



Hawai'i Home Advocates

"Understanding Makes All the Difference."™

DIVORCE & YOUR HOME

Understanding Your Options

Protecting your equity and avoiding the most common pitfalls during divorce in Hawai'i.

"Understanding Makes All the Difference."™

ONE MISSION · THREE GOALS

One Mission: To educate homeowners.

Three Goals: To help Hawai'i homeowners —

1. Understand their situation,
2. Learn their rights and options, and
3. Navigate toward the best possible outcome.

Everything here is free. Nothing is required.

And every path leads to your best interest.

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HOW HAWAII DIVIDES THE FAMILY HOME

Equitable Distribution — Fair, Not Necessarily 50/50

Hawaii is an **equitable distribution** state — not community property. The court follows the **Marital Partnership Model**, treating marriage like a business partnership where both contributed and both share in the outcome. "Equitable" means fair — not necessarily equal.

The 5 Property Categories

Category	What It Is	How Divided
1 & 3	Separate property — owned before marriage or received as gift/inheritance	100% to original owner
2 & 4	Appreciation of separate property during the marriage	50/50 between spouses
5	Marital property — acquired during the marriage	Generally 50/50 (court may deviate)

Unlike most states, Hawaii courts can divide property acquired before the marriage if they determine it is equitable to do so. If you owned your home before marrying, consult a Hawaii family law attorney immediately — do not assume it is fully protected.

Your Three Main Options for the Home

- ✓ **One spouse buys out the other** — keeps the home and refinances to pay the other's share. Common when children are involved.
- ✓ **Deferred sale** — both agree to delay the sale, often until children finish school. Requires a clear written agreement on expenses and terms.
- ✓ **Sell and split proceeds** — cleanest exit. Both receive their share at closing. Open-market listing or direct sale.

If you can't agree, the court decides. When spouses can't agree on the home, the family court will divide it for you in the divorce judgment — and that can mean ordering the home sold, often at below-market value because buyers know you're under pressure. (If you remain co-owners on title after the divorce, either of you can later force a sale through a separate "partition action.") Almost any option you negotiate beats letting a judge decide.

BEST PRACTICES — AVOIDING THE PITFALLS

The Most Common & Costly Mistakes in Hawai'i Divorces

- ✓ **Get a current market valuation before any agreement.** Many divorcing couples use outdated values or online estimates. Hawai'i's market shifts significantly. A proper CMA (Comparative Market Analysis) protects both parties from agreeing to an unfair split.
- ✓ **Don't stop making mortgage payments.** If both names are on the mortgage, both credit scores are affected by missed payments — regardless of any separation agreement. Document everything if your spouse stops paying.
- ✓ **Refinance to remove a spouse from the mortgage.** A divorce decree does NOT remove a spouse from a mortgage — only a refinance does. Until refinanced, both parties remain financially liable. This is the most overlooked post-divorce step.
- ✓ **Understand HARPTA before you sell.** If a selling spouse is no longer a Hawai'i resident, the state withholds 7.25% of the sale price at closing (HARPTA). It is a withholding, not a final tax — Hawai'i residents (Form N-289) or a reduced-withholding request (Form N-288B) can lower or avoid it. Consult a Hawai'i CPA before closing.
- ✓ **Time the sale for the capital gains exclusion.** The federal \$500,000 exclusion for married couples requires both to meet the 2-of-5-year residency test. Once divorced, each only gets the \$250,000 single exclusion. Selling before the divorce is final can save significant taxes.
- ✓ **Document economic misconduct.** Hawai'i courts can penalize a spouse who wastes or dissipates marital assets — gambling, excessive spending, or deliberate neglect of the home. Document carefully. It can shift the division in your favor.
- ✓ **Consider mediation before litigation.** Couples who reach their own agreement have more control, spend less on attorneys, and resolve faster. If you and your spouse can agree on the home, you avoid a judge deciding for you.

YOUR ACTION PLAN

Divorce & Your Home — What to Do Right Now

1 Get a current market valuation immediately.

Do not enter any property agreement without knowing what your home is actually worth today. Contact Barbara for a free CMA (Comparative Market Analysis) — no obligation.

2 Keep making mortgage payments.

Both names on the mortgage means both credit scores are affected. Do not stop paying while the divorce is pending — document everything if your spouse stops paying.

3 Consult a Hawai'i family law attorney early.

Property division in Hawai'i is complex. An attorney can help you understand what's separate vs. marital property before you agree to anything.

4 Understand the buyout option before deciding to sell.

Get a mortgage pre-qualification to know if a buyout is financially feasible. Many couples sell unnecessarily because they don't explore this option.

5 Review capital gains timing with a CPA.

If your home has significant appreciation, the timing of the sale relative to your divorce filing has major tax implications. Consult a CPA before making any decisions.

6 Refinance to remove the departing spouse from the mortgage.

Once the home is awarded to one spouse, refinance immediately. A divorce decree alone does not remove the other spouse's mortgage liability.

7 Get a HARPTA assessment before closing.

If a spouse is establishing residency outside Hawai'i, HARPTA withholding may apply at sale. Confirm with a Hawai'i CPA before closing.

! Do not agree to anything about the home without independent advice.

What feels fair in the emotion of divorce may not be financially sound. One conversation with Barbara — free, no pressure — can help you understand what you might be giving up.

8 Contact Barbara.

I can provide a current market valuation, explain your options, and help you think through whether a buyout, deferred sale, or listing makes the most sense.

808-781-6951

FREE RESOURCES

About free legal help in Hawai'i: Free legal representation for housing matters is very limited. Most free resources provide information or referrals, not an attorney who will represent you.

Hawai'i State Judiciary — Family Court Self-Help Center

Free legal information and forms for family court and divorce matters. Available at courthouses statewide.
courts.hawaii.gov/selfhelp

Volunteer Legal Services Hawai'i

Free civil legal help for qualifying low-income residents — housing, landlord-tenant, bankruptcy, and more. Apply online or call for intake.
808-528-7046 (O'ahu) | 1-800-839-5200 (Neighbor Islands) | vlsh.org

Hawai'i State Bar — Lawyer Referral Service

Get matched with a licensed Hawai'i attorney. Many offer a free or reduced-fee first consultation. Available Mon–Fri 8:30 a.m.–4:30 p.m.
808-537-9140 | hawaiilawyerreferral.com

Legal Aid Society of Hawai'i — Elder Law Services Only (age 60+)

Confirmed services: Advance Health Care Directive, Power of Attorney, and Simple Wills for qualifying residents age 60+. Does not cover divorce, property division, or family court matters.
808-536-4302 | legalaidhawaii.org

Hawai'i HomeOwnership Center (HHOC)

Free housing counseling including options review for divorcing homeowners.
808-523-9500 | hihomeownership.org



Barbara Coote

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"When God closes a door, He opens a window."

I want to be that window for you.

*"Informed Decisions are the Best Decisions."*TM

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Free. No sign-up. No obligation. Ever.