

# DIVORCE LAW IN HAWAI‘I

A PUBLIC EDUCATION PROGRAM  
PRESENTED BY THE FAMILY COURT  
OF THE FIRST CIRCUIT OF THE STATE OF HAWAI‘I  
AND THE MEDIATION CENTER OF THE PACIFIC

## DIVORCE LAW IN HAWAII

The monthly Divorce Law in Hawaii presentations, which are sponsored by the Family Court of the First Circuit of the State of Hawaii and the Mediation Center of the Pacific, and which began in 2002, are designed to help couples get divorced with a minimum of conflict and expense.

The following materials describe (a) the keys to a successful divorce, (b) the law and process of divorce in Hawaii, (c) available alternatives to divorce litigation, including mediation, attorney settlement, collaborative divorce, cooperative divorce, and arbitration/private judging, and (d) additional resources for divorcing spouses.

For the current schedule of Divorce Law in Hawaii presentations, please go to the website for the State of Hawaii Judiciary at [www.courts.state.hi.us](http://www.courts.state.hi.us).

Finally, as the information provided herein is necessarily general in nature, none of it should be taken as legal advice applicable to your unique and special situation. If you need professional assistance, you are encouraged to get it.

## **Introduction**

These materials address the following topics:

- Keys to a successful divorce.
- The different parts of a divorce.
- The grounds for a divorce.
- Legal custody of children.
- Physical custody of children.
- Division of assets and liabilities.
- Child support, child healthcare, and child education.
- Alimony, or spousal support.
- What happens in an uncontested divorce.
- What happens in a contested divorce.
- Alternatives to litigating in Family Court.
- Additional Resources

## **Keys to a Successful Hawaii Divorce**

Many would say that these are the keys to a successful divorce:

- The longer it takes to complete the divorce, the more it will hurt, and the more it will cost, both in dollars, and in lost opportunities. Education about divorce options which minimize conflict and expense is the key.
- The divorce will not be done until a Family Court judge signs the Divorce Decree. That's the goal. There is a fillable model Divorce Decree on the judiciary website. Most divorcing couples use this form.
- There are only two (2) ways to get a Divorce Decree. The spouses can either together decide the terms of their own divorce, and the Family Court will approve them, or either spouse can require a Family Court judge to decide those terms.

- A divorcing spouse should never let a Family Court judge decide any of the terms of their divorce, unless there really is no other reasonable alternative. A contested divorce is inevitably a lengthy, expensive, complicated, risky, stressful, frustrating, unpredictable, and privacy invasive undertaking with the potential to do lasting damage to the spouses, and the children.
- Divorcing spouses should, if at all possible, agree on all of the terms of their divorce, based on what they both believe is fair and best for their unique family situation. If a Family Court judge had to decide the terms of the divorce, rules and guidelines, which may sometimes seem unfair, will apply. And because of resource limitations, the judge will never know all of the facts. This is particularly true when it comes to custody. One should always seriously consider mediation in the event of any problem.
- Protect your privacy. Recognize that information about divorce on the Internet, except for information on the judiciary website, is generally unreliable. Divorcing spouses should take the advice of relatives and friends with a grain of salt, remember that their divorce file will be part of the public record, hire professionals as needed, but also do as much as they can on their own.
- While everyone going through a divorce has any number of perfectly good reasons to be truly angry because of what has happened, if one acts on their anger, they will only increase the chance of litigation. The harm to be avoided cannot be overstated. Reasonable and informed compromise on both sides is necessary. The goal is an outcome each spouse can live with.
- There are many ways a couple can go about settling the terms of their divorce without litigation before the Family Court. There is mediation, attorney settlement, collaborative divorce, cooperative divorce, and arbitration/private judging. Factfinders and evaluators can also be involved. The best choice will consider the unique personalities of those involved, and the nature of the issues.
- Finally, take heart. Divorce is truly a time of new beginnings, and opportunities. Just remember, as they say, “opportunity's favorite disguise is trouble”, and “you don't know who you are, until you see what you can do”. You have the chance to be a hero to those who care for you.

### **The Parts of a Divorce**

The Divorce Decree for a couple without children will (a) end their marriage, (b)

divide all of their assets, (c) allocate responsibility for the payment of all of their indebtedness, and (d) provide for spousal support, or not. We collectively call the division of assets and allocation of debt incident to divorce “property division.”

The Divorce Decree for a couple with one or more minor children, that is children not yet age 18, will also (a) award the legal and physical custody of those children to one or both parents, and (b) provide for their support, education, and maintenance.

The Divorce Decree for a couple with one or more educationally dependent adult children, depending on the circumstances, may also provide for their support, education, and maintenance.

In other words, there is (a) the divorce itself, (b) property division, and (c) the possibility of spousal support, and, depending on the couple, also (d) custody, and (e) the support of children.

### **The Divorce Itself**

There is a separate Family Court for each of the First Circuit (Oahu), the Second Circuit (Maui, Molokai, Lanai), the Third Circuit (Hawai‘i), and the Fifth Circuit (Kauai).

A spouse can file for divorce in the Circuit in which he or she is domiciled. A spouse can also file for divorce if they are residing on a military or federal base, installation, or reservation within Hawaii, or if they are in Hawai‘i under military orders.

A divorce will be granted upon the declaration by the Plaintiff spouse confirming that the marriage is irretrievably broken, or that the couple has been separated for at least two (2) years. The Defendant spouse does not need to consent to the divorce. A showing of fault is not required to get the divorce.

If the Defendant spouse does not reside in Hawai‘i, jurisdiction over him or her for purposes of property division, spousal support, and/or child support may be an issue.

If a child does not reside in Hawaii, jurisdiction to determine the child’s custody, and visitation, may be an issue.

### **Legal Custody of Children**

The Divorce Decree for a couple with one or more minor children will either award one parent sole legal custody of the children, or it will award joint legal

custody to both parents.

A parent awarded sole legal custody of a child is authorized to make most of the important decisions for him or her, and so we call it decision-making authority.

Parents awarded joint legal custody will make all important decisions for the child together. Joint legal custody can promote the fuller involvement and support of both parents in the life of the child.

Joint legal custody with tie-breaking authority to one parent can protect against a decision-making impasse.

### **Physical Custody of Children**

The Divorce Decree for a couple with one or more minor children will also say who will be their physical custodian.

Physical custody is where the children will live on a regular schedule, and so we call it time-sharing.

The labels are misleading. Joint physical custody is not necessarily 50-50 time-sharing. Rather, joint physical custody is defined by the law as any timesharing arrangement which assures the involved child or children of "frequent, continuing, and meaningful contact with both parents."

Decades ago the Family Court had guidelines for physical custody. They were abolished, because our statutes do not authorize them.

There is a relationship between timesharing and child support. Hawai'i's child support guidelines assume time-sharing by the non-primary caretaker of up to one forty-three (143) overnights per year. That's about five (5) out of every fourteen (14) overnights during school periods, with vacation periods shared equally. As time-sharing gets closer to 50-50, child support usually will change.

While a child in a custody dispute doesn't have a vote as to the outcome, he or she may have "a voice" through a best interest factfinder, a custody evaluator, or a custody guardian ad litem.

The voluntary and informed agreement of the parents with respect to the legal and physical custody of their children will be approved by the Family Court.

If the parents can't agree on either legal or physical custody, a Family Court judge will decide, and he or she will have wide discretion in doing so. Because of time and resource limitations, a Family Court judge will rarely have enough

information to make the best most child centered determination.

Legal and physical custody can change if the parents agree, and the Family Court can order a change, in certain circumstances.

### **Divorce Property Division**

The Divorce Decree will say who is to receive which assets, and who is to pay which indebtedness. Typically couples address property division after they have address custody, and before they address support.

The Divorce Decree will award all existing credit union, bank, checking, savings and brokerage accounts, vehicles, real estate, and life insurance cash value, retirement assets, vested trust interests, and everything else of present or prospective value, without regard to who legally owns it, to one party, or to both parties. In some cases, assets will be sold, and the proceeds divided.

The Divorce Decree will also divide the couple's household effects and personal belongings.

The marital estate also includes all mortgage debt, vehicle debt, tax debt, credit card debt, and other indebtedness in the name of one or both parties existing at the time of the divorce.

The first step in addressing any financial issue in any divorce is the creation of an Asset and Debt Statement reflecting all of the assets and liabilities in the marital estate. This is very important. There is a fillable form on the judiciary's website. A mediation on the financial issues in a divorce will typically begin with the preparation of a joint Asset and Debt Statement by the couple working together.

Any voluntary and informed agreement by the couple dividing the marital estate will be approved by the Family Court, even if it's different than what a judge would have ordered.

However, if the couple can't agree, a Family Court judge will decide how to divide the marital estate. In doing so, he or she will utilize what are referred to as marital partnership principles, sometimes known as the formula.

- The formula is very simple.
- First, from what exists at the time of the divorce each spouse is reimbursed assets worth his or her date of marriage personal net worth. This so-called "capital contribution credit" is referred to as "Category 1 property", for it is based on the proof of the existence of a particular property or properties on the date of marriage.

- Second, from what presently exists, each spouse is also reimbursed assets equal in value to the date of acquisition value of the gifts or inheritances he or she received during the marriage. This so-called “capital contribution credit” is referred to as “Category 3 property”, for it is based on the proof of the receipt of a particular property or properties during the marriage by way of gift or inheritance.
- Third, all of the presently remaining assets, referred to as “Category 5 property”, are divided equally. As part of this, all retirement accumulated during the marriage is equally divisible.
- All debt existing at the time of the divorce is also divided 50-50 under the formula.
- In other words, the formula divides everything existing at the present time, after reimbursements for date of marriage personal net worth, and gifts and inheritances received during the marriage.
- The formula regards marriage as an equal partnership. It does not consider the historic activities of the couple, good, bad or indifferent, at least until the divorce breaks out. It regards the title of an asset, or who is the legal obligor on a debt, as irrelevant.
- Based on the circumstances in which the parties will be left by the divorce, a Family Court judge can “equitably deviate” from the formula in favor of the less financially able spouse.
- A Family Court judge can also equitably deviate where a party has violated a financial restraining order, or concealed assets, or income.
- A Family Court judge can award a less financially able spouse additional property in lieu of alimony.
- Finally, a spouse will sometimes concede additional property to avoid the risk and expense of protracted litigation.

Lastly, it is very, very important to remember that the division of retirement incident to divorce often requires a separate Family Court order, and that the Divorce Decree alone is not enough.

### **Child-Support and Related Matters**

The Divorce Decree will provide for the support of any minor children, and it may also provide for the support of any educationally dependent adult children.



In Hawaii, generally, children not yet age 18, and children who are full-time students, and not yet age 23, are entitled to child support.

Parents will address child support once they have completed an Income and Expense Statement reflecting their anticipated future cash flow. There is a fillable form on the judiciary's website.

Child-support must comply with Hawai'i's child support guidelines. The guidelines are on the judiciary's website. There is an automatic worksheet which one can use to calculate child support for their family.

The guidelines consider four (4) things:

- The timesharing schedule for the children, if the overnights for the non-primary caretaker exceed one hundred forty-three (143) per year.
- The gross incomes of both parents from all sources. The guidelines describe which different types of income are included.
- Certain childcare payments to enable employment.
- The actual or theoretical cost of healthcare insurance for the involved child or children.

The amount calculated by the guidelines must be paid absent exceptional circumstances. The guidelines describe with particularity what are, and are not, exceptional circumstances.

Child support is paid through the Child Support Enforcement Agency by income withholding, unless ordered otherwise.

The Divorce Decree will address the maintenance of healthcare insurance for the children, and the payment of their uninsured healthcare expenses.

The Divorce Decree may also address the payment of the private school and college expenses of the children. Educational expenses include tuition, fees, and books. For a child living away, they will also include room and board, travel, and often an allowance.

There are no Family Court guidelines regarding the maintenance of healthcare insurance, the payment of healthcare expenses not covered by insurance, or the payment of educational expenses. The Family Court will approve any voluntary and informed agreement by the couple regarding them. If the parents can't agree, a Family Court judge would have wide discretion to decide the matter.

The couple can agree to the maintenance of life insurance for the benefit of their children, and the Family Court can order it.

Finally, child support, like custody, can be modified by agreement, and it can also be modified by the Family Court in certain circumstances.

## **Alimony**

The Divorce Decree will say whether there will be any alimony, or spousal support, as it is sometimes called.

- The Divorce Decree can provide that there will never be any alimony.
- The Divorce Decree can provide for transitional alimony, which is short-term post-divorce support received while the less financially advantaged spouse is adjusting to a lower standard of living.
- The Divorce Decree can provide for rehabilitative alimony, which is support received while the less financially advantaged spouse is getting further education, or acquiring new skills.
- The Divorce Decree can provide for permanent alimony, which is support received for the rest of the life of the less financially advantaged spouse.
- The Divorce Decree can reserve the matter of alimony for future determination.

There are no guidelines in Hawaii governing the amount, or duration, of alimony.

The voluntary and informed agreement of the parties regarding alimony will be approved by the Family Court.

If the couple cannot agree, a Family Court judge will decide the matter. Alimony is no-fault. It is not a reward for good deeds done, or a punishment for bad acts. It must be based on the circumstances in which the parties will be left by the divorce.

Alimony is typically addressed after custody, and divorce property division, are resolved, and before child support is resolved, since the payment of alimony affects the calculation of child support under the guidelines.

Alimony is most likely where the applicant has a projected post-divorce cash flow deficit, and the other spouse has a projected surplus, as reflected in their respective Income and Expense Statements.

Finally, alimony can be modified by agreement, and by the Family Court in certain circumstances.

### **An Uncontested Divorce**

The documentation for an uncontested divorce involving children will include seven (7) things:

- The original of a Divorce Decree signed by both spouses, and any involved lawyers.
- A filed copy of a joint child support guidelines worksheet signed by both spouses.
- A filed copy of a joint Asset and Debt Statement signed by both spouses (or a filed copy of one signed by each spouse).
- A filed copy of the Income and Expense Statement of each spouse.
- The original of an order for income assignment (or a filed copy of an affidavit for the direct payment of child support).
- A filed copy of an Appearance and Waiver signed by the Defendant spouse permitting a Family Court judge to sign the Divorce Decree.
- A filed copy of an affidavit by the Plaintiff spouse confirming the agreement, and other key facts regarding the couple.

No appearance before a Family Court judge is required for an uncontested divorce.

Once all of the uncontested divorce documentation is finally all signed, and presented to the Family Court, the divorce will typically be granted in a few weeks.

Finally, all of the forms for an uncontested divorce, in fillable form, as well as instructions for their completion, may be found on the judiciary's website.

### **A Contested Divorce**

A contested divorce rarely takes less than a year, and it can easily take a lot longer than that. Numerous steps required to advance a case to trial greatly add to the time required, and the cost involved.

## **Alternatives to Family Court Litigation**

Divorcing couples who do not wish to litigate before the Family Court have a variety of options.

- Parties Settle by Themselves Where the couple is on good terms, an agreement may be made and documented using the forms on the judiciary's website without the involvement of anyone else.
- Parties Settle Using Lawyers The couple and their lawyers can negotiate the terms of their divorce, and draft the uncontested paperwork without involving mediators, arbitrators, or judges.
- Parties Settle Using a Mediator The couple can, with or without lawyers, involve a skilled neutral to promote and facilitate the exchange of existing information, the acquisition of new information, and the exploration of possible win-win solutions.
- Parties Settle Using Collaborative Divorce Process Couples with lawyers can agree to be completely forthright, transparent, and cooperative in a shared effort to settle and, if settlement doesn't occur, new lawyers are required.
- Parties Utilize Cooperative Divorce Process Couples with lawyers can agree to be collaborative, but new lawyers are not required if settlement doesn't occur.
- Parties Resolve Issues Using an Arbitrator Couples can agree to submit their issues to an arbitrator, on such rules and guidelines they agree. The arbitrator acts as a private judge. The arbitrator's award is confirmed by the Family Court.
- Parties Resolve Some Issues Using Third Parties Couples can use volunteer settlement masters, custody evaluators, best interest factfinders, and financial issue factfinders to reduce or eliminate issues that would otherwise go to trial.

## **Additional Resources**

Besides this program, there are a number of other resources available to help divorcing spouses.

- Judiciary Website The Hawai'i State Judiciary's website at [www.courts.state.hi.us](http://www.courts.state.hi.us) includes many useful resources for divorcing spouses. Others are described.
- Kids First Kids First is the mandatory Family Court educational program for parents of minor children, and their children ages six (6) to seventeen (17). More information about the program can be found at [www.kidsfirsthawaii.com](http://www.kidsfirsthawaii.com).
- "The Purple Family" This award-winning educational video for parents and children of divorce is presented at Kids First.
- Mediation Center of the Pacific The Mediation Center of the Pacific is Hawai'i's largest provider of affordable divorce mediation services. For more information regarding MCP's divorce mediation services go to [www.mediatehawaii.org](http://www.mediatehawaii.org).
- HSBA Family Law Section The attorney members of the Family Law Section of the Hawai'i State Bar Association are pledged to uphold the highest standards of divorce law practice. For more information regarding the activities of the Family Law Section, go to [www.hawaiifamilylawsection.org](http://www.hawaiifamilylawsection.org).
- Kapolei Access to Justice Room Attorney members of the Family Law Section provide limited free legal assistance to unrepresented Family Court civil litigants at the Kapolei Access to Justice Room. More information about this program is available on the judiciary website.
- VSM Settlement Master Process Attorney members of the Family Law Section can be assigned by a Family Court judge to serve as a volunteer settlement master in a case which is otherwise headed for trial. More information about the VSM process is available on the judiciary website.
- Hawai'i Divorce Manual Since 1975 the Hawai'i State Bar Association's Hawai'i Divorce Manual has been the most widely used and judicially recognized resource on divorce in Hawai'i. Included are practical discussions of every aspect of divorce, an extensive set of practice forms, digests of all divorce cases, and Family Court policy memoranda, and a large collection of other resources. It is available in the Supreme Court Library, and certain public libraries, and it can be purchased at the offices of the HSBA.
- Family Court Self Help Centers The Family Court has self-help centers to assist divorcing couples at the Circuit Court at 777 Punchbowl in

downtown Honolulu, and at the Family Court at 4675 Kapolei Parkway in Kapolei. Contact information for both of them can be found on the judiciary website.

- Dispute Prevention and Resolution (DPR) Dispute Prevention and Resolution utilizes retired judges, and senior level practitioners, as mediators, arbitrators, private judges and special masters to assist divorcing couples resolve their issues. For more information go to the DPR website at [www.dprhawaii.com](http://www.dprhawaii.com).
- The International Association of Collaborative Professionals (IACP) The IACP is the leader in collaborative divorce practice in the United States, and throughout the world. On the IACP website at [www.collaborativepractice.com](http://www.collaborativepractice.com) you can find a large collection of materials describing collaborative practice.