

Steps to Take When an Issue in a Divorce Settlement Is Overlooked

Article By:

Jennifer Weisberg Millner

You just realized an asset wasn't included in the settlement agreement. Now what?

The custody schedule, support provisions, the sale of the marital home, and the agreement has been signed. This means at this point, the divorce is finalized. Just when everything seems they will return to a new normal you realize that an issue was forgotten and not addressed in the settlement agreement. So, what happens now?

This can be a complicated issue because settlement agreements are *final* agreements. Most often there is a very specific statement within the agreement that the document has addressed all issues between the two parties, and that all assets and debts have been addressed and distributed. There are extremely limited situations when you can go back and revisit issues.

If both parties agree something was forgotten in the settlement, they can consent to the settlement being re-opened and terms can be added. For instance, if there was a long forgotten joint bank account, both former spouses can agree to its distribution.

However, it's more typical for one party to realize the asset was overlooked, and the other will take the position that it was not overlooked, and the intent was to leave the asset in the possession of the spouse in whose name it was titled.

If a spouse finds an asset that was not specifically distributed in an agreement, that spouse can ask the court to re-open the divorce to divide it. There are limited reasons why a case can be re-opened, and a request to reopen has time limits. These reasons generally include mistakes, newly discovered evidence, or fraud. Typically, a request must be made one year from the original date of the agreement. If there are extraordinary circumstances, the court is one of equity and can open the case at a later date. However, these situations are extremely rare.

If the case is re-opened, that is just the beginning. The former spouse still has to demonstrate that the asset or debt was actually not addressed and that it would be unfair to allow the other spouse to keep the item. This is a heavier burden, and the court may say that a trial is necessary to make that determination. In addition, the emotional toll of having to revisit the entire divorce process cannot be overstated.

The difficulty in reopening a case demonstrates the need to “get it right the first time.” Having both parties run a credit check during the divorce process is one way to determine assets and debts. This is also a good way to make sure that a credit card that was assumed to only be in one party’s name is not actually in both. Sending subpoenas to banks is another way to make sure all assets and debts are accounted for. If there are no accounts listed at a bank that was used during the marriage, sending a request to make sure there are not active accounts can be useful.

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