Divorce Settlements What is Important to You by David D. Stein

Article published on January 12th 2012 | Law

The key sections of a well negotiated Marital Settlement Agreement are easy to name and not that difficult to achieve between people of good faith.

If there are minor children involved, the first issues are custody, co-parenting and support.

There is no singular right way to manage these issues. Younger children have different needs then teenagers. Special needs children must be cared for in a manner commensurate with their requirements. The key to success in coming to agreement on these matters is for the parents to rise above their personal perspective and adopt the mid-set that they will unselfishly put the best interests of the children first. If each parent can so adjust their thoughts, then parents of good faith will find the right way for their family.

Questions of child support are somewhat easier and will follow the agreement on co-parenting that the parties work out. This is because California mandates child support formulas based upon the income of the parties and the time each party will be spending with their children. Once that baseline number is established, the parties are free to enhance it as they see fit for particular expenses or enrichments that they feel are appropriate for their family.

The next set of issues to be negotiated often is spousal support.

In California there are 14 factors that a judge must carefully consider before awarding spousal support. These factors are set forth in Family Code Section 4320:

4320. In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties.

(i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.

(j) The immediate and specific tax consequences to each party.

(k) The balance of the hardships to each party.

(l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.

(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4325.

(n) Any other factors the court determines are just and equitable.

Make no mistake, the careful consideration, weighing and balancing of these myriad factors is a demanding and exacting task. It is best to have this conversation supported by a family law/mediation specialist who can help interpret, evaluate and clarify the process. However, always keep in mind that these elements must eventually be applied to your family situation and that if you approach the topic with the proper perspective, you will be able to come to acceptable terms on this challenging issue.

The last set of issues to be managed is the division of property.

In California the law is that each party has â€œan undivided one half interestâ€• in community property. Th challenge is for both parties to fully disclose all interests and values in all property. Once each party is fully apprised of the entire marital estate it is possible to sort out and assign the various assets and liabilities in a manner that is equitable and appropriate to the parties. Many times couples will agree to what is, on its face, an unequal distribution of property because they have decided that such an allocation is just and proper for their situation. Although California says that parties are entitled to a 50% share, informed parties are free to agree as they wish.

Before signing any Marital Settlement Agreement is always well advised to have the contract reviewed by an experienced family law attorney. Keep in mind that the review process is not to start the battle that has been avoided, but to make certain that you understand the agreement and that the agreement will accomplish what you want it to accomplish.

Article Source:
http://www.articleside.com/law-articles/divorce-settlements-what-is-important-to-you.htm - Article Side

David D. Stein - About Author:
Carol Gee is a lawyer with over 20 years of experience and a Liaise trained divorce mediator. Carol is bilingual in Mandarin Chinese and conducts mediation in English or Mandarin.
Read more: a divorce lawyers in San Francisco | a family law attorney San Francisco

Article Keywords:
divorce lawyers in San Francisco, family law attorney San Francisco

You can find more free articles on Article Side. Sign up today and share your knowledge to the community! It is completely FREE!