



Separation Agreements, Clean Break & Consent Orders

Separation Agreements

A large number of couples separate having made the decision that they do not live together, but equally, they do not want to start a divorce straight away or they may not want one at all!

No one can predict the future, which makes many people question if a divorce is the 'right thing to do'. By way of example, you would not rush into buying a car without shopping around, you would not get a mortgage without weighing up the other deals, so why should you hastily end your marriage without looking at your other options?

A divorce is often an extreme measure, and often a thorny topic which if rushed into can:

- Add to tensions
- Cause bitterness and resentment
- Emotionally confuse children
- Force topics to be discussed that you are not ready to talk about
- Start legal time tables that clash with plans already made
- Start the running of high legal costs
- Get impersonal solicitors involved
- Rush agreements on important decisions that need to be made

It is for the abovementioned reasons (and indeed, many others personal to the parties involved) that couples are seeking a remedy which best suits their particular circumstances.

Separation Agreements are becoming increasingly more popular as they provide both parties peace of mind before deciding on whether or not to legally divorce. A married couple can choose to separate and they have no obligations to inform any legal professionals that they are no longer together, thus making a Separation Agreement a far less formal means of achieving both parties wishes before making the ultimate decision as to whether or whether not to end the marriage by divorcing.

In addition to this, a Separation Agreement is an extremely effective way of regulating 'the split' and of making all the important decisions yourself, without the involvement of the Courts. A Separation Agreement can include:-

- Division of property
- Who will live in the marital home
- Payments of maintenance to either spouse
- Child provisions including agreement as to the maintenance to be paid for the children.
- Division of personal possessions
- Division of policies such as; pensions, insurance, medical
- Who is responsible for the bills that need paying
- Who is responsible for debts
- Bring about an abrupt end to your marriage

Please Note:

Whilst respecting your views and wishes, and acknowledging that you know more about the personalities and characters involved than we do, when asked to draft a Separation Agreement, we will ask you to sign a form, confirming that you wish to proceed to without the intention of making a Clean Break Agreement / Consent Order at the time the Separation Agreement is prepared. The form we ask you to sign confirms your acceptance and understanding that **we can make no promise that any provisions / arrangements in the Separation Agreement will stick** as it is only when such arrangements are embodied in a Court Order that 'the parties' rights are exhausted.

Consent Orders

In many family breakdowns, the parties reach an amicable arrangement about their property (the word 'Property' relates to the 'assets of the marriage' and often includes the Matrimonial Home). The arrangement can be either within a Divorce, or on informal separation.

However, irrespective of how any Agreement is reached, it is always prudent to include the terms of the Separation Agreement into a 'Clean Break Agreement' or 'Consent Order' made by the Court in divorce proceedings. The parties to a marriage have the right to one Court Order which re-arranges their financial (usually capital) affairs. Until such an Order has been made, or he or she remarries, both remain free, at any time later, to go to court and to ask for an Order appropriate to the time when the application is heard.

Circumstances may well have changed in between times, and a court may very easily take the view that the original arrangement is no longer appropriate.

Separation Agreements, whilst providing an extremely effective way of regulating the split, do not remove this right to a court order, and either party may still apply for one in a subsequent divorce.

When a Court makes that decision, the Separation Agreement will be one, and only one, of the elements it considers. The court looks at the situation which applies at the time it makes the order. The Court may ignore any previous arrangements, whether informal, or contained in any Separation Agreement.

It is for this reason that we would ask you to note that:-

1. such agreements must be entered into only on the understanding of the powers of the Courts and;
2. the value of most Separation Agreements is very limited.

Often, even in a divorce, there is still 'sufficient trust' between the parties to finish the divorce without an Order, but this can be just as unsafe. Even if the trust is justified, one party may later lose control of his or her affairs; they might be bankrupted, or suffer a serious accident.

An application might then be made, in effect, without their consent. Equally, one may acquire unexpected wealth, and the other find it irresistible to apply for a share. Such an application may not be likely, and may not succeed, but they do happen.

If any 'non-order' arrangement is challenged, the result is usually substantial additional expense as the Court has now to decide, not only what is the current position of the parties, but also what weight should be given to the earlier agreement.

Before making a Clean Break Agreement / Consent Order, the Courts now also require quite detailed information about the respective financial positions, and 'romantic intentions,' of the two parties. These details are provided on a "Statement of Information" Form which both parties must complete.

The Statement of Information Form provides details about, amongst other things, your income and capital and details of where you are living and whether you have any future plans to remarry or live with someone else.

This information is then sent to the Court together with the Clean Break Agreement/ Consent Order and will help the Court to decide whether the agreement you have reached with your partner is fair.

You will **not** need to attend Court. The Court will rubber stamp the Clean Break Agreement/ Consent Order if they are happy with it and send it back to your Legal Representative. If they are not satisfied with the Agreement/Order, the Court may ask your Legal Representative to send them more information or attend court to discuss the contents of the Agreement/Order and the Statement of Information.

The Court are keen to ensure that the agreements contained in the Agreement/Order have not been obtained by the parties in ignorance of any factor which might have affected their agreement and they want each side to make a full, documented, and recorded disclosure of their respective assets. It is also much easier if both parties have independent legal advice.

The Consent Order acts as a Contract between yourself and your partner. If your partner break the Agreement you can go back to court to enforce its terms against your partner.

The procedure is very straightforward and does not involve either party attending Court in most circumstances. A Clean Break Agreement / Consent Order can formalise Agreements relating to property division or transfer, personal property, savings, shares, policies, spouse maintenance, child maintenance and pensions, including pension-sharing orders.

The Agreement/Consent Order is filed after Decree Nisi has been pronounced by the Court in divorce proceedings and is a 'final binding order' on both parties.

Where you opt to have a Separation Agreement prepared, we strongly advise you ensure you instruct your Legal Representative to prepare the Consent Order or Clean Break Agreement and that it is signed by both parties in advance of initiating Divorce proceedings, thus ensuring there is no delay in obtaining the Agreement / Order from the Court at a later date.

A well drafted Separation Agreement can be either wholly, or in part included in the Clean Break Agreement / Consent Order, thus negating the need to re-visit matters which you agreed from the on-set of your separation.

Additionally, you can save time and money by providing your Legal Representative with a copy of the Separation Agreement as it is likely, in the majority of cases, that only minor adjustments / changes will be needed before embodying the terms and conditions of the Separation Agreement into a Clean Break Agreement / Consent Order.

In Summary

1. You may be able to settle financial matters without the need to go to court by preparing a Separation Agreement, though you must be fully aware that whilst affording both parties 'peace of mind', such an Agreement is not enforceable.
2. A Clean Break Agreement/Consent Order can be prepared, taking in to consideration the terms set out in the Separation Agreement and making the Agreement enforceable in the future.
3. 2. A Clean Break Agreement/Consent Order is **the only way** that you can guarantee that any Agreement you and your ex-partner may reach is enforceable by law and that no further claims can be made.
4. 2. A Clean Break Agreement/Consent Order allows you to ensure that, following your Divorce; your ex-partner cannot go back to court to ask for more money or assets and is the only way that you can guarantee that any Agreement you and your ex-partner may reach is enforceable by law and that no further claims can be made.

Finally....

A Clean Break Agreement/Consent Order should be drafted by a professional, with experience of such matters. Please do not hesitate to discuss this with us should you require further information as to this.

Disclaimer

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