

Why Do I Need a Lawyer When I Want to Do My Own Divorce and Separation Agreement?

Whether you downloaded something from the internet, copied your friend's separation agreement, or went to mediation and have a mediation report, you still need to talk to a lawyer about your divorce. Why? Here are the top 5 reasons:

1. The law says so. Consider the Matrimonial Property Act of Alberta:

Section 38(1): An agreement ... is enforceable if each spouse ... has acknowledged, in writing, apart from the other spouse or person

- (a) that the spouse or person is aware of the nature and the effect of the agreement,
- (b) that the spouse or person is aware of the possible future claims to property the spouse or person may have under this Act and that the spouse or person intends to give up these claims to the extent necessary to give effect to the agreement, and
- (c) that the spouse or person is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse or person.

Section 38(2): The acknowledgement referred to in subsection (1) shall be made before a lawyer other than the lawyer acting for the other spouse or person or before whom the acknowledgement is made by the other spouse or person.

Only a lawyer can tell you of the 'possible future claims to property ... under this Act', and only a lawyer can witness the above acknowledgement.

You can read the whole Matrimonial Property Act of Alberta here:

http://www.qp.alberta.ca/574.cfm?page=M08.cfm&leg_type=Acts&isbncln=0779743741.

Then consider the Supreme Court of Canada in the case of Miglin v. Miglin:

“Where vulnerabilities are not present, or are effectively compensated by the presence of counsel or other professionals or both, or have not been taken advantage of, the court should consider the agreement as a genuine mutual desire to finalize the terms of the parties' separation and as indicative of their substantive intentions. Accordingly, the court should be loathe to interfere. In contrast, where the power imbalance did vitiate the bargaining process, the agreement should not be read as expressing the parties' notion of equitable sharing in their circumstances and the agreement will merit little weight.”

Read the whole Miglin case here:

<http://csc.lexum.umontreal.ca/en/2003/2003scc24/2003scc24.html>.

2. You cannot rely upon your agreement being enforced or upheld without legal advice.

Why go through all the time, effort and stress to negotiate an arrangement when it is not guaranteed to be held up? Without the formalities that lawyers provide, you run a greater risk of your agreement not being enforced. What do I mean by this? Consider the following: you and

your former spouse make a deal that has you transferring the home to your spouse in exchange for a payment of \$100,000.00. You sign all the transfer documents, and the home is now in your spouse's name. Your spouse then decides not to pay you.

How do you make your spouse pay? If you take your agreement to a judge, the judge is obliged to follow the legislation for property division, support and parenting issues. Some of them have express requirements for legal advice – see above. All of them have implied requirements for legal advice. Without it, the judge can and will apply the law, notwithstanding what your agreement says; you may have to start all over again. Why put yourself through this? Do it once, properly.

3. Lawyers are problem solvers. For your problems.

We have done this before, and we are trained to generate options that you may not have considered. You are going through (hopefully) one divorce. Everything is new, and you are trying to address very sensitive issues during an emotional time. Sure there are articles on the web and books in the bookstore, but it can be difficult to apply the ideas from an article to your own divorce. A lawyer can help you move past the point you are having trouble with, and can suggest something new and productive. We can also make sure that you don't miss anything; this is the most common problem with the do it yourself divorce.

4. Lawyers can take a step back.

Lawyers are trained to consider more than just your legal position and entitlements. Risk of pursuing a specific action, cost-effectiveness of how to get things done, appropriate compromise when appropriate, and the effect of ongoing stress are considerations that your lawyer can address with you. Your lawyer can also provide an unemotional, objective perspective on issues that are often extremely emotional and subjective. Maximizing your legal position is one thing; spending 3 years in court and spending thousands of dollars in legal fees are not for everyone. A good lawyer can help you decide when enough is enough, and when it is time to move on.

5. Lawyers can empower you when negotiating with your spouse.

Lawyers have three roles when helping our clients: we educate, we advise, and we advocate. Some clients need all three roles to be played out, while others need only one or two. More and more lawyers are offering 'unbundled' services – providing legal advice without taking an active role in negotiations, for example. If you need to know what your legal entitlement is, but want to conclude negotiations yourself, we can help you.

Need help with any of the above 5 points? Give me a call. I successfully help people work through their separation and resolving their disputes in the way that respects individual interests and maintains dignity.

Warren is a family law lawyer who practices at Moe Hannah McNeill LLP in Calgary, Alberta. Warren's approach to family law emphasizes effective and dignified problem solving, empowering his clients to deal with their legal issues at separation. Read Warren's bio at http://www.calgaryfamilylawyers.com/warren_jennings.html.

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