

MARITAL BREAKDOWN AND SEPARATION AGREEMENTS

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When a marriage has totally broken down and a couple can either no longer co-habit or have already ceased co-habiting, it is important that they each re-organise their lives and resolve all outstanding issues between them. They can do so either by agreement (which is preferable) or through family court proceedings.

Many estranged spouses conclude what is known as a Separation Agreement. In it, they not only agree to live permanently apart from each other, but also detail agreed arrangements for the custody and care of children under 18 years and with regard to financial, property, life insurance, pension and inheritance issues.

Prior to the conclusion of any such agreement there should be a full and frank exchange of all relevant background information so that each spouse has an accurate, comprehensive and verified picture of the other's assets and income, including where relevant, property and business valuations and details of any life/ pension schemes and projected benefits. Where there are dependent children, each must also give consideration to the best and most practical arrangements for the children's accommodation and upbringing as well as to their own accommodation needs.

When children have good relationships with both parents, it is important that estranged spouses as parents cooperate to ensure that children are enabled to maintain such relationships and continue to benefit from them. Where there is a genuine concern that the conduct of one spouse has already or could in the future put children at risk or where children are alienated from a parent achieving an agreed approach to custody and access issues can be difficult. Professional help and advice from a child psychiatrist or psychologist, a family counselor or a social worker may be required.

A separation agreement may impact on a separated spouse for the rest of his/her life. Each agreement reflects the individual background circumstances and needs of each spouse and of their children and requires a fair distribution of assets and income between them. Separation agreements are usually prepared by solicitors and should never be finalized and signed without each spouse receiving separate legal advice. The actual arrangements agreed may be negotiated by a solicitor in consultation with his client and/ or with the assistance of a mediator. On occasions estranged spouses themselves may reach agreement on some issues through direct discussions between them.

Following the signing of a separation agreement, each spouse is entitled to lead an independent life and neither can validly complain if the other enters into a second

relationship. Legal costs incurred on separation agreements are usually substantially less than those incurred in contentious family court proceedings for a decree of judicial separation. No one can legally remarry after a separation agreement. To do so first requires that a divorce be obtained.

The above article is by way of introductory information only. Every person's family circumstances and personal background differs and individual legal advice should be sought for guidance on individual family circumstances