

October 17, 2016; Alternatives to Divorce

Not everyone in a failing marriage wants to run to divorce court. Although they may see the need to live separate and apart from their spouse, they aren't ready to drive a legal spike into the heart of their marriage. For some, the idea of a divorce is contrary to their religious beliefs. For others, they continue to hold out hope that with time their marriage can be saved. Still others may want to maintain benefits such as healthcare or military privileges. What can these couples do?

Guam law offers them two alternatives that preserve their marriage status while suspending the usual legal consequences of marriage. The first alternative is rather informal. The couple can simply agree to live separate and apart from each other without the fear that the separation will be considered legal desertion.

Although Guam law does not require separating couples to enter into a written separation agreement, I highly recommend that they do so. This can help reduce the possibility of future misunderstandings and legal battles. Within the agreement, the couple should include provisions for the division of their property and debts. For example, who will continue to live in the family home and who will move out? Who will be responsible for paying the various bills? There should also be a clear statement that any property either party acquires during the separation will be his or her separate property and not community property.

If the couple has children, the custodial and visitation arrangements should be specified and the amount of child support clearly stated. Finally, the agreement should include a statement that if either party should file for divorce in the future, the terms of the separation agreement will be incorporated into the final decree of divorce. This provision alone could save the couple thousands of dollars in future legal fees.

Another approach to separation is much more formal in nature and requires one spouse to file for separation with the Superior Court. Similar to a divorce action, the couple can then agree on the terms of the separation or take the matter to trial. But beware. On Guam we have an action for separate maintenance, *not* an action for legal separation. The key distinction is that under a separate maintenance action one of the spouses **MUST** ask for, and be granted, spousal support. If there is no request or need for spousal support, the judge cannot grant the separation request.

Our separate maintenance law is 65 years old and was modeled after a California statute. Back in 1950, one spouse usually worked while the other stayed home to care for the children. Divorce was frowned upon. Consequently, couples facing marital difficulties often filed for separation rather than divorce. To ensure that the non-working spouse, frequently the wife, had enough money to live on, the law required the working spouse to pay permanent spousal support.

Today, both spouses usually work and often have comparable levels of education. Consequently, the need for spousal support has decreased. California long ago amended its separation law to take these social and economic shifts into consideration. Unfortunately, Guam has not. Our law needs to be amended so that a request for spousal support is optional rather than mandatory in a legal separation proceeding. For some, this may make separation more appealing than divorce and open the door to possible reconciliation.