

Separation: Common Questions and Answers

The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your case.



Family law varies widely across states. This document attempts to address common questions and facts about separation agreements that are broadly applicable across the U.S., but the specific law in your state could vary. Always consult with an attorney for state-specific advice.

Q. What is a separation agreement?

A. A separation agreement is an agreement between two spouses that dictates certain obligations during the separation period and prior to a judge issuing a divorce decree. Separation agreements typically address matters such as division of property and debts; child custody, visitation, and support; and financial support. The separation agreement is not a divorce; it does not end the marriage. No law or regulation requires a separating couple to execute a separation agreement, though executing such a contract is highly recommended. Because of its significance, no one should sign a separation agreement without obtaining legal advice.

Q. Can anyone force me to sign a separation agreement?

A. No. A separation agreement must be voluntary. No one--not even a First Sergeant or Commander--can force you to sign one. Fraud, coercion, or mistake could void the terms of a separation agreement.

Q. What is the difference between a separation agreement and a property settlement agreement?

A. Generally, a separation agreement and a property settlement agreement are the same thing. Any difference between them is the scope of the agreement's terms. Both agreements allow spouses to privately settle marital details. The agreement may be limited to simply documenting the initiation of separation (some states require a minimum separation period before a divorce can be ordered). The agreement may be more complex, however, and describe issues of child custody, financial obligations, and distribution of marital property. The term "property settlement agreement" generally connotes a more robust and all-encompassing agreement which, oftentimes, is adopted by the court to become the foundation of the divorce decree.

Q. What if I want to change the terms of the separation agreement after signing it?

A. The signed separation agreement is a contract. Either spouse may ask to renegotiate the terms of the separation agreement, but it can only be modified if both parties agree to the new terms. Of course, a court can always order changes to the separation agreement.

Q. What happens to the separation agreement when I get divorced?

A. The separation agreement becomes void upon divorce and is replaced by the divorce decree. Very often, though, the judge will incorporate the separation agreement's terms into the final divorce judgment.

Q. What can a separation agreement do?

A. In the separation agreement, couples can:

- Divide property, both real and personal between them;
- Distribute military retired pay, pensions, and other benefits;
- Divide civilian retired pay, pensions, and benefits of a non-military spouse;
- Allocate responsibility for debts, though spouses should note that agreement to release a spouse from a debt does not necessarily mean the lender won't hold that individual responsible for the debt should a payment be missed; and
- Resolve issues involving child custody, visitation, and support.

Q. What can a separation agreement not do?

A. Spouses cannot bind a third-party in the separation agreement. Thus, banks or other creditors that oversee a joint account may still seek to reclaim debts from either spouse without regard to the terms of the separation agreement.

Finally, note that the separation agreement cannot bind the judge. The court will review the agreement for fairness and may change any term he/she sees fit. Regarding child custody, visitation, and support, the court will always consider the best interests of the child and adjust terms accordingly.