

Advantages of a separation agreement

The agreement is flexible as it can include any term that the parties wish to incorporate, subject to few limitations. Financial matters are often the cause of the most bitter disputes during a marriage breakdown, and an agreement negotiated by the parties may serve to take the heat out of the breakdown of the marriage. It provides a means of resolving financial and other problems formally but without the intervention of the court, which can be expensive and can encourage animosity between the parties.

Disadvantages of a separation agreement

It is not easy to enforce and does not achieve the same degree of finality as a court order. Therefore, your spouse may seek further relief from the court when they issue divorce proceedings.

For advice on separation agreements or any other family matters contact **Gorvins Solicitors Family Team** at:

4 Davy Avenue
Knowhill, Milton Keynes
MK5 8NL

Tel: +44 (0)1908 354 154
Fax: +44 (0)1908 354 155
E-mail: enquiriesmk@gorvins.com
www.gorvins.com

2-14 Millgate
Stockport, Cheshire
SK1 2NN

Tel: +44 (0)161 930 5151
Fax: +44 (0)161 930 5252
E-mail: enquiries@gorvins.com
www.gorvins.com

Separation agreements

There are occasions when, for a variety of reasons, a couple do not want to divorce at the time they separate.

Many of those couples do, however, want to formalise any agreement that they may have come to in relation to the children and property. Sometimes couples are able to reach agreement between themselves, and sometimes they are able to do so with the help of a mediator. We can also help to negotiate a settlement on your behalf.

If you are able to reach a voluntary agreement, then this can be incorporated into a voluntary deed of separation, also called a separation agreement. This type of document can be very helpful, as it allows a couple to move forward with their lives, rather than waiting to deal with financial matters at the time of divorce.

It is important to note that a deed of separation is a voluntary agreement, and cannot be forced upon a party. Courts do not have any involvement in the preparation or approval of the document.

Generally, each party should make full and frank disclosure of their financial circumstances to the other, and each party should seek independent legal advice on the terms of the agreement. Provided this is done, then it is likely that the court will take the deed of separation into account if there is a dispute during the divorce and one party tries to depart from the agreement. However, you should be aware that the court always has the jurisdiction to overturn an agreement. This is most likely where one party's circumstances have changed significantly between the execution of the deed of separation and the divorce, or where it is alleged that the document was signed by one party as a result of pressure from the other.

A deed of separation is not easily enforced through the court if one party breaches the terms of the agreement.

So what should a deed of separation contain?

There are no hard and fast rules about the contents of a deed of separation, and circumstances will vary depending on the case. Generally, it will state the names of the parties, confirm that they have made financial disclosure and also that they have taken independent legal advice. It acknowledges that the marriage has broken down and that a divorce will take place at some point in the future. The agreement of the parties to a marriage to live apart is central to a deed of separation and the document provides evidence as to the date of separation. Other matters that can be included are:-

Children

- Where each child will live
- How much contact will take place with the non-resident parent
- Specific arrangements for contact over school holidays, Christmas, birthdays etc.
- Agreements about the children's education

Finance and property

- The amount of maintenance that is to be paid, whether in respect of the children or the other party, and for how long.
- Responsibility for payment of extra expenses for the children, for example school trips.
- What is going to happen to the family home. Who is going to make the mortgage or rental payments, and what is going to happen to the property in the longer term. You may also wish to consider responsibility for the bills until the property is sold.
- Division of contents of the property.
- Division of any other assets.
- Whether one party is going to have a claim on the other's pension upon divorce.