

LEGAL SEPARATION



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

354 FW/JA
Legal Assistance & Preventive
Law
Pamphlet Series

INTRODUCTION

You may get a legal separation if there is a breakdown in the marriage and you want to separate but stay legally married to protect significant religious, financial, social or legal interests. It is important to understand however, that there are four different types of separation. Each type of separation may have a significant effect on property ownership.

TRIAL SEPARATION

When a couple lives apart for a test period to decide whether or not to separate permanently, it is called a trial separation. Even if the spouses don't get back together, the assets they accumulate and debts they incur during the trial period are usually considered marital property. This type of separation usually is not legally recognized, but is instead a specific period in a couple's relationship.

LIVING APART

Spouses who no longer reside in the same dwelling are said to be living apart. In some states, living apart without intending to reunite changes the spouses' property rights. For example, some states consider property accumulated and debts incurred while living apart to be the separate property or debt of the person who accumulated or incurred it. In other states, property is joint unless and until a divorce complaint is filed in the court. Also, in some states, couples must live apart for a certain period of time before they are permitted to file for a no-fault divorce.

PERMANENT SEPARATION

When a couple decides to permanently split up, it is often called a permanent separation. It may follow a trial separation, or may begin immediately when the couple starts living apart. In most states, all assets received and most debts incurred after permanent separation are the separate property or responsibility of the spouse incurring them. However, debts that happen after separation and before divorce are usually joint debts if they are incurred for certain necessities such as to provide for the children or maintain the marital home.

LEGAL SEPARATION

A legal separation results when a couple separates and a court rules on the division of property, spousal support, child support, custody, and visitation, but doesn't grant a divorce. The money awarded for support of the spouse and children under these circumstances is often called 'separate maintenance' instead of alimony or child support. A husband or a wife may separately or jointly file a complaint in the superior court for a legal separation. A legal separation may be granted no more than once to the same married couple. One of the parties to a complaint for legal separation must be a resident of the state at the time the action is commenced. A person serving in the military who has been continuously stationed at a military base or installation in the state for at least 30 days usually is considered a resident of the state for separation purposes. With a legal separation, any assets accumulated or debts incurred after the separation has become finalized are not considered jointly owned. Each spouse is responsible for his or her assets or debts. A legal separation does not restore the parties to the status of unmarried persons. A legal

separation modifies the parties' rights and responsibilities as married persons.

CONCLUSION

The legal office can help you with this issue and other legal issues. Call us at 377-4114 for more information.

This pamphlet is for basic information about legal separation. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.

