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Legal Separation in Arizona

For some couples, a legal separation is necessary until they can negotiate the specifics surrounding finances, property and children. For others, a divorce is the most feasible option. In Arizona, the process of obtaining a legal separation or divorce is very similar. Legal separations are generally governed by A.R.S. Section 25-313. Legal separation determines the rights as well as responsibilities of the important aspects of a married couple's relationship, such as child custody, child visitation, debt and property ownership. Although a separation legally establishes rights, it does not divorce a couple. A husband and wife still have the same legal rights and obligations as if they were a married couple living together.

Complaint

In Arizona, both spouses must agree to the separation before a decree will be granted. Couples must file either a "Petition for Legal Separation Without Children" or a "Petition for Legal Separation With Children" with the Superior Court of Arizona in the county in which they reside.

Separation Agreement

A separation agreement is a legal binding contract signed by spouses, which is intended to resolve property, debt and child related issues. This can be a very complex and detailed document depending upon the unique situation of the marriage. Many spouses consult an attorney to provide this or they decide to prepare their own.

Grounds

Filing for legal separation follows the same process as a divorce action with the exception that the court must find that either the marriage is irretrievably broken or that "one or both of the parties desires to live separate and apart." A.R.S. Section 25-313(3). Instead of a Petition for Dissolution of Marriage, one files a Petition for Legal Separation. The Petition should include the information specified in A.R.S. Section 25-314. Couples must acknowledge a "desire to live separate and apart" if they would like a legal separation or that their marriage is "irretrievably broken" if they desire a divorce. In cases that involve children, the parties must indicate if "significant" domestic violence has or has not occurred to obtain joint custody.

Residency

Either spouse must have lived in Arizona for the 90 days preceding the filing of the petition. If children are involved, they must have lived in Arizona for six months prior to filing. In a covenant marriage, a spouse cannot file for legal separation. If one party does not want the legal separation, the court may change the proceeding to a divorce proceeding.

Procedure

The petitioner completes the petition for legal separation (with or without children and files it with the court.

The forms include the child custody and parenting form as well as the child support worksheet. These must be submitted to the appropriate court where the case is filed. The spouse must attend a Parent Information Program.

Children

Custody and visitation are handled similarly in Arizona whether the couple is separating or divorcing. Children that are either born to or adopted by the party must be listed on the respective petition along with their names, date of birth and address. The pregnancy of the wife must be indicated as well. If spouses agree on custody matters, they may indicate the desire to share custody of the children or one parent obtaining sole custody with visitation rights to the non-custodial parent. The court under the Arizona Child Support Guidelines normally determines Child support orders.

Division of Debts and Property

Division of debts and property is treated the same in a legal separation or a divorce. Couples indicate on their petition the assets and liabilities acquired before and during the marriage. They must also determine if one party is responsible for paying the marital debts or if both parties will share the responsibility. Division of property is treated in much the same way. Once the type of property and its value are determined, the decree states the division of assets and liabilities.