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**2015 Edition**

# Legal Separation in Connecticut

A Guide to Resources in the Law Library

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# Introduction

A Guide to Resources in the Law Library

- **"A decree of legal separation shall have the effect of a decree dissolving marriage except that neither party shall be free to marry."** *Conn. Gen. Stat. § 46b-67(b)* (2015) (Amended, Effective October 1, 2015 by [Public Act 15-7](#), Sec. 5).
- **"The plaintiff filed for** legal separation on May 11, 2001, on the ground of irretrievable breakdown. The defendant filed a cross complaint for dissolution of the parties' marriage. On October 15, 2002, the court rendered judgment dissolving the marriage." [Raso v. Raso](#), 92 Conn. App. 678, 679, 886 A.2d 863 (2005).
- "The plaintiff . . . commenced this action for a legal separation and other relief by a complaint dated May 23, 2005. A copy of the writ of summons and complaint was served in hand on the defendant on May 24, 2005. The defendant did not file an appearance, and the matter was placed on the uncontested list for January 26, 2006. On January 26, 2006, the plaintiff appeared and filed a motion to amend her complaint, requesting a dissolution of the marriage rather than a legal separation. The defendant did not appear at the hearing, and a judgment of dissolution was rendered by the court . . ." [Berzins v. Berzins](#), 105 Conn. App. 648, 650, 938 A. 2d 1281 (2008).
- **"In this issue of first impression, we are called on to determine whether the involuntary conservators of a conserved person can respond to an action for legal separation filed against the conserved person by filing an answer and cross complaint seeking a dissolution of marriage on behalf of the conserved person. We answer that question in the affirmative and, therefore, reverse the judgment of the trial court dismissing this cross complaint."** [Luster v. Luster](#), 128 Conn. App. 259, 260, 17 A. 3d 1068 (2011).
- **"In *Szot v. Szot*, 41 Conn. App. 238, 674 A.2d 1384 (1996), we reversed the trial court's judgment that converted a legal separation into a marital dissolution on the ground that the court had violated the plaintiff's right to due process by terminating a hearing prematurely and, thus, denying her a reasonable opportunity to be heard on the issues involved. Id., 238-39. Our recitation of the facts in *Szot* is instructive."** [Eilers v. Eilers](#), 89 Conn. App. 210, 216, 873 A.2d 185 (2005).
- **"The procedure to convert a decree of legal separation into a decree of** dissolution is governed by General Statutes §§ 46b-65 and 46b-66 and Practice Book §§ 25-36 and 25-37. Pursuant to § 46b-65(b) and § 25-36, a motion or petition for a decree of dissolution after legal separation may be filed at any time after the entry of a decree of legal separation and must state, inter alia, that the **parties have not resumed marital relations. Thus, 'a party seeking to convert a** legal separation into a dissolution under General Statutes 46b-65(b) must comply with Practice Book [§ 25-36] which requires the petitioner to state in the petition **whether the parties have resumed marital relations."** [Buggy v. Buggy](#), Superior Court, Judicial District of Stamford-Norwalk, No. FA05-4005647-S (Oct. 25, 2010) (2010 WL 4723213) (2010 Conn. Super. LEXIS 2833).

# Section 1: Effect, Definition and History

A Guide to Resources in the Law Library

## **SCOPE:**

- Bibliographic resources relating to the distinction between legal separation and dissolution of marriage.

## **DEFINITION:**

**Effect of Decree of Legal Separation:** "A decree of legal separation shall have the effect of a decree dissolving marriage except that neither party shall be free to marry." Conn. Gen. Stat. [§ 46b-67\(b\)](#) (2015) (Amended, Effective October 1, 2015 by [Public Act 15-7](#), Sec. 5).

## **STATUTES:**

You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2015) [§ 46b-65](#). **Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.** (a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the judicial district in which the separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.

(b) If no declaration has been filed under subsection (a) of this section, then at any time after the entry of a decree of legal separation, either party may petition the superior court for the judicial district in which the decree was entered for a decree dissolving the marriage and the court shall enter the decree in the presence of the party seeking the dissolution.

[§ 46b-67](#). (Amended, Effective October 1, 2015 by [Public Act 15-7](#), Sec. 5). **Waiting period. Effect of decree.** (a) Following the expiration of ninety days after the day on which a complaint for dissolution or legal separation is made returnable, or after the expiration of six months, where proceedings have been stayed under section 46b-53, the court may proceed on the complaint...

[§ 46b-81](#). **Assignment of property and transfer of title.** (a) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either spouse all or any part of the estate of the other spouse. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either spouse, when in the judgment of the court it is the proper mode to carry the decree into effect...

## **PUBLIC ACT:**

You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website.

- [Public Act 15-7](#), effective October 1, 2015, will add the following section to Conn. Gen. Stat. § 46b-67.

(b) If the parties attest, under oath, that they have an agreement as to all terms of the dissolution of marriage or legal separation and wish the court to enter a decree of dissolution of marriage or legal separation prior to the expiration of the time periods set forth in subsection (a) of this section, and file a motion seeking the waiver of said time periods, the court may waive the provisions of subsection (a) of this section.

## **HISTORY:**

- 1955 (Supp. 1955, vol. 2) § 3006d. *First Legislation*. Public Act No. 390.

## **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2015).  
[Chapter 25. Procedure in Family Matters](#)
  - § 25-2. Complaints for Dissolution of Marriage or Civil Union, Legal Separation, or Annulment
  - § 25-5. Automatic Orders upon Service of Complaint or Application
  - § 25-36. Motion for Decree Finally Dissolving Marriage or Civil Union after Decree of Legal Separation
  - § 25-37. —Notice and Hearing

## **FORMS:**

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Court Forms](#) (official)  
[JDP-FM-237](#). Legal Separation Complaint.
- 2 Conn. Practice Book (1997).
  - Form 504.1. Complaint for Dissolution of Marriage or Legal Separation
  - [Form 504.2. Petition for Decree Dissolving Marriage After Legal Separation \(Figure 1\)](#)
- Amy Calvo MacNamara et al., eds., [Library of Connecticut Family Law Forms](#), (2014).  
Chapter 1. Legal Separation
  - Form 15-001 Petition for Decree Dissolving Marriage after Legal Separation
  - Form 15-002 Application for Order of Notice (Re: Legal Separation)
  - Form 15-003 Order for Hearing and Notice (Re: Legal Separation)
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).
  - Form No. II-A-2. Complaint, page 6.
  - Form No. XVIII-A-1a. Petition for Decree Dissolving Marriage After Legal Separation, page 261.
  - Form No. XVIII-A-2. Declaration of Resumption of Marital Relationship, page 264.

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Meeks v. Meeks](#), Superior Court, Judicial District of Middlesex at Middletown, No. FA06-4005259-S (July 26, 2013) (56 Conn. L. Rptr. 579) (2013 WL 4420060). **“The court also found that the agreement not to proceed with the dissolution but rather to seek a legal separation was done to allow the defendant to remain on the plaintiff’s medical insurance because he had undergone major back surgery and was still recovering from that operation.”**
- [Berzins v. Berzins](#), 306 Conn. 651, 654, 51 A. 3d 941, (2012). **“The plaintiff commenced the present action seeking a legal separation from the named defendant, David Berzins (Berzins), and other relief. Berzins failed to file an appearance and the case was placed on the uncontested list for a January 26, 2006 hearing, at which Berzins failed to appear. At the hearing, the plaintiff filed a motion to amend her complaint to seek dissolution of the marriage. The court, Hon. Lawrence C. Klaczak, judge trial referee, rendered a default judgment against Berzins and dissolved the parties’ marriage pursuant to the terms of the plaintiff’s proposed orders.”**
- [Mitchell v. Mitchell](#), 194 Conn. 312, 318-19, 481 A.2d 31, 34 (1984). **“General Statutes 46b-65** (codified as § 46-61 and recodified in 1979 as § 46b-65) was enacted in 1973 as part of a complete revision of the domestic relations statutes. Public Acts 1973, No. 73-373.”
- [Mitchell v. Mitchell](#), 194 Conn. 312, 321, 481 A.2d 31, 34 (1984). **“An obvious goal of the legislature in enacting § 46b-65 was to reduce the role of the court by creating a summary proceeding when there is no dispute between the parties. To that effect subsection (a) contemplates that the court satisfy itself that the prescribed formal declaration has been filed before vacating the separation decree while subsection (b) contemplates a minimal role for the court when there is no dispute that the parties had not resumed marital relations. When that is the case the statute requires the court to give effect to the parties’ status and convert a de facto dissolution into a de jure dissolution.”**
- [Satter v. Satter](#), 153 Conn. 230, 231, 215 A.2d 415 (1965). **“In 1955, the legislature enacted Public Act No. 390, now General Statutes §§ 46-29 and 46-30, which provided that a legal separation could be decreed upon the petition of a party on grounds which would have entitled that party to a divorce. Such a separation would have the effect of a divorce except that neither party would be free to marry any third party unless a decree dissolving and terminating the marriage was subsequently rendered upon petition of either party.”**

**ENCYCLOPEDIAS:**

- 24 [Am Jur 2d](#) *Divorce & Separation* (2008).  
§ 372. —Converting limited divorce into absolute divorce
- 27A [C.J.S.](#) *Divorce* (2005).  
§ 349. Absolute and limited divorce

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2015).  
Chapter 3. Dissolution of Marriage and Legal Separation  
§ 3.27. Checklist: Defining a Legal Separation  
§ 3.28. Distinguishing a Legal Separation from a Dissolution of Marriage  
§ 3.29. Determining Residency
- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
Chapter 10 Legal separation  
§ 10: 1. In general  
§ 10: 2. Basis for legal separation  
§ 10: 5. Parties  
§ 10: 6. Distinction from dissolution  
§ 10: 8. Judgment  
§ 10: 9. Resumption of marital relations; reconciliation  
§ 10: 10. Conversion to dissolution—Procedure  
§ 10: 11. Conversion to dissolution—Legal considerations
- 8A Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
§ 51: 10. Effect of judgment
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 2002).  
Chapter 20. Family Law Procedures  
§ 241. History of Connecticut's Divorce Law  
§ 262. Legal Separation
- 1 Wesley W. Horton & Kimberly A. Knox, Connecticut Practice Series, [Superior Court Civil Rules](#), (2014-2015 ed.).  
**Authors' Comments following § 25-36**
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).  
Chapter XVIII. Legal separation,  
Notes & Comments, p. 260.

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our law libraries.

- Arthur E. Balbirer and Gaetano Ferro, *Survey of 1991 Developments In Connecticut Family Law*, 66 Conn. B.J. 40 (1992).  
Conversion of legal separation to dissolution,  
p. 62-63.
- Maxine Aaronson, *Keep Your Client Covered with COBRA*, 13 Fam. Advoc. 18 (1990-91).
- Jan B. Gilman, *COBRA- How It Works and How It Might Impact Spouses Upon Divorce*, 6 J. Am. Acad. Matrimonial Law 131 (1990).



Table 1: Health Insurance

<b>Group Health Insurance Policy Coverage</b>
<p data-bbox="631 415 987 447" style="text-align: center;"><b>Conn. Gen. Stat. (2015)</b></p> <p data-bbox="256 478 1360 926"><u><a href="#">Sec. 38a-469</a></u>. <b>Definitions.</b> As used in this title, unless the context otherwise requires or a different meaning is specifically prescribed, “health insurance” policy means insurance providing benefits due to illness or injury, resulting in loss of life, loss of earnings, or expenses incurred, and includes the following types of coverage: (1) Basic hospital expense coverage; (2) basic medical-surgical expense coverage; (3) hospital confinement indemnity coverage; (4) major medical expense coverage; (5) disability income protection coverage; (6) accident only coverage; (7) long term care coverage; (8) specified accident coverage; (9) Medicare supplement coverage; (10) limited benefit health coverage; (11) hospital or medical service plan contract; (12) hospital and medical coverage provided to subscribers of a health care center; (13) specified disease coverage; (14) TriCare supplement coverage; (15) travel health coverage; and (16) single service ancillary health coverage, including, but not limited to, dental, vision or prescription drug coverage.</p> <p data-bbox="256 961 1349 1220"><u><a href="#">Sec. 38a-512a</a></u>. <b>Continuation of coverage.</b> (a)(1) Each insurer, health care center, hospital service corporation, medical service corporation, fraternal benefit society or other entity delivering, issuing for delivery, renewing, amending or continuing a group health insurance policy in this state that provides coverage of the type specified in subdivisions (1), (2), (3), (4), (11) and (12) of section 38a-469 shall provide the option to continue coverage under each of the following circumstances until the individual is eligible for other group insurance, except as provided in subparagraphs (C) and (D) of this subdivision: ...</p> <p data-bbox="256 1255 1344 1482">(E) The coverage of any covered individual shall terminate: ... (ii) as to the <b>employee’s spouse, at the end of the month following the month in which a divorce, court-ordered annulment or legal separation</b> is obtained, whichever is earlier, except that the plan shall provide the option for said spouse to continue coverage for the periods set forth for such events under federal extension requirements established by the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272, as amended from time to time; ...</p> <p data-bbox="256 1518 1341 1675">(c) Nothing in this section shall alter or impair existing group policies which have been established pursuant to an agreement which resulted from collective bargaining, and the provisions required by this section shall become effective upon the next regular renewal and completion of such collective bargaining agreement.</p> <p data-bbox="256 1711 1360 1801"><u><a href="#">Sec. 38a-554</a></u>. <b>Additional requirements and eligibility under group comprehensive health care plans. Coverage for stepchildren. Continuation of benefits under group plans. ...</b></p> <p data-bbox="256 1837 1341 1902">(b) The plan shall provide the option to continue coverage under each of the following circumstances until the individual is eligible for other group insurance...</p>

(5) The coverage of any covered individual shall terminate: ... (B) as to the **employee's spouse, at the end of the month following the month in which a divorce, court-ordered annulment or legal separation** is obtained, whichever is earlier, except that the plan shall provide the option for said spouse to continue coverage for the periods set forth for such events under federal extension requirements established by the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272, as amended from time to time; ...

### U.S. Code

[29 U.S.C. § 1161](#). **Plans must provide continuation coverage to certain individuals.**

[29 U.S.C. § 1162](#). **Continuation coverage.**

[29 U.S.C. § 1163](#). **Qualifying event.** For purposes of this part, the term "qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

- (1) The death of the covered employee.
- (2) **The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.**
- (3) The divorce or **legal separation** of the covered employee from the **employee's spouse.**
- (4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].
- (5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.
- (6) A proceeding in a case under title 11, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 1167 (3)(C) of this title within one year before or after the date of commencement of the proceeding.

### Office of Legislative Research Report

*(Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.)*

Janet L. Kaminski Leduc, Senior Legislative Attorney, **OLR Backgrounder: COBRA Continuation Of Group Health Benefits**, Connecticut General Assembly, Office of Legislative Research Report No. [2011-R-0503](#) (December 28, 2011).

"FEDERAL LAW: ... Continuation coverage is available only when coverage is lost due to certain "qualifying events." Qualifying events for employees are (1) voluntary or involuntary termination of employment for reasons other than gross misconduct and (2) reduction in the number of hours worked.

For spouses and dependent children, the qualifying events are the:

1. voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct;
2. reduction in the number of hours worked by the covered employee;
3. covered employee's eligibility for Medicare;
4. covered employee's death, divorce, or **legal separation**; and
5. if a dependent child, loss of dependent child status under the plan.

STATE LAW: ... Connecticut law requires each group health insurance policy, regardless of the number of insureds, to provide continuation and conversion benefits (CGS §§ 38a-538, 38a-546, and 38a-554(b) & (d)).

***Continuation of Coverage***

State law requires each group health insurance policy to give individuals the option to continue coverage under certain circumstances until they are eligible for other group insurance (CGS § 38a-554(b)). Continuation of coverage is available to an employee and his or her covered dependents if the employee is laid-off, is given reduced work hours, takes a leave of absence, or terminates employment, for other than gross misconduct. The employee's spouse and dependent children can continue coverage under a group health plan if the employee dies; there is a divorce, court ordered annulment, or **legal separation**; or the child loses dependent status.

## Section 2: Grounds for Legal Separation

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A Guide to Resources in the Law Library

**"A decree of dissolution of a marriage or a decree of legal separation shall be granted upon a finding that one of the following causes has occurred:**

- (1) The marriage has broken down irretrievably;
- (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled;
- (3) adultery;
- (4) fraudulent contract;
- (5) wilful desertion for one year with total neglect of duty;
- (6) **seven years' absence, during all of which period the absent party has not been heard from;**
- (7) habitual intemperance;
- (8) intolerable cruelty;
- (9) sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year;
- (10) legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of **the complaint.**" Conn. Gen. Stat. [§ 46b-40](#)(c) (2015).

The [Dissolution of Marriage in Connecticut](#) research guide provides more information on the individual grounds for divorce and legal separation.

# Section 3: Reconciliation (After Legal Separation)

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic sources relating to reconciliation after legal separation

## **STATUTES:**

You can visit your local law library or [search the most recent statutes and public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2015).  
[§ 46b-65. Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.](#)  
(a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the judicial district in which the separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.

## **FORMS:**

- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).  
Form No. XVIII-A-2. Declaration of Resumption of Marital Relationship, page 264.

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Mitchell v. Mitchell](#), 194 Conn. 312, 319, 481 A.2d 31 (1984). "**General Statutes 46b-65...** The present statute completely revamped its predecessor. Subsection (a) established a new and expeditious method by which parties who had reconciled could vacate their separation agreement without the intervention of a judge. They simply file a signed, acknowledged, and witnessed declaration of resumption with the clerk of the Superior Court in which the separation was decreed and, if the court finds that the declaration meets the statutory requirements, the decree is vacated and the original complaint is **dismissed.**"
- [Mitchell v. Mitchell](#), 194 Conn. 312, 326, 481 A.2d 31 (1984). "**If the parties had resumed marital relations, even for a trial reconciliation, or the petitioner states in the petition that they did not resume and the defendant disputes that fact, the parties cannot proceed under the summary method of § 46b-65(b) but must instead proceed under the general dissolution provision, § 46b-40.**"

## **TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
Chapter 10. Legal separation  
§ 10:9. Resumption of marital relations;  
reconciliation

# Section 4: Conversion of Legal Separation into Dissolution of Marriage

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic sources relating to the conversion of a legal separation into a dissolution of marriage.

## **DEFINITIONS:**

- **Declaration of Resumption of Marital Relations:** "General Statutes 46b-65 (b) establishes an expeditious method by which the parties can convert a legal separation into a dissolution. Practice Book 472 [now 25-36] requires a party seeking to convert the legal separation into a dissolution to state, inter alia, whether the parties had resumed marital relations. If the parties have, in fact, resumed marital relations, they cannot proceed under the summary procedures provided in 46b-65(b), but must instead proceed under the general dissolution provision, 46b-40." [Mignosa v. Mignosa](#), 25 Conn. App. 210, 213, 594 A.2d 15 (1991).
- **Financial Orders:** "Neither the trial court's memorandum of decision nor the judgment file contains any finding that the orders entered at the time of the legal separation were 'fair and equitable' in light of the circumstances existing at the time of the dissolution. Therefore, although we hold that the trial court properly granted the defendant's petition converting the parties' legal separation into a dissolution of marriage, the trial court's incorporation of the prior orders entered in the decree of legal separation into the decree of dissolution of marriage without a finding that the orders were 'fair and equitable' at the time of the dissolution was improper." [Mignosa v. Mignosa](#), 25 Conn. App. 210, 216, 594 A.2d 15 (1991).
- "Notwithstanding the decisions in *Mignosa* and *Szot*, there is a split of authority within the Superior Court regarding whether the trial court may modify a separation agreement when incorporating it into a dissolution decree because of the earlier Supreme Court opinion in *Mitchell v. Mitchell*, 194 Conn. 312, 481 A.2d 31 (1984)." [Buggy v. Buggy](#), Superior Court, Judicial District of Stamford – Norwalk, No. FA05-4005647-S (Oct. 25, 2010) (2010 WL 4723213) (2010 Conn. Super. LEXIS 2833).

## **STATUTES:**

- Conn. Gen. Stat. (2015).  
[§ 46b-65. Filing of declaration of resumption of marital relations; dissolution of marriage after legal separation decree when no declaration filed.](#)  
(a) If the parties to a decree of legal separation at any time resume marital relations and file their written declaration of resumption, signed, acknowledged and witnessed, with the clerk of the superior court for the

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judicial district in which the separation was decreed, the declaration shall be entered upon the docket, under the entries relating to the complaint, and the decree shall be vacated and the complaint shall be deemed dismissed.

(b) If no declaration has been filed under subsection (a) of this section, then at any time after the entry of a decree of legal separation, either party may petition the superior court for the judicial district in which the decree was entered for a decree dissolving the marriage and the court shall enter the decree in the presence of the party seeking the dissolution.

### **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

- Connecticut Practice Book (2015).  
[Chapter 25. Procedure in Family Matters](#)  
§ 25-36. Motion for Decree Finally Dissolving Marriage or Civil Union after Decree of Legal Separation  
§ 25-37. —Notice and Hearing

### **FORMS:**

- 2 Conn. Practice Book (1997).  
[Form 504.2. Petition for Decree Dissolving Marriage After Legal Separation \(Figure 1\)](#)
- Amy Calvo MacNamara et al., eds., [Library of Connecticut Family Law Forms](#), (2014).  
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Form 15-003 Order for Hearing and Notice (Re: Legal Separation)
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) (1991).  
Form No. XVIII-A-1a. Petition for Decree Dissolving Marriage After Legal Separation, page 261.  
Form No. XVIII-A-2. Declaration of Resumption of Marital Relationship, page 264.

### **CASES:**

- [Buggy v. Buggy](#), 141 Conn. App. 733, 735, 64 A. 3d 778, (2013). "the court entered an order dissolving the parties' marriage and converted the decree of legal separation to a decree of dissolution. The court determined that a change in custody in favor of the defendant was in the best interests of the minor children and further that there had been a substantial change in the defendant's financial circumstances."
- [Lester v. Lester](#), Superior Court, Judicial District of New Haven at Meriden, No. FA04-4000021-S (Sept. 11, 2013) (56 Conn. L. Rptr. 787) (2013 WL 5422841). "By motion

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filed June 12, 2013, the plaintiff requested, pursuant to General Statutes § 46b-65 to convert the legal separation into a divorce decree. General Statutes §§ 46b-65 and 46b-66, and Practice Book §§ 25-36 and 25-37 govern the procedure to convert a decree of legal separation into a **decree of dissolution.**”

- [Meeks v. Meeks](#), Superior Court, Judicial District of Middlesex at Middletown, No. FA06-4005259-S (July 26, 2013) (56 Conn. L. Rptr. 579) (2013 WL 4420060). “Nevertheless, even though there is a slight split in authority as to whether *Mitchell* and *Mignosa* collectively require that the court inquire into the fairness of a separation agreement, a majority of the trial courts have made the initial determination of whether the agreement remains fair and equitable, which remains to be the current trend. Given the fact that *Mitchell* primarily focused on the implications of resumed marital relations, rather than a **party’s challenge as to the fairness and equity of the original agreement**, along with the fact that *Mignosa* stated that a court is required to determine whether the original agreement remains fair and equitable, the current trend of inquiring into the fairness of the agreements remains the stronger position.
- [Treadwell v. Treadwell](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. FA01-0386575-S (Sept. 24, 2012) (2012 WL 4902757). “**the court finds that the order of alimony, as modified by order of the court (Winslow, J.) on January 13, 2011 are not fair and equitable today. Therefore, the court grants the defendant’s Motion to Modify the Alimony (#142.79).** The court is however, bound by the provisions of the Legal Separation which are property **distributions which effect the orders of alimony.**”  
  
“**The Husband is asking the court to interpret the Legal Separation Agreement property settlement to mean that the Wife is only to share in one incentive, not the subsequent years incentive. The court must look to the plain language of the Agreement. Because a stipulation is considered a contract, our interpretation of a separation agreement that is incorporated into a dissolution decree is guided by the general principles governing the construction of contracts.**” (Internal quotation marks omitted).
- [Sargent v. Sargent](#), 125 Conn. App. 824, 826, 9 A.3d 799 (2011). “**On March 16, 2009, the defendant filed a motion for modification of alimony and a petition for a decree dissolving the parties’ marriage pursuant to General Statutes § 46b-65 (b).** In support of his motion for modification of alimony, the defendant claimed that his **‘financial circumstances [had] changed significantly’** from the time that the parties were legally separated. The plaintiff filed an objection to the defendant’s petition for



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dissolution on June 3, 2009, claiming that conversion of the separation into a dissolution would cause her irreparable harm.”

- Buggy v. Buggy, Superior Court, Judicial District of Stamford–Norwalk, No. FA05-4005647-S (Oct. 25, 2010) (2010 WL 4723213) (2010 Conn. Super. LEXIS 2833). **“Notwithstanding the decisions in *Mignosa* and *Szot*, there is a split of authority within the Superior Court regarding whether the trial court may modify a separation agreement when incorporating it into a dissolution decree because of the earlier Supreme Court opinion in *Mitchell v. Mitchell*, 194 Conn. 312, 481 A.2d 31 (1984).”**
- Gilbert v. Gilbert, Superior Court, Judicial District of New Haven, No. FA 04-0485657-S (May 13, 2008), (45 Conn. L. Rptr. 553) (2008 WL 2313381). **“Before the court can address financial issues when converting a legal separation to a decree of dissolution, it must first examine the relationship of the parties. If it determines that the parties have resumed marital relations, it must reexamine the final order entered at the time of the legal separation in a full hearing. If the parties’ relationship is unchanged, the court plays a minor role and merely converts the de facto dissolution to a de jure dissolution.”**
- Myjak v. Myjak, Superior Court, Judicial District of Middlesex, No. FA97-0083027-S (Nov. 17, 2000) (29 Conn. L. Rptr. 30) (2000 WL 1827228). **“A final distribution of property and financial orders after legal separation should not be based on a separation agreement without an inquiry by the court as to whether the agreement is fair and equitable at the time of the dissolution. *Mignosa v. Mignosa*, 25 Conn. App. 210, 594 A.2d 15 (1991).”**
- Herbert v. Herbert, Superior Court, Judicial District of Waterbury, No. FA 990155947S, (Mar. 3, 2000) (26 Conn. L. Rptr. 625) (2000 WL 277281). **“In *Mitchell v. Mitchell*, supra, 194 Conn. 312, the majority opinion held that a party seeking to convert a legal separation into a dissolution under General Statutes § 46b-65(b) must comply with Practice Book § 25-36, which requires the petitioner to state in the petition whether the parties has resumed marital relations. ‘... If the court renders a decree of legal separation the parties may then pursue one of two avenues, the summary route under 46b-65 or the trial route under 46b-40. The summary route contemplates mutual agreement of the parties ... One of the purposes of [Practice Book § 25-36] is to enable the court to ascertain whether the case is an appropriate candidate for summary disposition.’ Id., 325-26. If there is a question as to whether the case is a candidate for summary disposition, then the court can fix a time for a hearing to resolve any disputes. See Id., 326; ...”**

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- [Szot v. Szot](#), 41 Conn. App. 238, 241, 674 A.2d 1384 (1996). **"In order to determine whether such orders were fair and equitable, the parties were entitled to an opportunity to present evidence in a hearing."**
- [Bemonte v. Bemonte](#), 44 Conn. Supp. 431, 435-436, 693 A.2d 739 (1996). **"Absent a properly executed declaration of resumption of marital relations or intervention by court action opening the judgment for good reason, the judgment of legal separation, once the appeal period has expired, is final. The division of assets and liabilities is also final. An assignment of property is nonmodifiable. Hence, the court is without jurisdiction or other authority to modify a final judgment of legal separation insofar as it assigns property. The holding in *Mignosa* must give way to the holding of the majority in *Mitchell* which controls the outcome of the present case."**
- [Marsillio v. Marsillio](#), Superior Court, Judicial District of Bridgeport, No. FA93-0301875-S (Nov. 7, 1994) (12 Conn. L. Rptr. 665, 666) (1994 WL 645954). **"To be added to the statutory requirement for a decree of dissolution of marriage after a decree of legal separation are two further requirements, one, that the parties have not resumed living together (*Mitchell v. Mitchell*, supra) and two, that the agreement of the parties entered into at the time of the decree of legal separation continues to be fair and equitable at the time of entry of the decree of dissolution. (*Mignosa v. Mignosa*, supra.)"**
- [Mignosa v. Mignosa](#), 25 Conn. App. 210, 212-213, 594 A.2d 15 (1991). **"At the hearing, the plaintiff raised the issue for the first time. She denied that marital relations had not been resumed claiming that she and the defendant had engaged in sexual intercourse since the granting of the legal separation... at various times after said legal separation the parties had social contact but none of these contacts ever reached a level of resumption of marital relations within the purview of *General Statutes § 46b-65*." (Internal quotation marks omitted).**
- [Mignosa v. Mignosa](#), 25 Conn. App. 210, 216, 594 A.2d 15 (1991). **"Therefore, although we hold that the trial court properly granted the defendant's petition converting the parties' legal separation into a dissolution of marriage, the trial court's incorporation of the prior orders entered in the decree of legal separation into the decree of dissolution of marriage without a finding that the orders were 'fair and equitable' at the time of the dissolution was improper."**
- [Mitchell v. Mitchell](#), 194 Conn. 312, 326, 481 A.2d 31 (1984). **"If the parties had resumed marital relations, even for a trial reconciliation, or the petitioner states in the**

petition that they did not resume and the defendant disputes that fact, the parties cannot proceed under the summary method of § 46b-65(b) but must instead proceed under the general dissolution provision, § 46b-40.”

**DIGESTS:**

**TEXTS &  
TREATISES:**

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- [Connecticut Family Law Citations](#): *Legal Separation*
- Louise Truax, ed., [LexisNexis Practice Guide: Connecticut Family Law](#) (2015).  
Chapter 3. Dissolution of Marriage and Legal Separation  
§ 3.30 Converting a Legal Separation into a Dissolution
- 1 Wesley W. Horton & Kimberly A. Knox, Connecticut Practice Series, [Superior Court Civil Rules](#), (2014-2015 ed.).  
**Authors' Comments following § 25-36**
- 7 Arnold H. Rutkin and Kathleen A. Hogan, [Connecticut Practice, Family Law and Practice with Forms](#) (2010).  
Chapter 10. Legal separation  
§ 10:10. Conversion to dissolution-Procedure  
§ 10:11. Conversion to dissolution-Legal considerations
- 2 Renee Bevacqua Bollier and Susan V. Busby, [Stephenson's Connecticut Civil Procedure](#) (3<sup>rd</sup> ed. 2002).  
Chapter 20. Family law procedures  
§ 262. Legal Separation  
c. Procedure

Figure 1: Petition for decree dissolving marriage after legal separation

*(Caption of legal separation action)*

**Petition for Decree Dissolving Marriage after Legal Separation**

To the Superior Court for *(judicial district where legal separation was entered)*

The undersigned, a party to the above entitled action, respectfully represents

1. On *(date)* a judgment for legal separation was entered by this court in the above entitled action as of record appears.

2. The parties have not resumed marital relations since the entry of the decree, and no written declaration of the resumption of marital relations has been filed pursuant to Gen. Stat., § 46-61 [The statute was recodified in 1979 and is now § 46b-65].

Wherefore the undersigned prays that the court enter a decree dissolving the marriage of the parties.

(Name of Petitioner)

By \_\_\_\_\_

His Attorney

Figure 2: Application for order of notice

*(Caption of legal separation action)*

APPLICATION FOR ORDER OF NOTICE

The undersigned respectfully represents:

1. The accompanying petition for a decree dissolving the marriage of the parties to this action is being presented to the court.

2. The adverse party is now within the state and is residing at

*or*

2. The adverse party is not within the state, but resides at

*or*

2. The place of residence of the adverse party is unknown.

Wherefore, the petitioner requests that the court fix a time and place for a hearing on the petition and make an order of notice thereof

by personal service

*or*

in such manner as the court deems reasonable.

Petitioner

By \_\_\_\_\_

Figure 3: Order for hearing and notice

*(Caption of legal separation action)*

ORDER FOR HEARING AND NOTICE

It is hereby ordered that a hearing on the foregoing petition be held at the Court House (*location and place*) on (*date*) at (time), and

It is further ordered that notice of the pendency of the petition and of the time and place of the hearing thereon be given to the adverse party

*(if a resident of this state)*

by personal service

*(or)*

*(If a non-resident or residence is unknown insert such notice as the court deems reasonable)*

at least \_\_\_\_\_ days before the date of the hearing.

By The Court ( \_\_\_\_\_ , J.)

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Assistant Clerk

SUMMONS

To any Proper Officer:

By authority of the state of Connecticut you are hereby commanded to give notice of the pendency of the foregoing petition and of the time and place of the hearing thereon to (*name of adverse party*)

*(if a resident)*

by leaving a true and attested copy of the petition and of the foregoing order for hearing and notice with \_\_\_\_\_ and in his hands

*or*

*(if non-resident or residence is unknown insert such directions as may be contained in the order)*

at least \_\_\_\_\_ days before the date of the hearing.

Hereof fail not, but due service and return make

Dated at (*place and date*)

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Commissioner of the Superior Court

(P.B.1978; see Rules, §§ 472 and 473; Gen. Stat., § 46-61 [46b-65].)