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Legal separation vs. divorce: Reviewing the pros and cons

If you and your spouse are having difficulties but you're not 100-percent certain about divorce, it may be worth discussing the option of "legal separation" as an alternative. This is a formal arrangement backed up by a court order or written agreement that allows a couple to stay legally married but with enforceable provisions in place to address spousal and child support, custody and visitation.

Some couples favor legal separation because of their religion. Certain faiths prohibit or discourage divorce and a legal separation allows a couple to live separate lives without losing the financial security of marriage. For example, if a couple is legally separated and one spouse passes away, the surviving spouse retains the right to receive Social Security and pension payments.

Other couples might consider legal separation as a way to determine whether their marriage is irretrievably broken. When a couple divorces, it's permanent. But a legally separated couple has a chance to assess life apart while having important conversations about custody and support issues. They can reverse the separation if they are able to resolve their differences. If they can't, their separation agreement might form a useful framework for a quicker, more efficient divorce. In addition, couples may feel more secure about their decision to divorce if they have attempted a legal separation period.

Another potential benefit to legal separation is that, at least in



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some states, once a couple is legally separated any new property either spouse acquires and ongoing income that each spouse is receiving does not become marital property and thus is not divided as part of a marital estate. This may work to your advantage or disadvantage, depending on your circumstances, but it's something you would want to discuss further with an attorney.

Health insurance coverage is yet another reason some couples

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Preparing for an estate planning meeting

When setting up a will and other estate planning documents, many clients are concerned about making the most efficient use of their attorney's time.



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While these meetings are bound to raise some questions you hadn't thought of, there are things you can do to prepare.

The more thought you put into certain goals and wishes (including those below), the easier it is for your attorney to create documents that reflect your intentions:

Executor: Think about who would serve as your executor or personal representative charged with settling your estate.

Healthcare proxy: If you become incapacitated, who do you trust to make medical decisions for you?

Financial power of attorney: Similar to the healthcare proxy, this is the person who acts as your financial agent if you become incapacitated.

Guardian for your minor children: If you have children, or are planning for children, it's a good idea to name a guardian and a backup in case the first is unable or unwilling to serve. Separately, who will manage any inheritance you leave for this child?

Personal belongings: Consider whether there are certain items (e.g., heirlooms, cars, jewelry, artwork) that you would like to be given to someone specific.

Distributions to young beneficiaries: Consider how beneficiaries will receive their share of your estate. If assets are passing to surviving children, do you want them to receive their share upon turning 18? Would you rather a trustee provides specified access to the funds until the child reaches a specified age?

Equalization: If you provided a substantial gift to a child in your lifetime (e.g., you helped them through college or paid for a wedding) that you have not yet provided to other children, do you want to provide an equalization mechanism as part of their inheritance distributions? Similarly, if your adult children have very different financial situations, will that impact how you want your assets distributed?

Distributions to adult beneficiaries: Do you have adult heirs who might benefit from having their share protected in case of divorce or creditor claims? Let your attorney know if any of your beneficiaries have special needs, have legal or credit problems, suffer from addiction, or seem likely to divorce in the future.

Charitable bequests: Do you wish to provide gifts to any nonprofits as part of your estate?

These are big questions, and you may not have all the answers right away. But don't let that be a reason to put off scheduling an appointment. Your attorney can provide suggestions and help you think through all of your available options.

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Legal separation vs. divorce: pros and cons

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might consider legally separating. That's because if they are still married, they can both remain on one spouse's insurance plan. If they get divorced, the loss of health care coverage for the uninsured spouse could then become part of the post-divorce cost calculus. It's worth noting, however, that some employer-sponsored health plans don't permit a legally separated spouse to stay covered, so check the fine print of your plan.

The biggest consideration in favor of divorce, on the other hand, is that a legally separated couple can't move on with their lives the same way a divorced couple can. A legally separated person is still married and thus cannot get married to someone else. If one spouse wants to remarry, then he or she has to



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go through the process of a divorce.

The bottom line is that legal separation isn't appropriate for everybody. But in states where it's permitted, it's an option worth discussing with your attorney.

How might liens impact your PI claim?

If you have been hurt and someone else may be responsible, it's very important to talk to a personal injury attorney about your rights. A good attorney will also be able to counsel you on the issue of "liens."

A lien is a claim a third party may have on a portion of your recovery. For example, doctors, hospitals and other health care providers who treated you for your injuries might have a claim on part of your recovery if they haven't been paid. Similarly, your health or auto insurance company may have a lien if they have paid for your care. Additionally, government health insurers like Medicaid and Medicare could have a claim.

But don't assume that just because there may be a lien that it's not worth bringing a case. Your attorney may be able to minimize the bite they take from your settlement or jury award, particularly if the lienholder is overreaching.

For example, in 2016, a woman named Jeanette Peterson went to the emergency room at a hospital in suburban Detroit complaining of a headache she had been suffering since the previous night. She also told the physician's assistant she was feeling "heaviness" in her chest and shortness of breath.

An EKG allegedly showed some abnormalities, as did lab results, but later in the day Peterson told the PA she felt better and she was discharged without further treatment. A month later, Peterson suffered cardiac arrest that left her with brain damage. Her guardian brought a medical malpractice claim on behalf of the hospital, which settled. But after the trial judge entered final

judgment, Medicaid stepped in and tried to lay claim to a significant portion of the recovery.

Medicaid's asserted lien represented 65 percent of the settlement, cutting deep into what Peterson's family had hoped would compensate her for her pain and suffering while helping cover her future care.

The family argued that Medicaid was entitled only to a pro rata share of the settlement. In other words, because they settled for 21 percent of the total value of Peterson's case, Medicaid was entitled to only 21 percent of its lien.

The judge ruled in the family's favor, holding that Medicaid could only recover the parts of the settlement allocated to past medical expenses, not portions attributable to future expenses or pain and suffering. He also sanctioned the agency for bringing a "frivolous" motion for relief, finding that it should have known better. The Michigan Court of Appeals upheld the ruling.

Hospitals and private medical practices also assert liens on recoveries, usually when the patient has no insurance and is getting billed directly. In some states, they can approach an injured patient who they suspect may have a legal claim and ask them to sign a waiver agreeing that they do not want Medicaid, Medicare or their insurer billed for their care. That enables the hospital to reach into the patient's recovery for the full cost of its care rather than satisfying itself with Medicaid, Medicare or a health insurer's lower reimbursement rates.

If you are presented with such an agreement, talk to an attorney before signing anything and compromising part of a potential recovery.



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Anti-money laundering law halts anonymous homebuying

A new federal law targets wealthy buyers who purchase high-priced homes and commercial properties through anonymous shell companies. The law is designed to combat money laundering and stop the flow of illicit money into U.S. real estate.

The federal Corporate Transparency Act, which passed on January 1, 2021, requires limited liability companies (LLCs) to disclose the "beneficial owner" behind the entity. The information will be stored in a federal database accessible to banks and law enforcement, but not to the general public.

Delaware, New Mexico and Wyoming are among the states that allow buyers to register anonymous

LLCs. These shell companies are used by wealthy investors and celebrities to hide their identities.

While LLCs provide legitimate business benefits, including limiting owner liability, they can also be used to cloak investments. Previously, bad actors could launder and stash illegal money in high-value assets, hidden from law enforcement.

Beyond the crime-fighting benefits of the law, housing advocates say it could lower housing costs in certain markets, such as New York and Miami. That's because the measure could make it harder for bad actors to buy up units in luxury high-rises that they never intend to occupy just for the sake of storing cash.



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Employees working remotely out-of-state pose risks

More than a year into the COVID-19 pandemic, telecommuting is the new normal for many employers who never would have considered such an arrangement in the past, and many telecommuting

employees are doing so from a state other than their employer's home state.

Employers with out-of-state remote workers should consult with a lawyer to discuss associated legal risks and

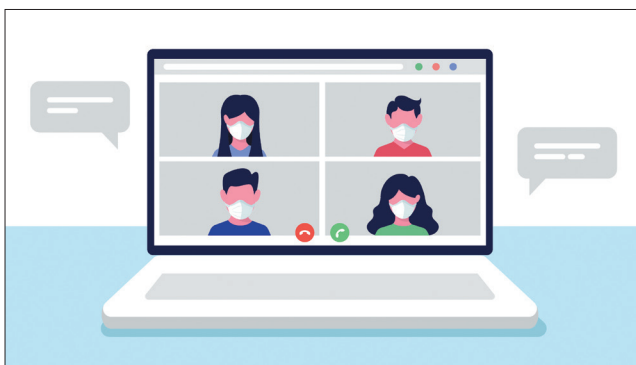
develop policies to address them.

First, employment laws such as wage-and-hour protections; paid and unpaid family, medical and sick leave requirements; unemployment and workers' comp requirements; and even rules about what must appear on paystubs can vary from state to

state. For example, California requires an employer to pay overtime to an employee who works more than eight hours in any one day. Meanwhile, Oregon employers only need to pay employees for any hours worked beyond 40 hours in a week. Let's say an employee working remotely from California for an Oregon employer works nine hours per day for four days straight. An employer that fails to pay overtime could find itself in court for violating California overtime laws.

Additionally, these arrangements might require employers to rethink their benefits packages. If an employer is using a regional health insurer, this may not adequately meet the needs of out-of-state remote workers. Meanwhile, an employer with unionized workers may need to take a close look at its collective bargaining agreement and how it defines such things as "principal place of employment."

The best way to address all these situations is to take a proactive approach by figuring out exactly where each employee is working and consulting an attorney to draft policies for remote work.



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