

DRAFTING TIPS FOR
MARITAL SETTLEMENT AGREEMENTS

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10 THINGS TO REMEMBER:

1. Draft Defensively
2. Don't be Married to the Form
3. Talk to Opposing Counsel *Before* You Start Drafting
4. Don't A-S-S-U-M-E Anything
5. Use Examples if Necessary
6. Think Before You Draft
7. Math is Important Too
8. If You Need More Time, Take It
9. Proofread
10. Repeat Steps 1-10 Each Time

HINTS & EXAMPLES:

1. Draft Defensively

- Remember Your Audience (It is Not Just Your Client)
- Think of What Can Go Wrong
- Think About the Post-Decree Calendar
- Ambiguity is your Foe

Each of the parties has had the benefit of advice, investigation and recommendations with reference to the wealth, property, estate and income of the other, *both directly and through the furnishing of complete financial data to counsel*, and that each has been fully informed of his and her respective rights and obligations in this matter, *and that each is otherwise aware and cognizant of all of the property and income possessed by the other and the value thereof.*

Each of the parties has had the benefit of advice, investigation and recommendations with reference to the wealth, property, estate and income of the other. *Each party avers that they have each fully disclosed all of their assets, liabilities, income and expenses which are all fully and accurately set forth within this Agreement. Each party has been advised that they each have the right to pursue further discovery of these matters but they have each respectively advised their counsel to forego any such further investigation into these matters.*

2. Don't be Married to the Form

- Are the Facts Consistent with the Form
- Do you Need this Paragraph
- Boiler Plate Language Needs Review

ARTICLE # HEALTH INSURANCE FOR SPOUSE

##. The Husband shall cooperate with the Wife to assist her in obtaining a continuation and conversion of the existing health and hospitalization insurance to a separate policy issued on her behalf *pursuant to the provisions of the Illinois Spousal Health and Insurance Rights Act of 1985 (SHIRA), and/or the Consolidation Omnibus Budget Reconciliation Act (COBRA).* The Husband shall obtain and execute all documents necessary to obtain said continuation and conversion. Upon obtaining said separate policy, the Wife shall be solely responsible for the payment of the premiums.

3. **Talk to Opposing Counsel *Before* You Start Drafting**

- Which Lawyer is Doing the Drafting
- What is the Timetable
- Does the Other Lawyer have “Pet Language” he or she wants
- Avoid “Dueling Agreements”
- Mail – Fax – E-mail – Personal Meeting

4. **Don’t A-S-S-U-M-E Anything**

- Don’t ASSUME real problems will be drafted away
- Don’t ASSUME you know everything – READ DOCUMENTS
- Don’t ASSUME the Tax Code
- Do Your Own Drafting

5. **Use Examples if Necessary**

##. The Husband is currently the owner of a ___% interest in an entity known as _____. With respect to said ownership interests, the parties agree that the Husband shall retain ownership of same free and clear of any claim thereto by the Wife, except and unless said ownership interest is ever sold and reduced to a liquid position, in which case the Wife shall be entitled to receive the following declining percentage proportional share of the Husband’s interests therein, *on an after-tax basis*, based upon the following timetable all timed upon the anniversary date of the Judgment for Dissolution of Marriage:

- a. 50% – Until 1 year anniversary of Judgment
- b. 47% - Between 1st and 2nd year after entry of Judgment
- c. 40% - Between 2nd and 3rd year after entry of Judgment
- d. 35% - Between 3rd and 4th year after entry of Judgment
- e. 30% - Between 4th and 5th year after entry of Judgment
- f. 25% - Between 5th and 6th year after entry of Judgment
- g. 20% - Between 6th and 7th year after entry of Judgment
- h. 15% - Between 7th and 8th year after entry of Judgment
- i. 10% - Between 8th and 9th year after entry of Judgment
- j. 5% - Between 9th and 10th year after entry of Judgment
- k. 0% - After 10th year after entry of Judgment

6. Think Before You Draft

- What Issues are Important to the Client - Some
- What Issues are Important to the Lawyer – ALL
- What Issues are Important to your Malpractice Carrier – ALL
- Use a Checklist on Each Case
- Use Your Notes
- Read the Documents

7. Math is Important Too

- Good Drafting Does Not Erase Bad Math
- Use FinPlan But Also T-H-I-N-K
- Use Excel But Also T-H-I-N-K
- Be Creative

8. If You Need More Time, Take It

- A Good Draft in 21 Days is Better than a Bad Draft in 3 Days
- Be Thorough

9. Proofread

- Computer Spell Check is NOT Proofreading
- Names, Ages and Addresses are Important
- Only Your Best Product Goes Out

10. Repeat Steps 1-10 Each Time

- NO SHORTCUTS ALLOWED