

Formal agreements vital in separation



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Legal Matters

Separated couples who attempt to divide their property between themselves without the lawfully required independent legal advice are failing to create valid agreements.

This can have disastrous consequences as in a case where the husband applied to the court to divide the couple's property 20 years after he left the relationship.

He had left the relationship and family home by leaving a note that included the words, "I've taken the car and some clothes. The rest is all yours".

The wife retained all the assets and the care of the couple's four children. The husband and wife had no contact for 20 years until the husband got in touch seeking his share of the family home.

The Court in this case held that, despite the note and the length of time that had passed, there was no valid agreement as to the division of the couple's property.

The husband was, therefore, entitled to a share in the family

home. That result would cause major problems for the other spouse, who had based her life decisions on owning the family home for all those years.

In order to ensure your agreement on the division of property is valid, it must meet the following requirements:

- It must be in writing and signed by both parties.
- Each party to the agreement

must have independent legal advice before signing it.

■ The signature of each party to the agreement must be witnessed by a lawyer.

■ The lawyer who witnesses the signature of a party must certify that, before that party signs the agreement, the lawyer explained to that party the effect and implications of it.

The purpose of these

requirements is to ensure that both parties know what they are gaining and/or losing by agreeing to a settlement that divides their property.

So long as they get that advice and the formal requirements are met then the parties are free to divide their property on any basis they agree to.

Before the lawyer can certify the agreement they need to advise

the client of the effect of the agreement and its implications.

This means the lawyer will need information on what the relationship property assets are and the values before they give their advice. Putting together a list of all property and providing values and if necessary valuations will assist with the process.

Full disclosure needs to be made by each party to the other of all relationship property assets. If full disclosure is not made then the agreement may be overturned by the court.

If the parties have given full disclosure and agree on the list and values, they can then reach agreement to formally record the division of their property.

If these issues are not formally settled within a reasonable time following the end of the relationship, that can cause practical difficulties later. One partner may not be in New Zealand or not be able to be located.

It pays to get early advice regarding your specific situation despite the difficulties of dealing with these issues when the relationship ends.

If you have a legal inquiry you would like discussed in this column please email Alan on alan@knowsley.co.nz

Column courtesy of Rainey Collins Lawyers phone 0800 728 484 or raineycollins.co.nz.



DIVORCE AGREEMENT APPROVED
HUSBAND NAME, referred to herein as HUSBAND and WIFE
WIFE, agree:

The parties were 1999-2011