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HOW TO GET A LEGAL SEPARATION

Using “How to Do Your Own Divorce in California”

How a Legal Separation differs from a Dissolution:

1. Residency requirement: You can file your case for Legal Separation (LS) in the county where you or your spouse live, even if you just moved there. There is no 3-month/6-month residency requirement.

2. Waiting period: LS does not have a six month waiting period after service of summons before it can become final. The only time limitation is how quickly you can complete the paperwork. But for the pace of bureaucracy, you can have your Judgment as soon as 31 days after serving the Petition and Summons if the case goes by default, or even immediately on filing for it if your papers are all done and Respondent signs the Appearance, Stipulation and Waiver form.

3. Health insurance: LS does not necessarily end the right of a spouse (and any children) to continue to be covered under the other spouse’s health insurance plan. Read your insurance policy or check with the plan administrator.

4. Wills and life insurance: To find out if LS will affect a beneficiary’s status under an insurance policy, read your insurance contract. As for wills, a “surviving spouse” does not include a person who has obtained a valid order terminating all marital property rights, e.g. a legal separation.

5. Restoring wife’s maiden name: You cannot restore the wife’s maiden name as part of a Legal Separation case, since the parties remain married, but name changes can be accomplished outside the LS process.

6. Both spouses must consent: According to Family Code § 2345, a court may not render a judgment of legal separation without the consent of both parties, unless one party fails to make a general appearance (defaults). If your spouse contests the LS you will need to work out the terms to reach agreement on the issues, then your spouse can file an Appearance & Waiver to let the case go on. If you absolutely can’t get agreement, you will probably need a lawyer.

How to fill out the forms. Follow all the instructions in “How to Do Your Own Divorce,” except as shown below:

Marital Settlement Agreement: Keep in mind that this agreement was not written for a Legal Separation, and you will need to change the wording wherever it refers to termination of the marriage or dissolution of the marriage. This is a fairly simple agreement, so if you have any doubts or questions about debts, taxes, bankruptcy or future responsibility for your spouse, you should get help from a family law attorney or Divorce Helpline at (800) 359-7004.

FL-100 Petition (chapter 10):

Caption- check the box for Legal Separation instead of Dissolution
Item 1- do not check any box for RESIDENCE
Item 5 (on back)- at item 5(a) check the box for Legal Separation and at 5(a)(1) check the box for irreconcilable differences.

FL-180 Judgment (chapter 18):

Caption- check the box for Legal Separation instead of Dissolution
Item 4- Do not check box 4a, nor enter a date for marital status to end because it does NOT end. Instead, check box 4b, Judgment of legal separation.

FL-170 Declaration for Default or Uncontested... (chapter 20):

In the caption, check the box for Legal Separation. Check box 22 and do NOT check box 18, 19, 20 or 21.

Going to a hearing (chapter 19): You will need to modify your testimony to fit the wording for Legal Separation. Keep in mind the differences between Dissolution and Legal Separation listed at the beginning of this document and adjust your testimony accordingly (no residence requirement, no restoration of wife’s maiden name, etc.) and use the words Legal Separation everywhere the book says Dissolution or Divorce.

FL-190 Notice of Entry of Judgment (chapter 21):

Check box 4 instead of box 1. Leave blank the section that asks for “Effective date of termination of marital status.”

When your Judgment is entered, you are legally separated and you must file taxes as an unmarried person beginning with the year in which your Judgment is entered. This means you can file either as single, or head of household if you have a qualifying dependent.