have conferences.
- Family Court can have trials.
- Family Court grants uncontested divorces.
- Family Court grants contested divorces.
- Family Court can grant post-divorce orders.

Normal Time Line

- From execution of uncontested documents to granting of uncontested divorce.
- From submission of application for conference to conference.
- From last conference to trial.

Typical Causes of Delay and Conflict

- Insufficient base of shared financial data.
- Insufficient knowledge as to likely Family Court-ordered outcomes.
- Lack of respect and dignity in personal dealings.

PREPARING FOR DIVORCE

Prepare for a Successful Divorce Agreement

- Get educated about the law.
- Maintain a good support system.
- Evaluate your own abilities and needs.
- Inventory the family's assets and debts.
- Freely exchange information with your spouse.
- Keep lines of communication open.
- Favor mediation; avoid litigation except as a last resort.

Control Challenging Situations

- Make express understandings preserving assets, controlling debt, and barring harmful unilateral actions (canceling health care or car insurance, changing life insurance or retirement beneficiaries, etc.) during the divorce.
- Make express understandings about sharing time with children, and making important decisions for them.
- Get Family Court personal conduct or financial restraining orders if necessary.

Gather and Maintain Financial Documents

- State and federal income tax returns (last 3-5 years).
- Personal financial statements (loan applications).
- Account statements (credit union, bank, checking, securities, mutual funds, insurance, retirement, credit card, car, mortgage, other debt).
- Pay statements (since last tax return).
- W-2 and 1099 forms (since last tax return).
- Records for date-of-marriage assets and debts.
- Records for gifted and inherited property.
- Keep all financial records received until divorce is final.

USING DIVORCE MEDIATION TO HELP

A. What is Divorce Mediation?

- Mediation is where one or more trained neutrals help divorcing couples exchange information and explore “win-win” solutions.
- It is not judging.
- It is completely privileged and confidential.
- It is completely voluntary.

B. Why Favor Divorce Mediation?

- It is cheaper than litigation.
- It is usually successful.
- Mediated agreements are more durable.
- Mediated agreements are more complete and comprehensive. In most contested divorces, one or more issues will not be addressed completely.
- Mediation reduces the likelihood of post-divorce litigation. Most losers in a contested divorce want to promote more fighting to “get even.” The more you win now, the more you fight later.
- The Family Court favors mediation.

PLACES TO GET MORE HELP

Hawai'i Divorce Manual

- 25 chapters in 2 volumes updated every year.
- Written by nearly 200 local and national family law professionals and sponsored by the Hawai'i State Bar Association.
- Considered by most Family Court judges.
- Clear and easy to read.
- Complete discussion of the current law in Hawai'i on custody and visitation, property division and debt allocation, child support, alimony, palimony, pre and post marital agreements, separation, annulment, and everything else related to divorce.
- Includes Family Court forms, Family Court policy memoranda, and lists of resources for divorcing parents and children.
- Available at Hawai'i Supreme Court Law Library, 417 South King Street, Room 115, Honolulu, Hawai'i.
- Available in certain public libraries.
- Available for purchase from Hawai'i State Bar Association, 110 Alakea Street, Suite 1000, Honolulu, HI.

Hawai'i Judiciary Website

- Hawai'i State Judiciary's web site is at <http://www.courts.state.hi.us>
- Uncontested divorce without children package.
- Uncontested divorce with children package.
- Numerous other resources for divorcing spouses.

Family Court Information Center

- 777 Punchbowl Street, Honolulu, Hawai'i 96813
- 4675 Kapolei Parkway, Kapolei, Hawai'i 96707