

LEGAL SEPARATION versus DISSOLUTION OF MARRIAGE WHAT'S THE DIFFERENCE?

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Not much in terms of the process, but at the end of a legal separation, the parties remain married (*at least in a legal, technical sense*), although they are separated both physically and financially. The two processes are otherwise identical in every way, except that at the end of the legal separation process, the marital relationship is not terminated. All other issues relating to children and property are resolved in the exactly the same process as a divorce. But in a legal separation, the Decree of Legal Separation issued at the end of the process means the parties are still married, and are therefore not free to re-marry. In contrast, the Decree of Dissolution issued at the end of the divorce process means the parties are not married anymore, and therefore each is free to re-marry if they choose.

For some individuals, the difference between a legal separation and a divorce has important religious significance, or perhaps satisfies the needs of various family pressures. In any event, the steps required for both are identical, and the only difference is that the marriage is not terminated in a Legal Separation, while the marriage is terminated in a Dissolution/divorce.

A child conceived during a marriage and born after a divorce, is presumed to be the child of the marriage. What about a child born after a Decree of Legal Separation is issued?

Yes, that's that same for a legal separation as it is for any divorce. If a child is born to the wife within 300 days after a Decree of Legal Separation is issued, Colorado Law establishes a rebuttable presumption that the husband is the father (CRS §19-4-105 (Presumption of Paternity)). Colorado public policy generally favors legitimacy, as expressed in the presumption of paternity accorded to a man married to the mother at the time of the child's birth. Any such presumption of paternity may be rebutted by clear and convincing evidence, such as proof of impotency or non-availability, or by a court decree establishing paternity by another man. The same rebuttable presumption would apply, for the same 300-day time period. If the husband is the father, all child support obligations apply, regardless of whether it was a divorce or a legal separation involved.

What does it take to change a Legal Separation into a divorce? Again, not much. During the divorce proceedings, the shift from a legal separation to a divorce can be done at any time prior to the final decree, even on oral motion. If a legal separation is requested by either party, the court will issue the decree in that form, unless the other party objects, in which case a regular Decree of Dissolution of Marriage will be issued.

When a Decree of Legal Separation is issued, after six months has passed, either party may file a one-page form requesting to convert from one to the other, which is *jdf-1321 (Motion to Convert Decree of Legal Separation to Decree of Dissolution)*. Proper notice to the other party is required, and the court shall convert the decree (CRS §14-10-120 (*Decree*)). The additional court fee to convert a Decree of Legal Separation to a Decree of Dissolution is \$105.00.