

Can my ex and I make a separation agreement without a lawyer?

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A separation agreement is a legally binding contract between ex-spouses or ex-common-law partners that deals with the issues arising from a separation, including property division, spousal support, parenting and child support.

Many exes wonder if they can enter into a separation agreement without lawyers, often finding online templates for do-it-yourself (DIY) separation agreements. The assumed benefits of doing so without a lawyer most commonly come down to saving costs and keeping matters between the exes private.

However, while it is possible to prepare and sign a separation agreement without the assistance of a lawyer, it may be found that the agreement is not worth the paper it is written on. The problems of making a DIY separation agreement arise from two things: (1) lack of knowledge about legislation and entitlements, and (2) lack of independent legal advice.

Knowledge of the Law

First, exes attempting to do a separation agreement on their own typically are not aware of or knowledgeable about the legislation that impacts them as separated spouses or partners. In Manitoba and in Canada, there is legislation and common law that sets out the legal rights, entitlements and obligations of separating parties. Knowledge of these rights, entitlements and obligations become crucial when entering into a separation agreement, as the agreement is the legally binding contract that resolves such matters. Without a lawyer, it is possible that exes may enter into a separation agreement that is not fair or equitable, or that does not properly deal with all matters arising from a separation.

Independent Legal Advice

Second, when lawyers are not involved in a separation agreement, the parties are likely not receiving independent legal advice on the agreement. Independent legal advice (“ILA”) is crucial for both parties to understand the legislation, their entitlements and obligations, and how the agreement will affect them now and in the future. ILA is given by a lawyer who meets with only one of the parties to provide advice independently from the other party to the agreement.

While it is crucial for the parties personally to understand what they are agreeing to in their separation agreement, ILA also has the effect of making the agreement enforceable in the future as a court is more likely to uphold a separation agreement if both parties to the agreement received ILA. Without ILA, one party could potentially make an argument in the future that they did not understand their rights when they signed, or that they were forced to sign under coercion or undue influence.

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