

LEGAL SEPARATION



The State of South Dakota does not recognize a separate action for legal separations. Iowa and Nebraska, on the other hand, do have a formal process for couples who don't want to divorce, but rather, legally separate. The purpose of a legal separation may stem from religious beliefs (e.g. where the parties' religion does not support divorce); uncertainty (e.g. couples who are unsure whether they want to formerly dissolve their marriage may use a legal separation as a starting point); financial reasons, or other personal preferences or matters.

If a court orders a legal separation in Iowa or Nebraska, it is the functional equivalent of divorce, except the marriage itself is not legally dissolved. A decree of legal separation may address matters like division of assets and debts, child custody and visitation, child support, and potentially spousal support or maintenance.

In 2012, Nebraska passed a law allowing for legal separation to be Court-ordered without a hearing when: (a) both parties waive the requirement of the hearing and the court has sufficient basis to make a finding that it has subject matter jurisdiction over the legal separation proceeding and personal jurisdiction over both parties; and (b) both parties have certified in writing that they shall thereafter live separate and apart, both parties have certified that they have made every reasonable effort to effect reconciliation, all documents required by the court and by statute have been filed, and the parties have entered into a written agreement, signed by both parties under oath, resolving all issues presented by the pleadings in their legal separation proceeding. Neb. Rev. Stat. § 42-361.01.