



Divorce or Separation?

Many clients ask me if they should file a legal separation prior to filing a petition for dissolution or instead of a dissolution petition. There are a few cases where there a legal separation may be appropriate but in most cases, it is more cost effective to file a dissolution rather than a separation. Here are some of the questions I've been asked.

Can I file for legal separation if my spouse is filing for divorce?

If your spouse requests a divorce, a court would not grant your petition for legal separation. The divorce will prevail over the legal separation. In order for the court to grant a legal separation, both spouses would have to agree. Since a legal separation prohibits a spouse from being remarried, both parties are required to consent to a legal separation. Only one spouse is required to consent to a divorce.

I have been married for 10 yrs. My spouse and I have agreed to separate in a matter of 6 months. In the event I want to move out before that time. Would it be in my best interest to file a legal separation?

There is no reason why you should file a legal separation as opposed to a petition for dissolution. You may file and serve a petition for dissolution while you are residing in the same home as your spouse. There are no significant advantages in filing for a legal separation. In the State of California the date of separation is the date in which one spouse communicates to the other that they do not intend to remain in the marriage. If you file a petition for legal separation and later wish to be divorced, you will still need to file a divorce later on or you would need to file an amended petition to change from a separation to a petition for dissolution.

Of course, each case is unique and the answers above are not intended to account for every variable. There are several reasons why a couple may seek a legal separation as opposed to a divorce. There are religions which do not recognize a couple's desire to divorce, therefore they may choose to file a Petition for Legal Separation as opposed to a Petition for Dissolution.

A couple may wish to file a legal separation for purposes of their income taxes which they are in the process of filing for a divorce. A judgment for Legal Separation does not have a waiting limit, whereas a

Dissolution Judgment does. From the time you serve the divorce papers to your soon-to-be-ex spouse, you cannot be officially divorced for at least six months and one day. Where there is a tax benefit to both parties, they may seek to obtain a Judgment for Legal Separation in order to be able to file as single or head of household for that income tax year.

I have had cases where the parties have no intention of remarriage and they wish to remain on the other party's medical insurance policy. In those instances, a party may seek to file a Petition for Legal Separation rather than a Petition for Dissolution. The disadvantage to filing a Legal Separation is that neither party is free to remarry as they are still legally married to each other. If either spouse wishes to remarry, the parties will need to file a Petition for Dissolution and wait the required time for the Judgment to be entered.

In most cases, it is better and easier to file for a divorce right off the bat rather than dealing with a legal separation.



About Patricia C. Van Haren: Family Law attorney Patricia C. Van Haren has been a practicing attorney since May of 2011. Prior to attending law school, Patricia was a family law paralegal for approximately 20 years. For several years before becoming an attorney, she assisted couples through uncontested divorces as a paralegal. After establishing her own practice, she used all of her skills to develop her family law practice.

Ms. Van Haren focuses solely on family law matters ranging from paternity actions, divorces, child custody & visitation, move aways, parental abduction, child and spousal support and property division. She also focuses on guardianships and adoptions. She handles uncontested divorces and mediations as well as family law litigation. We have offices in Torrance and Irvine and handle cases throughout Los