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### FAQ Regarding Separation and Annulment Law

You may have a few options before divorce, such as separation or annulment. Here are some frequently asked questions about separation and annulment law:

#### **Is annulment law different than divorce?**

The short answer to this question is: in some ways no, annulments are no different than divorces, and in some ways yes, annulments do differ from divorces. Like a divorce, an annulment is a court order after a proceeding that essentially dissolves a marriage. However, unlike a divorce, an annulment has the legal effect of making it so the marriage never existed in the first place. Some people would rather have their marriage annulled, that is treated as if it never occurred in the first place, than to live with the stigma that they associate with divorce. There are other people that prefer annulments for religious reasons as well. Some churches and other religious associates do not allow a person to remarry that has had a prior divorce. In these situations, an annulment may allow that person to get remarried within their church.

There are various legal grounds that must be shown before an annulment can be obtained by a married couple. In general, to get an annulment, you will have to show at least one of the following reasons:

- **There was fraud or misrepresentation.** This could mean that one spouse lied about his or her ability to reproduce, misrepresented his or her age, or did not explain that they could not get legally married because they were still in a prior marriage.
- **One spouse concealed something from the other.** This could mean that one spouse did not inform the other of an addiction of some sort (drugs/alcohol/sex), a prior felony conviction or jail time, involvement in a violent gang, an ongoing criminal activity, a sexually transmitted disease or other health factor.
- **Inability or refusal to consummate the marriage.** This speaks for itself and refers to the inability or refusal of one spouse to have sexual intercourse with the other.
- **A simple but large misunderstanding.** One of the most common reasons for an annulment is a misunderstanding that one spouse wants to have children while the other does not.

If you can show one or more of the above reasons, you may be able to get a civil annulment of your marriage. If you are a member of the Roman Catholic Church, you may be able to get a "religious annulment" from the church after receiving a civil divorce through the state court system. By doing so, you will be able to remarry and have your new marriage recognized by the church.

Generally speaking, you have a better chance of having your marriage annulled if you have been married for only a short time. Indeed, a large majority of annulments are granted to marriages that have lasted only a few weeks or months. In these situations, it is easy to divide assets and property and there are generally no children that have to be considered for issues of custody, support or visitation. However, states do typically have laws and rules in place that govern annulments of long term marriages. These laws and rules will provide guidance for dividing property after an annulment as well as determining child custody, visitation rights and support obligations of the parents. Children whose parents have had their marriage annulled are not considered illegitimate by the law.

#### **If two people are married, can they be considered separated?**

In short, yes. However, there is much confusion that is associated with this simple word, "separated." Much of this confusion is due to the fact that there are four different types of separation:

- **Trial separation.** If a married couple decides to live separately (even if they are living in the same house) to see if they want to continue living separately, this is called a trial separation. If the couple decides not to get back together, the assets they accumulate during the trial separation, as well as the debts they incur, are normally considered as

jointly owned. Trial separations are generally not recognized by the law and are instead just a classification of a period of time during a couple's relationship.

- **Living apart.** If two spouses no longer live in the same residence, they are said to be living apart. Depending upon the state that you and your spouse live in, living apart could impact your property rights. For states that consider living apart as the first part of a divorce, assets accrued and debts incurred by the individuals during this living apart phase could be classified as separate property and not marital property. However, other states still consider this property to be joint, marital property until a complaint seeking divorce is filed.
- **Permanent separation.** If a couple finally decides to split up for good, this is often called a permanent separation. Permanent separations often follow trial separations where the spouses cannot reconcile their differences and wish to go different ways. In a majority of states, all property received and most debts incurred during a permanent separation are considered the separate property of the spouse that is responsible for the property or debt. However, there are some types of debts that are still considered joint property if incurred during a permanent separation. If debt is incurred for certain necessities, like providing for children, during a permanent separation, the debt will still be considered as joint property. However, permanent separation is still not normally considered to be a legal separation. Only if one spouse takes the other to court for support payments or custody will a separation be considered legal.
- **Legal separation.** As noted above, legal separation is one step beyond a permanent separation. Legal separation occurs when a couple splits up and seeks a court issued judgment for a division of property, child custody, support payments, visitation rights, but not for divorce. If payments are ordered in a legal separation, either for child support or for living expenses, it is generally called separate maintenance. Some states allow separate maintenance to be ordered even if litigation is still pending. Separate maintenance is often the basis for future alimony awards after divorce proceedings.

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