

What you Need to Know About Legal Separation in California

One of the biggest misconceptions is that you have to be legally separated before you get a divorce in California, but nothing could be further from the truth. A legal separation is an alternative to divorce, not a mandatory step towards divorce. The fact is that a legal separation and a divorce are two similar but distinct types of cases that legally change the structure of your marriage and relationship in a permanent way. Here are some of the key facts you need to know about legal separations.

Reasons for a Legal Separation in California

Just like a divorce, you can obtain a legal separation without stating a specific reason for wanting one. The concept of “no fault” applies to legal separations just as it does in divorce, and they are granted for two reasons: “irreconcilable differences,” which basically means that the marriage has permanently broken down and one or both spouses do not believe the relationship can be salvaged, and “permanent legal incapacity to make decisions,” which is a very rare reason to seek a legal separation.

Requirements for a Legal Separation in California

Unlike a divorce, a legal separation does not have a residency requirement, which means that you do not have to be a resident of California for at least six months or of your county of filing for at least three months. Many people who have recently moved to California and want to end their marriage choose a legal separation so that they can start the process without waiting for months. Notably, in order for California to have jurisdiction (ability) to make custody or visitation orders, the children must still meet the residency requirements except for emergency situations. Therefore, if you need custody or visitation orders, you may wish to explore other alternatives.

Legal separations do not require a waiting period like divorces do. In other words, if you and your spouse have a full agreement, you can obtain a Judgment of Legal Separation much faster than you can obtain a Judgment of Dissolution of Marriage.

Legal separations follow the exact same three-part process as the divorce process. For more detail regarding this process, please see our [overview article on divorce](#).

What Issues are Covered in a Legal Separation?

Every California legal separation deals with the same basic issues:

1. **Child Custody:** who has decision making rights regarding the children of the marriage and where the children live

2. **Child Visitation:** the day-to-day parenting schedule, including holidays and vacations
3. **Child Support:** California has standard “guidelines” used to calculate child support, which are based on each parent’s income and the amount of time the children spend with each parent
4. **Spousal Support:** also known as alimony, the sub-issues of whether or not support is appropriate, the amount of support, and the length it should be paid should all be addressed
5. **Property division:** property includes everything owned, from retirements, bank accounts, and real property, to the furniture, furnishings, and appliances all need to somehow be divided
6. **Debt allocation:** everything owed, credit card obligations, personal loans, and tax debts need to be split
7. **Attorney fees:** there are two general reasons why a person might have to pay the other spouse’s attorney fees. One reason is that one spouse has a greater ability to pay for attorney fees than the other, and the other reason is because one person has behaved badly during the divorce proceedings and is fined.

Noticeably absent is the issue of marital status. Upon a Judgment of Legal Separation, you are still legally married to your spouse. If you choose to divorce your spouse after you have a final Judgment of Legal Separation, you will need to file a completely new and separate dissolution of marriage case.

How do I Choose Between a Legal Separation and Divorce?

Deciding between a legal separation and divorce is an extremely personal issue without a specific right or wrong answer. While some people prefer a legal separation due to religious or moral preferences, others elect a legal separation because they believe it will be emotionally easier on their spouse and children. Still others wish to take advantage of the intact marital status to try and continue sharing the same health insurance benefits or military spouse privileges.

Conclusion

We hope that you now have a better understanding regarding your options in choosing to file for divorce or legal separation. Although a single article isn’t going to be the only information you need to make a decision, you should now have a better idea regarding your options. For advice on how to decide if legal separation or divorce is best for you, please [contact us](#) for help.