

How Does a Legal Separation Differ from a Divorce or Dissolution?

Q: Why would a couple want a legal separation?

A: Situations may exist where two people wish to live separately, but do not wish to terminate their marriage. For example, religious beliefs may cause them to want to keep the marriage intact. Or, practically speaking, the need to continue medical insurance coverage for one spouse through the employer of the other may be a reason for not legally ending the marriage. Many medical policies now, however, provide that a legal separation may disqualify a spouse from coverage.

Q: How is a legal separation obtained?

A: A legal separation may be obtained by filing an action which alleges one or more of ten "grounds," or reasons why the separation should occur. Many of these grounds are the same as those used to obtain a divorce, and include incompatibility, adultery, willful absence for more than one year, extreme cruelty, habitual drunkenness, and gross neglect of duty. While one party may seek only a legal separation, the other may seek a divorce. All of the temporary orders and procedures available in a divorce case also apply in a legal separation case.

Q: What's the difference between a legal separation and a divorce or dissolution?

A: In a legal separation, the marriage remains legally intact, whereas in a divorce or dissolution, the marriage is ended. Nevertheless, the issues addressed by the court in a final order or agreement of legal separation are the same matters dealt with in a divorce or dissolution. They include designation of a residential parent and legal custodian, parenting rights, child support, spousal support, division of property, and payment of debts. The agreement or order of legal separation may later become the basis of a final divorce or dissolution, but the marriage will remain legally intact unless one of the parties takes some further action to terminate the marriage. The rights and obligations of the parties are governed by the agreement or order, which is enforceable through the court.

Q: Are the orders subject to change?

A: If the parties agree, the property division may be modified. However, the court cannot change the property division without the parties' consent. Child support and parental rights and responsibilities orders are subject to change so long as the court has jurisdiction over these orders. Spousal support may generally be modified if it is shown that circumstances have changed.

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Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association. This article was prepared by Stanley Morganstern, the former managing partner of the Cleveland firm, Morganstern, MacAdams & DeVito Co., L.P.A.

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