

WHAT IS A LEGAL SEPARATION BY AGREEMENT OF PARTIES?

A Separation Agreement is **not** something the Court grants. There is no application form. You can't apply for one. If you don't know where your spouse is, or if they won't agree, you can't create a Separation Agreement.

A Separation Agreement is a contract between you and your spouse, where you both agree to the following: live separate and apart, who is responsible for paying what bills, whom the children will live with, if child support will be paid, what visitation arrangements will be, what happens to the marital property, or anything else you want to include. Someone must prepare this for you if you can't do it yourself, usually an attorney. In some cases, special wording will be needed in order for your Separation Agreement to be the basis for divorce.

An attorney can help you draw up the Agreement. In complicated cases where there may be real estate, a pension, child custody, debts, or tax questions, etc., an attorney's advice and assistance are strongly suggested. Since a poorly worded agreement can have serious unexpected consequences for the parties, particularly in complicated cases, it is strongly recommended that you seek an attorney's advice and assistance. The Court can't recommend an attorney. For a lawyer referral, contact your local Bar Association, the New York State Bar Association's Lawyer Referral and Information Service at (800) 342-3661, or refer to the list of lawyers in the yellow pages of your local phone book.

Both parties must agree to the entire Separation Agreement and their signatures must be acknowledged in the presence of a notary public, although both don't have to appear before the notary at the same time, or even use the same notary. The Separation Agreement becomes legally binding when signed by both parties and notarized and can be enforced if the terms are violated by the other spouse. If you wish, you may file it with the County Clerk's Office in the county where either of you currently live. There is a filing fee of \$5.00.

An Agreement can't be back dated to take into consideration the time you were separated before signing the Agreement. You are legally separated **after** the Agreement is signed and notarized by both parties.

One year after signing and notarizing the Agreement, you or your spouse may file for a divorce based on your Separation Agreement. This is called a "conversion" divorce (Domestic Relations Law §170[6]), in which no grounds based on default or legal reasons to grant a divorce are necessary. The \$5.00 fee paid to file the Agreement will be credited to the divorce filing fees if you file in the same county where your Agreement was filed. You must file the Agreement at the time you file for the divorce, if you have not already done so.

In some instances, you may want to ask the judge to include or incorporate some or all of the terms of your Agreement into the divorce judgment. Some judges permit or require this while others do not. Incorporation of the terms usually makes it easier to enforce the terms later, but the judge may require that the Agreement have specific wording.