

Are we legally separated?

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Dear Ask the Attorney:

My husband and I broke up and have not lived together for more than 5 years but we have never filed any papers or saw any attorneys. There are no children in this relationship. Are we legally separated?

J.S.

Our guest blogger is Cimmerian A. Morgan, Esq., an associate in the matrimonial and family law department of Einhorn, Barbarito, Frost & Botwinick, PC Mr. Morgan has negotiated and drafted many Separation Agreements over the years for his clients.

Dear J.S.,

The answer is no. However, the reason is not that you have failed to meet the standard for a “legal separation.” Rather, the reason is that there is technically no such thing as a “legal separation” under New Jersey law.

Contrary to popular belief, there is nothing in New Jersey law which defines a “legal separation.” Unlike a divorce, which can be awarded by a New Jersey Superior Court pursuant to a statute and case law, Courts do not grant “legal separations,” and there is no statute governing legal separations.

However, it is possible, and in fact common, for spouses to separate from each other and have the terms of their separation set forth in a legally enforceable written agreement. Such agreements typically provide for the rights and obligations of each spouse during the period of the parties’ separation. Those rights and obligations often include the payment of spousal support, custody of

children, child support, equitable distribution of marital assets, etc. Many Separation Agreements are prepared and executed in contemplation of a future divorce and with the intention that the Separation Agreement will be incorporated into a Final Judgment of Divorce at some date in the future

If you are interested in formalizing the terms of your separation, you might consider entering into a Separation Agreement. It is not necessary that either spouse file a Complaint for Divorce or even desire a divorce before both spouses can enter into a Separation Agreement. Further, unless the Separation Agreement states otherwise, it can and will remain enforceable regardless of whether a divorce is ever obtained.

You should retain a qualified matrimonial attorney to negotiate and draft your Separation Agreement to ensure that is properly done. Doing so can save you a lot of time, money, and angst in the future should you decide to obtain a Final Judgment of Divorce.

“Ask the Attorney” is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.