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The North Carolina Lawyer Referral Service (LRS) can refer you to a lawyer near you. LRS lawyers charge no more than \$50 for up to a 30-minute initial consultation. **This is not a pro bono referral service.** We do not make referrals to lawyers who work for free.

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## THIS IS THE LAW

### SEPARATION AND DIVORCE

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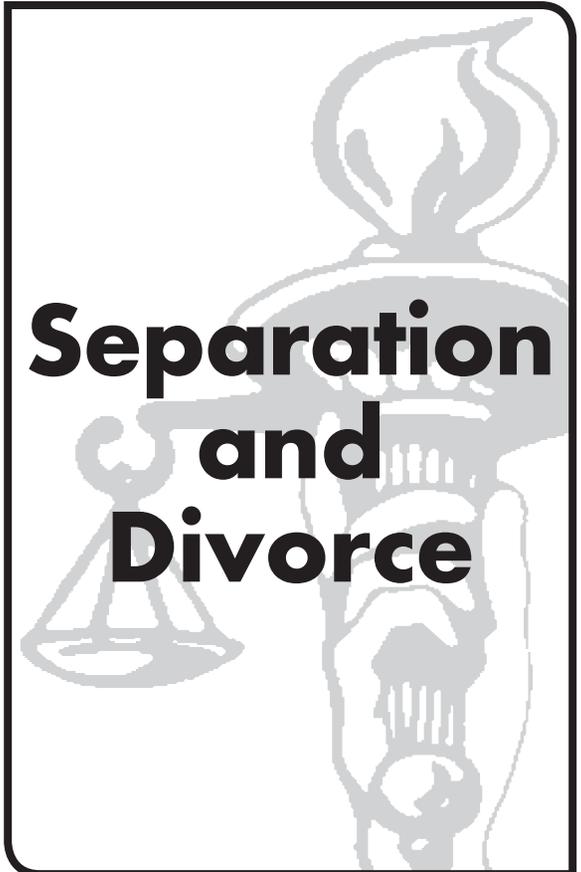
**North Carolina Bar Association  
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North Carolina Bar Association

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## **SEPARATION AND DIVORCE**

Sometimes marriages do not work out as planned. When that happens, couples separate and later divorce. The purpose of this pamphlet is to explain the law of separation and divorce by answering frequently asked questions on those matters.

**Do I File for Separation?** • No. Separation happens once husband and wife begin living separate and apart and at least one of them has the intent to remain separate and apart.

**Do I Need an Agreement or Court Order to be Legally Separated?** • No. You are legally separated once you begin living separate and apart and at least one spouse intends to remain that way.

**Is it OK if We Continue Living in the Same House?** • No. Living separate and apart means you must be living in separate residences.

**What are the Grounds for Divorce?** • There are only two grounds for divorce: 1) Separation for One Year; or 2) Incurable Insanity of One Spouse and Separation for Three Years. The vast majority of marriages are dissolved based on the ground of separation for one year. In order to get divorced, you must have been separated for one year and at least one spouse must have had the intent to remain separate and apart. In addition, one of you must have been a resident of North Carolina for at least six months. Fault is not necessary to obtain a divorce.

**What Do I Need to Do to Get Divorced?** • You have to file a complaint (lawsuit) asking for a divorce. You cannot file a divorce complaint until after you and your spouse have been separated for one year. You have to serve your spouse with the complaint. Service is usually accomplished by certified mail or Sheriff. Then you will need a hearing in front of a judge. The

judge has to enter a Judgment declaring you divorced. You are not divorced until the judge signs a Judgment and the clerk file stamps it.

**Does it Matter Who Files for the Divorce?** No. The person who files for the divorce is responsible for filing the appropriate papers, paying the filing fee and getting the hearing scheduled. However, there is no advantage to filing first.

**How Long Does the Divorce Process Take?** The length of the process varies based on how long it takes to get service of your spouse and how soon the clerk schedules the divorce hearing. Generally, it should take approximately 60 days after the complaint is filed.

**What is the Effect of a Divorce?** • There are many important effects of a divorce. First, the entry of a divorce cuts off your right to alimony and property division. If those claims have not been resolved in a valid and binding Agreement or properly filed with the court prior to the entry of the divorce judgment, they are lost forever. The loss of those claims can be devastating. Second, the entry of a divorce changes your tax filing status. Third, the entry of a divorce enables you to remarry. Fourth, the entry of a divorce cuts off your rights to inherit from your spouse. Fifth, it can alter the way your house is owned if you own a house with your spouse. Consulting an attorney is an important way to make sure your rights are protected.

**How Do I Change My Name Back?** • You may include a request to change your name in your divorce complaint. The name change can be included in the divorce judgment. You cannot change your name to any name in this process. You may resume your maiden name. You may also resume a former married name under certain circumstances. In the alternative, you may make a request to resume a former name after the divorce has

been entered by filing the appropriate application with the clerk, and paying a fee.

**What About Custody, Child Support, Alimony, and Property Division?** • These issues are complicated and beyond the scope of this pamphlet. You may resolve these issues by agreement with your spouse prior to or after your divorce. There is no requirement that you be divorced before you resolve these issues, and similarly, these issues can be resolved after your divorce is entered. If you and your spouse are not able to agree, you can try mediation or arbitration as alternatives to court. If those options do not work for you, you will have to file a complaint (lawsuit) seeking relief in court. Then you will have a hearing, which will result in a court order. Regardless of which approach you choose, you should consult an attorney first.

**What is Mediation?** • Mediation is when a neutral third party helps facilitate an agreement between the parties. The mediator does not make decisions, and is not a judge. The parties make the decisions, but the mediator helps them along. One of the benefits of mediation is that the parties have control over the outcome, and can negotiate for specific provisions. Mediators cannot testify later in court, if you do not settle. If the parties are able to resolve the issues such as child custody, child support, alimony and property division at mediation, it will have the effect of not going to court on those issues.. You do not necessarily need a lawyer for mediation, but we recommend it. Without an attorney, you could lose or waive rights you did not know you had.

**How Do I Find an Attorney?** • You may contact the N.C. Lawyer Referral Service; contact information is provided on the back panel of this pamphlet and on the website of the North Carolina Bar Association ([www.ncbar.org](http://www.ncbar.org)). If you cannot afford an attorney, you should contact the Legal Aid of North Carolina office serving your county.