

Legal separation basics

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Learn about the differences between getting a divorce and a legal separation and why you might choose one over the other.

What is a legal separation?

This type of court case can give you everything that a divorce does, **except for** ending the marriage. You'll stay legally married. Filing for separation instead of divorce may be a good option for you if, for example, your religion keeps you from getting a divorce, but you want the other relief available, such as a parenting plan, child support, and property and debt division.

If you just want to get divorced, you **don't** need to file for legal separation first.

The process for getting a legal separation is much like divorce and uses many of the same court forms, including if you're the person who's received separation papers and must respond to them. But you don't need to wait 90 days before finalizing, like you do when you file for divorce. You simply need to wait to see if your spouse responds within 20 days of receiving your court papers.

Answer a few questions on **Get Family and Safety Forms** to get the right forms for your situation.

Here's how legal separation is **different** from divorce:

- Your marriage doesn't end.
- Social Security (<https://secure.ssa.gov/poms.nsf/lnx/0500501150>) still treats you as married when figuring out benefits.

- You can only legally remarry if you change (convert) the separation order to a divorce order.

A legal separation is different from being physically separated. Being physically separated just means that you no longer live together. You don't need to file for legal separation to live apart.

What if I've changed my mind after filing for separation and want a divorce instead?

It depends on where you're at in the process.

- **If your case isn't final (a judge hasn't signed a Legal Separation Order yet):** You can file a new summons and petition for divorce and have them delivered to your spouse (served on your spouse). You can file this as an "amended petition" in the same case number as your legal separation case. You must still wait 90 days to finalize your case.

If your spouse said they wanted a divorce in their Response to your legal separation petition, you don't need to file a new summons and petition for divorce. Your spouse's response should be enough to change the case to a divorce.

- **If a judge already signed a Legal Separation Order:** You can change (convert) a legal separation order to a divorce order after **6 months**. Either spouse can file a request (a motion) to change it (<https://www.courts.wa.gov/forms/documents/FL%20Divorce%20251%20Motion%20to%20Co>). If the request is made properly, the judge must sign the order converting the legal separation to a divorce (<https://www.courts.wa.gov/forms/documents/FL%20Divorce%20253%20Order%20Converting>). The rest of your legal separation orders, such as any parenting plan and child support order, will still be good (will stay in effect).

I want a separation but my spouse wants a divorce. Can I stop the divorce?

Probably not. If you file for legal separation, but your spouse puts in their Response that they want a divorce, the judge will probably grant the divorce. To get a divorce, one spouse only needs to show the marriage is *irretrievably broken*. This means there's no hope of you getting back together.

I don't want to be responsible for debts my spouse takes on after we separate. What should I do?

You can file for divorce (or for legal separation) and file a motion for Temporary Family Law Orders.

Can I get an annulment?

Sort of.

You can file a Petition to Invalidate Marriage (FL Divorce Form 205)

(<https://www.courts.wa.gov/forms/documents/FL%20Divorce%20205%20Petition%20to%20Invalidate>

and related forms. In this type of case, you ask the judge to grant you an **Invalid Marriage Order**. This Order declares that your marriage could not legally exist (was **void**) from the day it started. The Invalid Marriage Order cancels the marriage and makes it as if it never happened.

Only a very few cases will fit the legal definition of an invalid marriage. The judge will give you a declaration of invalidity if you can prove at least one of these:

- One or both of you were under age 17 when you got married.
- You were both under age 18 when you married. You didn't have parental or court approval to get married.
- One or both of you were already married to someone else when your marriage took place.
- You're too closely related by blood (closer than second cousins).
- One of you couldn't consent to the marriage, because of mental incapacity or alcohol or drugs.
- One of you used force or threats (called duress) or fraud to make the other marry you. In this situation, only the spouse who was the victim of the duress or fraud can ask the judge to declare your marriage invalid. Try to talk to a lawyer if you want to file this kind of case, or if you've been served with such a petition.
- You haven't chosen to keep living together as spouses after turning 18, or becoming able to consent, after the duress stopped, or after you discovered the fraud.

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