



LEGAL AID SOCIETY OF HAWAI'I



DIVORCE LAW IN HAWAI'I

IMPORTANT: Every state has its own divorce laws. If you are getting divorced in another state, or if you have received divorce papers from a state other than Hawai'i, this brochure will *NOT* apply to you. You need to contact the Legal Aid office in the state where your divorce papers were filed.



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Revised 2022. F16 Divorce Law in Hawai'i.

What does a divorce do?

A divorce ends your marriage, decides custody and visitation of your children, and divides any assets and debts you or your spouse acquired during the marriage. Other issues like child support, alimony, or medical/dental insurance for children can also be decided. In a divorce, you and your spouse can agree on a way to resolve these issues for yourselves. If you and your spouse cannot agree on how to resolve these issues, the court will decide for you.

How long do I need to live in Hawai'i to file for divorce here?

To file for divorce in Hawai'i, you need only live in Hawai'i and intend to remain here at the time of filing. This is a change from the previous requirement that you live in Hawai'i for at least 6 months. You must file for divorce on the island, or in the circuit, where you live.

This requirement was changed in hopes of assisting those experiencing domestic violence. **If you are experiencing domestic violence,** you can now file for divorce and leave the island before waiting 6 months. If you need to stay, you can also apply for a temporary restraining order (see pages 7-8).

However, **if you have a minor child at issue in the divorce,** you may need to wait until the child lives in Hawai'i for six months before filing. Six months is when Hawai'i becomes the child's home state, and the court may elect not to issue decisions regarding the child until that time.

Additionally, if you reside on a military/federal base, a reservation within the State of Hawaii, or are in the State of Hawaii under military orders, you may file for divorce. You may also file for divorce if you were married or obtained a civil union in Hawai'i and your home state does not recognize same sex marriage.

Can I get a divorce even if my spouse doesn't want one?

Yes. Hawai'i is a no-fault divorce state. This means you can get a divorce even if the other person doesn't want one. You *do not* have to prove that your spouse did something wrong to get the divorce. You just have to say that the marriage is "irretrievably broken."

What if I don't know where my spouse is?

As a part of the divorce, your spouse must be properly given a copy of the divorce forms you filed at court so that they know you are starting the divorce process. You can still get a divorce if you don't know where your spouse is, but **first you'll have to show the court that you did everything you could to find your spouse.** This includes checking the phone book, asking the post office for a forwarding address, and calling your spouse's friends or relatives for their new address, at the least.

If you are *still* unable to find your spouse after trying everything you can, **you can ask to serve by publishing notice in the newspaper.** If you are unable to afford the cost of publishing (around \$500.00,) you can ask the court for permission to serve by mailing the divorce forms to your spouse's last known address and posting notice at the court house.

If the wife is currently pregnant, can we still get a divorce?

Yes, but you will not be able to finalize the divorce until the baby is born and the identity of the child's father is established. This is normally done through a separate paternity case. If the wife is pregnant, you can still get the divorce papers together and even file the divorce at the courthouse, but **you will have to wait until the child is born to finish the paternity case and become divorced.**

How long will it take to get a divorce?

It depends. If you and your spouse agree on *all* of the issues in the divorce (e.g. who gets custody of children, how debts and assets are divided) your divorce is considered an uncontested divorce. In an *uncontested* divorce, you will complete divorce papers, and your spouse will answer saying they agree to all the terms of the divorce. This process can take anywhere from **6 months to a year**. However, **if there has been abuse in the relationship, an uncontested divorce may not be the best option for you.**

If you and your spouse cannot agree on all the issues, you must go through a contested divorce process, where the court will make decisions for you. This type of divorce is complicated and you may need an attorney. It can take up to **a year and a half or more** to finalize a *contested* divorce.

What if my spouse and I cannot agree on divorce, and I need a decision on something now?

Since a *contested* divorce can take a long time to be finished, **you can ask for temporary orders for what happens in the meantime.** For example: Who has custody of the children? How much child support is being paid, and to whom? Who is able to use marital assets (e.g. who lives in the house or who uses the car?)

This temporary order is called pre-decree relief. You can get *pre-decree relief* by filing a motion for pre-decree relief at the same time you file your divorce forms, and serving a copy of the *motion* and the divorce forms to your spouse at the same time. After you file the motion for *pre-decree relief*, you and your spouse will receive a hearing date when you can present your arguments in front of a judge. The judge will then make decisions on these issues. This order for *pre-decree relief* is only temporary, and lasts until the divorce is finalized.

What is mediation?

Mediation means that you and your spouse try to reach an agreement with the help of a neutral third person. Mediation may help you if you and your spouse agree on most issues, but have a few minor disputes. To get mediation services, call the mediation agency on your island. (See Page 9.)

****If there was abuse in the relationship, mediation may not be appropriate for you.**

Please call the Legal Aid Society of Hawai'i or the Domestic Violence Action Center. (See Page 8.)

What should I know about the custody of our children?

Divorce decides custody only for children of both spouses. There are two types of custody: Physical custody and legal custody.

Physical custody is who the child will live with.

Legal custody is who will make major decisions in the child's life—e.g. decisions about the school a child attends, medical decisions, etc.

Both legal and physical custody can be either ***joint*** (shared between both parents) or ***sole*** (given to only one parent.) For example, a divorce can decide to give *sole physical custody* to one parent and also decide *joint legal custody* which will be shared between two parents.

What should I know about visitation?

Usually, **if one parent receives *sole physical custody*, the other parent has visitation rights to their children.** If you believe you can work out a flexible schedule of visitation with your spouse without the court's involvement, you can ask for ***reasonable visitation***. If you and your spouse disagree about a visitation schedule, the court will order a rigid schedule of visitation according to the child's best interests. This is called ***set visitation***. In circumstances where you believe the child's safety is at risk, the court can order ***supervised visitation*** or (in rare situations) ***no visitation***.

If you believe your children are not safe with your spouse (e.g. if they have abused the children or will use drugs/alcohol during visitation), *supervised visitation* will let your spouse visit the children only under the supervision of an adult you trust, or at a visitation center. For more information, call Legal Aid or the family visitation center nearest you. (See Page 9.)

What if my spouse and I cannot agree on custody/visitation?

If you can't agree on who has custody, **the court will decide custody of the children based on what is in the best interests of the children.** To determine this, the judge will usually order a ***social study***. The type of *social study* you have depends on where the divorce was filed.

O'AHU: A *social study* is a short (about half-hour) meeting between parent and a court-appointed social worker. The social worker will interview both parents and sometimes the children, then usually recommend a custody order to the judge.

MAUI and BIG ISLAND: Social studies can range in time, but usually they take 2 to 3 months. During this period, a court-appointed social worker observes and interviews both parents. After the study is completed, the social worker makes recommendations for a custody order to the court.

KAUA'I: Social studies usually last 6 months or longer. A court-appointed social worker interviews and meets with both parents during this period, then makes a recommendation to the court.

What about child support?

The parent that doesn't have *physical custody* OR the higher-income parent with *joint custody* must pay child support. The amount of child support is based on a formula that the court calculates. The court takes into account your gross monthly income and your spouse's income to determine how much child support you must pay.

Even if the parent without custody is not working or receiving any income, they still must pay the minimum of \$83 per month per child. Even if the parent who has custody does not want child support, the state mandates that the parent without custody pays the parent with custody.

What if my spouse is supposed to pay child support after our divorce but they don't?

If your spouse does not pay, the state or the court can order that child support money is taken out of any state benefits they receive, their paycheck, or their savings and given to you.

You have two options to do this:

- 1) **You can contact the Child Support Enforcement Agency who is legally obligated to keep track of child support payments.** (See Page 9.)
- 2) **You can enforce it yourself by filing a *motion for post-decree relief* in family court.** Call Legal Aid for more information.

What if the husband is not the father of all the children born during the marriage?

If a child born during the marriage is not the husband's child, **paternity needs to be established showing the husband is not the real father.** If paternity is not established, the husband remains the legal father, and all the legal responsibilities and rights (e.g. child support and visitation) are still his.

You have two options to address paternity in a divorce:

- 1) If you live on O'ahu: You can submit ***paternity affidavits*** regarding the paternity of the child without having a paternity judgment. These *affidavits* are documents that are voluntarily written, establish the paternity of the child, and are sworn to be correct by wife, husband, and biological father in front of a notary public. This affidavit does not establish LEGAL paternity, but will take the children who are not the husband's child out of the divorce proceedings.
- 2) If you do not live on O'ahu, or you are unable to submit a voluntary paternity *affidavit*: You can file a ***paternity action***. A paternity action establishes the legal paternity of the child. However, you cannot finalize your divorce until the paternity action is finalized, so filing a *paternity action* may actually cause your divorce to take longer.

To decide which option is the best option to consider in your case, please call Legal Aid.

How will the divorce affect our money and bills?

At the time of the divorce, both spouses need to disclose all the assets and debts they have, both joint and individual. This includes all that they own – cars, tools, homes, bank accounts, etc. – and all that they owe – mortgage, credit card debt, utility debt, car loans, personal loans, etc. **All assets and debts of both husband and wife need to be given to somebody in the divorce.**

If you and your spouse can agree on how to divide all of your joint and individual assets and debts, then your divorce will proceed as an *uncontested divorce*. If you and your spouse cannot agree, then your divorce will proceed as a *contested divorce*, and the court will need to decide for you.

If your divorce is contested, the court will usually award property and debts acquired **before** the marriage to the party who owned them before the marriage. The court will then divide the assets and debts according to what is “fair and equitable,” considering each of your incomes.

What if my spouse is supposed to pay the bills after our divorce but they don’t?

The divorce decree only governs the actions of you and your spouse. This means that third parties like creditors don’t have to honor it. **If you have joint debts, joint bills, or bills in your name that your ex-spouse is supposed to pay according to the divorce decree, then the collectors can legally come after you to pay the bills, regardless of what the divorce decree says.** For example, if your ex-spouse declared bankruptcy, the creditors can still try to collect joint debts from you.

If you currently have joint debts (like a home or car loan) with your spouse, you should send the creditor a letter explaining that you will no longer be responsible for any additional debt. Usually, you will not be responsible for the debt that accumulates after the creditor receives your letter, but you will still be responsible for debt up until they get that letter.

What if my spouse was the sole income earner, and I have no income of my own?

When filing for divorce, you can ask for *alimony* or “spousal support,” which is money that is paid monthly to one spouse by another after the divorce. *Alimony* is very hard to get, and usually temporary. *Alimony* is supposed to help a spouse get back on their feet after the marriage, especially if they haven’t been working during the marriage. The court will decide if you get *alimony* based on many factors, including the reason you didn’t work during the marriage, whether you need *alimony* and whether your spouse can afford to give you *alimony*.

How do I get a divorce?

To start your divorce you can:

- 1) Call your local Legal Aid office for information on any available divorce clinics in your area,
OR
- 2) Go online to: <http://lawhelp.org/hi/self-help>, and find the Self-Help Form that applies to you. For example, you would click on “Self Help Form: Divorce without Children – Maui (Second Circuit)” if you wanted to file for divorce on Maui and you have no children. This is an online Q&A which will create the forms you need to file for divorce.
OR
- 3) Go to Family Court (See Page 9) on your island and pick up the forms to start a divorce yourself. Ask for the “Divorce Packet” (and specify with or without children.)
OR
- 4) Get forms online at: http://courts.state.hi.us/self-help/courts/forms/court_forms.html

After you fill out the divorce papers, you file one copy of the divorce papers with the family court on your island. You will be charged a filing fee, but some courts have fee waivers for people who can't afford the filing fee. You also need to find someone over 18 on the island (not you) to give your spouse another copy of the divorce papers. If you can't find anyone, you will have to pay a civil process server to deliver the divorce papers to your spouse. For more resources, see Pages 8-9.

After your spouse receives the papers they have three options:

- 1) **Your spouse can give you and the court an *answer*, which are papers that say they agree to all the terms of the divorce.** This is an *uncontested* divorce. This lets the court know that you and your spouse are in agreement and the divorce can proceed without either of you going to court.
- 2) **Your spouse can give you and the court an *answer*, which are papers that say they do not agree to all the terms of the divorce.** This is a *contested* divorce. This lets the court know that you and your spouse do not agree on parts of the divorce. The divorce will proceed after both parties mediate to settle any disagreements, or after both parties present their case in front of a judge, who then decides how the divorce will be settled.
- 3) **Your spouse doesn't do anything.** If the court doesn't hear from your spouse for 20 days after you give your spouse the divorce papers, your spouse is ***defaulted***. This means they have not said whether they agree or disagree with the divorce, and the family court may award you everything you asked for in your divorce papers.

What if I am afraid of my spouse?

If there has been physical, verbal, emotional, or financial abuse in your relationship or if you are afraid of your spouse, an uncontested divorce is probably not appropriate for you.

The decisions you make in a divorce affect you and your life for a very long time. If your spouse has abused you or your children, your spouse can also manipulate you or force you to make decisions you don't want to make. You also risk putting yourself in situations that endanger your life or the life of your children. Call Legal Aid or the Domestic Violence Action Center Legal Hotline (pg. 8) for more information about your options to protect yourself or your children.

Community Resources for Divorce



Legal Aid Society of Hawai'i

924 Bethel Street
Honolulu, HI 96813

www.legalaidHawai'i.org
www.lawhelp.org/hi

Legal Aid's Hotline:

O'ahu: (808) 536-4302
Neighbor Islands: 1-800-499-4302

Walk-In Hours

Honolulu Office ONLY

9:00-11:30am

***Only first six people are seen!**

Hotline Hours

ALL ISLANDS

Monday through Friday

9:00-11:30am and 1:00-3:30pm

Hawai'i State Judiciary

Divorce Self-Help Resources: www.courts.state.hi.us/self-help/divorce/divorce.html

Divorce Forms and Packets: www.courts.state.hi.us/self-help/divorce/forms/divorce_forms.html

Volunteer Legal Services Hawai'i Hotline

O'ahu: (808) 528-7046

Neighbor Islands: 1-800-839-5200

Family Safety and Domestic Abuse Resources

Creating a Safety Plan

Domestic Violence Action Center

O'ahu Only → 808.531.3771

All Islands → 1.800.690.6200

Catholic Charities Hawaii Helpline

All Islands → 808.521.4357

Alternatives to Violence

Hilo Only → 808.969.7798

Kona Only → 808.323.2664

YWCA

Kaua'i Only → 808.245.5959

Women Helping Women

Maui Only → 808.579.9581

Lana'i Only → 808.565.6700

National Domestic Violence

Hotline

All Islands → 1.800.799.7233

Getting a TRO

Adult Services Branch

O'ahu Only → 808.538.5959

Maui Only → 808.244.2706

Kaua'i Only → 808.482.2330

Hilo Only → 808.969.7798

Kona Only → 808.443.2112

Ala Kuola

O'ahu Only → 808.545.1880

Child & Family Services

Maui Only → 808.877.6888

Women Helping Women

Maui Only → 808.446.7379

Alternatives to Violence

Hilo Only → 808.969.7798

Kona Only → 808.323.2664

YWCA Crisis Line

Kaua'i Only → 808.245.6362

Shelters for Victims

O'AHU

Domestic Violence Shelter → 808.841.0822

Ohia Shelter → 808.526.2200

Hale Ola Abuse Shelter → 808.528.0606

Child & Family Services → 808.841.0822

MAUI

Child & Family Services → 808.877.6888

Women Helping Women → 808.579.9581

BIG ISLAND

Family Crisis Shelter → 808.969.8864 (Hilo)

→ 808.322.7233 (Kona)

Alternatives to Violence → 808.969.7798 (Hilo)

West Hawai'i Shelter → 808.323.2664 (Kona)

KAUAI

YWCA Family Violence → 808.245.8404

MOLOKA'I

Hale Ho'omalua → 808.567.6888



Community Resources for Divorce



Family Court Locations

O'ahu (*First Circuit*)

Family Court Service Center (Ho'okele)
4675 Kapolei Parkway
Kapolei, HI 96707
(808) 954-8290

O'ahu (*First Circuit*)

Family Court: Management Services Branch
777 Punchbowl Street, 2nd Floor
Honolulu, HI 96813
(808) 539-4496

Maui (*Second Circuit*)

Circuit Court – Hoapili Hale
2145 Main Street
Wailuku, HI 96793
(808) 244-2969

Hawai'i - Hilo (*Third Circuit*)

Circuit Court – Hale Kaulike
777 Kilauea Ave.
Hilo, HI 96720
(808) 961-7400

*1-800-769-3868 *if calling from Moloka'i or Lana'i*

Kaua'i (*Fifth Circuit*)

Circuit Court – Puuhonua Kaulike Bldg
3970 Kaana St.
Lihu'e, HI 96766
(808) 482-2330

Hawai'i - Kona (*Third Circuit*)

Circuit Court
75-1020 Haukapila Street
Kealahou, HI 96750
(808) 322-8750

Community Mediation Centers

O'ahu

Mediation Center of the Pacific
245 North Kukui Street, Suite 206
Honolulu, HI 96817
(808) 521-6767
www.mediateHawaii.org

Hawai'i - Hilo

Ku'ikahi Mediation Center
101 Aupuni Street, Suite 1009
Hilo, HI 96720
(808)935-7844
www.hawaiimediation.org

Hawai'i - Kona

West Hawai'i Mediation Center
65-1291 Kawaihae Rd. #202
Waimea, HI 96743
(808) 885-5525
www.whmediation.org

Maui

Mediation Services of Maui
95 Mahalani Street, Suite 25
Wailuku, HI 96793
(808) 244-5744
www.mauimediation.org

Moloka'i

Mediation Center of Moloka'i
P.O. Box 1708
Kaunakakai, HI 96748
(808) 553-3844

Kaua'i

Kaua'i Economic Opportunity Inc.
Mediation Program
2804 Wehe Road Lihue, HI 96766
(808) 245-4077
www.keoinc.org/index.php/mediation

Childcare Resources

Day Care (For Court Hearings)

Parents and Children Together (PACT)
www.pacthawaii.org
(808) 847-3285

Family Counseling

Parents and Children Together (PACT)
www.pacthawaii.org/family_peace_centers.html
(808) 832-0855

Child Support Enforcement Agency

ag.hawaii.gov/csea/contact
O'ahu: (808) 692-8265
Hawai'i: (808) 933-0644
Maui: (808) 243-5241
Kaua'i: (808) 241-7112
Everywhere Else: 1-888-317-9081 *toll free*

Supervised Visitation

Child & Family Service
www.childandfamilyservice.org
O'ahu: (808) 681-1467
Maui: (808) 877-6888
Kaua'i: (808) 245-5914
Kona: (808) 323-2664; Hilo: (808) 935-2188
Moloka'i: (808) 553-5529

Useful Legal Terms



<i>answer</i>	when you receive the divorce papers aka the <i>complaint</i> , the papers you file responding to the divorce papers are called <i>an answer</i> or <i>answer to complaint for divorce</i> .
<i>alimony</i>	temporary cash assistance paid by one spouse to another after a divorce; this is separate from child support payments.
<i>assets</i>	anything owned of financial value, like real estate, bank accounts, jewelry, furniture, or cars.
<i>complaint</i>	when you first file for divorce, the papers are called a <i>complaint</i> or <i>complaint for divorce</i> .
<i>custodial</i>	the parent that has <i>physical custody</i> of the child; e.g. the <i>custodial</i> parent.
<i>custody (physical)</i>	the responsibility and right to have a child live with you.
<i>custody (legal)</i>	the responsibility and right to make major legal decisions about a child's future; e.g. religion, health care, and education.
<i>debt</i>	money owed; e.g. bank/personal/student loans, credit card debt, and mortgages.
<i>default</i>	a <i>default</i> judgment is issued when a <i>defendant</i> or <i>respondent</i> does not <i>answer</i> a <i>complaint</i> or does not show up for a court hearing; the judgment is usually in favor of the <i>petitioner</i> or <i>plaintiff</i> .
<i>defendant</i>	the person who did not file for divorce; means the same thing as <i>respondent</i> . **being a <i>defendant</i> in a divorce doesn't mean you did something wrong and doesn't mean you have less rights than your spouse.
<i>divorce (contested)</i>	a legal process which ends a marriage; <i>contested divorce</i> means that both spouses disagree on one or more of the terms of the <i>divorce</i> .
<i>divorce (uncontested)</i>	a legal process which ends a marriage; <i>uncontested divorce</i> means that both spouses agree on all the terms of the <i>divorce</i> .
<i>divorce decree</i>	after a divorce is finalized, a <i>decree</i> is a paper which describes the terms of the divorce; e.g. describing how custody is awarded, how debts and assets will be split, who pays alimony, etc.
<i>domestic abuse/ domestic violence (DV)</i>	consistently aggressive, hurtful, or violent behavior from one spouse to the other spouse, intentional or not; see page 8 for DV resources in Hawai'i.
<i>mediation</i>	when two people disagreeing meet with a neutral third person, in order to arrive at an agreement; see page 9 for mediation centers in Hawai'i.
<i>motion</i>	a motion is a request to a judge to make a decision about the case; <i>motion for pre-decree relief</i> asks the judge to make decisions before the case is over; <i>motion for post-decree relief</i> asks the judge to make decisions after the case is over.
<i>non-custodial</i>	the parent that does not have <i>physical custody</i> of the child; e.g. the <i>non-custodial</i> parent.
<i>paternity</i>	establishes the identity of the legal father of the child
<i>petitioner</i>	the person who first filed for divorce; means the same thing as <i>plaintiff</i> .
<i>plaintiff</i>	the person who first filed for divorce; means the same thing as <i>petitioner</i> .
<i>respondent</i>	the person who did not file for divorce; means the same thing as <i>defendant</i> .
<i>service</i>	the delivery of court documents to the people involved in a case.
<i>social study</i>	a meeting between a parent and a social worker to determine issues of custody for the court.
<i>temporary restraining order (TRO)</i>	a temporary order that can order another person to stay away from you; depending on the situation, a <i>TRO</i> can remove a person from a shared home, can order them to have no contact, and can provide temporary custody of any shared children.
<i>visitation (reasonable)</i>	the right of a parent to visit a child according to a schedule agreed upon by both parents.
<i>visitation (set)</i>	the right of a parent to visit a child according to a schedule set by the court.
<i>visitation (supervised)</i>	the right of a parent to visit a child only when there is a third person present; see page 9 for visitation centers in Hawai'i.

REMEMBER:

This brochure is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.