

Think Financially, Not Emotionally®

# DIVORCE

## FINANCIAL PLANNER FOR WOMEN

Volume I



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## Deciding Between Divorce and Separation

It's not unusual these days for couples to decide to live separately for a time before actually getting divorced, using this "trial separation" to decide whether or not they want to pursue formal legal action. Moreover, many couples ultimately decide to simply remain separated rather than divorce, even when they know their marriage is fractured beyond repair.

Why would you make this choice? What reasons could there possibly be to live apart from a spouse and yet remain married? In many cases, opting for a legal separation rather than a divorce boils down to money. Sometimes, it simply makes good financial sense.

Legal separation might be a good financial option for you under the following circumstances:

- If your marriage lasts at least 10 years before you divorce and you do not remarry, you might be able to receive spousal retirement benefits based on your ex-husband's Social Security benefits. If you've already been married eight or nine years, you might want to consider separating until you pass the 10-year threshold.
- If remaining on your husband's health insurance is of paramount importance, you *might* be able to continue receiving benefits from your husband's employer by separating but not divorcing. However, some employers' health insurance providers view a legal separation the same as divorce and will deny benefits to a separated spouse. (Note: Some people [particularly those with what could be deemed "pre-existing conditions"] used to remain legally separated so they could stay on their spouse's health plan. Under the Affordable Care Act—commonly known as "ObamaCare"—pre-existing conditions are no longer a factor in determining eligibility for health care. Even so, you might not want to change health insurance plans or doctors if you don't have to.)



### IMPORTANT THINGS TO KNOW

There is an important distinction between merely living apart and legally separating. A legal separation is nearly the same as a divorce except that you remain married. Assets are divided, alimony and child support are paid, and so on. But note that a number of states don't allow or recognize a legal separation. Consult with your divorce attorney to determine what the laws are in your state.



## IMPORTANT THINGS TO KNOW

Be aware that if you continue to file your taxes jointly with your spouse, you will be legally liable should your husband engage in any financial shenanigans. (See Chapter 11, “Filing Separate Tax Returns,” for more information.)

- By separating but not divorcing, you *might* be able to continue to file joint income tax returns, thereby typically saving on your tax bill. But be aware that whether or not you are considered married or unmarried—and, therefore, able to file jointly or not—will depend on complicated laws at both the state and federal levels.
- By separating but not divorcing, you can retain certain service-related benefits if your husband is in the military.
- By separating but not divorcing, you can pool certain resources with your husband. For example, maintaining two separate households can be prohibitively expensive, so you might decide to continue to reside under the same roof but in “his” and “hers” areas of the house. However, understand that this type of living arrangement can have complicated repercussions, affecting things such as how alimony is treated for tax purposes.

Of course, you might decide to remain married but legally separated for other, non-financial, reasons. If, for example, you come from a religious background that frowns on divorce, legally separating may be an acceptable alternative.



## IMPORTANT THINGS TO KNOW

Depending on the length of your marriage, you may be eligible for certain military benefits even if you divorce. Divorced spouses are eligible for military pension benefits if the marriage lasted at least 10 years, and PX and commissary shopping privileges are retained if the marriage lasted 20 years.

## What to Do

Here are some questions to ask yourself when deciding whether to separate or pursue actual divorce:

	Yes	No
Have you been married for less than 10 years?	<input type="checkbox"/>	<input type="checkbox"/>
If so, are you willing to wait the requisite time before divorcing in order to be eligible for Social Security spousal benefits?	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to remain under your husband's employee benefits package in order to afford health insurance?	<input type="checkbox"/>	<input type="checkbox"/>
If so, will your husband's employer continue to carry you on the company's group policy if you are legally separated?	<input type="checkbox"/>	<input type="checkbox"/>
If you legally separate, will you still be considered married under the laws of your state for the purpose of filing income taxes?	<input type="checkbox"/>	<input type="checkbox"/>
If your husband is in the military, will you retain your military spousal benefits if you legally separate?	<input type="checkbox"/>	<input type="checkbox"/>
Do your finances dictate that you remain in your marital home, albeit in a separate living space within the dwelling?	<input type="checkbox"/>	<input type="checkbox"/>
Does your religion frown on divorce?	<input type="checkbox"/>	<input type="checkbox"/>
Are there other reasons you should separate instead of move forward with a divorce?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "yes" to one or more of these questions, you might consider legally separating instead of pursuing an actual divorce.



## FROM THE EXPERTS

If you do decide to live apart from your husband beyond a reasonable trial period, you should obtain a legal separation agreement—a legally binding agreement between you and your husband to resolve issues such as division of assets and debt, alimony/spousal support, child support, and visitation.

“Although separating certainly can have benefits, living apart from your spouse without a formal written separation agreement can put you at risk. If you separate, you still remain liable for your spouse’s debts and legal issues in which they are involved, notwithstanding the fact that you are not living together,” says Marilyn Chinitz, Partner at Blank Rome, who has represented such clients such as Tom Cruise and Michael Douglas. “A written separation agreement would appropriately address those issues. . . . Informal separations without a document detailing the terms of your separation . . . can cause difficulties down the road leading to litigation.”

## Where to Learn More

Legal Separation or Divorce: Which is Better Financially?: <http://www.forbes.com/sites/jefflanders/2012/01/10/legal-separation-or-divorce-which-is-better-financially/>

Separation: <http://www.divorcedex.com/divorce/Separation-1111.shtml>