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Common Misconceptions About Legal Separation in New Mexico

Unlike other states, in New Mexico, the process for obtaining a legal separation is nearly identical to that for getting a divorce. Parties often mistakenly believe that they can get a legal separation faster and cheaper than they can get a divorce. However, in granting a legal separation the New Mexico courts will still need to divide all of the property and debts, and determine child custody and child support, which means that obtaining a legal separation, is not any faster than the divorce process. Nor does it save on attorney fees.

Most of the same documents will need to be filed as with a divorce and nearly all of the same steps will be taken by the court, except that at the end of the legal separation process the parties cannot legally remarry. In the end, if a divorce is inevitable and the end objective, then a legal separation will greatly increase the attorney fees, time and stress of the process.

This leads to the question, why file for a legal separation? Some parties may pursue a legal separation for religious reasons if their church does not frown on legal separation the same way it does on divorce. Others may file for legal separation rather than divorce because in some cases both parties may keep the health benefits earned by one spouse if they are legally separated but not if the parties are divorced.

Given the limitations of health care in the United States, this second reason can be a powerful incentive for seeking a legal separation rather than a divorce. However, the health care issue can be pretty tricky. Not all insurance policies allow continued coverage for parties that are legally separated. It is therefore important to check with the individual policy before pursuing this option.

Essentially, anyone contemplating a legal separation rather than a divorce should consult with an experienced divorce and family law attorney. It may be that a legal separation is not the best route. And even if it is, it is important to understand all of your rights and obligations in moving forward.

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