

## Legal Separation Agreements

By Rick Fernambucq &  
Charles H. Dunn

In the practice of matrimonial law a “divorce a mensa et thoro” or a “divorce from bed and board” is more commonly known as a legal separation. The statutory authority for the granting of a legal separation is located at § 30-2-40, Code of Alabama (1975). A legal separation differs from an absolute divorce in that the marital status between the parties is not terminated or dissolved. A decree of legal separation shall be entered if the jurisdictional requirements are met, one of the two no-fault grounds is met or one or both parties desire to live separate and apart, and, if applicable, the court has followed Rule 32 of the Alabama Rules of Judicial Administration. The grounds for a decree of legal separation are the same as in a divorce. The terms of the legal separation can be modified only if the parties agree by consent or by court order upon proof of a material change in circumstances.

After a legal separation has been entered either party can subsequently initiate a divorce action. The court shall order that the terms of the legal separation relating to alimony or property settlement be incorporated into a final divorce decree *only* if agreed to by the parties. Otherwise, in its discretion the court may consider the terms of the legal separation in structuring its award of alimony and property upon final dissolution.

A legal effect of a legal separation may be to permit the parties to live separate and apart but to preserve certain rights that would otherwise be terminated upon a final dissolution of the marriage. It is an available remedy in situations in which a divorce is not feasible or practical. Some instances when it may not be feasible, practical or in the best interest of a party to obtain an absolute divorce would be those dealing with availability of medical insurance or possible entitlement to retirement benefits. Upon entry of an absolute divorce, the medical coverage that was once available to a spouse and maintained as a benefit of the other spouse’s employment may cease within a certain time period. This can create significant problems in such cases where the spouse being dropped from medical insurance coverage has extensive medical problems. As to retirement matters, benefits to spouses may become more substantial the longer the

marriage lasts. This would extend to Social Security benefits and to retirement benefits. For reasons such as these, a legal separation may be pursued as opposed to an absolute divorce in order to allow continued medical insurance coverage or continued benefits from a spouse's Social Security or retirement.

When preparing a legal separation agreement, there are several paragraphs and provisions which may need to be inserted depending on the particular facts and circumstances. Depending on the particular situation, it may be essential for the legal separation agreement to include the following language and provisions:

- \* that the terms of the legal separation relating to alimony or property settlement be incorporated into a final divorce decree;
- \* that the earnings or accumulations, including the retirement benefits, of each party received after the entry of a legal separation are the separate property of the party acquiring the earnings, accumulations or benefits, and shall not be considered by the court in a subsequent divorce action;
- \* that a spouse may convey his or her real estate without the signature of consent of the other spouse;
- \* that each spouse shall waive all rights to inheritance from the other spouse pursuant to § 43-8-72, Code of Alabama (1975); and
- \* that costs of court shall be taxed or assessed to one party.