

## **GUAM DIVORCE AND SEPARATION**

**Basic Requirements for a Divorce:** In order to get divorced on Guam, there are three basic requirements: (1) there must be a valid marriage; (2) at least one spouse must have been a resident of Guam for 90 days immediately preceding the filing for divorce; (3) "grounds" for the divorce must exist.

**Residency Requirement:** If you want to be divorced on Guam, either you or your spouse must be considered a resident of Guam. If Guam is not your home of record, there are two ways you can be deemed a resident of the island: (1) You can be physically present on Guam for the 90 days immediately preceding the filing for divorce; or (2) You can be in the military and assigned to a unit on Guam (or be on a ship home-ported on Guam) for the 90 days.

**Grounds for Divorce:** You'll need to prove that you have grounds for a divorce. Currently, the grounds are: (1) Adultery; (2) Extreme Cruelty; (3) Willful Desertion; (4) Willful Neglect; (5) Habitual Intemperance; (6) Conviction of a Felony; (7) Irreconcilable Differences. If you use *willful desertion*, *willful neglect* or *habitual intemperance* for your grounds, you'll have to prove they lasted for at least one year before the court will consider granting you a divorce. If you use *adultery*, you must file within two years of finding out about the adulterous liaison.

**The Divorce Proceedings:** The first step in getting divorced is the filing of a "complaint," which is a document that tells the court you want a divorce, the reason why and what - if anything - you want (such as property division, child custody, child support, alimony, etc.). Either spouse can file the complaint. After the complaint is filed, the court will hold hearings to decide whether or not to grant the divorce and how to resolve any issues of child support, property distribution and the like. How many and what kind of hearings depends largely on whether you choose to have a contested, consent or "publication" divorce (all three are discussed below). If the court decides to grant the divorce, the judge will enter an interlocutory (temporary) divorce decree. The interlocutory decree stays in effect until the judge enters the final divorce decree. Guam law requires the judge to wait six months before entering the final decree, but a judge can waive the waiting period if you can show a good reason for doing so. You should keep in mind that your divorce is not "final" until you receive the final decree. Usually, once the interlocutory decree is entered, there are no more hearings before the court issues the final decree. Most attorneys will agree to mail you a copy of the final decree once it's handed down if you leave Guam before the final decree is issued.

**Types of Divorces:** There are three basic types of divorces on Guam: consent, contested and publication divorces. Determining which divorce is appropriate for you is one of the most critical decisions you'll make in getting divorced.

**1. Consent Divorces:** Consent divorces are commonly known as "uncontested divorces" and, for the most part, are the simplest proceedings. These divorces are used when the spouses agree on virtually all aspects of the divorce (such as which grounds for divorce should be used, how the property should be divided up, how much child support payments will be, etc.). Before the court will consider granting a consent divorce, one spouse must file the complaint as well as the other spouse's signed form consenting to the divorce. In a consent divorce, the consent form and other documents may be mailed to your spouse for his or her notarized signature -- your spouse need not be present on Guam for the divorce to go through. If your spouse is a military member and isn't on Guam, he or she will need to waive his or her rights under the Soldiers' and Sailors' Civil Relief Act before the divorce can proceed. If your spouse is not active duty military, he or she needs to send a notarized letter to the judge stating he or she is aware of the right to appear and contest the divorce, and willingly waives these rights. Once the complaint and consent forms are filed in the Superior Court of Guam, the court will set a hearing date. Both spouses will be called to appear before the Superior Court judge assigned to the case, unless appearance has also been waived. The judge will decide whether or not to sign the interlocutory divorce decree.

**2. Contested Divorces:** Contested divorces usually are appropriate when spouses disagree on whether or not to get divorced, how to divide up property, which spouse gets custody of the children and so on. Depending on what the disagreements are, a contested divorce can drag on indefinitely and can become extremely expensive. Judges will schedule hearings as needed to deal with the spouses' disputes. The judge will then resolve those disputes for the spouses.

**3. Publication Divorces:** Publication divorces are used in the rare situation when the spouse who files the complaint cannot arrange to have the other spouse personally served with the divorce summons. This would be the case when one spouse is avoiding being served by hiding or not picking up his or her mail. Before a court will accept a complaint in a publication divorce, you will have to prove you put forth some effort to find your spouse. Generally, you'll have to prove you sent copies of the summons to his or her last known address and never received an answer.

You will also need to publish copies of the divorce summons in the Pacific Daily News and post notices in Hagatna unless you know that your spouse is no longer on Guam. If you're awarded a publication divorce, but you didn't exert enough effort in trying to locate your spouse, your spouse may have a good chance at overturning the divorce order. The court may have limited jurisdiction over the other spouse in a publication divorce. Although the court will be able to issue orders of property division, child custody and child support regarding property and children on Guam, the court may not have jurisdiction over any property or children off-island. The lack of jurisdiction may not stop the courts from issuing orders, but your spouse may be able to challenge them. If you attempt to get a publication divorce and your spouse contacts the court during the proceeding, the publication divorce will be converted to a contested divorce. Once it becomes a contested divorce, the court will have full jurisdiction over all marital property and children located on or off the island.

***Divorce Attorneys:*** Going through a divorce can be very trying - both emotionally and financially. You may also be at risk for losing property, custody of children and important rights. For these reasons, we suggest you hire a Guam attorney to assist you in getting divorced on Guam. You may find our Attorney Referral pamphlet useful in selecting an attorney to represent you. Additionally, the Guam Bar Association Lawyer Referral Service can be contacted at "www.guambar.org" or (671) 864-5297. When you first meet with your attorney, you should be prepared to discuss matters such as: (1) Proposed grounds for divorce;(2) Your and your spouse's income;(3) Assets you and your spouse own; (4) Debts you and your spouse have; (5) Proposed division of property and debts; (6) Proposed child custody and visitation arrangements; (7) Amount of child support you're seeking; (8) Whether you want alimony (if so, how much).

***Alimony and Dividing Up Property:*** How property is divided up after a divorce depends on whether you pursue a contested or consent divorce. If you choose a consent divorce, you and your spouse can put virtually anything you want in the divorce decree, because a consent divorce is essentially a contract between the two of you. One spouse can agree to pay the other alimony (spousal support), the spouses can agree to split a pension or to put property in a trust for the children, they'll decide who gets what debt and so on. If the spouses can agree to the terms of a divorce, a judge is not likely to step in and overrule the agreement unless it is designed to hurt a child or either spouse. If, instead, you go through with a contested divorce, the judge will make most of the decisions about how property is divided up. Courts in Guam may order one spouse to pay alimony, but payments are generally for a limited amount of time, if they're ordered at all. Guam is a "community property" jurisdiction, which is why alimony is less prevalent than in some states. In a community property jurisdiction, like Guam, the judge will divide up everything that is considered community property, which is everything the spouses acquired while married. All income earned by the spouses during the marriage (and everything bought with that income) is community property and can be divided up between the spouses. Property the spouses had before they were married and anything they inherited or were given as gifts is generally considered "separate property," and won't be divided by the court. Pensions and retirement pay may or may not be community property, depending on several factors. You should be prepared to discuss such issues with your attorney to find out what will be available if you proceed with a contested divorce.

***When Children are Involved:*** If a couple with children under the age of 18 gets divorced, they will have to deal with issues of child custody, child support payments and visitation rights. In a contested divorce, the court will make decisions on some or all of these issues. (1) **Child Custody:** The court can issue an order regarding the custody of a child any time the child is a minor. That means the court makes custody determinations before, during and after the actual divorce proceedings. In Guam, custody will be awarded to either one or both of the parents based on the best interests of the child. The court may, however, award custody to someone other than the child's parents in extreme situations. If there is ever a change in the circumstances regarding the best interests of the child, the court may modify or reverse the initial child custody order for as long as the child is a minor. In deciding how custody will be awarded, the court may order investigations into the care, welfare and custody of any child from the marriage. If the child is mature enough to form an intelligent preference as to who should be given custody, the court may also consider the child's wishes. Guam courts generally grant parents liberal visitation rights, leaving the scheduling to the parents. If the parents cannot agree on a visitation schedule, the court will set one. Regardless of how visitation is structured, you must find out from the court or your attorney whether or not you must notify the court before leaving Guam with the child. (2) **Child Support:** As long as a child is a minor, the court can order a parent to pay child support. The court can also modify existing child support orders whenever the financial situation of either parent changes. Whenever a divorce suit begins and a child is involved, the Family Division of the Attorney General's office will set a temporary child support hearing to ensure that the child is adequately cared for during the divorce proceedings. The amount of child support is set in accordance with the guidelines created by the Family Division and is based on both parents' gross income (minus a deduction for personal expenses). Each parent will get

to take an additional deduction for child support payments being made to other children. At some point during the divorce proceedings, the court will review the temporary child support amount and issue a final child support order.

***Annulment of a Marriage:*** In a few cases, a married couple may get their marriage annulled instead of pursuing a divorce. A successful annulment means the marriage will be treated as having never happened. An annulment, however, won't relieve parents of their child support obligations. Annulments are only awarded when there is some problem with the initial marriage. In Guam, the following reasons are recognized as valid grounds for an annulment if they existed at the time of the marriage: **(1) Underage:** The spouse seeking the annulment must have been underage and his or her parents didn't consent to the marriage. No annulment will be allowed if the spouse freely cohabits with the other after turning 18. **(2) Unsound Mind:** The annulment won't be allowed if the person of unsound mind comes to reason and freely cohabits with the other. **(3) Fraud or Force:** An annulment may be granted if one spouse agreed to be married due to fraud or force. However, if the parties freely cohabit after the fraud is discovered or after the threat of force has been removed, an annulment won't be granted. **(4) Bigamy:** If one spouse was already married, the current marriage may be annulled.

***Remarriage:*** You are not divorced and eligible to remarry until the judge has signed the **final** decree of divorce. You are not eligible to remarry while the interlocutory decree is still in effect. You should keep in mind there will be six months between the two orders unless the judge waives the waiting period.