

Legal Assistance Practice Points: Military Separation and Divorce Maryland Style: Part 1

by Yosefi Seltzer, Legal Assistance Attorney

Unfortunately, divorce is commonplace for far too many military families. The first step for many is to legally separate. Different states define “legal separation” differently. Although some states allow spouses to continue residing in the same household or even to periodically continue a physical relationship with each other, Maryland is traditional: to be legally separated, it requires both spouses to live under separate roofs and to cease a physical relationship.

Grounds for divorce vary across the 50 states. Some states are referred to as “no-fault” divorce states, meaning, neither party has to prove grounds for divorce (adultery, cruelty of treatment or incarceration are common grounds for divorce). One of the spouses merely has to assert there are unspecified “irreconcilable differences”. Once again, Maryland is more traditional. There are several grounds for divorce in Maryland: adultery, desertion for more than 12 months, cruelty of treatment, insanity, imprisonment for at least 12 months of a minimum 3 year sentence, two year separation, excessively vicious conduct. These must be proved through evidence (eyewitness testimony, video or audio recordings, proper admission of documents or statements, etc.) which usually means the party pursuing such a divorce must hire an experienced attorney to present the case. Typically, even if one or more of these bases for absolute divorce is present, the parties choose to pursue a divorce under the grounds of “voluntary separation.” This requires the parties to reside separate and apart (not under the same roof) for at least 12 months and not have a physical relationship for the same amount of time. Maryland courts are strict in the sense that if the couple lives apart for 11 months, but has a one-night fling, the 12 month separation clock will restart. If you intend to pursue a voluntary separation divorce in Maryland, you must strictly abide by these provisions if you want your divorce to be finalized as soon as possible.

Couples in Maryland could separate for 12 months and ultimately secure a voluntary separation divorce without a written agreement, but it typically makes sense for them to execute a written separation agreement when they begin the separation term. A separation agreement is a voluntary contract between the parties that divides up property (household goods, investments/savings/retirement plans and land or houses) and debts, determines who will be responsible for paying which ongoing bills and can also serve to spell out spousal support and child custody, visitation rights and support obligations. The separation agreement will govern the separation period, meaning, if one of the parties violates its terms, the other can seek recourse from a judge.

Moreover, the agreement helps lay the foundation for the final divorce because the parties will usually resolve many of the points of contention between them. If the couple have children together, it is particularly beneficial to have a separation agreement to spell out visitation rights, custody and support obligations. Otherwise, the parties may end up battling over who gets the kids on Christmas Eve or which parent must pay for the child’s piano lessons.

Stay tuned to the next issue for the conclusion of the Separation Agreement discussion to include child support and custody matters, division of property and jurisdictional matters.

Should you have any additional questions regarding divorce issues, you may call the Fort Meade Legal Assistance Office at (301) 677-9762 to make an appointment to speak with an attorney.