

How to file an uncontested legal separation in Illinois

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The Self Help Legal Center

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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer,

Look for these symbols to tell you when to:



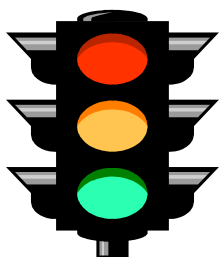
STOP!

You need legal representation or advice to continue.



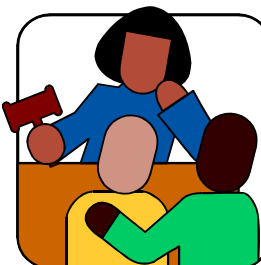
USE CAUTION!

This is a complicated step so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

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Warning to all readers



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Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll free: 877-342-7891

For additional information, you may visit their website at:

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

Coordinated Advice and Referral Program for Legal Service

serving Cook County

312-738-9200

Will County

Serving Will County

815-727-5123

Who these people are



Judge:

The judge is the person who presides over the courtroom. In most cases, including divorce cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people of pending or upcoming court cases or hearings. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.



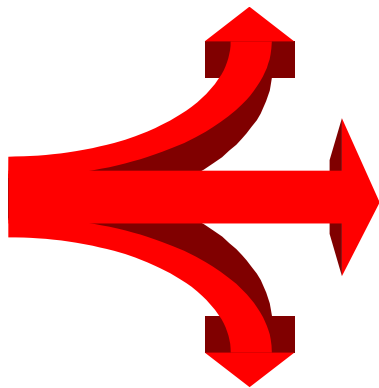
attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



mediator:

A mediator is someone who can meet with you and the person with which you currently have a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you make a decision. In some counties, mediation is required in certain types of cases, including custody.



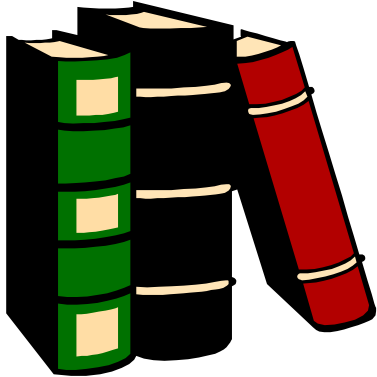
Order of Protection

If you want a legal separation because you are concerned about physical, mental, or other abuse by your spouse, you should get an order of protection because unlike an order of protection, a legal separation will not protect you from abuse.

For assistance in getting an order of protection, contact your nearest domestic violence shelter. You can find their number in the Yellow Pages.

Simplified Divorce Procedure

If you or your spouse reside in the State of Illinois, you have been married for less than 8 years, your combined assets are worth less than \$10,000, your combined income is less than \$35,000, neither party has a gross income of more than \$20,000, you have no minor (below 18) children of your marriage, and the wife is not presently pregnant by the husband, you may qualify for an easier, simpler method of divorce called the Illinois Simplified Divorce Procedure. Please contact the Self Help Center for more information and the necessary forms.



Disclaimer: Please Read !!



The following is a list of publications which discuss the issues of legal separation. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular book will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

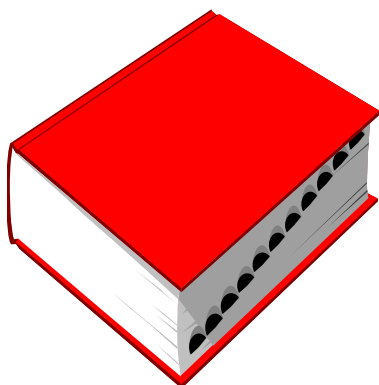
How to Draw Up Your Own Peaceful Settlement Agreement with Your Spouse: The National Marital Settlement by Benji O. Anosike

Separated and Waiting by Jan Northington

Family Law Dictionary by Robin D. Leonard and Stephen Elias

The American Bar Association Guide to Family Law

The Rights of Families by Martin Guggenheim, Alexandra Dylan Lowe, and Diane Curtis



alimony (maintenance)

Financial support paid to one spouse by another. This support is not for the children, but, rather is to maintain the standard of living for the receiving spouse. These forms allow you to ask for maintenance.

circuit

The judicial system in Illinois is divided into Circuits. Each circuit defines a particular geographic area in Illinois.

child support

This is what the non-custodial parent pays to the custodial parent to help support his or her child. The amount of child support is set by law.

custody

The person who makes the decisions in the child's life regarding issues of health care, education, religion, and lifestyle. It is not who has physical control over the child or where the child resides.

joint custody

When two people share custody. (see custody)

judgment

A decision or order of the court.

jurisdiction

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a subject. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state.

motion

A written or oral request to the judge after a lawsuit has been started (see petition).

What these legal words mean

marital debt

Generally, debts acquired after the date of a marriage and before the date of a legal separation.

marital property

Generally, property bought after the date of a marriage and before the date of a legal separation.

non-marital debt

Generally, debts acquired before the date of a marriage or after the date of a legal separation.

non-marital property

Generally, property acquired before the date of a marriage or after the date of a legal separation.

notary public

A person who verifies that a signature on a document. The notary public does not verify the content of the document itself.

petition

A written request to the court. A petition usually starts a lawsuit.

pro-se

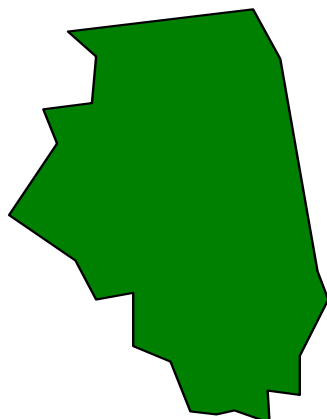
A person who is not represented by an attorney.

visitation

The period of time when the non-custodial parents gets to visit with his or her child.

Summary of the law in this area

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The law which governs most of the area of legal separation in Illinois is the Illinois Marriage and Dissolution of Marriage Act. It can be found in Act 5 of Chapter 750 of the Illinois Compiled Statutes. The specific legal citation is 750 ILCS 5/401-413.

The difference between a divorce and legal separation:

In a divorce, the marriage is legally over. In a separation, it is not. Unlike a divorce, there is no assignment of blame and a spouse needs no grounds for a separation. As long as you are living apart or plan to be living apart and reconciliation is unlikely, then a legal separation should be granted.

The difference between a physical and legal separation:

A legal separation is different than a physical separation because in addition to not living together (physical separation), the parties have initiated a lawsuit in court to resolve certain issues. These issues can be custody of children, marital debt and property, child support and maintenance. A legal separation can also affect your estate planning (wills, inheritance), so you should seek the advice of an attorney on these matters before you file anything in court.

How the court decides if a legal separation should be granted:

To get a legal separation in Illinois you have to reside in Illinois for more than 90 days; you have to live separate or apart from your spouse; and it cannot be your fault that you are separating. While it is not required, at the time of the legal separation, other issues are resolved including debts, property, custody of child(ren), visitation, support, and maintenance. For definitions of these terms see "What these legal terms mean" earlier in this packet.

How the court decides who should get sole or joint custody:

The judge will decide who will get custody of the children of a marriage. Parents, however, are encouraged to try to agree on the custody issue and when they do, their agreement is presented to the judge for his/her approval. In determining whether to approve an agreement or make a decision between competing parents for custody, the judge uses the standard of "the best interests of the child." In determining what is in the "best interests of the child", the judge will look at many factors including: the child's wishes, the parent's wishes, child's interaction and relationship with parents and siblings and other persons of interest, where the child has lived, adjustment to community and school, health, and domestic violence. The specific legal citation for this is 750 ILCS 5/602.

If the parties have a joint parenting agreement, the court will make sure that the agreement is not only fair and equitable to the parents, but also that it is in the "best interests of the child."

How the court decides how much child support a noncustodial parent should pay:

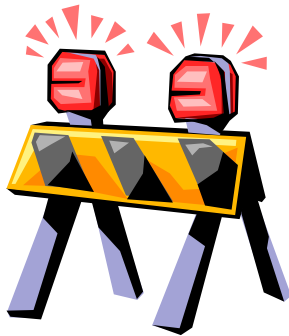
How much child support a supporting parent pays from his/her net (after taxes) salary is determined by statute. The current rates are: 1 child - 20%, 2 children - 28%, 3 children - 32%, 4 children - 40%, 5 children - 45%, 6 or more children - 50% These are guidelines and a judge can go above or below them with good cause. The specific legal citation for this is 750 ILCS 5/505.

How the court decides how much visitation a noncustodial parent should receive:

The amount and type of visitation a noncustodial parent gets is not set by statute, but rather by the judge on the basis of reasonableness. Visitation can be restricted or supervised but only when unrestricted visitation would pose a serious physical or emotional threat to the child(ren). The specific legal citation for this is 7



Can you file for legal separation in Illinois? 12



The court must have jurisdiction over you to give you a legal separation. Similarly, to order your spouse to do something — like pay support or give you a piece of personal property (a tv, a chair), the court must have jurisdiction over your spouse. To know if the court has jurisdiction over you or your spouse, you need to know the following rules.

How the court gets jurisdiction over you:

The court can have jurisdiction over you if you have lived in the State of Illinois for at least 90 consecutive days.

How the court gets jurisdiction over your spouse:

The court can have jurisdiction over your spouse if your spouse has received proper notice of the lawsuit that you have started. To do this, you will need to “serve” your spouse.

Special rules for spouses who don't live in Illinois:

Even if your spouse lives in another state, you can still get a legal separation. However, if your spouse has never lived in the State of Illinois or committed an act inside Illinois which would cause him/her to come under the jurisdiction of the court, while the court can grant you a legal separation, the court cannot order your spouse to do anything, like pay child support, transfer property, or pay debts.

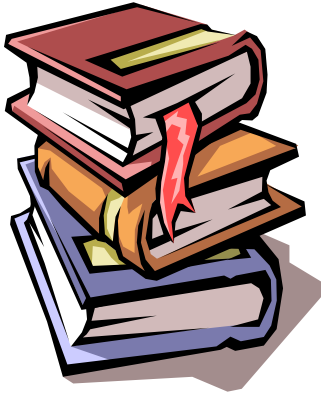
Special rules when custody of a child is involved in a legal separation:

While you can get a legal separation if you and your children have lived in Illinois for 90 days, the court cannot grant you or your spouse custody of your children (except in very limited circumstances) unless your children have lived in Illinois for 6 consecutive months. The specific legal citation for this is 750 ILCS 36/201.



Steps for Filing for Legal Separation

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Step One: Make the necessary decisions

Before you can proceed with completing the paperwork you need to file for legal separation, you need to make some major decisions. This packet will not help you make these decisions. If you need help making these decisions, you should consult other reference books or an attorney .



Who do you want to have custody of your minor child(ren)? Do you want joint custody? What kind of visitation will you or your spouse have?

Property and debts:

What marital property do you want? What marital debts will you assume responsibility for? What debts will you and your spouse share?

Support and maintenance:

How much child support will you or your spouse pay? Do you want maintenance?

— If you are uncertain as to whether you want maintenance, you should seek the advice of an attorney licensed to practice in the State of Illinois.



Step Two: Prepare the necessary forms to start the process.

In the supplement to this packet you will find 2 forms: the Petition For Legal Separation and the Application to Sue as a Poor Person. Using the Forms Guide, you will need to complete these forms.



The Petition is your formal written request to the court for a legal separation. It also serves as a notice to your spouse as to your position on certain issues — custody of children, debts, property, — so your spouse can respond to these issues. The Petition is a very important form and needs to be completed carefully. If you do not request something in your Petition, the court cannot grant it to you.

The Application is your request that the court waive the fees that are required for a person to file for a legal separation. The amount of these fees varies by county. Typically, only persons of low income will receive a fee waiver, but there is no statutory definition as to what level of income is required for a person to receive a waiver. Consequently, if you think you may be eligible — your best bet is to apply. Denial of a fee waiver will not impact your legal separation case except that you will have to pay a fee to file documents with the Clerk.

Step Three: File your documents

Select the county in which you will file your legal separation. Most of the time, you will file your legal separation in the county in which you live. You can, however, file your legal separation in the county where your spouse lives. If you did not receive a waiver of the filing fee, you will have to pay to file your legal separation. The courthouse for your county usually resides in the county seat.

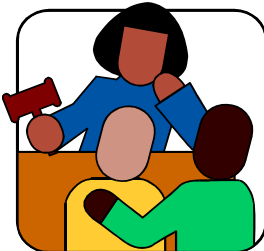


Your first step is to give the Application To Sue as A Poor Person to the Circuit Clerk and ask that it be presented to a judge for his/her approval. Wait (this may take several days) to see if it is approved, and if it is, you can then file your Petition without paying any filing fees.

After your fee waiver is either approved or denied, you should file your Petition for Legal Separation. Remember to take the original and 2 copies of the Petition with you to the Circuit Clerk's office. (One for yourself and one for your spouse).

Step Four: Notify your spouse of the legal separation.

You will need to serve a copy of your petition on your spouse. If your spouse lives inside the State of Illinois, use the packet entitled "How to serve someone by the Sheriff in Illinois," if your spouse lives outside the State of Illinois, use the packet entitled "How to serve someone by the Sheriff outside Illinois." If you don't know where your spouse is, or if attempts to serve your spouse have been unsuccessful, use the packet entitled "How to serve someone by publication." If you need help finding these packets, call the Self Help Center.



If your spouse will agree to waive being served and agree to the terms of the legal separation as you have requested in your Petition, you should have him/her sign the Entry of Appearance, Waiver, and Consent form included in the supplement to this packet. Please note that your spouse must have seen a copy of the Petition that you filed as well as a copy of the Judgment you plan to give to the Judge. Your spouse's signature must be notarized. Once you file this form with the Circuit Clerk, you can move to Step Five. If your spouse will not sign this form, you will need to serve your spouse as described in the above paragraph.

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Step Five: Request/Get a hearing date:

Once you have served your spouse, you will need to wait 30 days to see if he/she files a response to your Petition. If your spouse has failed to file a response after 30 days have passed, you should request a hearing date.



If the person you are suing has signed an Entry of Appearance, Waiver, and Consent form waiving service, you do not need to wait the 30 days before requesting your hearing.

If your spouse has filed a response and it appears from the response that he/she has an attorney, or if an attorney contacts you at any time before or during the hearing, you should seek legal assistance immediately as it is not a good idea for you to proceed against a person who is represented by an attorney on your own.



Depending upon the county in which you filed your legal separation, you will need to contact either the Circuit Clerk or the secretary of the judge who usually handles the legal separation cases to request a hearing date. You can do this either by phone, or by mail. When contacting the clerk or the judge's secretary, be sure to ask for the default or pro se hearing date.

Some counties require you to send a Notice to your spouse of the hearing. If this is the case, you will need to complete and send the Notice form to your spouse and file the Certificate of Mailing of Notice to certify when you mailed it. These forms can be found in the packet supplement.



Step Six: Prepare for the hearing:

You will need to prepare the Judgment of Legal Separation form, the Joint Parenting Order (if you are asking for joint custody and do not have a separate agreement of your own), and the Notice to Withhold Income For Child Support (if you or your spouse is asking for child support). The Judgment is the document which the judge signs which grants you your legal separation. The Order sets forth the



terms of your joint custody agreement and the Notice is a form which is sent to the employer of the parent who is paying child support so his/her wages can be garnished.

The Judgment is a final order on such issues as custody, property, debts, maintenance, visitation, and child support and can only be changed by another court order. The Judgment is the form which you will present when someone asks you for proof of your Legal Separation and its terms. Consequently, this is a very important form.

Prepare your testimony using the Judgment of Legal Separation as your guide. You will need to testify about all of the facts you have alleged in your petition (the numbered parts of the Judgment) and you will need to testify as to what you want the court to do (the letter parts of the Judgment). If you ask the court to do something that was not in your Petition, you may have to either amend your Petition or you may not get it.

Steps To Getting A Legal Separation

When testifying about who should get custody of your child(ren), tell the judge who has been the primary caretaker of the child(ren), who has provided them with a home, who has provided them with medical care, and who has given them love and affection.

If you and your spouse have agreed to joint custody of your child(ren), you and your spouse must complete the Joint Parenting Order form found in the supplement to this packet and take it with you to your hearing for the Judge's approval.



Step Seven: Attend the hearing:

While there is no way to know exactly what will happen at your hearing. Here are some things you should do:

- Bring with you your copies of all the documents you filed with the Circuit Clerk and any other papers relating to your legal separation.
- Arrive at least 30 minutes before your hearing. Whatever you do, don't be late. Check the docket or ask the Clerk exactly what room you will be in. Tell the Clerk or the Judge's secretary that you are ready to proceed when called and wait for your case number and name to be called.
- When the Judge enters the courtroom, stand until you are told to be seated. When your case is called, approach the bench. Always refer to the Judge as "your honor".
- Before you begin, the judge may then ask you preliminary questions about your case. Be prepared to answer whether your spouse was served, and if so, when. If serving by publication, be prepared to answer why you don't know where your spouse is and when it was completed.
- To testify, you will need to call yourself as a witness. At this time, the Judge will put you under oath and you will present your testimony using your written testimony as your guide.

Steps To Getting A Legal Separation

After you have testified, present your Judgment of Legal Separation, the Joint Parenting Order (if you are asking for joint custody) to the Judge for his/her signature. If the Judge wants corrections made, don't panic, you can ask for permission to submit a corrected version by mail.



Step Eight: Wrap it up:

After the judge has signed the Judgment of Legal Separation and the Joint Parenting Order (if you are asking for joint custody), you will need to file your Judgment and the Order (if you are asking for joint custody) with the Clerk and send a file-stamped copy of the Judgment to your spouse.

To certify (prove) that you have done this, you will need to file a Certificate of Mailing with the Clerk. As with all documents you file, be sure to keep file stamped copies of these documents for yourself. Remember to hold on to your Judgment as it is your proof that you are legally separated. If you lose your Judgment, however, don't panic, as with any document you file, you can always get another copy from the Circuit Clerk. You may, however, have to pay for the copies. The Certificate of Mailing forms can be found in the supplement to this packet.

If you or your spouse is asking for child support, you must send the Notice to Withhold Income For Child Support to the supporting parent's employer so that the child support can be deducted from his/her wages. To certify (prove) that you have done this, you will need to file a Affidavit of Service of Notice To Withhold Income For Child Support with the Clerk. As with all documents you file, be sure to keep file stamped copies of these documents for yourself.



Q: What is a court file?

A: The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

Q: When do you need to file a document in a court file?

A: Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

Q: What does it mean to file a document in a court file?

A: Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

Q: Does filing a document make it legal?

A: No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

Q: Why is filing so important?

A: Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



Myth 1: You need your spouse's signature to get a legal separation.

Wrong!! The judge decides if you get a legal separation, not your spouse.

Myth 2: Joint custody means the child must spend equal time with each parent.

Wrong!! While parents who have joint custody of a child often do have an equal time with the child, it does not have to be that way. Remember that custody has to do with who makes the major decisions in the child's

life — education, religion, health — not where the child resides. A parent, therefore, could have joint custody and only see the child every other weekend.

Myth 3: If one party is "responsible" for a marital debt in a legal separation judgment, his/her spouse can't be sued for that debt.

Wrong!! A legal separation is only binding on those people who are the parties to the lawsuit. Consequently, unless a creditor (someone you owe money to) was a party to your legal separation, he/she can still collect a marital debt from you. If your spouse agreed to be "responsible" for a particular marital debt and he/she does not pay the debt, your only recourse is to take him/her back to court to either a) get him to pay the debt or b) reimburse you for any monies you spent on the debt for which your spouse was responsible. Of course, if your spouse does not have the money to reimburse you or to pay the debt, taking him/her back to court would probably be a waste of your time and money.

Myth 4: Once I get a legal separation, I cannot get a divorce.

Wrong!! Either a current proceeding or a judgment for legal separation shall not bar either party from instituting an action for dissolution for marriage.



Get help if you need it

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, then doing your own legal separation may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if doing your own legal separation proves to be too difficult a task for you, talk to an attorney.



Go to other pro-se or default hearings before yours



If your county courthouse has a special date when they schedule the pro-se (no attorneys) or default (uncontested) hearings, try to attend at least one hearing before the date of your hearing. This way, you can watch what happens, (including what mistakes others make) take notes, and be more prepared for your hearing date.