

SEPARATION AGREEMENTS (DEED OF SEPARATION)

A Separation Agreement is a written document used to set out arrangements between divorcing or separating couples concerning issues such as property, finances and children

WHAT IS A SEPARATION AGREEMENT?

A Separation Agreement is a bespoke written document between divorcing or separating couples to record the future arrangements between them. For example, it may record that the family home will be sold and the proceeds equally divided or that their children will spend equal time living with each parent.

It provides an action plan for their separation to enable them both to know exactly what the position is concerning their property and finances, as well as their children. In addition, it can be helpful to record each party's intention and prevent any disputes in the future.

Ideally, the Separation Agreement will be redrafted and embodied within a legally binding court order (by consent) and presented to the court for approval within the subsequent divorce/dissolution proceedings.

WHY ENTER INTO A SEPARATION AGREEMENT?

Separation agreements are usually entered into by separating parties who do not want to divorce or dissolve their civil partnership at that time, perhaps for religious reasons or because they cannot yet begin legal proceedings or simply wish to wait a time.

A Separation Agreement can protect your interests until you decide to get divorced or your civil partnership is dissolved. In addition, it can give more certainty as to financial arrangements provided the agreement is fair and was entered into and drawn up properly.

ARE SEPARATION AGREEMENTS LEGALLY BINDING?

Separation Agreements cannot override or oust the duties or powers of a Judge upon Divorce/Dissolution of marriage. A Judge has a responsibility to ensure that any financial settlement is fair and reasonable in all circumstances. Separation Agreements can also be later challenged by either party as being unfair, e.g. upon the divorce.

Circumstances can change, and in the event of a dispute, the court will look at all the circumstances as they are at the time of the divorce/dissolution. However, if they have changed significantly, for example, a party has suffered a reduced earning capacity or ill health, or if the court considers that any agreement may adversely affect the children, it is likely to consider that it is not fair to uphold the separation agreement, or part of it, in the circumstances.

Separation Agreements do, however, carry weight with the court. For example, in a dispute, they are generally less likely to be considered unfair if they are recent or if circumstances have not significantly changed. Further, if both parties to the agreement knew precisely what they agreed to when the agreement was made, both legally and financially, and it was properly negotiated and entered into. Thus, separation agreements are most likely to be upheld by the court on divorce.

To add weight to the agreement, it should include a declaration that you have each provided financial disclosure and attach a schedule summarising that disclosure. It should also include a statement that you have each taken legal advice on the terms of the agreement (or if you have chosen not to, that you had the opportunity to do so) and state that you both intend the agreement to be legally binding.

Even though separation agreements are not always binding, you should not enter into a separation agreement unless you intend to be bound by the terms of that agreement.

WHAT WILL HAPPEN IF ONE PARTY NO LONGER WISHES TO BE BOUND BY THE TERMS OF A SEPARATION AGREEMENT?

If in the event of a divorce, one of you no longer wishes to be bound by the separation agreement, but the other person does, that person may make an application to the court for the other party to explain why an order should not be made in terms of the agreement. Whether the court will uphold the agreement will depend on the factors detailed above.

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.

For more information, please see our website www.kjsmith.co.uk/our-services

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