

THE IMPORANTANCE OF A LEGAL SEPARATION AGREEMENT

By Marie Tukara



Parties are often confused about what they should do upon separation. Often I hear the term we need to need to get a “legal separation”. In our statutes which govern separation and divorce there is no such term. Parties can choose to go to court, go through mediation or to settle their matters by negotiating and signing a separation agreement. A separation agreement is a legal document which is signed and witnessed by both parties which sets out the terms of their separation and also confirms the date of separation.

There are many factors to consider upon separation, such as but not limited to custody of the children, support (child and spousal), possession or sale of the matrimonial home and equalization of the net family property. These are issues which can be negotiated and

outlined in an agreement.

This leads to the question, why would you sign a separation agreement. Simplistically, this avenue is often one that is chosen because it is less acrimonious, less costly and avoids a court application. A couple separates and the separation is difficult enough emotionally. They want to do this as painless as possible. They are confused and they need guidance. Each party is represented by a lawyer who can advise their client as to their rights. When negotiating an agreement the parties feel they are players in the terms which are ultimately decided on and they can control the outcome of their separation. There are often compromises on many issues but each party can go away feeling there is no winner or loser. An example of this is dealing with custody and access to the children. This issue can be the most difficult and acrimonious. It is better to negotiate who the children are going to live with than have a Judge who is a stranger to the parties tell him/her where the children are going to live and when they will see their children. The parties want finality to their situation and signing an agreement helps to achieve this in a more expeditious manner. This is not to say that negotiating an agreement is the best course for every situation. If this was the case our court system would not be congested as it is. However, attempting to negotiate an agreement is usually the first step in the process because it does help parties deal with the enormity of their situation and if and when they do have to go to court it may not seem as ominous if they have been negotiating an agreement.

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