

What We Know

ARTICLES & INSIGHTS

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Navigating the Separation Process in North Carolina

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If you and your spouse are considering divorce, it is important to understand North Carolina's separation requirements. North Carolina law requires that a husband and wife be separated for one year prior to obtaining an order for divorce. Although this condition sounds straightforward, individuals often have questions about the [separation](#) requirements under North Carolina law.

When does the one-year separation period begin to run?

The one-year period commences when you and your spouse begin living in different residences, with at least one spouse having the intent to live apart from the other. If you and your spouse are living at the same address, you are not separated. Even in cases where you may be habiting opposite sides of the house, the fact that you share one address means you're not separated. If you are residing in separate homes, you must remain separated for one year and one day to become eligible to obtain an order for absolute divorce.

What happens if we reconcile during the one-year separation period?

If you and your spouse reconcile during the one-year separation period, the separation is considered to have ended. A reconciliation does not pause the separation. Instead, the separation must start over in the event that a reconciliation is not permanent. North Carolina courts consider the "totality of the circumstances" to determine if the parties have reconciled. As such, an isolated incident of intimacy or sexual intercourse during the separation period generally does not constitute a reconciliation.

Do I need a written separation agreement?

North Carolina does not require a written separation agreement to fulfill the one-year separation requirement. North Carolina courts do not require proof of separation beyond parties' testimony unless there is a dispute between the parties as to when the period of separation began. Although a written separation agreement is not required, it is likely in your best interest to have a separation agreement drafted and signed.

Why should I have a separation agreement and what is its purpose?

No divorce is the same. Separation agreements help divorcing couples set expectations and terms of their divorce. You can address every issue pertaining to the end of your marriage in the separation agreement except the divorce itself. The separation agreement can address how the marital property will be divided, if alimony will be paid and how much, how child custody and visitation will be arranged, how much child support will be paid, and other issues relating to the divorce.

Drafting a separation agreement involves communication and negotiation with your spouse. Although communication between spouses may be difficult during the early stages of the separation, a separation agreement often makes the divorce process less expensive and less antagonistic for both parties. By coming to an agreement on most, if not all, of the terms relating to the divorce, parties can avoid extensive legal fees associated with litigation. If the parties have an effective separation agreement in place when their one-year separation period has expired, the only thing left to do is file for a final divorce.

Do I need to hire an attorney to separate from my spouse?

Although you do not need an attorney to separate from your spouse, it is in your best interest to hire an attorney to represent your interests when negotiating and drafting a separation agreement. A separation agreement is a legally binding contract, meaning once you sign it; you are bound to its terms. Even if you represent yourself during the drafting and negotiation of the separation agreement, it is especially important to have an attorney review your separation agreement before you sign the contract. Remember, if your spouse has hired an attorney, that attorney represents your spouse's interests alone. Divorce is an emotional and sometimes overwhelming process, which is why it's important to have an objective third party by your side to help protect your rights and interests.

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