



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

To get a divorce in Hawai'i, you or your spouse must have lived in Hawai'i for at least six (6) months **and** you or your spouse must have lived on the same island (or within your county) for at least three (3) months. If you haven't lived in Hawai'i long enough, you cannot file for a divorce in the state.

Instead, you can do one of the following:

- 1) Wait until you've lived in Hawai'i long enough, and file for your divorce after you meet the time requirements, **OR**
- 2) You may be able to return to your previous place of residence and file for a divorce there. Check with a Legal Aid office in that area to find out more details, as divorce law is different in every state. Call the Legal Aid Society of Hawai'i for numbers of other Legal Aids. **OR**
- 3) If there has been abuse, you can apply for a temporary restraining order (TRO) in Hawai'i even if you haven't lived in the state long enough for a divorce. A TRO can give you temporary custody and visitation orders. For more information on a TRO outside of a divorce, please contact Legal Aid.

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 simply 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 served a copy of the divorce forms that you filed at court so that they know that you are starting the divorce process.

You can still get your divorce even if you cannot find your spouse, but you will need to tell the court how you searched for your spouse and for how long. Call the Legal Aid hotline for more information.

What does a divorce do?

A divorce ends your marriage and resolves what happens with your children and with any assets and bills you or your spouse acquired during the marriage. Other issues decided in a divorce are retirement, alimony, wife's last name, and medical/dental insurance for your children. In a divorce, you and your spouse can decide for yourselves how to resolve things such as who has custody of the children, and who pays which bills. If you and your spouse cannot agree on how to resolve any of these issues, then the court must do that for you.

How long will it take to get a divorce?

It depends on your situation. If you and your spouse can agree on everything such as child custody & visitation, how the bills and money are divided up, and how to divide retirement benefits, then you can get an "uncontested divorce." This generally takes about two (2) months to finalize after you have completed the paperwork. In most situations, you will not need to go before a judge in an uncontested divorce. If there has been abuse in your 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 judge makes those decisions for you. This type of divorce is complicated and you need an attorney. It can take up to a year and a half or more to finalize.

What is mediation?

Mediation means that you and your spouse try to reach an agreement with the help of a neutral third person. If you and your spouse are able to agree on most of the issues, but have a few minor disputes, mediation may help you come to an agreement so you can get an uncontested divorce.

To get mediation services, call the mediation agency on your island. See numbers at the back of this brochure. They will call both you and your spouse to schedule a meeting with a professional mediator who will work with you to come to a written agreement.

NOTE: If there has been abuse in the relationship, mediation and an uncontested divorce may not be appropriate for you. Please call the Legal Aid Society or the Domestic Violence Clearinghouse and Legal Hotline.

What should I know about the custody of our children?

Divorce decides custody only of children of both parties.

There are two types of child custody: physical and legal.

- **Physical custody** is with whom a child lives.
- **Legal custody** is which parent is responsible for making the major decisions in a child's life – e.g., what church or school a child attends, medical decisions, etc.

Both legal and physical custody can be either joint (shared between both parents) or sole (with only one parent). For example, physical custody can be given to one parent, while legal custody is shared. If physical custody is given to one parent only, the other parent usually has visitation rights and pays child support.

If the parents do not agree on a custody arrangement for the shared children, the court will make a decision based on what is in the best interests of the children. One important factor considered is which parent has been the child's main caretaker.

What if my spouse and I cannot agree on custody?

If you can't agree on who has custody, your divorce will be contested. The court will decide custody of the children for you. When there is a custody dispute, the judge will usually order a *social study*. The type of *social study* you have depends on what island the divorce was filed.

O'ahu: A *social study* is a short (about ½ hour) meeting between parents and a court social worker. The court worker will interview both parents and sometimes the children, then usually recommend a custody order to the judge on the same day.

Maui and Big Island: Social studies can range in time, but usually they take two to three (2-3) months. During this period, a court-appointed social worker observes and interviews both parents. After the study is completed, the social workers make recommendations to the court as to a custody arrangement.

Kaua'i: Social studies usually last six (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 should I know about visitation?

Usually, if one parent receives full physical custody, the other parent will have visitation. In certain circumstances, the court can order supervised visitation or – in rare situations – will order no visitation at all.

In an uncontested divorce, you and your spouse can agree to a visitation schedule that can be flexible or rigid. If you cannot agree on a visitation schedule, the court will set a visitation schedule they believe is in the best interest of a child.

Supervised 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 the visitation), you can ask the court for *supervised visitation*. *Supervised visitation* means your spouse is limited to visiting the children under the supervision of another adult, like at a visitation center or with a relative. For more information on supervised visitation, call Legal Aid or the family visitation center nearest you.

What about child support?

The parent who does not have physical custody – or the higher-income parent with joint custody – must pay child support. The amount of child support is based on a court-ordered formula. The court inserts your income and your spouse's income into a calculation worksheet, and comes up with an amount.

Even if the parent without custody is not working or receiving any income, the minimum amount of child support is \$70 per month per child. If the non-custodial parent is working, a portion of their paycheck can be taken by the state to pay child support.

If you and your spouse plan on sharing joint physical custody, the parent with more income will still probably be ordered to pay child support.

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

Once you start a divorce, you can ask the court to make temporary orders, which will decide issues for now while you wait until the final divorce decisions are made in the divorce order.

Since a contested divorce can take a long time, you may need temporary orders for 1) child custody, 2) child support, and 3) who will be able to use marital assets (e.g., who lives in the house or gets to use the car). You can file a motion asking for *temporary orders* on these matters at the time you file your divorce forms. The court has forms for *pre-decree relief* which you can use. After you file the forms, 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 the issues.

What is a temporary restraining order (TRO)?

A temporary restraining order (TRO) is an order signed by a judge that can order that your spouse not contact you, your children, and other persons living with you. It can order your spouse to leave the home. It can also give you temporary custody of your children.

If there has been any abuse or violence, you can get a TRO through a *Motion for Pre-Decree Relief* to protect you and/or your children and other household members during the divorce process.

If you are a victim of domestic violence and cannot get a lawyer for a contested divorce, **you can still get a TRO without filing for divorce**. A TRO outside a divorce is usually quick and you don't need an attorney.

Please call Legal Aid on your island or the Domestic Violence Clearinghouse & Legal Hotline for more information.

How will the divorce affect our money and bills?

At the time of the divorce, both husband and wife need to disclose all the assets and debts they have. This includes all that they own – cars, tools, homes, bank accounts, etc. – and all those they owe – things like the mortgage company, the credit card company, and the utility companies. All of the 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 or sole assets and debts, then you can obtain an uncontested divorce. If you and your spouse cannot agree, then the court will need to decide for you. Generally, the court will award property and debts acquired before the marriage to the party who already possessed them before the marriage. The court will then divide the assets and debts that the couple obtained during the marriage. The court will divide them “fairly and equitably.”

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

The divorce order is *binding* only between you and your spouse. This means that third parties or creditors do not have to honor it. If you have joint debts, joint bills, or bills in your name that your ex-spouse is supposed to pay but doesn't, the collectors can legally come after you to pay the bills. If you or your spouse declares bankruptcy, the creditors can still try to collect joint debts from the other spouse.

If you have current joint debts with your spouse, you should send the creditor a letter explaining that you will no longer be responsible for any additional debt made by your spouse.

If you are being harassed by bill collectors, call Legal Aid for some advice on how to handle it.

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

It depends. Most judges prefer that you wait until after a baby is born, and they will not allow you to get a divorce while the wife is pregnant. Most judges prefer to handle issues concerning a child (like child custody and child support) at the same time as the divorce. If the wife is pregnant, you can still start getting the divorce papers together, but you may want to focus on establishing paternity before filing the divorce papers.

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

The husband is considered to be the legal father of any child born during the marriage. If a child born during the marriage is not the husband's child, paternity needs to be established before the divorce proceedings can commence. If paternity is not established, the husband will remain the legal father, and will still be legally responsible for the child.

You have two options to address paternity in the divorce: Your first option is you may be able to submit *affidavits* regarding the paternity of the child in lieu of a paternity judgment (*O'abu only*). The paternity *affidavits* are voluntary declarations of paternity written down and sworn to by all parties involved before a notary public. The wife, husband, and biological father will each need to complete a separate affidavit and consent to the paternity of the minor child.

You must also submit a *Supplemental Order Re: Child* with the affidavits.

Your second option is to file a *paternity action*. A *paternity action* is a court order that establishes the legal father of a child. A legal father has certain rights to the child (e.g., a right to request custody and visitation) and also obligations to the child (e.g., he's obligated to pay child support if he doesn't have physical custody). Submitting paternity affidavits in lieu of a paternity judgment does not establish the biological father of the child as the legal father.

To start a paternity action before the divorce proceeding, contact the Child Support Enforcement Agency (CSEA) or a private attorney. CSEA will assist only if paternity is being established on another man. If paternity is not being established on another man, you will need to seek help from a private attorney. (See “Attorneys” in the yellow pages.)

How do I get an uncontested divorce?

You can get an uncontested divorce if you and your spouse agree on all the issues to be decided in a divorce. You must agree on custody of children, type of visitation, and division of assets and debts, including retirement benefits and pension.

If there has been abuse or if you are afraid of your spouse, an uncontested divorce is probably not appropriate for you. You will need to work with your spouse to make lifelong decisions. If there has been abuse, there can be manipulation to force you to make decisions you may not want to make. You also risk putting yourself in situations that endanger your life. Contact Legal Aid or the Domestic Violence Clearinghouse Legal Hotline for more information on your options.

To start your uncontested divorce, you can:

- 1) Call your local Legal Aid office for information on any available divorce clinics in your area, **OR**
- 2) Go to Family Court on your island and pick up the forms and start the actions yourself. Ask for the “Uncontested Divorce Packet” (and specify with or without children). If you have questions, refer to the Hawai‘i Divorce Manual at the law library on your island. **OR**
- 3) Get the forms from the internet at:
http://www.courts.state.hi.us/self-help/courts/forms/court_forms.html

There are two ways that you can obtain an uncontested divorce:

- 1) **Your spouse signs the divorce documents.** If your spouse agrees to all the issues in your divorce, they can simply sign specific divorce forms that let the court know that they agree to the divorce.
- 2) **Your spouse does not do anything about the divorce.** This process is called *default*. This means that the divorce forms are properly served on your spouse, but they then don’t do anything to contest the divorce. A *default judgment* means that your spouse has not responded to the court, and has not told you that they don’t agree to the divorce. If Family Court awards your divorce by *default*, you will probably be given everything you have requested in your divorce papers.

Legal Aid Society of Hawai‘i

924 Bethel Street
Honolulu, HI 96813

www.legalaidhawaii.org

Legal Aid’s Hotline:

O‘ahu: 808.536.4302
Neighbor Islands: 1.800.499.4302

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.

Important Terms

assets	Anything owned of financial value, such as real estate, bank accounts, personal property, jewelry, furniture, or cars.
contested divorce	When the spouses cannot agree on all the issues in a divorce. Contested divorces can take one or two years to finalize, depending on the situation.
custody	The care, control, and maintenance of a child.
custody (legal)	The right and responsibility to make major legal decisions about a child's future (such as religion, health care, and education).
custody (physical)	The right and responsibility to have a child live with you.
debts	Monies that are owed, including loans, credit cards, and mortgages.
irretrievably broken	A term used to refer to the grounds for divorce when no one is at fault and the spouses are unable to reunite.
mediation	When two opposing parties meet with a neutral third person in order to arrive at an agreement about specific issues. Mediation services are available on most islands.
no-fault	In Hawai'i this means that you do not need to prove that it was somebody's fault before you can obtain your divorce. All you need to say is that the marriage is <i>irretrievably broken</i> .
non-custodial	The parent who does not have the authority to keep a child with them, and/or does not have the authority to make legal decisions about a child.
paternity	Paternity establishes the legal father of a child. Establishing paternity is necessary when the parents of a child are not married.
supervised visitation	Means that the non-custodial spouse can visit with a child only with someone else present to ensure the safety of the child.
temporary restraining order (TRO)	A temporary order that can order someone (<i>the respondent</i>) to stay away from them (<i>the petitioner</i>). Depending on the situation, a TRO can remove <i>the respondent</i> from a shared home, can order them to have no contact, and can also provide <i>the petitioner</i> custody of any shared children.
visitation	The right of a non-custodial parent to see a child. Visitation ranges from supervised to unsupervised, and from frequent to never. Depending on the situation, visitation can be flexible or rigid.

Useful Names & Numbers

Legal Aid Society of Hawai'i

924 Bethel Street
Honolulu, HI 96813
www.legalaidhawaii.org

Legal Aid's Hotline Hours:

Monday through Friday
9:00am - 11:30am *and* 1:00pm - 3:30pm
O'ahu: 536-4302
Other Islands: 800-499-4302

Hawai'i State Judiciary: Divorce Self-Help Resources

www.courts.state.hi.us/self-help/divorce/divorce.html

Divorce Forms & Packets

www.courts.state.hi.us/self-help/divorce/forms/divorce_forms.html

O'ahu (*First Circuit*)

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

Maui (*Second Circuit*)

Circuit Court
2145 Main Street, Room 106
Wailuku, HI 96793
244-2969
1-800-769-3868 (*toll free from Moloka'i & Lana'i*)

O'ahu (*First Circuit*)

Family Court: Management Services Branch
777 Punchbowl Street, 2nd floor
Honolulu, HI 96813
539-4496

Kaua'i (*Fifth Circuit*)

Circuit Court
3059 Umi Street, Room 101
Lihu'e, HI 96766
246-3300

Hawai'i/Hilo (*Third Circuit*)

Circuit Court
75 Aupuni Street
Hilo, HI 96720
961-7400

Hawai'i/Kona (*Third Circuit*)

Circuit Court
75-7595A Haukapila Street
Kealahou, HI 96750
322-8790

Family Courts (Temporary Restraining Orders)

O'ahu 538-5959

Hawai'i 969-7798 (*Hilo*)
322-6090 (*Kona*)

Kaua'i 245-6362

Maui 242-5995

Moloka'i 533-3202

Lana'i 242-4335 (*Call collect*)

<p>Domestic Violence Clearinghouse & Legal Hotline</p> <p>O'ahu: 531-3771 All others: 1-800-690-6200 (<i>toll free</i>)</p>	<p>Domestic Violence Shelter Hotline</p> <p>O'ahu: 841-0822 <i>Shelter</i> 533-7125 <i>Military</i> 528-0606 <i>Windward</i></p> <p>Hawai'i: 959-8864 Hilo (<i>Abused Women and Children</i>) 322-7233 Kona</p> <p>Maui: 579-9581 (<i>receives collect calls from Maui, Moloka'i and Lana'i</i>)</p> <p>Kaua'i: 245-6362 Moloka'i: 567-6888</p>
<p>Volunteer Legal Services Hawai'i</p> <p>O'ahu: 528-7046 All others: 1-800-839-5200</p>	<p>Family counseling</p> <p>Parents and Children Together (PACT) Family Peace Centers</p> <p>www.pacthawaii.org/family_peace_centers.html</p> <p>832-0855</p>
<p>Child care (for during court hearings)</p> <p>Parents and Children Together (PACT)</p> <p>www.pacthawaii.org</p> <p>847-3285</p>	<p>Supervised visitation</p> <p>Child & Family Service</p> <p>www.childandfamilyservice.org/cfs2.php?id1=40</p> <p>O'ahu: 681-1467 Maui: 877-6888 Kaua'i: 245-5914</p>
<p>Child Support Enforcement Agency</p> <p>www.hawaii.gov/ag/csea</p> <p>O'ahu: 692-8265 Hawai'i (Hilo): 933-0644 Maui: 243-5241 Kaua'i: 241-7112 Moloka'i, Lāna'i, & Mainland 1-888-317-9081 (<i>toll free</i>)</p>	

Community Mediation Centers		
<p>O'ahu</p> <p>Mediation Center of the Pacific <i>(formerly known as the Neighborhood Justice Center)</i> 245 North Kukui Street, Suite 206 Honolulu, HI 96817 Phone: 521-6767 Fax: 538-1454 www.mediatehawaii.org</p>	<p>Hawai'i (Hilo)</p> <p>Ku'ikahi Mediation Center 101 Aupuni Street, Suite 1014-B2 Hilo, HI 96720 Phone: 935-7844 Fax: 961-9727 www.kmchilo.com</p>	<p>Hawai'i (West)</p> <p>West Hawai'i Mediation Center P.O. Box 7020 Kamuela, HI 96743 Phone: 885-5525 Fax: 887-0525 www.whmediation.com</p>
<p>Maui County</p> <p>Mediation Services of Maui 95 Mahalani Street, Suite 25 Wailuku, HI 96793 Phone: 244-5744 Fax: 249-0905 www.mauimmediation.org</p>	<p>Moloka'i</p> <p>Mediation Center of Moloka'i P. O. Box 1708 Kaunakaka'i, HI 96748 Phone: 553-3844</p>	<p>Kaua'i</p> <p>Kaua'i Economic Opportunity Inc. Mediation Program 2804 Wehe Road Lihu'e, HI 96766 Phone: 245-4077 Fax: 245-7476</p>