

Avoiding an Unhealthy Divorce Agreement

You're in the final stages of your divorce negotiations. The attorneys for both sides are busy drafting a property settlement and divorce agreement that will legally bind the actions of you and your (soon to be) ex-spouse for many years to come. This is a very emotional time for both parties and, in their haste to complete the process, it is not unusual that certain legal issues are vaguely addressed or, in some cases, omitted in their entirety. Just ask anyone who has been through the process and you will be hard pressed to find someone who did not experience some post-divorce issues not covered by their agreement.

The remedies to these omissions depend upon the relationship (or lack thereof) of the divorcing parties. The "amicable parties" can usually find common ground and mutually agree to correct unaddressed problems or issues. "Warring parties" may have no other choice but to live within the terms of their agreements or pursue legal means to correct or clarify their issues.

There is no "master list" that will help identify every unforeseen situation. Obtaining sound professional advice, reading and understanding your agreement drafts, discussing issues with friends or family members who have gone through the process all can help you avoid an "unhealthy divorce agreement." From my experiences, both personally and professionally, here are five "hot" topics you should address:

Clearly Define Emancipation. What age do your children have to reach before child support payments end? Is it defined by state law? Should there be payment adjustments for un-emancipated

children attending college or not living with the custodial parent? Did you address extended payments for children with special needs?

Clearly Define Cohabitation. There are too many court cases that may result in unexpected legal challenges that could put you at risk for a modification of alimony. One cited court case argued for cohabitation and a reduction in alimony because, among other things, “the significant other stayed overnight several days each week” and helped with the “day to day chores” around the ex-wife’s house. Carefully drafted language defining cohabitation helps eliminate this risk.

Avoid Ambiguous Terminology. The most common example of ambiguous terminology- “the ability of the parties to pay.” Your ex-spouse may claim poverty or loss of employment just before the college tuition or camp bill is due. And if he or she has no liquid assets to help pay these expenses, you may get “stuck” paying the entire bill! Be specific when it comes to how medical bills or extra curricular activities should be shared. Use percentages and dollar limits so that precise calculations can be made.

Understand What Expenses Child Support Payments Should Cover. Generally, they apply to the “big three”- food, clothing and shelter. Camp, child care, braces, unreimbursed medical expenses, special religious celebrations, weddings, vacations-all are just a few of the many expenses that fall outside the “big three”. If you do not address these other expenses, you may quickly find yourself paying for things you never anticipated.

Define Ways and Means for Defending Your Agreements. Parties can legally bind themselves to certain terms but, too many times, they don't live up to what they agreed. How will you enforce your agreement when your ex-spouse refuses to reimburse you for a few thousand dollars of medical expenses? Filing legal motions are costly, time consuming, and usually invite counter claims. Having your agreements state that the "non-complying party" bear all legal costs relating to the enforcement of your agreement could prove very effective in convincing your ex to live up to his/her responsibilities.

Be mindful before you sign off on your agreements. A poorly drafted document can cause many problems down the road. Sit with your professionals and discuss your life style and expectations. Understand that your children's needs change from year to year and usually require more cash outlays as they get older. The hot topics outlined above can help assist you in avoiding an "unhealthy divorce agreement."

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