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A Grand Idea

Category: Separation Agreements

There's a saying "marriage is grand and divorce is twenty grand". Humorous only to those who haven't experienced first hand the financial and emotional agony of a messy divorce. But it doesn't have to be this way, at least the part about the divorce costing twenty grand. That's because there are some excellent options which can help to reduce your legal costs if you're going through divorce or separation.

It's also a good thing not to lose sight of your goal in such circumstances, namely to resolve all outstanding matrimonial matters. This can be accomplished in only two ways, either through an agreement or a Consent Order reached between you and the other party, or by allowing a judge to decide your matrimonial fate.

Let's examine the non-court option. If you and your spouse are still able to sit down and discuss matters calmly and rationally then an excellent idea is for the both of you to attempt to reach an agreement. There is, however, one important proviso. Before sitting down to discuss matters, take the opportunity to obtain some legal advice regarding your rights and obligations.

Then, if an agreement can be reached either you or your spouse can then retain a lawyer to prepare a legally binding Separation Agreement. Since you and your spouse have worked out the majority of the issues in advance the cost for the preparation of the Agreement is substantially less than it would be if two lawyers were involved in attempting to negotiate the same agreement.

Once the Separation Agreement is prepared and reviewed by you and your spouse you should attend with a lawyer and obtain legal advice prior to signing. In such situations you should ensure that there is a document called a Certificate of Independent Legal Advice attached to the Agreement which is signed by your lawyer. It's a document which confirms that the lawyer believes that you have understood the Agreement and that you signed it willingly and not

under any duress from the other party.

The reason it's important is because of the possibility that one of the parties at a future date may seek to have the Agreement overturned by the Court because they "didn't understand what they were signing" or felt "forced" to sign. If it is overturned by the Court there is a risk that the Court could then "rewrite" the Agreement. The Certificate can act as an important defence to such future actions.

Clients are often surprised to hear that they both can't sign in front of the same lawyer, this is because it would place the lawyer in a "conflict of interest" since he can't independently and impartially represent the legal interests of both clients which may differ.

If, however, the talking option is not quite as easy as it sounds then it's time to enlist the efforts of a professional family mediator. In these circumstances if a resolution is reached the mediator can prepare a letter or memo which outlines the agreement. But it's important to note that the letter or memo is not a valid legally binding agreement until it's transformed into a Separation Agreement by a lawyer. Still a much less expensive option than going to court.

There's also a saying that "talk is cheap", but that's a good thing, especially during tough matrimonial times, and the best way to keep your own divorce or separation well under twenty grand. 🍷