

# **Divorce Law in Hawai'i – Attorney's Presentation**

## **Introduction**

Aloha Everyone.

Welcome to this June 18, 2025 presentation of Divorce Law in Hawaii. Today we present for the 299<sup>th</sup> time. We thank you very much for coming.

Each month, for more than twenty-three (23) years, we've been helping people get divorced with a minimum of conflict and expense. We hope that we can help you too.

My name is Bill Darrah. I've been a family law attorney in Hawaii for nearly 50 years, and I am a divorce mediator with the Mediation Center of the Pacific.

My part of today's presentation has four (4) parts.

1. First, I'll tell you what I would tell my sister if she told me that she was getting divorced, and asked for my advice.
2. Second, I'll give you a simple overview of the law in Hawaii regarding custody, property division, child support, and alimony.
3. Third, I'll describe how a couple with a minor child might go about settling custody, and the financial issues in their divorce.
4. Fourth, I'll compare an uncontested divorce with a contested divorce, and describe the documents required for an uncontested divorce.

Tracey Wiltgen, the executive director of the Mediation Center of the Pacific, who introduced me, will speak to you after I have concluded my remarks. MCP is the largest provider of divorce mediation services in Hawaii. Tracey will describe divorce mediation as a popular and effective option which you may elect to choose.

After we have both concluded our remarks, we will be happy to respond to any general questions. Please use the chat room to write them down for

us. We will remain for as long as it takes to respond to all of your questions.

We remind you that this program is not a substitute for legal advice. Neither Tracey nor I are spokespeople for the Judiciary. We encourage you to get professional assistance, if you feel that you need it.

Thank you again for joining us today.

## **Part 1 - What I Would Tell My Sister**

If my sister told me that she was going to get divorced, and asked for my advice, I would tell her nine (9) things:

1. Don't stick your head in the sand. If you really do have to get divorced, get on with it. The longer it takes, the more it will likely hurt, and cost, both in dollars, and in lost opportunities, while everyone's life gets stuck on hold, or worse.
2. Keep your eye on the goal. Your divorce is concluded when a Family Court judge signs your Divorce Decree. There is a form of Divorce Decree which most divorcing couples in your situation use on the Hawaii Judiciary website. Google "Hawaii Judiciary" and go to the Family Court forms. Start to think about what your Divorce Decree might look like.
3. You control your own fate. You and your husband can dictate the terms of your divorce. Or you can require a Family Court judge to do that for you. Don't make a Family Court judge decide any of the terms of your divorce, unless you have no other choice. He or she will do the best they can, but because of the shortcomings inherent in the litigation process, they will never have all of the information they need to address your situation fully. A contested divorce is a lengthy, stressful, expensive, and privacy invasive undertaking with the potential to do lasting damage to a family.
4. If you have questions about the law and process of divorce, attend a session of "Divorce Law in Hawaii" and, if necessary, consult the Hawaii Divorce Manual, our principal resource in this area. It is described on the Judiciary website.

5. If you are not sufficiently aware of your husband's financial circumstances, or you think that he is not entirely sure of yours, try to start a mediation right away. Come to understand, as quickly as you can, all you need to know about your children. Mediation will greatly expedite the acquisition of information which you and your husband will need to fully understand your options. Once you both have the information which you need, mediation will provide a safe and confidential space to explore all manner of settlement possibilities in real time. The Family Court supports and encourages mediation, and in the event of a disagreement on an issue, will routinely order it.
6. Work collaboratively with your husband to reach a fair result which respects the unique circumstances of your family. The goal is an outcome which you and he can both live with, achieved as soon as possible. There are no winners or losers here. Reasonable and informed compromise on both sides is necessary, in order to move on.
7. Always strive to be your own best self. Make those who care for you proud. Everyone going through a divorce has any number of perfectly good reasons to be truly angry because of what has happened, but if you act on your anger you will only increase the chance of litigation. This is all about "damage control". Fighting in this realm is never "cost-effective."
8. Take heart. While this may hurt worse than anything, it is not the worst thing that will happen to you. Divorce is truly a new beginning, unlike any other. You do not know who you are until you see what you could do.
9. And last, but certainly not least, don't forget that I love and admire you, for who you are.

## **Part 2 - The Law in Hawaii Regarding Custody, Property Division, Child Support and Alimony**

A simple overview of divorce law in Hawaii goes like this.

## **The Parts of a Divorce**

A Divorce Decree signed by a judge and filed in the Family Court will determine the terms of a couple's divorce.

- The Divorce Decree for a couple without children will (a) end their marriage, (b) divide their assets and debts, and (c) provide for alimony, or not.
- The Divorce Decree for a couple with a minor child (a child not yet age 18) will also (a) award the legal and physical custody of the child to one or both parents, and (b) provide for his or her support.
- The Divorce Decree for a couple with an adult dependent child may, or may not, provide for his or her support.

## **The Divorce Itself**

There is a separate Family Court for the First Circuit (Oahu), the Second Circuit (Maui, Molokai, Lanai), the Third Circuit (Hawaii), and the Fifth Circuit (Kauai).

A married person can file for divorce in the Circuit where he or she is domiciled. That's, generally, the place where he or she lives, and intends to remain indefinitely. A non-domiciliary residing on a military installation within Hawaii, or in Hawaii under military orders, can also file for divorce in Hawaii. No longer can a married person file for divorce in Hawaii based on historic physical presence alone.

The Family Court will grant a divorce upon the declaration by the moving party affirming that the marriage is irretrievably broken, or that the couple has been separated for two years. No allegation of fault is required.

## **Legal Custody of Children**

The Divorce Decree for a couple with a child who is not yet age 18 will either (a) award one parent sole legal custody of the child, or (b) award joint legal custody to both parents.

A parent who is awarded sole legal custody of a minor child will make all of the important decisions for him or her going forward. The other parent

will only have the right of reasonable visitation, and the right to object to the child's adoption, or marriage.

Parents awarded joint legal custody of a minor child will together continue to make all of the important decisions for the child.

Joint legal custody with tie-breaking authority to one parent, or the other, can protect against a decision-making impasse, while ensuring that all important decisions are considered ahead of time by both parents.

## **Physical Custody of Children**

The Divorce Decree for a couple with a minor child will either (a) award one parent the child's physical custody, or (b) award joint physical custody to both parents.

Joint physical custody does not mean 50-50 time sharing. Rather, it is any timesharing arrangement which assures a child of "frequent, continuing, and meaningful contact with both parents."

The Divorce Decree can provide for a specific time-sharing schedule, or provide that the parents will agree to one going forward.

There is a relationship between timesharing and child support. Hawaii's child support Guidelines assume time-sharing by the non-primary caretaker of up to one hundred and forty-three (143) overnights per year. As time-sharing gets closer to 50-50, support under the Guidelines generally goes down.

A child in a custody dispute doesn't have a "vote" as to the outcome. He or she may have "a voice" in the outcome through a custody evaluator, guardian ad litem, best interest factfinder, or some other individual appointed by the Family Court, or in some other approved manner.

A voluntary and informed agreement by the parents with respect to the legal and physical custody of their minor 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 be required to decide. He or she will have wide discretion in deciding what to do. Unlike some other states, there are no custody guidelines in Hawaii which a judge must follow.

Legal and physical custody are subject to modification in the future, in certain circumstances.

## **Divorce Property Division**

There are just two (2) important things to remember here:

1. The Family Court is required to approve any voluntary and informed agreement dividing up a couple's assets and liabilities, even if the terms are totally different than what a Family Court judge might have ordered.
2. If the couple can't agree, a Family Court judge will use a formula to calculate a presumptively correct outcome, and then decide whether a valid reason exists for a non-formula outcome. A spouse urging a non-formula outcome has the burden of persuasion.

The formula is very simple. From all that exists today, each spouse is entitled to (a) assets equal to his or her personal net worth on the date of the marriage, plus assets worth the date of acquisition value of what they received by gift or inheritance during the marriage, and (b) half of what remains.

Likewise, under the formula, all debts existing at the time of the divorce are 50-50.

The formula does not consider anything at all that happened during the marriage. The formula does not consider the condition in which the parties will be left by the divorce. The formula only considers (a) what exists today, (b) what the spouses were worth when they got married, and (c) the date of acquisition value of gifts and inheritances received along the way.

For this reason, the formula outcome may not necessarily be a "just and equitable" outcome.

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

Hawaii has mandatory Child Support Guidelines. They are on the Judiciary website.

There are just four (4) important things to remember here:

1. Minor Children The Divorce Decree for the parents of a minor child must require child support for the child in the amount calculated under Hawaii's Child Support Guidelines unless there are "exceptional circumstances." The Guidelines identify many potential "exceptional circumstances".
2. Adult Children If the parents agree to the payment of child support for a dependent adult child, it must be in the Guidelines amount, unless there are "exceptional circumstances." If the parents disagree, a Family Court judge, in his or her wide discretion, may, or may not, order the payment of support for a dependent adult child. If ordered, it must be in the Guidelines amount, unless there are "exceptional circumstances."
3. Healthcare Every order for child support must address the maintenance of private or public health insurance and/or the payment of "cash medical support" for the involved child. The Guidelines describe what this involves.
4. Education Expenses The parents may agree to obligate themselves to pay the educational expenses for a child. If the parents disagree, a Family Court judge, in his or her wide discretion, may, or may not, require the payment of educational expenses.

Child support is subject to modification in the future, in certain circumstances.

Child support will be paid by income assignment, unless the parents agree otherwise, and certain conditions are satisfied.

## **Alimony**

There are three (3) basic options here.

1. The Divorce Decree can provide that there will never be any alimony. This will be true in most cases.
2. 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.

3. The Divorce Decree can provide for what is referred to as “rehabilitative alimony”; support received while the less financially advantaged spouse is getting further education, or acquiring new job-related skills.

The voluntary and informed agreement of the parties regarding alimony, one way or the other, will be approved by the Family Court.

If the couple cannot agree, a Family Court judge will decide. He or she will have wide discretion in doing so. Unlike many other states, there are no guidelines in Hawaii as to when alimony should be ordered, and, if ordered, how much it should be, and for how long it should be paid.

Alimony is subject to modification in the future, in certain circumstances.

### **Part 3 - Resolving Divorce Issues Step-By-Step**

A divorcing couple with a minor child might go about resolving custody, property division, child support, and alimony like this.

#### **Resolving Custody**

Custody usually, although not always, is addressed first.

The parents will together acquire and exchange all the information which they thought they needed in order to decide what would be best for their child, doing so as fast as possible.

The parents might fill out and exchange Family Court Parenting Plans using the form on the Judiciary website to describe the circumstances of their child, and suggest possible outcomes.

Then, in order to control the outcome, rather than delegate it to someone else, the parents will decide what is the best legal and physical custody arrangement for their child.

#### **Resolving Financial Issues**

Most couples, although not all of them, will address property division first, child support second, and alimony third.



## **Resolving Property Division**

Property division would be resolved in four (4) steps, like this:

1. Each parent will complete a Family Court Asset and Debt Statement in the form on the Judiciary website describing all of the assets and liabilities in the current marital estate.
2. If that did not result in an agreement, the parents will then determine what would be the allocation of the family's current net worth under Hawaii's property division formula. Again, the formula only considers (a) current family net worth, (b) the personal net worth of each spouse on the date of the marriage, and (c) the date of acquisition value of any gifts and inheritances received along the way.
3. If that did not result in an agreement, the parents will then consider everything which either of them felt might warrant a different property division outcome.
4. Then, in order to control the outcome, rather than delegate it to someone else, the parents will agree as to the division of the assets and liabilities existing at the present time.

## **Resolving Child Support**

Child support for the minor child would next be resolved in six (6) steps, like this:

1. Each parent will complete a Family Court Income and Expense Statement in the form on the Judiciary website to reflect his or her anticipated post-divorce cash flow circumstances, assuming the agreed custody and property division outcomes.
2. The parents will then agree regarding the maintenance of healthcare insurance for the child, the payment of "cash medical support", and/or the payment of expenses not covered by insurance, as the calculation of child support under the Guidelines will consider this.

3. The parents will then agree regarding the educational expenses of the child, as the calculation of child support under the Guidelines will consider this.
4. The parents will then agree as to the amount of child support for the child as calculated under Guidelines, as reflected in a Child Support Guidelines Worksheet in the form on the Judiciary website.
5. If this does not result in an agreement as to the amount of child support, the parents will then consider everything which either of them felt warranted non-Guideline support, as permitted by the Guidelines.
6. Then, in order to control the outcome, rather than delegate it to someone else, the parents will agree on the amount of child support.

## **Resolving Alimony**

Lastly, alimony would be resolved in three (3) steps, like this:

1. Each parent will update his or her Family Court Income and Expense Statement to reflect the effect of the agreements regarding custody, property division and child support.
2. The parents will then consider everything which either of them felt was relevant for alimony determination purposes.
3. In order to control the outcome, rather than let someone else decide, the parents will then make an agreement regarding alimony.

In most cases, mediation will greatly facilitate the successful resolution of divorce custody, property division, child support, and alimony issues, and avoid the unnecessary delay, and needless cost, which can otherwise occur.

A contested divorce is the option of last resort.

## **Part 4 - An Uncontested Divorce vs. A Contested Divorce**

Lastly, let me describe the difference between an uncontested divorce in a contested divorce.

An uncontested divorce is one where the couple is divorced on the terms of a Divorce Decree they have signed.

A contested divorce is one where the terms of the divorce are decided by a Family Court judge after a trial.

### **An Uncontested Divorce**

In an uncontested divorce, the spouse who files for divorce (the Plaintiff) will present the uncontested divorce documents to the Family Court.

The uncontested divorce documents for a couple with a minor child will include:

1. The Divorce Decree signed by the couple.
2. The Plaintiff's Asset and Debt Statement.
3. The Plaintiff's Income and Expense Statement.
4. The Child Support Guidelines Worksheet signed by the couple.
5. An Order for Income Assignment for child support, or an affidavit for the direct payment of child support.
6. The Plaintiff's Affidavit of Uncontested Divorce confirming that the divorce is uncontested.
7. The Appearance and Waiver signed by the Defendant confirming that the divorce can proceed on an uncontested basis.

If retirement is being divided, a separate order may be required. This is important.

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

An uncontested divorce can take a few weeks between the point at which the uncontested divorce documents are presented to the Family Court, and the entry of the Divorce Decree.

The Family Court has self-help centers in the Circuit Court at 777 Punchbowl, and at the Family Court in Kapolei. Family Court staff members will provide assistance in the processing of uncontested divorce documents. Contact information for the self-help centers is on the Judiciary's website.

There is a checklist and instructions for an uncontested divorce in the divorce forms section on the Judiciary's website.

## **A Contested Divorce**

A contested divorce can easily take years.

A contested divorce involves many formal procedures. A contested divorce is expensive. A contested divorce is stressful. A contested divorce can do lasting damage to the parents, and to the children.

The outcome of a contested divorce is impossible to predict, even if one is totally experienced, and totally prepared. The relevant facts at the time of the determination will be different than the current facts. The inherent shortcomings of the litigation process will ensure that all of the relevant facts are not admitted into evidence. The law at the time of the determination may be different than the current law. There are no hard and fast rules in Hawaii with respect to divorce custody, property division, child support, or alimony.

## **Concluding Remarks**

That would conclude my part of the presentation. Thank you very much for considering what I have had to say. I hope that it will prove helpful to you.

A script of my remarks today will be available in the Divorce Law in Hawaii materials on the Judiciary's website, in due course.

And now, it is my pleasure to turn the program over to Tracey Wiltgen, the executive director of the Mediation Center of the Pacific.