
A Separate Peace: Can You File for a Legal Separation in New Jersey?

Jan L. Bernstein, Esq.

The straightforward answer is no. There is no formal proceeding that provides a legal separation in New Jersey. So now what? What can you do to protect yourself and your family if you are not ready or cannot afford to file a Complaint for Divorce, but are ready to live separately from your spouse? The answer--enter into a separation agreement.

What Is A Separation Agreement?

A separation agreement is a legally binding written or oral agreement between spouses that covers the period of time from when you separate until you are ready or able to file for divorce. The agreement can cover a small period of time, such as a few months, or may last for years. An oral agreement is more difficult to prove. Therefore, if you choose to enter into an oral agreement, in lieu of a written agreement, the oral agreement must be accompanied by action. This means that if you agree that your spouse will maintain the mortgage on your property, it is not enough just to agree to those terms, your spouse must actually begin to pay the mortgage. A separation agreement is a contract that outlines the terms of your separation. The agreement is a result of negotiations and compromises between you and your spouse and generally resolves issues relating to child custody, parenting time, child support, spousal support, division of property, payment of medical expenses, and division of debt. It can also resolve issues during separation which are specific to your family. For example, the agreement may cover who pays the cost of your child's college education or daycare. An agreement covers the issues that you and your family need it to cover, until you are ready to file for divorce.

Why Enter Into A Separation Agreement Instead Of Filing For Divorce?

In these uncertain financial times, even if you and your spouse both recognize that you cannot continue to live together, you may not be able to file for divorce emotionally, or financially. Prior to separating, you need to ensure certainty and stability. It is important that you and your spouse know how the supported spouse will be supported during the separation, and for the supporting spouse to understand what responsibilities they will have during the separation. Also, it is important for both parties to know that your children will be properly supported during separation. A separation agreement can provide a set amount of support for

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Ms. Bernstein is a Member of Sills Cummis & Gross and chairs the Firm's Family Law Practice Group. She can be reached at jbernstein@sillscummis.com | (973) 643-5866.

you and the children during this new phase in your life, and let the supporting spouse know what they need to pay during this time. Or you may need to be sure that you or your spouse will not put the family further into debt, and that your assets will not be depleted during this time, if that is what your agreement encompasses. A separation agreement can provide you with the certainty you need. But more important, a separation agreement can give you peace of mind. The agreement may put a freeze on all assets and debts acquired during your marriage. Therefore, if your agreement specifies this language, your spouse cannot liquidate your bank accounts (or any other assets acquired during the marriage); your agreement also will protect you if your spouse amasses an insurmountable credit card bill and demands that you be responsible for fifty percent of the debt. Once the separation agreement is in place, you can be indemnified by the actions taken by your spouse.

Do I Have To Go To Court To Obtain A Separation Agreement?

The good news is that you do not have to go to court to obtain a separation agreement. Although you can draft your own separation agreement with your spouse, this is not advisable. If you enter into a separation agreement with your spouse without the assistance of counsel and later realize that you did not make the best deal for yourself, it will be difficult to set aside the agreement. Even if it is possible to do so, it may cost you significant funds to “undo” the agreement and prove why it was unconscionable at the time you entered into it. Both parties will want someone on their side during negotiations to ensure that they are getting full financial disclosures from the other party, and that they fully understand the terms of the agreement. Going through a separation is an emotional process and the results of legal proceedings can endure for decades, if not longer. You need someone who can assist you during this difficult time. An experienced family law attorney at Sills Cummis & Gross can discuss your options for entering into a separation agreement and guide you through the process in the way that best meets your needs and the needs of your family.