

## **Common Questions & Answers on Separation Agreements**

**Q.** What is a Separation Agreement?

**A.** A separation agreement is an agreement between a husband and wife when they separate from each other. Once signed, it becomes a binding contract between them. The separation agreement will resolve such matters as division of property and debts, child custody and support. It is not a “temporary paper” drafted just to allow a spouse to return to the states. It contains binding and – in most cases – final promises. A separation agreement must be voluntary. No law or regulation requires a separating couple to execute a separation agreement. No one can compel a spouse to sign a separation agreement, not even a First Sergeant or commander. An "agreement" means that both parties sign voluntarily. Coercion, fraud, undue influence, or lack of knowledge will void the terms of a separation agreement.

**Q.** What is the difference between a Separation Agreement and a Property Settlement Agreement?

**A.** These are documents that serve similar purpose depending upon the divorce rules of the individual states. Most states provide that a married couple may get divorced if they have lived separate and apart for a specified period of time. If that period of lengthy (one year), the husband and wife may want to spell out how they will live during this period in a Separation Agreement. In fact some states will reduce the separation time period if the husband and wife have completed a Separation Agreement. If the required period of time is relatively short (90 days), the husband and wife will not need the Separation Agreement, but may want to enter into a Property Settlement Agreement to resolve those issues and be able to simplify the divorce action. Many of the same issues can be addressed in either document.

**Q.** What if I want to change the terms of the Separation Agreement?

**A.** Since the signed Separation Agreement is a contract, the husband and wife are free to renegotiate the terms of the Separation Agreement. However, it can be modified only if both parties agree to the new terms. Of course, a court can always order changes to the Separation Agreement, especially in areas affecting children (see discussion below on what a Separation Agreement cannot do).

**Q.** What happens to the Separation Agreement when I get divorced?

**A.** That will depend upon the law of the state where you get the divorce. Very often, the Separation Agreement will be made a part of the final divorce judgment in some fashion. If this occurs, the terms of the Separation Agreement will be treated as if they were a part of the court order. This means that you may no longer change the terms by a simple “new” agreement of the parties. Instead, you will have to go back to court to change the terms. This means that if you want to change the custody of John, Jr. from the mother to the father and let the father stop paying child support while he has custody of John, Jr. you’ll have to go back to court to effect that change.

**Q.** What can a Separation Agreement do?

**A.** A Separation Agreement can let you settle many of the issues relating to the marriage. You can divide the property between the parties (though you may have to re-title some property (automobiles, bank accounts, investment accounts) so that the transfer is legally effective. Division of property may also include dividing the military retired pay (or the civilian retired pay of the non-military spouse). You can allocate responsibility for joint debts arising from the marriage (though as discussed below, this is only effective between the husband and wife. Unless you can get the lender to release one party, the lender can continue to look to both the husband and wife to repay the debt.) And you can resolve issues involving child custody and child support (though as noted below, the court may revisit these issues to insure that the custody and support are in the best interests of the child).

**Q.** What can't a Separation Agreement do?

**A.** Since it is a contract between spouses, it cannot bind third parties (such as banks or finance companies) that have not signed it. Thus if the Separation Agreement requires that the husband pay for the car loan that is in both names, the wife remains liable for that loan unless the lending company releases her from that obligation. If the husband does not make the payments, the wife will still be responsible for the payments. Her remedy would be to go after the husband for breach of contract.

A Separation Agreement cannot legitimize adultery. Sexual relations with a person who is not one's spouse is adultery, and no "dating clause" will serve to make legal something that is illegal. Most separation agreements do, however, contain a clause that allows each spouse to be left alone as if single and unmarried and that forbids each spouse from harassing, molesting or interfering with the other. Again, this is not a license for adultery.

A Separation Agreement cannot bind the court in areas relating to child custody and child support. The court will always look out for the best interest of the child and will be able to adjust the terms of the Separation Agreement to insure that the child's best interest are protected. If the Separation Agreement says that the non-custodial parent will not pay any child support, the court will probably refuse to accept such a provision and instead calculate the appropriate level of child support using the state guidelines and substitute that amount into any resulting court order.