

Is there such a thing as Legal Separation in New Jersey?

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I am often asked by clients if there is such a thing as legal separation. Sometimes clients want to “soft launch” their divorce or find a solution to their marriage, without pulling the trigger on the divorce process. While there are many ways to initiate a separation of two married individuals and find creative solutions that do not involve a final divorce, a separation is not required to initiate the divorce process and there is no need to make same “legal” or solemnized with the court.

Many married couples reach a point where continuing to live together is no longer feasible, yet pursuing a divorce may not feel appropriate, affordable, or necessary. In these circumstances, individuals often search for “legal separation” to determine whether New Jersey law provides a formal mechanism for spouses to live apart while remaining married. In New Jersey, the answer requires some clarification.

Does Legal Separation Exist in New Jersey?

New Jersey does not formally recognize “legal separation” as a distinct marital status. Unlike states that permit spouses to file for legal separation, New Jersey law does not provide a process that alters a couple’s legal status from married to separated.

As a result, spouses who separate without further legal action remain legally married, with all rights and obligations that accompany that status. Thus, while parties may be separated, without any written agreement between them, the term of the marriage continues to increase (increasing the length of any future alimony obligation) and the income and assets earned continue to be included in the marital estate (potentially increasing the pool of assets to be divided in any future equitable distribution claim).

Separation Agreements

Although legal separation is not recognized by statute, spouses may enter into a written separation agreement as a precursor to a divorce. In essence, they may resolve all issues incident to their separation and ultimate divorce, without filing any Complaint for Divorce with the Court. A separation or marital settlement agreement is a contractual arrangement that defines the parties’ respective rights and responsibilities while living apart, pending a divorce.

These agreements commonly address issues such as child custody and parenting time, child support, alimony, responsibility for expenses, and use or possession of marital assets as well as their ultimate distribution. When properly drafted, a separation or marital settlement agreement

can provide clarity and stability during a period of separation and be enforced as the global resolution of all issues incident to a divorce and incorporated into an ultimate Judgment of Divorce when one or both parties are ready to file.

As these agreements deal with the most important issues, your children, your income, and your property, it is important that they are carefully negotiated and reviewed by counsel.

Why Do People Ask About Legal Separation?

Individuals frequently inquire about legal separation because they are seeking structure without finality. Common motivations include maintaining health insurance coverage, complying with religious beliefs, allowing time for reconciliation, or minimizing disruption for children.

Regardless of the reason, informal separation without legal guidance can create significant risks, particularly with respect to finances and parental rights.

When Should You Consult a Family Law Attorney?

Whenever spouses are contemplating separation or have already begun living apart, obtaining legal guidance is strongly advisable. Choices made during this period can significantly impact future rights and obligations, including issues related to support, custody, and the division of marital assets.

A family law attorney can help evaluate available options, advise you of your rights, prepare or review an agreement, and help you determine the appropriate next steps based on your specific circumstances. Addressing these issues early can reduce uncertainty, limit conflict, and help safeguard your legal and financial interests moving forward.