



Hawai'i Home Advocates

"Understanding Makes All the Difference."™

INHERITED PROPERTY IN HAWAII

A Guide for Families

For families navigating inherited property, probate, and estate decisions 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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UNDERSTANDING PROBATE IN HAWAII'

What It Is, How Long It Takes, What It Costs

Probate can feel like a mountain. But every family we've worked with started exactly where you are — not knowing where to begin. Small steps taken early make all the difference.

Probate is the court-supervised process through which a deceased person's estate is settled — debts are paid and assets are transferred to heirs. In Hawai'i, probate is required whenever a person dies owning real property **solely in their own name**, with no surviving joint owner or other transfer mechanism in place.

■ Hawai'i Probate at a Glance

Factor	Details
Timeline	6–18 months for a typical estate. Complex estates can take 2–3 years.
Cost	Typically 3–7% of estate value in attorney fees, court costs, and executor fees.
Privacy	Probate is a public court process — anyone can see what was owned and who inherited it.
Court	Filed in the Circuit Court of the circuit where the deceased lived or the property is located.
Small Estate	Estates under \$100,000 (excluding real property) may qualify for a simplified affidavit process.

■ Hawai'i-Specific Considerations

- ✓ Hawai'i has both a Land Court system and a regular Bureau of Conveyances — which system your property is in affects how title transfers.
- ✓ DHHL (Department of Hawaiian Home Lands) homestead leases have entirely separate inheritance rules.

- ✓ Hawai'i provides homestead allowance, exempt property, and family allowance to support surviving spouses during probate.
- Surviving spouses have an elective-share right — up to 50% of the augmented estate for marriages of 15+ years.

The good news: Probate is not inevitable. Hawai'i law provides several legal tools to transfer property without court involvement — if they are set up before death. See the next page.

LEGAL WAYS TO AVOID PROBATE IN HAWAII'

Plan Ahead — Your Family Will Thank You

Each method below transfers real property to heirs without court involvement — saving months of delay and thousands in fees. Each has different requirements and tradeoffs. Always consult a Hawai'i estate attorney before choosing.

★ Revocable Living Trust

- ✓ The gold standard — avoids probate for virtually any asset, including real property.
- ✓ Private — unlike probate, trust transfers are not public record. You keep full control during your lifetime.
- The successor trustee transfers property immediately at death — no court.

⚠ **The costly mistake:** A trust only avoids probate for property it actually owns. You must **retitle the property into the trust** (transfer ownership to yourself as trustee). A trust that doesn't own the home avoids nothing — this is the most common and most expensive estate-planning mistake in Hawai'i.

★ Joint Tenancy with Right of Survivorship

- ✓ The surviving owner automatically inherits — no probate, no court.
- ✓ Each joint tenant must own an equal share in Hawai'i.
- Adding a joint tenant is an irrevocable gift of partial ownership — you can't remove them without consent.

★ Tenancy by the Entirety

- ✓ Available only to married couples and registered domestic partners in Hawai'i.
- ✓ Automatic survivorship, plus strong creditor protection.
- Dissolves at divorce — converts to tenancy in common, which does NOT avoid probate.

★ Transfer-on-Death (TOD) Deed

- ✓ You sign and record the deed now — it takes effect only at your death, and is fully revocable in the meantime.

→ The beneficiary deals directly with the county — no court involvement.

⚠ **TOD deed cautions:** If your property is registered in the Hawai'i **Land Court**, a TOD transfer requires a petition to the Land Court — an extra step most families don't expect. And if you are a joint owner survived by other joint owners, a TOD deed has no effect — survivorship takes over instead.

Small Estate Affidavit

- ✓ Simplified process for estates under \$100,000 (excluding real property).
- Hawai'i real estate values almost always exceed this threshold — rarely available for the home itself.

⚠ **The #1 trap — Tenancy in Common does NOT avoid probate.** Many people who think they own property "jointly" actually hold it as tenancy in common — especially inherited property split among siblings. A deceased owner's share goes through probate. Always check how the deed reads: if it doesn't clearly say "joint tenancy," it is likely tenancy in common.

🌺 **DHHL homestead lands — special rules:** Hawaiian Home Lands leases follow entirely separate succession rules under the Hawaiian Homes Commission Act. Standard probate-avoidance tools do not apply without DHHL approval. Contact DHHL directly and consult an attorney experienced with Native Hawaiian land.

YOUR OPTIONS FOR THE PROPERTY

You Have Time — Understand Your Options First

There is rarely an immediate deadline to decide what to do with an inherited property. Understanding the full financial picture before making any decision is almost always the right approach.

Keep the Home

- ✓ Strong sentimental and financial reasons to hold Hawai'i real estate long-term.
- Understand the ongoing costs — property taxes, insurance, and maintenance.
- If there are multiple heirs, all must agree — disagreements can force a partition sale.

Rent the Property

- ✓ Generates income while preserving long-term ownership and appreciation.
- Short-term-rental permits are tightly restricted — verify before advertising.
- Long-term tenants have strong legal protections; requires active management.

★ List on the Open Market

- ✓ Best way to maximize proceeds — full market exposure and competitive offers.
- Property must be in probate or trust before title can transfer.
- If multiple heirs disagree, a sale may require court approval.

★ Direct Cash Sale

- ✓ Can close quickly — stops ongoing carrying costs, with no repairs, showings, or commissions.
- ✓ Can accommodate complex heir situations and probate timelines.
- Price is typically below full market value — weigh against speed and simplicity.

TAXES ON AN INHERITED HOME

What You'll Owe — and What You Won't

Inheriting a home raises a few tax questions. First, the relief: **simply inheriting property is not taxable income to you** — you don't owe income tax just for receiving it. Here's what actually matters.

★ Step-Up in Basis — Your Biggest Advantage

- ✓ At death, the property's cost basis resets to its fair market value as of the date of death.
- ✓ If you sell soon after, there is little or no capital-gains tax — you're only taxed on appreciation after you inherited.
- Get a date-of-death valuation to document and lock in the stepped-up basis.

HARPTA at Sale

- ✓ When you sell Hawai'i real property, a state withholding (HARPTA) may apply at closing.
- Exemptions exist and much of it is often refundable — consult a Hawai'i CPA, and confirm the current rate before closing.

Estate tax — most families won't owe it. Estate tax is paid by the *estate*, not by you as the heir, and only when the *total estate* is large. There are two separate layers:

- **Federal:** the exemption is very high — several million dollars per person — so almost no single home triggers federal estate tax.
- **Hawai'i:** a separate state estate tax with a much lower exemption than the federal one — still in the multi-million-dollar range, so most estates fall below it — taxed at progressive rates.

Thresholds and rates change over time. Verify the current figures at **tax.hawaii.gov** (Hawai'i) and **irs.gov** (federal), or ask a Hawai'i CPA or estate attorney.

THE EXISTING MORTGAGE ON THE HOME

You're Rarely Forced to Pay It Off at Once

If the home still has a mortgage, you usually have more protection than you'd expect.

★ You Can Keep the Existing Loan (Garn-St. Germain)

- ✓ Under federal law (the Garn-St. Germain Act), a lender cannot enforce a “due-on-sale” clause when a relative inherits the home after the borrower's death.
- ✓ You can keep the original loan and continue paying under the same terms — no forced refinance or payoff. A real win if the rate is below today's market.
- Applies to residential property (under 5 units). Contact the loan servicer to continue the loan.

The Reverse-Mortgage Exception

- If the home has a reverse mortgage (HECM), it does not simply transfer — it becomes due and payable at the last borrower's death.
- Heirs generally get about 30 days to respond and roughly 6 months to act, with extensions sometimes available if actively selling or financing.

⚠ **Reverse mortgage — know your numbers:** To keep the home, you pay the **lesser of the loan balance or 95% of the appraised value**. HECMs are non-recourse — you will never owe more than the home is worth, and FHA insurance covers any shortfall. Your choices: pay it off or refinance to keep it, sell and keep any leftover equity, sign a deed-in-lieu, or walk away. Don't let the clock run out — contact the servicer right away.

SURVIVOR ACTION PLANS

What to Do First — Two Paths

■ Military & Veteran Surviving Spouse

1 File VA Form 21-0966 (Intent to File) immediately.

This protects your benefit start date and locks in potential retroactive back pay for DIC and other survivor benefits. File online at va.gov or call 800-827-1000. Don't wait until you have all your documents.

2 Contact the Hawai'i Office of Veterans' Services (OVS).

Free guidance specifically for surviving families. They can walk you through every benefit you're entitled to. Visit dod.hawaii.gov/ovs. You don't have to figure this out alone.

3 Transfer the disabled-veteran property tax exemption.

If your spouse had the disabled-veteran property tax exemption, contact your county Real Property Assessment Division. Bring the death certificate, marriage certificate, and VA disability rating letter.

4 Check Survivor Benefit Plan (SBP) enrollment.

Contact DFAS at 800-321-1080. If enrolled, you may be entitled to up to 55% of retired pay monthly. Since 2023 this is no longer reduced by DIC payments.

5 Apply for VA DIC benefits using Form 21P-534EZ.

File as soon as possible after the Intent to File. If your spouse died from a service-connected cause or was rated totally disabled for 10+ years, you likely qualify for monthly tax-free payments.

6 Check CHAMPVA eligibility.

If you don't have TRICARE, you and your dependents may qualify for CHAMPVA health coverage. Call 800-733-8387.

! Be alert to predatory approaches.

Surviving spouses of veterans are targeted by scammers and predatory buyers. Do not sign any real estate document under pressure. Any legitimate offer will still be there in 30 days.

SURVIVOR ACTION PLANS (CONTINUED)

Civilian Surviving Spouse & Family

1 Contact a Hawai'i estate attorney to open probate — or confirm it can be avoided.

If property was held solely in the deceased's name, probate is likely required. An attorney can also confirm whether a living trust, joint tenancy, or TOD deed is already in place.

2 Notify your county Real Property Assessment Division.

Report the change in ownership. If the deceased had any property tax exemptions, understand how they are affected. Bring the death certificate and deed.

3 Notify the mortgage lender of the death.

Ask about loan assumption. Surviving spouses and inheriting relatives often have the right to keep the existing mortgage under federal law — ask specifically about this.

4 Check for life insurance that may pay off the mortgage.

Review all insurance documents, bank statements, and mail. Some policies are tied directly to the mortgage and pay it off automatically at death.

5 Review all joint accounts, deeds, and beneficiary designations.

Understand exactly what is in the estate and what transfers automatically. Accounts with beneficiary designations bypass probate entirely.

6 Do not make decisions about the property under pressure.

There is no urgency. Understanding your full financial and legal position first will help you make a better decision about the home later.

! Be alert to unsolicited buyers and scammers.

Grieving families are specifically targeted by predatory investors shortly after a death. Do not sign any real estate document under pressure. Any legitimate offer will still be there in 30 days.

BEFORE YOU BEGIN

Documents to Gather When You're Ready

- Death certificate (certified copies) ■ Property deed
- Mortgage statement ■ Will (if any)
- Trust documents (if any) ■ Life insurance policies
- Marriage certificate ■ Property tax bill

Take it at your pace. You don't need every document before you start — gather what you can, and a good attorney or counselor can help you find the rest.

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 — Self-Help Center

Free legal information and forms for probate and estate matters.
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 probate, estate, or property disputes.
808-536-4302 | legalaidthawaii.org

Hawai'i Office of Veterans' Services (OVS)

Free guidance for military surviving families — benefits, exemptions, and estate questions.
808-433-0420 | dod.hawaii.gov/ovs

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All resources on this site are free.

No sign-up. No obligation. Ever.

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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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