

## **SELF-HELP CENTER**

### **LEGAL SEPARATION BY AGREEMENT OF PARTIES**

A Separation Agreement is not something the Court grants. There is no application form. You cannot apply for one. However, you can obtain a judgment of separation and live separate and apart pursuant to the judgment.

If you do not know where your spouse is, or if he/she will not agree, you cannot create a separation agreement.

A Separation Agreement is a contract between you and your spouse, in which you both agree to live separate and apart, who will be responsible for paying what bills, decide with whom the children will live, if one party will be paying child support to the other, and what the visitation arrangements will be, what becomes of the marital property, or anything else both of you want to include. Someone must draw (write) this up for you if you cannot do it yourself, usually an Attorney.

Both parties must agree to the entire separation agreement and their signatures must be acknowledged in the manner required for a deed to be recorded in the presence of a Notary Public (although you both do not have to appear before the Notary at the same time, or even use the same Notary).

An Attorney can help you draw up an Agreement. In complicated cases (where there may be real estate, a pension, child custody, debts, or tax questions, etc.) an Attorney's advice and assistance is strongly suggested. Since a poorly worded agreement can have serious unexpected consequences for the Parties, particularly in complicated cases, it is strongly recommended that you seek an attorney's advice and assistance. The court cannot recommend an Attorney. For a lawyer referral, contact your local Bar Association, the New York State Bar Association's Lawyer Referral and Information Service at (800) 342-366 1, or refer to the list of lawyers in the yellow pages of your local phone book.

The Separation Agreement becomes legal (binding) and can be enforced by you or your spouse if the terms are violated by the other spouse as soon as it is notarized. You may file it (if you wish) with the County Clerk's Office in the County where either of you live now. There is a filing fee of \$210.

An Agreement cannot take into consideration any time during which you have already been separated. You are only Legally Separated after the Agreement is Notarized by both parties.

One year after the date of notarization you or your spouse may file for a divorce based on your separation Agreement. This is called a "conversion" divorce (DRL 170.6), in which no fault grounds (legal reasons to grant a divorce) are necessary except for the Agreement. The \$210 fee paid to file the Agreement will be credited to the divorce filing fees (if you file in the same County where your Agreement was filed). You must file the Agreement at the time you file for the divorce, if you have not already done so.

In some instances, you may want to ask the judge to include (incorporate) some or all of the terms of your agreement into the divorce judgment. Some judges permit or require this others do not. Incorporation of the terms usually makes it easier to enforce the terms later.