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Breaking Up: Your Finances in Legal Separation

by Danielle Dresden

There's no easy way to end a relationship.

For married couples, it's even harder. The legality and intermingled finances of marriage mean that even during the emotional turmoil of a breakup, you need to make practical decisions.

Many of those decisions will be financial, complicating an already stressful situation. But regardless of how you feel about money matters, you owe it to yourself to consider your finances.

Good marriages may be made in heaven, but good divorces and separations are made by people who face facts.

"In order to make smart financial decisions, you have to put your emotions on the back burner," explains Jeffrey A. Landers, New York, author of ["Divorce: Think Financially, Not Emotionally: What Women Need To Know About Securing Their Financial Future Before, During, and After Divorce."](#)

Some couples choose separation, rather than divorce, seeing it as a sort of "middle ground," according to Lili Vasileff, co-author with Laura Campbell of ["The Ultimate Divorce Organizer."](#) Vasileff also is president emeritus of the Association of Divorce Financial Planners and president and founder of Divorce and Money Matters, LLC, Greenwich, Conn.

But *is* separation middle ground? "Based on her 24 years as a certified divorce financial analyst, Vasileff says 80% to 90% of the time couples obtaining a legal separation do get divorced. "Once that's all on the table," and financial issues are made clear through discovery, Vasileff says, "it's very hard to take it back." The process also seems to have an emotional impact. "When financial reality is apparent and addressed, it makes it less scary for individuals to accept transition and plan forward for a post-divorce life," Vasileff explains.

This means you should approach legal separation as carefully as you would divorce. Separation agreements frequently serve as the blueprint for a final divorce settlement, so don't agree to anything temporarily that you couldn't live with permanently.

Informal separations don't protect finances

"The most common route is, people separate, but they don't do it legally," Landers says. "When you do that, you're not getting protected legally. If you're going to be separated for more than one to two months, you need a legal document."

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Johnny Carson reportedly said, "The difference between a divorce and a legal separation is that a legal separation gives a husband time to hide his money."

Carson misstated the distinction but his key point is valid. "The risk is pretty high if you don't have a formal, written agreement," Vasileff notes.

People don't always behave well during a break-up. "Friendly divorce" doesn't have to be an oxymoron, but hostility is common and it's frequently expressed with a sock to the old bank account.

Without a legal separation, a spiteful or careless ex can run up bills and draw down your marital property. "You, as the other spouse, may not be aware of this, but it could come back to affect you negatively," Landers says.

Spouses may damage the other's credit rating, hide assets, or change beneficiaries on longstanding policies. "You have no enforcement without a written, legal separation, which is a legal order and a contract," Vasileff says. "You do not have the power of the law behind you."

A legal separation document should identify and assign a couple's financial interests, including:

- Income
- Property
- Credit union and bank accounts (cash and savings)
- Credit card accounts
- Brokerage accounts
- Debts
- Insurance policies
- Retirement and pension funds

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The separation document also should address alimony and child support, and parenting issues, such as custody and visitation.

"From a financial perspective, there's very little difference between a legal separation and a divorce," Vasileff says. "It's not equivalent to a divorce or dissolution and recognizes the possibility that the couple may reunite. It does not terminate a marriage, and so does not allow the parties to remarry."

"Basically, you're doing the exact same thing you would in a divorce, going through assets and debts," Landers says. "The difference is, you're still married."

Why partners postpone divorce

"In general, people seek legal separation to separate their financial identities," Vasileff says. Emotions also can come into play, such as a reluctance to face the finality of divorce. Other reasons couples prefer legal separation to divorce include:

- Staying on a spouse's health-insurance policy
- Lengthening the marriage to become eligible for spousal Social Security benefits
- Reducing taxes by filing joint returns
- Qualifying for military family benefits
- Religious, cultural, or moral objections

Landers says maintaining access to a spouse's employer-sponsored health insurance is one of the most common reasons couples don't divorce.

However, Vasileff points out, "The problem is nowadays most employers are catching on." Contact insurers and employers to ascertain their policies regarding spousal participation in health insurance and pension plans if you're considering legal separation.

Qualifying for potential [Social Security benefits](#) also encourages separation. "If you've been married less than 10 years but you're really close [to that threshold], then if you don't divorce you may have the choice of earning Social Security benefits based on your work record or 50% of the benefits of the higher wage-earning spouse," Landers says.

This can be important for women, since they typically earn less than men and may spend time out of the work force, according to Landers, who specializes in this topic at his Bedrock Divorce Advisors, LLC.

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Identify separation specifics

Divorce laws vary by state. Some states don't recognize legal separation, so make sure you know what laws apply to you. Key objectives for a legal separation agreement include:

- Identifying and determining distribution of assets and responsibility for debts
- Settling child custody issues
- Settling alimony and child support issues
- Documenting both parties' intentions
- Establishing the parties' ability to monitor adherence to the agreement
- Updating and designating beneficiaries
- Ensuring agreements comply with Internal Revenue Service rules
- Making sure no one waives spousal rights unknowingly

Separation and divorce redefine a relationship's legal and financial context; they don't end it. You and your ex still will have contact, especially if you have children. A fair legal separation can give you a solid financial footing—and that's a good way to start the next chapter of your lives.

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