

**CAN A DEPENDENT SPOUSE WHO IS SEPARATED FROM
THE SUPPORTING SPOUSE RECEIVE FINANCIAL SUPPORT
AND/OR EQUITABLE DISTRIBUTION WITHOUT A
DIVORCE?**

Many people ask if New Jersey allows for “legal separation” when they do not, yet, know if they want to have an absolute divorce. The fact is that in New Jersey there is no provision in the law for “legal separation” but there is the right for a dependent spouse to seek support for herself and the children and, in some circumstances, equitable distribution, where no

**WHILE THERE IS NO ABILITY TO
SEEK “LEGAL SEPARATION” IN NEW
JERSEY, A DEPENDENT SPOUSE
WHOSE SUPPORTING SPOUSE HAS
LEFT THE HOUSE HAS THE RIGHT
TO SEEK SPOUSAL SUPPORT AS WELL
AS CHILD SUPPORT AND IN SOME
CASES, EQUITABLE DISTRIBUTION
EVEN WHEN NO ABSOLUTE
DIVORCE IS BEING SOUGHT.**

absolute divorce is being sought.

If the parties have separated and the supporting spouse has moved out of the marital residence leaving the supported spouse without knowing if the household bills will be paid or if she will be able to make ends meet, she can file a Complaint for Separate Maintenance. (for purposes of simplifying this article, the term “she” will be used for the dependent spouse but either spouse who is dependent can seek relief.)

A **Complaint for Separate Maintenance** is often used in cases where neither party for divorce and the supporting spouse has moved out of the house leaving the other spouse with no means of support but the supported spouse does not want to seek a divorce for religious or other purposes. This Complaint will result in an Order compelling the other party to continue to

pay spousal support, maintain the house and other basic needs of the dependent spouse.

Unfortunately, for the dependent spouse, however, under this arrangement, the only relief that will be granted is related to support. She cannot seek equitable distribution or other property rights or transfers. Thus, if there is property such as a house, bank accounts, securities and investments, or pension in either the name of the supporting spouse alone, or in joint names of the parties, the dependent spouse is not going to be entitled to have any portion of the property divided and transfer into her own name and control.

As a result, the party whose name is connected with the assets will be able to transfer them, spend them or put them in someone else’s name and the dependent spouse (if the assets are in the name of the other party) will not have any control over them as long as the parties remain married. Depending upon the way joint assets are held, it is, also, possible for one party to take control of all of them to the disadvantage of the other party. In the alternative, some joint assets, such as a jointly owned house, cannot be sold or transferred without both parties’ agreement.

That means that if the supporting spouse races to the bank and withdraws all the funds in from an account that either party has access to, the dependent spouse may not even be able to access joint funds. If the supporting spouse transfers, spends or even gambles away funds in his name, alone, the dependent spouse may have no recourse to collect her share of those assets.

Of course, the dependent party, also, has the right to access joint accounts, as well, but if there is a need for support, it usually is because one party has control of the marital estate.

Therefore, it is often necessary to decide if separate maintenance is the appropriate option when a dependent spouse wishes to have the property that was acquired by either of them during the marriage divided so that she can take control of her share.

In cases where the parties want to divide the assets and determine support without obtaining an absolute divorce such as when one party needs to remain on the medical insurance policy of the other party for a period of time or for some other reason, and neither party intends to remarry immediately, it is possible to file a **Complaint for Divorce from Bed and Board**.

In that case, the parties undertake the same process as they would for an absolute divorce. They exchange financial information about assets and income. Neither party is supposed to withdraw or transfer assets in their own names during the process. They prepare a Marital Settlement Agreement by consent or a Judgment is granted by a Court after a trial. They will be considered divorced for all purposes **except** that neither can remarry until the Judgment for Divorce from Bed and Board is converted into an Absolute Judgment of Divorce.

The parties generally agree that the Divorce from Bed and Board will either be converted to an absolute divorce after a specified period of time or upon the request of either party in future. While the Divorce from Bed and Board exists, not only is the dependent spouse going to receive support but equitable distribution can take place and property divided so that the dependent spouse will have control over her own share of marital assets, immediately. If the parties do not agree on a specific time period to convert the divorce or one party refuses to comply with the agreement, the other party has the right to seek the conversion from the court and the absolute divorce **will** be granted.

Finally, in the event that the parties are not going to divorce immediately but there is a need for child support and a determination of custody for the children because one party has moved out of the marital residence leaving the other with the children, a

Complaint for Custody and Support (otherwise known as a “non-dissolution” complaint) can be filed.

In this case, the dependent spouse does not seek support for herself but for the children which means that she has to be capable of contributing toward her share of the expenses of the family in the physical absence of the other spouse. This type of action is more commonly filed in circumstances when the parties are not married but have children in common. It can, however, be filed by married parents, as well, if they have not decided to divorce but need to determine custody and insure that both parties are contributing to the children’s financial well-being.

In a non-dissolution case, as in the separate maintenance situation, no equitable distribution is awarded.

Obviously, there are advantages and disadvantages to remaining married but separated; however the limited rights of parties to receive property in these options may outweigh the interest of remaining married for an indefinite period of time while living apart. At the same time, if someone does not feel ready to obtain an absolute divorce or there are other social or religious factors that make it personally unreasonable or improper to file for divorce, New Jersey does not allow one party to simply move out of the house, retain control over all the assets and leave the other party destitute even though there is no such specific legal action for “legal separation” in New Jersey.

DEBORAH A. ROSE, ESQUIRE, *is a certified matrimonial attorney and a divorce mediator who has been practicing law for over 30 years and whose offices are in North Brunswick, New Jersey.*

850 Carolier Lane, North Brunswick, NJ 08902
(732)821-3055
deb@darosepc.com