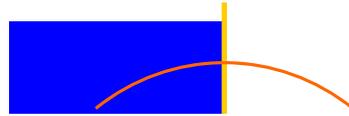


Region Legal Service Office Japan, Branch Office Guam



# Quick Guide to Family Law



*Guam Edition*



Date: June 2015

## Disclaimer

### **This is not legal advice!**

This is not a substitute for legal advice. This is a general overview of Guam's laws on divorce, adoption, guardianships and name changes, and what our office can assist you with in the family law arena. Every case is different, and what is true for one case may not be true for another. We highly encourage you to come see a Legal Assistance attorney after reviewing this information to discuss your case .

Legal Assistance attorneys are not authorized to represent you in a civilian court out in town. They can provide you with legal advice, draft letters and certain other documents for you, and generally assist you find a course of action for your case. Again, the scope of service is determined by your case. Some cases may need more work than others! Please stop by for an appointment to discuss your case further, or call us at 671-333-2061.

## Hours of Operation

Notary and Power of Attorney Services  
Monday-Friday: 0900-1530

Attorney Walk-in Services (Based on Attorney Availability)  
Monday-Thursday: 0930-1500

Attorney Appointments  
Monday-Thursday: 0930-1500  
Friday: 0930-1300

## Divorce on Guam

### Residency

Either you or your spouse have to have been on Guam for ninety (90) days prior to filing for a divorce. This is known as the “residency requirement.” The residency requirement may be shortened if you are getting an uncontested divorce. Uncontested divorces will be discussed in depth further on in this section. However, simply put, they are divorces where both spouses agree to get divorced, there are no children involved, and both spouses agree on how to divide all of their property and money. If you are getting an uncontested divorce, the residency requirement is seven (7) days.



This does not mean you will be in front of a judge and divorced in either seven or ninety days. That mark on the calendar is just the date you can file your divorce papers at the courthouse.

Whether your divorce is contested or uncontested, you will only get an interlocutory, or temporary, divorce decree at your hearing. By statute, you will not get your final divorce decree until six months later, when it is mailed to you. However, this six month waiting period can be waived, provided that you show good cause.

### Uncontested Divorces

Uncontested divorces are also referred to as “consent divorces.” A couple can get an uncontested divorce on Guam when they agree that they want to divorce, have no children, and agree on the division of their property and other assets. If a couple has children, the divorce is treated as a contested divorce.

The forms for an uncontested divorce are available online or at the Superior Court of Guam. However, individuals are strongly encouraged to consult with a Legal Assistance attorney before filing anything.

The process is fairly straightforward. One spouse, known as the “plaintiff,” must file a complaint for divorce. They also have to have their spouse sign a form consenting to the divorce, and a marital settlement agreement. The settlement agreement is included in the divorce package provided by the court, and generally states that all aspects of property and asset division have already been settled between the spouses. Once these documents are filed in the Superior Court of Guam in Hagatna, the court will set a hearing date. At that hearing, the Superior Court judge will review the filings, and decide whether to sign the interlocutory divorce decree, and whether to grant a waiver of the six month waiting period for a final divorce decree if requested.



## Divorce on Guam

### Contested Divorces

A contested divorce is typically appropriate when a couple disagrees on whether or not to get divorced, how to divide property, child custody or support. There have to be “grounds,” or reasons, to file for a contested divorce. On Guam, the grounds for divorce are: adultery; extreme cruelty; willful desertion; willful neglect; habitual intemperance; conviction of a felony; and irreconcilable differences. Irreconcilable differences is a commonly asserted ground in cases where a couple would be getting an uncontested divorce, but for the fact that they have children. You are strongly encouraged to hire a civilian attorney to file a contested divorce.

Regardless of which ground you are asserting, you must have proof that meets a legal standard and can actually be received by the court under the rules of evidence. Unfortunately, it is often the case that just having text messages, or photographs from Facebook, is not enough to prove a ground like adultery. Consult with a Legal Assistance attorney to see if your case supports filing a contested divorce.



### Annulment

Annulment is an infrequently used way to end a marriage. It is not a divorce—it is a way of saying that the couple was never legally married to begin with. However, it does not end child support obligations for either parent. There have to be grounds to get an annulment. On Guam, there are four grounds for annulments: unsound mind; underage spouse; fraud or force; and bigamy. It is rare to qualify for an annulment, and spouses can disqualify themselves from any of the grounds, except bigamy, if they willingly cohabit with the other spouse after turning eighteen (underage spouse), the fraud or force has been removed (fraud or force) or the spouse of unsound mind comes to reason (unsound mind). Consult with a Legal Assistance attorney before moving forward.

## Support, Custody & Property Division

### Child Support & Custody

Child support amounts are determined by guidelines, and enforced by the Attorney General's office. The set amount is based on both parents' gross income. Child custody and visitation are determined based on the best interests of the children involved. Custody orders can be modified if there is a material change in circumstances after the initial custody order was entered.

### Alimony & Property Division

Guam is a community property jurisdiction. This means that anything acquired while married, except for gifts, can be divided by the court in a divorce. However, spouses can agree to property division—even in a contested divorce—prior to going to court. Assuming that the division is reasonable, the judge is not likely to overrule the spouses' agreement. Alimony may be ordered, but it often is not, because of Guam's status as a community property jurisdiction. Judges can divide property, instead of awarding alimony.

### Military Benefits

Many important military benefits are altered or lost after a divorce. If a spouse has been married to an active duty service member for twenty years, and those twenty years overlap with twenty years of active duty service, that spouse does not lose any benefits. They are considered to have retired with the service-member, and retain their military identification card, base access privileges, and healthcare. They also may receive up to fifty percent of the active duty member's retirement pay.

TRICARE currently offers a 180 day extension of premium-free health care benefits to spouses in this situation. This program is called the Transitional Assistance Management Program (TAMP), and is not an automatic entitlement. Please call TRICARE for more information. North Region: 1-877-874-2273; South Region: 1-800-444-5445; West Region: 1-877-988-9378.

Additionally, the Continued Health Care Benefit Program (CHCBP) is a premium-based plan that offers temporary transitional health coverage for 18 to 36 months after TRICARE eligibility ends. CHCBP acts as a bridge between military health benefits and your new civilian health plan. It is a healthcare program intended to provide you with continuous healthcare coverage on a temporary basis following your loss of military benefits. For more information, please visit: <https://www.humanamilitary.com/beneficiary/plans-and-programs/chcbp>.

## Military Benefits

A spouse who was married to an active duty service-member for at least ten years may receive a portion of their active-duty spouse's retirement pay. The portion is calculated using the following formula:

$(\text{number of months of marriage} / \text{number of months of active duty service}) \times .5$

Note that in any case, no matter how long the spouses were married, this is not an automatic entitlement. The divorce decree must specifically state the percentage or dollar amount of retirement pay that the former spouse will receive, and how it will be paid. If the spouse wants a garnishment from DFAS, DFAS will not honor the request, unless the original divorce decree has this information, with the proper wording. It is imperative that you consult with an attorney.



## Adoption

An adoption is the process of legally substituting a new parent or parents for a biological parent or parents. It eliminates all rights that the biological parent has to the child, and gives those rights to the adopting parent. While there are several types of adoption, the most common is step-parent adoption. Step-parent adoptions are, simply, when a step-parent adopts his or her step-child.

The Legal Assistance Office can discuss your case with you, but highly recommends that you seek civilian counsel to assist you in drafting your adoption forms to file in court. While our office can advise you on your case, we cannot draft your adoption forms for you.

An adoption is begun by filing a law suit at the Superior Court of Guam. The court does not provide the forms, and cannot assist you in drafting your documents.

## Adoption

First, the parental rights of the biological parent must be terminated. Typically, this is done by sending a form to the biological parent, which the biological parent signs in front of a notary public. That form is filed along with the other adoption forms in the court.

Second, the adopting parents must prove to the court that they are suitable parents. Guam requires a probationary period, in which the child lives with the adoptive parents and is observed by Social Services. However, this probationary period can be waived for good cause.

Third, the adoption must be in the child's best interests. If the child is over twelve years old, he or she must consent to the adoption.

If all of these factors are met, the court will issue a final decree of adoption, declaring the adoption official. The court can also order a name change, if petitioned for to change the child's last name.

## Reimbursement

Once your adoption is finalized, you may be able to apply for reimbursement of adoption expenses. Reimbursement is authorized for certain expenses per calendar year. For amounts, please visit: <http://www.dfas.mil/militarymembers/payentitlements/adoptionreimbursement.html>. In order to qualify for the reimbursement, service members must be serving on continuous active duty for at least 180 days and the adoption must be finalized while on active duty. In addition, the claim must be submitted while on active duty and within one year of the date that the adoption was finalized. Reimbursable costs are: public and private agency fees, including adoption fees charged by an agency in a foreign country; placement fees, including fees charged adoptive parents for counseling; legal fees (including court costs) in connection with services that are unavailable to a member of the armed forces; and medical expenses, including hospital expenses of the biological mother of the child to be adopted and of a newborn infant to be adopted.

More information can also be found on the DFAS website.

## Guardianships

### What is a Guardianship?

A guardianship establishes a legal relationship between a child and an adult who is not the child's parent. The difference between a guardianship and an adoption is that a guardianship does not involve the termination of parental rights. The biological parent or parents still have to provide financial support for the child, for example—but the guardian is able to take care of the child's needs, such as education, medical care, and shelter.

There are also "special needs" guardianships, for individuals who are over the age of eighteen, but have special needs that mean they need another adult to take care of them. Mentally disabled adults legally are still adults—so to help them be taken care of, a parent may get a guardianship over their mentally disabled adult child. The Legal Assistance Office does not provide advice on special needs guardianships.

Guardianships are generally necessary if a child is staying with an adult who is not their parent for several months or years. Many active-duty single parents give a guardianship to a grandparent or other individual to care for their

child while they are deployed, for example.

### Establishing a Guardianship

Courts establish guardianships. The petitioner files guardianship papers in court. A court investigator then typically will interview the potential guardian, child, and parents. The investigator will then make a recommendation to the judge, who determines if guardianship is necessary, and if the guardian is appropriate, based on the interview and the best interests of the child. Generally, the parents must consent to the guardianship. However, no consent is necessary if the parents abandoned the child, or the judge finds that it would be detrimental to the child's best interests' for his or her parents to have custody.

Guardianships typically end when the child turns eighteen, dies, or a judge determines that the guardianship is no longer necessary. A guardian may also step down from the guardianship, if the court grants permission. If that happens, and a guardianship is still necessary, the court will appoint a new guardian to take their place.

## Name Changes

Life changes also often mean that a change in name is necessary or desired. While the Legal Assistance office will not draft your forms to file for a name change, we can guide you through the process and discuss options with you.

A blue rectangular graphic with the word "HELLO" in large, white, sans-serif capital letters. Below it, the phrase "my name is" is written in a smaller, white, lowercase sans-serif font.

### After Marriage, Divorce or Adoption

No lawsuit or action is required to change your last name after you get married. If you want to change your last name, simply take certified copies of your marriage certificate or divorce decree to each government entity—such as the Office of Vital Statistics or the Department of Motor Vehicles—to do so. The same is true after adoption. Simply take certified copies of the final court order granting the adoption to the necessary government entities. Be sure to call each government entity or place of business first, to be sure they do not have any internal forms or requirements.

### Other Cases

You must file a petition in the Superior Court of Guam, and pay a filing fee. You must arrange through the court to have public notice of your filing and court date publicized, so that other interested parties, such as creditors or family members, may appear at the hearing. The petition must also include a reason for your name change. Please be aware that it is illegal to change your name to hide from creditors. Once you get your finalized court order, you file it with the Office of Vital Statistics, Department of Public Health and Social Services. You can also give certified copies of the court order to other government and business entities to change your name with them as well.



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