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Fear Factor

Category: Separation Agreements

It's generally recognized as something which ranks near the top of any list of anxiety provoking events. I'm not talking about the death of a loved one, or speaking in front of an audience, both of which also rank at or near the top of most people's list, I'm talking about separation and divorce. However it's my experience, as a family law lawyer, that one of the best ways to minimize the "fear factor" is to know as much as possible about your legal rights and obligations in such circumstances.

Consequently, over the course of the next few weeks, I'll be providing some general legal information about separation, divorce and related topics. However, as always, you should consult with a legal professional to obtain appropriate legal advice with respect to your own specific circumstances.

One of the most frequently asked questions is the meaning of the phrase "date of separation". The date of separation simply means the date the parties discontinued living together in a husband and wife relationship. It does not necessarily mean the date that the parties actually physically separated, for example, the date that one of the parties left the family residence.

In fact, in some circumstances, the parties may have lived essentially separate lives for several years, while continuing to reside in the family residence. Typically, one party resides downstairs and the other party upstairs. For legal purposes such parties are already separated. The reason the period of separation is important is because after a period of at least one year, either party may be in a position to obtain a divorce.

While there are other circumstances which can lead to divorce, such as adultery, its my experience that the one year period of separation is by far the most common.

Now that you've established you're separated, what is the next step in your legal journey? There are

a number of options and alternatives. One option is to file, in a Supreme Court Registry, the necessary court papers. In these papers you will be required to indicate what you are asking for, such as, a fair and equitable divorce, division of family assets, spousal support, child custody and anything else.

However, since an actual trial to determine these issues may be many months away, in order for you to obtain what is commonly referred to as "interim relief" you will also need to prepare for, and attend at, a hearing in order for a judge to decide such issues.

Another option which should also be considered is an attempt to negotiate a resolution of all outstanding issues, either between the parties and their counsel, or with the assistance of a professional mediator or collaborative law lawyer.

If agreement can be reached the terms can then be integrated into a legally binding Separation Agreement. The Separation Agreement can then be filed at the appropriate time, with the additional necessary papers, to obtain what is referred to as a "desk order divorce", without the need of actually appearing to speak to the matter in court.

While it may not remove separation and divorce from your own list of high-anxiety situations, good legal advice will at least help you to reduce your own separation anxiety. 🌱