

Divorce v. Legal Separation in Michigan: A Quick Issue Check

When a marriage breaks down parties have two options: divorce or separate. In many states a couple can file for a legal separation as an alternative to a divorce, saving some from the religiously-awkward divorce. In Michigan, though, has no such legal separation. Instead, what it has is called Separate Maintenance and many of the issues that will arise are discussed below.

What is ‘Separate Maintenance?’

A Judgment of Separate Maintenance is virtually identical in every way to a divorce, requiring similar paperwork to be filed, the same grounds to be plead and much the same process to be followed. The only real difference is that with a Judgment of Separate Maintenance the parties remain technically married when the judgment is issued, whereas with a divorce they do not.

Property/Debts/Spousal Support

As it will in a divorce, absent an agreement from the parties the court will divide property, debts and other assets in the usual manner and if justified, may order spousal support.

Custody Rights

The procedure for custody never changes, whether it comes under a divorce, separate maintenance or if the parties were never married. In all cases it will evaluate the parties and make a recommendation based on the best interests of the child. Once custody is established the court will order parenting time and child support, as it would in a divorce.

Legal Effect of Separate Maintenance

The effect of Judgment for Separate Maintenance is the same as a divorce except that the parties remain married. Ownership of assets is determined and responsibility for debts are established. The only marked difference with the judgment is the parties remain married. However, a Judgment of Separate Maintenance need not be permanent. Indeed, if the parties reconcile the judgment could be vacated and if one should decide a divorce is warranted the judgment can be converted to reflect that.

Separation without filing

Parties are always free to separate without seeking a Judgment of Separate Maintenance and depending on the financial posture of the parties, this may be the best solution. However, for a separation without filing to work the parties must be

capable of dealing with one another fairly and honestly so as to separate assets, debts and custody of any children. However, unlike a Judgment of Separate maintenance or other custody action, the parties will have no custody orders to enforce should a dispute arise.

Practically Speaking

A Judgment of Separate Maintenance is a rare phenomenon. Because the process is virtually identical to a divorce and provides no real advantages, parties tend to opt for the divorce. Additionally, for a judgment of separate maintenance to be entered it requires both parties to agree to a Judgment of Separate Maintenance over a divorce, which is a rare occurrence.

Warning

One should always consult a licensed attorney before undertaking any actions.

Michigan Compile Laws § 552.7

Michigan Compile Laws § 552.19

Michigan Compile Laws § 552.23