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Separation Anxiety

Category: Separation Agreements

Despite your best efforts to salvage the remains of your relationship the end is inevitable. On the positive side however, there are no children, and you and your spouse are still talking to one another. After comparing notes with friends who have suffered through the financial and emotional hardship of legal proceedings, you and your spouse decide to take matters into your own hands and settle all matters between yourselves. After all, you are both mature and intelligent adults who know what's best for your family.

You or your spouse purchase a do-it-yourself Separation Agreement, available at most stationary stores, cross out the provisions that you don't believe are applicable and sign on the dotted line. The Agreement is then put into a drawer and forgotten about, at least temporarily, until a problem arises.

At this point you will likely be the recipient of court documents suggesting that the Agreement be overturned for a variety of reasons, and demanding a re-allocation of assets and liabilities. Stunned, you ask yourself how this can possibly happen since you and your spouse already agreed on a final settlement of all family assets and debts.

You return to the drawer and pull out the signed Separation Agreement. There must be a mistake, you think, because it's absolutely clear from the terms of the Agreement what you both agreed. Surely, your spouse can't renege on his or her written agreement.

Wrong. Courts can and do, for a variety of reasons overturn Agreements between individuals. Factors such as duress, undue influence, non-disclosure, and the lack of independent legal advice are frequently claimed in such proceedings.

Courts will not enforce the terms of the Agreement if your spouse is able to demonstrate that he or she signed the Agreement as a result of undue pressure or influence. Courts will also be reluctant to enforce the terms of the Agreement if it appears that the Agreement is simply unfair.

What could you have done differently? I always recommend that parties entering into an Agreement receive independent legal advice before signing. If you and your spouse had received such advice before signing there is a much greater likelihood that a court would enforce the terms of the Agreement. It's not a large investment in legal fees but it's definitely worthwhile. As the saying goes, you can pay me now, or you can pay me later! 🍷