

September 12, 2016; No common law marriage on Guam

In last week's column I left off with the question, does Guam recognize common-law marriages? That is, does Guam give long-term partners the same rights and benefits as couples who have gone through a formal wedding? Please, let it be known from the tip of Mount Lam Lam to the bowels of the Marianas Trench, there is no such thing as common-law marriage on the island! I emphasize this so strongly because many people here are convinced that our legal system does recognize such relationships. This can be a very costly and dangerous misconception.

Guam law defines marriage as "a personal relation arising out of a civil contract, to which the consent of parties capable to making that contract is necessary. *Consent alone will not constitute marriage*; it MUST be followed by a solemnization authorized by this Title."

So, under our law, mere consent to be married is not sufficient to establish a marital relationship. The marriage must be "solemnized." This is an official marriage ceremony. Guam law authorizes certain officials to solemnize a marriage including the Governor, judges, ordained clergy and priests, the directors of designated agencies, the Speaker of the Legislature, mayors and vice-mayors.

However before any of these individuals can conduct the marriage ceremony, the couple (opposite sex or same-sex) must first obtain a marriage license from the Department of Public Health & Social Services.

Obviously, based on these requirements, the fact that two people have lived together on Guam for many years, have children together, and tell others that they are married, doesn't make them married.

Why does this matter? In states where common law marriages are recognized, if one partner dies, the other may be eligible to receive the deceased partner's retirement pension and to claim a community property interest in assets that accumulated during the relationship, including the family home. Or, if the couple wants to break up, they must formally divorce and equally divide community property and debts. One spouse may also be able to get support from the other.

This isn't true on Guam, or in states that don't recognize common law marriages. No matter how long an unmarried couple lives together, neither person acquires community property interest in the other's assets. If they break up, neither can demand spousal support from the other. If one dies, the other can't claim a portion of the deceased partner's retirement or Social Security benefits. So, in the event of a death or break up, a long-term partner could find himself or herself homeless and broke. Unfortunately, this has happened many times on Guam.

The situation is further muddied by the fact that some agencies within the Government of Guam, and many private businesses, make reference to “common-law” relationships. For example, some Government of Guam agencies permit an employee to take sick leave when the employee’s “common law” spouse is sick. Many private insurance companies allow an enrollee to include his or her “common law” in health insurance benefits. In these instances, the use of the term “common law” is an informal reference to the relationship and carries no legal weight in redefining the relationship for other purposes.

Unmarried couples can improve their legal standing through the use of wills, powers of attorney, joint accounts, and private contracts. However, talk to a lawyer before pursuing any of these options.