

Separation or Divorce? Which is right for you?

“I’m not quite ready for divorce,” the statement always starts, “I think I want a separation first.” Or “Doesn’t separation turn into a divorce automatically after one year?” Such are a few of the comments associated with the widespread misinformation regarding the differences between divorce and separation.

As two separate and distinct actions the issue of Divorce or Separation is usually one of the first discussions couples that choose to change their marital status need to address. Notice I use the term change marital status and not dissolve the bonds of matrimony because only Divorce will accomplish that goal. Separation in and of itself never leads to a dissolution of the marriage. Although the steps and the process starts out the same and grounds in both actions need to be established, the choice to live separate and apart for one year or more merely sets the second step in dissolution of the marriage. Separation of one year or more pursuant to a written agreement is one of the grounds for either party to pursue a divorce one year later. It is not an automatic process; the seeking party needs to actually serve a summons and complaint for divorce on their spouse using the separation as grounds.

The problem arises when one party is ready for the dissolution and the other party is not. I call it the legal blackmail game. Usually there is one party who is never completely satisfied with the agreement that was signed

and in order to agree to the divorce will ask for some changes in the already executed agreement, in order to make the final process goes smoothly.

Can someone contest a divorce, which has an underlying separation agreement already in place? You bet! Now the question is do you re-litigate the issues already litigated or give in to contesting party and change some aspect of the previous agreement. Blackmail? Maybe not? Justice? Definitely Not! This was not intended at all by the creators of the Separation Agreement as a ground for divorce. It was meant to be an uncontested ground sailing through the balance of the legal process to end the marriage. In reality it becomes a sword used sometimes years later to re-avenge the hurt party.

What does this mean financially? The cost of a Separation is exactly the same as that of a Divorce. All the same negotiation is done with the exception of the uncontested paperwork, which is the easy part. The only thing that is filed with the court is a memorandum of the separation agreement attesting to the fact that one was signed and that both parties agree to abide by same. Couples may stay legally separated for the rest of their lives if they choose. They may never legally marry however, and depending on the plan may not be eligible under their spouses health plan under a legal separation. The pros? Well, you still are legally married, many people feel that in and of itself is a pro. Also some health plans allow a separated spouse to still be eligible for benefits as long as a divorce is not filed. There may also be some benefits under a spouse's pension plan such as a death benefit, which a divorce will nullify but a separation may not. That of course needs to be

checked out with the individual pension plan. Cons? As I already indicated the cost of the final divorce may be double if the non-moving spouse is so disposed to contest. I'm not a fan of separation; I like to have the good fight once, as I tell my clients. Any indecision can be handled after the fact. How you ask? Re-marriage....(of course with a prenup). Its cheaper....no more blood tests and a \$20 fee for the license! Think about it!