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The Non-Divorce

By Colleen DeBaise
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BREAKING UP IS HARD — and expensive — to do. That's why some couples choose to stay together, long after romance is dead, in a state of matrimony that can best be described as the "non-divorce."

While the situation varies, the couple in a non-divorce usually remains living together under one roof, more like passionless roommates than spouses. While there's no hard statistics, some divorce experts say they're seeing more of this unromantic phenomenon, driven by three big financial factors: the high cost of legal fees in divorce; the expense of setting up two households, and the difficulty in obtaining adequate health insurance, especially if one spouse has a pre-existing condition.

That's a shift from decades past, when couples stayed together because divorce carried a social stigma, or was forbidden by religious teachings. But along with finances, there's another driving factor in today's not-quite-a-divorce arrangement. Many couples, turned off by their friends' bitter, rancorous breakups, would rather stay together than endure the messiness or inflict it upon their children. "We've seen the fall-out from divorce," says Debbie Mandel, a Lawrence, N.Y., stress-management specialist who often works with individuals in loveless marriages. "There's so much viciousness, and then the draining of the pocketbooks to attorneys."

Spouses who decide to stick together are just "realistic people," says Mandel. Sometimes, the arrangement allows couples to discretely date other people, while keeping up the illusion of marriage to children and the community. And finances, significantly, stay intact. "They are really making pragmatic, business-like decisions for their marriage," she says.

Susan Goldfarb (not her married name) and her husband have been together for 26 years, but disagreements over their children's education strained their marriage about six years ago. The couple considered divorce but ultimately decided against it. "Neither of us makes that much money, and if we had to separate, it would be a hardship for us," says Goldfarb, of Westchester County, N.Y., who works in customer service while her husband teaches high school math.

The couple come from different socioeconomic backgrounds and fought "like cats and dogs" when their daughter and son — now 22 and 18, respectively — were in high school, she says. Goldfarb grew up middle class and wanted the children to take college-prep courses and attend top-ranked private universities. Her husband, from a lower-income background, didn't see the need and insisted they take classes at less-prestigious City University of New York.

Goldfarb decided divorce wasn't a good idea because split households would further the problem. "I didn't want him to influence the children," she says. "I felt if we were to stay married, I'd have more control. I could monitor what he was saying."

While the outcome was a compromise — their daughter attended a city college but their son is currently enrolled in a private school outside of Boston — the battlewounds remain. Divorce, however, isn't in the picture. "We do love each other — it's just not as deep of a love that we had before," she says. "We are really, really good friends. And we trust each other. We're probably both scared to find new partners." At this point, the pair, both in their 50s, "are sticking together," she says. "It's not that severe of a case where we need to change our lives."

Rich Gordon, principal mediator at A Fair Way Mediation Center in San Diego, says some couples stick together because "the devil that you know is better than the devil you don't know." In his practice, he has seen military couples (from a nearby naval base) staying together so both spouses can still be covered under the military's medical benefits and pension plan.

Unhappily Ever After

Legal Options (Besides Divorce)

Typically, couples who practice the non-divorce hash things out, informally, on their own. (Avoidance of legal fees, after all, is one of the reasons they're staying together.) But here are some legal options to consider.

- Resolve child support, custody and spousal support issues in family court. "You can go to family court without an attorney — it's common — and get these issues resolved while married," according to Sember.
- Obtain a legal separation, which divides property and debt, and outlines custody and support issues, while leaving the actual marriage intact. (This is sometimes referred to as the "Catholic divorce" for those with strict religious beliefs.) The parties can

Some couples have approached him to craft postnuptial or separation agreements, which will divide assets while keeping the marriage technically intact. But it's not always easy to come up with an ideal legal solution. "Psychologically, you are really opening a Pandora's box," he says. Emotions run deep, even when a couple is leading separate lives. Infidelity, in particular, can create bitterness. A couple who wishes to stay married when the romance is gone should really think twice, for many reasons. "You are not leading a full life if you remain with someone with the title of marriage when there's nothing below the surface," he says.

Legal action might be a better plan for the couple seriously considering divorce but isn't ready to take the final step. "There are a lot of people who aren't really positive yet, but they know they can't stand to be together or need space," says Brette Sember, a former divorce lawyer in Clarence, N.Y., and author of "The Divorce Organizer & Planner."

An initial step might be resolving child support, custody and spousal support in family court, which can be accomplished even if there's no divorce petition pending, she says. After that, the couple can decide what to do.

Judy Poller, who practices matrimonial law at Bryan Cave in New York, says some spouses decide to practice the non-divorce after they've looked into actual divorce — and decided it was too onerous. "I had a guy come in, who was married for 20-plus years, with two kids in high school. We spoke for quite a while, and I told him that his assets would be divided in half. He had a very nice lifestyle. His wife didn't work through the marriage. I told him my guesstimation of what his responsibilities would be, and his attitude was 'Well, I guess this is good enough for now,'" she says. "He figured he'd have his fun on the side, and do what he wanted to do."

Some spouses, of course, practice the non-divorce in the eternal hope that it will work out. Lynn Johnson (whose name we've changed due to privacy concerns), lives in the Midwest, and has been married for 29 years but estranged for the past six years — although she and her husband occasionally travel together "like brother and sister." The couple has two adult children, and she hopes that someday she'll be in a happy marriage. "In my mind, I am still married, and hope and pray for a miracle," she says.

There's been no infidelity, drugs, alcohol or physical or verbal abuse — just a falling out of love. For now, the two maintain separate households, and her husband pays the majority of the expenses, which she worries would change if they ever got a divorce. She describes her situation as "reasonable insanity." While not happy, she's reluctant to dissolve the marriage because of finances, the effect it might have on their children, and the questionable morality of breaking vows. "It is not how I dreamed my marriage would end up," she says. "I guess one of my favorite sayings about my situation is 'I would rather bury him than divorce him,' because I fell in love with him when I was young and I still love him today — but in a different way."

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