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LEGAL SEPARATION vs. DIVORCE

QUESTION: My spouse and I are considering a separation, possibly a divorce. What is the difference between a legal separation and a divorce?

ANSWER: In your question, you have used three terms for changes in a marriage:

- separation
- legal separation
- divorce

“Separation” simply means living apart. You do not need to file court papers to separate. The law does not require you to live with your spouse. However, separating from your spouse may affect your legal rights. The best way is to talk to a lawyer before separating.

If you do separate, you will need to work out arrangements for the care of the children, support, and payment of bills. A mediator or lawyer can help you and your spouse reach an agreement. A lawyer can advise you on your legal options, if an informal agreement is not possible. If you are not ready to file for a legal separation or divorce, but need the court’s help in getting child support or alimony (support for spouse) there is a special type of court papers that can be filed. You may also seek court orders about custody and visitation without filing for a legal separation or divorce.

“Legal Separation” is a major change in the status of your marriage. To get a legal separation you must file a petition in your Superior or Family Division Court. It is a distinct legal product rather than being a first step to getting a divorce. In fact, legal separation takes as long as a divorce (average time, 8-10 months), and costs just as much.

In many ways, a legal separation is the same as a divorce. Both include final custody, visitation, child support, and if appropriate, alimony orders. All the family assets and debts are permanently divided. (In both types of cases, it is possible to get temporary orders about support and custody early in the case, if you need them.)

The major difference is that if you have a legal separation, you are still married. The wife may not resume her former name. Since it costs just as much, takes as long, and requires the same major decisions, why would anyone want a legal separation?

Some couples choose legal separation because of religious beliefs or moral values against divorce. In a few cases, health insurance coverage is the reason for a legal separation. Even after divorce, employer-supplied health insurance may continue for a spouse. However, the coverage may be for a limited period (two or three years) and may require payment of a substantial monthly premium.

In some, but not all, employer’s health insurance plans, the situation is better if you get a legal separation. In these plans, coverage and costs change if you divorce, but not if you get a legal separation. If health insurance is an important issue in your family, get information from the employer’s benefit or human resources department.

If you are considering divorce or legal separation, or think that your spouse is, it is important to see a lawyer and get legal advice. “Legal advice” includes how New Hampshire law applies to your family situation and your legal options. The lawyer can help you decide whether a legal separation or a divorce would be the better choice for you.

Some lawyers offer a free or reduced fee initial consultation. If the lawyer whose advice you want charges, it will be a good investment for you to pay for 30 minutes or an hour of time before you take steps that cannot be undone. Separation, legal separation, and divorce have long-lasting legal results. See a lawyer before you act!

Answered by *Attorney Honey Hastings* of Amherst.

If you have a legal question, you may call **1-800-868-1212** to reach [LawLine](#) on the **second** Wednesday of each month from 7 to 9 p.m., when volunteer lawyers are available to answer your legal questions.