



ENFORCEABILITY OF PROPERTY SETTLEMENT AGREEMENTS

In a divorce or legal separation the parties may enter into a written property settlement agreement, which distributes the community property and community debts. In a divorce action, the trial court has authority to exercise full equity powers and jurisdiction since such actions are generally considered equitable actions and are, therefore, inducted under the rules of equity *Genda v. Superior Court, County of Pima*, 103 Ariz. 240,439 P.2d 811. Compare this with the holding in *Roden v. Roden*, 29 Ariz. 398, where the Court held when the parties settle their property rights by agreement, if the agreement is fair and equitable, free from fraud and undue influence, the Court will normally approve it.

Typical language to include in an enforceable property settlement agreement, include the following phrases:

- This property settlement agreement is made and entered into freely and voluntarily by each of the parties free from any duress, constraint, or influence of any kind or nature on the part of the other;
- Each party solemnly and specifically avers that this property settlement agreement has been entered into without undue influence, fraud, coercion, or misrepresentation, and with advice of counsel;
- This property settlement agreement is made and entered into voluntarily by both parties, free and clear from any duress or influence on either party by the other;
- Each party warrants that he/she has read the agreement in its entirety;
- Each party gives the assurance that he/she has read this agreement in its entirety;
- Each party has had the opportunity or has been advised fully and adequately by their respective legal counsel, of their own choice, as to the character and legal effect of all recitals and covenants contained in this agreement, and each party further warrants that he/she fully understands the nature and effects of such recitals and covenants prior to the execution of this agreement.

Including such language will make it extremely difficult for a party to set aside or overturn a property settlement agreement.