

What is a legal separation?

Spouses who are permanently living apart can obtain a legal separation from a court. Simply living apart is not a "legal separation" no matter how long it lasts.

A legal separation is not the same as a divorce. A person who is legally separated is still married, and cannot remarry.

How is a legal separation different from a divorce?

In a divorce, a court makes the spouses single again. At the same time, it decides who gets certain property, who pays certain debts, where the children will primarily live, who will pay child support and how much, and whether one spouse will pay spousal support to the other and, if so, for how long. A legal separation does all of these things except make a married couple into single people. A person who is only legally separated is not free to marry again.

Why would someone get a legal separation instead of a divorce?

Some people want a legal separation to help them decide whether to

divorce--and the court decision protects them from each other's debts while they decide. Some want to divorce but have not lived in New Mexico long enough to do so; there is no time requirement for a legal separation. Some do not want to divorce for religious reasons. Some would prefer to divorce, but want to be able to provide health insurance to a very ill spouse.

How long do I have to live in New Mexico to be able to file for a legal separation?

There is no time requirement before a person can file for a legal separation. It is possible to move to New Mexico today and start a case for a legal separation tomorrow. In contrast, eligibility for a divorce requires that at least one spouse live in New Mexico for at least six months before filing for divorce. In both kinds of cases, however, the minor children of the marriage must have lived in the state for a minimum of six months before a New Mexico court can make a decision about custody.

Can my spouse keep me from re-marrying by getting only a legal separation instead of a divorce?

No. Either spouse can file for a divorce after the other has filed for a legal separation, so long as one spouse has been a resident of the state long enough.

How does a legal separation get changed to a divorce?

Unfortunately, it is necessary to file a separate case for divorce. Either spouse can ask the court for a change in the way the court handled property or debts or custody and support in the legal separation case.