

## WHAT IS A LEGAL SEPARATION?



June 5, 2018

If you and your spouse decide to live separate and apart, but you do not want to divorce, you can go for a legal separation.

To do this you enter into a Separation Agreement. This does not involve Court intervention when done through mediation.

A legal separation can give you and your spouse the time apart you need while you try to repair a marriage that may be in jeopardy of ending.

A separation agreement gives you the chance to work out problems, slowly and over time, without the pressure of a divorce action. There may be other financial reasons to go for the separation instead of a divorce right away. These concerns can be health insurance related, tax interests and/or retirement benefits.

As part of the separation agreement, you and your spouse decide on a number of important issues, such as child support and spousal support (called maintenance), as well as a parenting plan. A written separation agreement will set out the rights and obligations of you and your spouse both during and after the separation. This will include equitable distribution of property including homes and retirement plans. It becomes a binding agreement enforceable in Court if necessary.

Although New York law now provides for a no-fault divorce, if you or your spouse can establish that you have lived separate and apart under a written separation agreement for at least one year, then you may obtain a judgment of divorce on that basis alone. The separation agreement will be submitted as part of a divorce decree, if you or your spouse decides to seek a divorce.

If you and your spouse begin living separate and apart under a separation agreement, you are free to get back together at any time. A separation agreement generally becomes invalid and void when you begin living together again with an intent to reconcile.

A mediator can work out the terms with you for a legal separation but remember only an attorney can draft the legal document.

*Robyn D. Weisman, Esq., Attorney, Mediator, Collaborative Lawyer, Director of Divorce Mediation & Family Services of New York, Ltd. 1-800-WE MEDIATE*