

DIVORCE IN HAWAII

One can obtain a divorce in Hawaii if s/he resides in Hawaii or has been physically present in the State for a continuous period of six months. The divorce action is heard by the Family Court of the circuit/island in which the applicant has resided for at least three months. Individuals stationed in Hawaii pursuant to military orders are included.

If the divorce is uncontested, the parties may wish to represent themselves rather than hiring an attorney. So long as the parties reach an agreement on all issues, a court appearance will not be necessary since proof is allowed by way of an affidavit. Uncontested cases in Hawaii are very simple. This is a no-fault divorce state, and there is no period of separation requirement. Divorce becomes final upon the filing of the divorce decree. The filing fee for initiating a divorce action is \$175 without children and \$225 with children (including stepchildren). Provided all the necessary papers are completed and filed in a timely manner, couples can get a divorce as quickly as eight weeks or as long as one year. Once all the necessary papers have been filed, the court assigns the plaintiff a “review” date—the date the judge reviews the paperwork and grants the divorce. The decree is filed and the divorce becomes effective about one to two weeks after the review date. Copies of the decree are then mailed to the parties.

The divorce forms for uncontested divorces may be found on the judicial website at www.courts.state.hi.us. Click on “forms” at the top of the menu, then click on “Oahu—Family Court.” That will bring you to a list of selections, including the divorce forms and instructions for filing. For divorces involving children, the Hawaii child support guidelines and online calculation worksheet are also available on this page.

If the spouse contests the divorce or if there are children involved, the party filing for divorce (the “plaintiff”) may wish to retain a local divorce attorney. NLSO attorneys are not authorized to represent clients in divorce matters.

If the spouse refuses to cooperate but fails to file an answer after service of process, plaintiff will appear at a court hearing on a motion for default judgment and can then submit the decree for approval. If the spouse files an answer, the plaintiff will file a motion for pretrial conference/motion to set for trial together with a position statement. It takes about three weeks to a month to get a motions hearing set. Both parties are expected to participate in mediation before attending the pretrial conference. Mediation may be waived by the court if the marriage has a history of domestic violence or one of the parties has moved out of state. Where there are no real issues in dispute, the judges are skilled at persuading the parties to settle. The terms of the agreement are placed on the record, and all that remains is for the plaintiff to submit a proposed decree for approval.

Division of property and debt is based on partnership principles. With few exceptions, an individual’s assets become part of the marital estate upon marriage. Upon divorce, each party is given a credit equal to the value of their assets at the time of marriage. Any appreciation of those assets and any assets acquired during the marriage are divided equally as a starting point, though the court may consider what is fair.

Spousal support prior to divorce is typically awarded to maintain the status quo of the parties. Do not expect spousal support if the parties are dual military or both have jobs with comparable earnings. There are three types of post-divorce alimony:

transitional, rehabilitative, and permanent. Transitional is available to assist a spouse temporarily if the divorce will create a financial hardship. Rehabilitative is for the spouse who has enrolled or has a specific plan for enrolling in school in order to gain skills to rejoin the workforce. Permanent alimony is for the spouse who is disabled, elderly, or otherwise unable/unexpected to reenter the workforce.

Child support is calculated by the Hawaii's child support guidelines using the combined income of both parents. The court may deviate up or down from the guideline amount but only in exceptional circumstances, as provided by the guidelines.

Child custody entails both legal and physical custody. Legal custody entails who will be responsible for making major decisions involving the child's life, such as education, healthcare, and early emancipation. One parent may be awarded sole legal custody, or both parents may be awarded joint legal custody. Physical custody decides who will raise the child. Sole physical custody may be awarded to one parent with visitation awarded to the non-custodial parent. Or, physical custody may be joint, for example, where both parents will be residing in the same geographic area. Hawaii also has what is known as "extended visitation," (non-custodial parent has child more than 143 days per year but not 50/50 joint custody) which may reduce the amount of the non-custodial parent's support obligation.

If custody is disputed, the court may appoint a Guardian ad Litem and/or a Custody Evaluator to investigate the circumstances and provide the court with a recommendation for custody. Parties pay the GAL/CE's fees, and each party may be required by the court to provide a \$500 advance payment prior to the investigation. The fee can be waived for indigent parties. Appointment of a GAL/CE usually occurs upon motion by one of the parties but may also be ordered at the pretrial conference.

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