

Separation vs Divorce

There is significant confusion in the marketplace about the differences between a Legal Separation and a Dissolution of Marriage. Parties are also often interested to know why one option might be more advantageous for them than another. The distinctions between these two routes however, are actually quite simple.

Legal Separation vs Separation

At the outset it is important to understand that a Legal Separation is completely distinct from the concept of a couple being separated. Unfortunately, for whatever reason, the law in the State of California has utilized very similar terms to mean two completely different things. A Legal Separation is a distinct and official legal status wherein parties go through the process of establishing a custody schedule with the children, orders are made regarding child and/or spousal support and property is divided as appropriate. The court confers the status upon a couple of being Legally Separated in the same way that the court would confer the status of Dissolution of a Marriage.

In contrast, parties who are married can become separated without going through any sort of legal procedure or process. Separation takes place when the marriage is over or, as the law says, when the marriage is irretrievably broken. The parties are still legally married but either one or both parties have decided that the marriage is finished, can't be repaired and they no longer wish to be married anymore. In Dissolution and Legal Separation cases the court will always want to know what the Date of Separation is. Every case is different and whether the date of separation has happened in a given case and with a given couple is a question of fact. If the parties disagree about when the date of separation took place they can ask the court to decide. The court will look at all of the circumstances to make that determination. Those circumstances can include the date that one spouse moved out of the marital home, the date of a big fight, the date one spouse found out the other was cheating, the date someone filed for Dissolution of Marriage, etc. None of these activities is necessarily conclusive as again, every case is unique.

Dissolution of Marriage (Divorce) vs Legal Separation

A Dissolution of Marriage (commonly referred to as a divorce) changes the couple from having the legal status of married persons to each individual becoming a single person. This is relevant for remarriage, filing taxes and other such activities. A Legal Separation does not terminate the married status of the couple, the way a dissolution does. A couple that obtains a legal separation remains married and never becomes single. The actual issues in the case however, such as custody, child support, spousal support, division of assets and debts, attorney's fees, are all addressed and divided up in the same way as in a dissolution case. The only difference with a legal separation is that the couple stays married; they are married but legally separated. Thus, legal separation is usually not a simpler, easier, or faster way for the parties to go their separate ways as some people believe. In fact couples seeking a legal separation can benefit from retaining counsel as much or more than couples seeking to dissolve their marriage as there might be intricate issues at hand that would be best addressed by counsel.

The vast majority of people elect to pursue a Dissolution of Marriage rather than a Legal Separation. The usual reasons for selection of a legal separation are:

- Religious reasons: some churches/religions look down on divorce, but find legal separations to be acceptable.
- Couples over the age of 65 can have tax/retirement benefits from obtaining a legal separation as opposed to dissolution.
- If one of the parties has significant health issues and would not be able to obtain health insurance on his/her own without the coverage that the other party has available through their work or otherwise. Many health insurance plans will only ensure a spouse not a former spouse. In such cases parties may elect to pursue a legal separation so that the ill/injured spouse can continue to have health insurance.

An attorney can discuss with you the specific issues that you are dealing with and can advise you on whether a legal separation will help your situation or not. The decision is certainly an important one. When you file your case you will need to indicate whether you are filing for Dissolution of Marriage or for Legal Separation. It is possible to commence a case having filed for one and then to later on change and switch to another but it's probably best to retain an attorney to help with this process. Again, either way, the parties will be able to divide up their estate and deal with all other issues in their case regardless of whether they file for dissolution of marriage or legal separation.

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