

Separation

Legal Separations are an option in Illinois, but they are almost never used. Being legally separated is very different from "being separated." When a couple fights and one spouse moves out for a while, that's being separated. A legal separation is entirely different.

Legal Separations are done in the court just like in a divorce case. Papers are filed just like in a divorce case. Both parties have an opportunity to appear before a judge just like in a divorce case. The court may enter an award of maintenance (alimony) and child support just like in a divorce case. If the appropriate papers are filed, the court may even divide up property just like in a divorce case. The "marital estate" is closed and two new, separate financial estates, for inheritance, tax purposes, business deals, etc., are created, just like in a divorce. Legal separations are just like a divorce... except you're still married.

The only difference between a legal separation and a divorce is this: with a divorce, you're divorced and you can remarry if you want; with a legal separation, you're still married to the same spouse.

Legal separations are used strategically by divorce attorneys in some cases that may drag on for a long time and pass some critical financial deadline. By achieving a separation early, the property of the marital estate may be valued and divided immediately without having to wait until all the messy little details are taken care of. By advancing the date of the termination of joint property rights, the attorneys may help the divorcing couple avoid a huge tax bill, realize other tax advantages, or may otherwise help them shelter assets or avoid debt. If your divorce attorney recommends obtaining a legal separation first and then converting it into a divorce, think carefully about the advice and get a second opinion, a separation may save you a lot of money, but it may also save your spouse money at your expense.

First, it is important for some people who, for religious reasons, believe their souls may not fare as well in the hereafter if their human, physical, embodiment here on Earth is a party to the dissolution of a relationship sanctified by their creator. For those people, a Legal Separation achieves all of the technical, legal, ends that a divorce would, but it preserves the bonds of matrimony so that, upon arriving at the Pearly Gates, they may truthfully report to St. Peter that, indeed, they never divorced their spouse.

Keep in mind that any Legal Separation may, at any time, be converted into a divorce. Court procedures have to be followed, but the process is fairly straightforward.

Trial Separations: Trial separations are not a panacea, they are a last-ditch effort at saving whatever was good in the relationship. It affords both parties a chance to come up for air -- to get away from ceaseless bickering and blaming that leads nowhere. Splitting up can be a radical step; but experts say it can mend fences or at least make a subsequent divorce more civil. If you're going to separate, just to try things out, at least do it right: have a written agreement that spells out:

1. **Duration:** Spell out how long you expect to stay separated - six weeks is a typical minimum and one year is a typical max. Later renegotiation should always be an option.
2. **Therapy:** Commit to therapy or abandon it, but agree on the issue, one way or the other.
3. **Contact:** How many phone calls will / can you each tolerate per day? What will you do for the holidays? What about the annual neighborhood or club party? Figure it all out... and agree before splitting.
4. **Stuff:** It doesn't matter so much who takes what as identifying the things and their value. If reconciliation fails and a divorce follows, you should know all the assets of the marital estate and their values everything from the TVs to the CDs to the IRAs. Still as attorneys we have often heard the question "What am I entitled to during a separation?"
5. **Dating:** Can you date others? Can you date each other? Find out and agree before parting ways.
6. **Kids:** Decision-making, informing, visiting, and support should all be dealt with before a separation.

7. **Privacy:** What will you each be able to tell friends, family, co-workers?
8. **Next Steps:** There should be a defined end to the agreement, whether you agree to get back together, extend the separation or divorce. Define the exit options.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.