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# Divorce vs. Legal Separation: Understanding the Differences

In Wisconsin, couples having serious problems in their marriage have two main legal options to consider: divorce or legal separation. While both options involve the division of property, deciding custody and placement (if children are involved), and financial support, they are legally different and have different effects under Wisconsin law.

This article breaks down the key differences between divorce and legal separation in Wisconsin using information from leading Wisconsin family law firms and official statutes.

## Legal Definitions

- **Divorce:** A divorce is a legal process that ends a marriage<sup>1</sup>.
- **Legal Separation:** A legal separation is a process that separates a couple's finances but does not end the marriage. The couple remains legally married.

## Remarriage

- **Divorce:** After it is official, both people are considered single and can remarry after a six-month waiting period<sup>2</sup>.
- **Legal Separation:** Because the couple remains legally married, neither person can marry someone else.

## Name Change

- **Divorce:** Either member of a divorcing couple can ask the court to let them return to using their maiden name (the last name they used before the marriage)<sup>3</sup>.
- **Legal Separation:** A legal separation does not allow either spouse to go back to using their maiden name.

## Reconciliation

- **Divorce:** Divorced couples have 6 months after the divorce is final to reconcile and ask the court to vacate (cancel) the divorce judgment by filing a [Stipulation to Vacate/Revoke the Judgment of Divorce or Legal Separation](#)<sup>4</sup>.
  - **Note:** If a couple remarries each other at any time after they have divorced, they can ask the court to cancel the divorce judgment by filing that same document<sup>5</sup>.
- **Legal Separation:** Legally separated couples can reconcile at any time after the legal separation is final and cancel their Judgment of Separation<sup>6</sup> by filing a [Stipulation to Vacate/Revoke the Judgment of Divorce or Legal Separation](#).
  - **Note:** If reconciliation does not happen, a judgment of legal separation can be changed to a divorce judgment:  
At any time by joint request of both spouses<sup>7</sup>.
    - They would file a [Stipulation Converting Legal Separation to Divorce](#) along with the [Divorce/Annulment worksheet](#) and an [Order on Stipulation Converting Legal Separation to Divorce](#).
  - After 1 year, either spouse can petition the court to change the legal separation to a divorce, and the court must grant it.
    - They would file a [Motion Converting Legal Separation to Divorce](#), the [Divorce/Annulment Worksheet](#), and an [Order on Motion Converting Legal Separation to Divorce](#).

## Benefits

### Supplemental Security Income (SSI)

If you get SSI benefits each month, the amount is based on your financial need. The Social Security Administration (SSA) looks at what you own and how much money you get, including your spouse's income and any help you get with things like rent or food. Your SSI can go up or down if your income or what you own changes.

- **Divorce:** If your spouse's income was lowering your SSI benefit, your payment may increase after divorce.
  - **Caution:** If you start receiving spousal maintenance, the SSA will count that as income. If the spousal maintenance is high, it could cause your SSI benefit to decrease.
- **Legal Separation:** It's important to report a legal separation to the Social Security Administration (SSA). They will then decide if the separation changes whether you can get benefits or how much you get, based on your personal situation.

The Social Security Administration rules say (20 CFR § 416.1835):

“Information we need about separation or end of marriage after you become eligible for SSI.

(a) If you and your spouse stop living together. If you and your spouse stop living together, you must promptly report that fact to us, so that we can decide whether there has been a change that affects either person's benefits. You must also answer questions such as the following. If you cannot answer our questions you must tell us why not and give us whatever information you can.

- When did you stop living together?
- Do you expect to live together again?
- If so, when?
- Where is your husband or wife living?
- Is either of you living with someone else as husband and wife?”

## **Social Security Disability and Retirement Insurance (SSDI)**

SSDI benefits are usually based on an individual's own work record. So a divorce or legal separation would not automatically change the benefits. However, divorce can affect eligibility for benefits based on an ex-spouse's record, which requires a marriage of at least 10 years (and certain other conditions). Because of this law, people who have already been married for seven or eight years might choose legal separation instead of divorce. Then, after they reach 10 years of marriage, they can change the separation into a divorce.

## Military Benefits

Similarly, there are some military benefits for ex-spouses that require at least a 10-year marriage. For that reason, couples may choose legal separation over divorce if they are close to the 10-year threshold of their marriage.

## Taxes

You are considered single by both the Internal Revenue Department<sup>8</sup> and the Wisconsin Department of Revenue<sup>9</sup> if you have a judgment of divorce or legal separation granted by a judge.

There is no difference in tax treatment between a divorce judgment and a legal separation judgment.

## Property Division, Support and Custody

In both legal separation and divorce:

- Marital property is divided – Wis. Stat. § 767.61
- Spousal support (maintenance) can be ordered – Wis. Stat. § 767.56
- Child custody and placement must be determined based on the best interest of the child(ren) – Wis. Stat. §§ 767.41, 767.511 \*767.511 is Child Support, and this bullet-point is custody/placement)

The steps are almost the same whether you choose separation or divorce. Both need you to share all your financial information, fill out legal papers, and get orders from the court.

## Overall

There are several reasons why a couple might decide to get a legal separation rather than a divorce:

- **Health Insurance:** One spouse may want to keep receiving health or insurance benefits through the other.
  - **Caution:** Some employers and insurance plans do not allow a legally separated spouse to stay on the plan. Check with the provider and plan documents.

- **Religion:** Religious beliefs might not allow divorce but may allow legal separation.
- **Reconciliation:** Some spouses may not be ready to end the marriage for good and want time apart while still leaving the door open to getting back together. Legal separation gives them that option, and they can reconcile at any time.

Just like some people prefer legal separation, there are also good reasons why divorce might be the better choice for you:

- **You want to remarry.** In Wisconsin, you must wait six months after your divorce is finalized before you can legally marry someone else. With legal separation, you're still married and can't remarry unless you first get divorced.
- **Reconciliation is unlikely.** If you're confident that there's little chance of getting back together with your spouse, divorce may be a cleaner, less stressful option in the long run.
- **There are serious issues in the relationship.** If your marriage involves problems like substance abuse or domestic violence, it's important to think carefully about how that impacts you and your family. Divorce may offer a clearer path forward, especially when considering your well-being and the role your spouse may play as a co-parent.

## Summary Table: Divorce vs. Legal Separation

Feature	Divorce	Legal Separation
Ends marriage	Yes	No
Can remarry	Yes (after 6 months)	No
Name change	If requested	No
Stay on other's health insurance	No	Possibly
Canceling judgement possible	If reconcile within 6 months; otherwise must remarry	Yes
Property division	Yes	Yes
Custody/placement orders	Yes	Yes
Affects benefits	Possibly	Possibly

## Conclusion

Just like some people prefer legal separation, there are also good reasons why divorce might be the better choice for you:

You want to remarry. In Wisconsin, you must wait six months after your divorce is finalized before you can legally marry someone else. With legal separation, you're still married and can't remarry unless you first get divorced.

Reconciliation is unlikely. If you're confident that there's little chance of getting back together with your spouse, divorce may be a cleaner, less stressful option in the long run.

There are serious issues in the relationship. If your marriage involves problems like substance abuse or domestic violence, it's important to think carefully about how that impacts you and your family. Divorce may offer a clearer path forward, especially when considering your well-being and the role your spouse may play as a co-parent.

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