

Separation Agreements

Overview

For a variety of reasons you may not want to take the step of getting divorced when you separate from your spouse. You may however want to formalise any agreements you reach in relation to the children and property. If you are able to reach a voluntary agreement then this can be incorporated into a deed of separation, also called a separation agreement.

For details of the negotiation options, processes and the financial information you will need to provide please see our factsheet on '**Finances**'.



What can a deed of separation contain?

There are no hard and fast rules about the contents of a deed of separation and generally it is up to the couple to decide what arrangements they want to record. The type of agreements usually recorded in relation to children are where the children will live, how much contact they will have with the non-resident parent and the level of child maintenance payable. In relation to assets the agreement will usually record whether the assets are going to be divided immediately and if so how and if they are going to be divided at a later date when and how. It can also record whether there is to be a financial clean break or whether there will be ongoing obligations to pay maintenance etc. The agreement can also record when a divorce will take place and how the costs of the divorce will be funded.

What happens to the agreement on a divorce?

At the time of your divorce you can have the deed of separation incorporated into a consent order. This is an order entered into voluntarily and will set out the terms of your financial settlement. Only the court can order a clean break between you and therefore it is important to have your agreement recorded in a consent order to give you absolute certainty.

Can the terms of the deed of separation be challenged?

A deed of separation cannot oust the jurisdiction of the court. It is therefore open to either party to the agreement to issue an application for financial provision once the divorce petition has been issued.

The court will however be unlikely to depart from the terms of the deed if both parties have made full and frank disclosure of their financial circumstances, they have each had independent legal advice on the terms of the agreement, there has been no pressure to sign it and there has been no significant change in circumstances.

What are the advantages of a separation agreement?

The agreement is flexible as it can include any term you wish to incorporate, subject to a few limitations. An agreement negotiated by you will also help to keep the separation as amicable as possible. It also provides a means of resolving financial and other problems formally but without the intervention of the court, which can be expensive and can cause animosity.

What are the disadvantages of a separation agreement?

It is not easy to enforce and does not achieve the same degree of finality as a court order as your spouse could seek further relief from the court at the time of the divorce.

Please feel free to discuss your own position and concerns. Contact your nearest office on:

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