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LawTalk Blog



My spouse is not participating in property settlement negotiations

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Scenario:

Tina and Ike were married for 15 years. Their marriage was tumultuous and often characterised by domestic violence. Earlier this year Tina decided to leave the marriage after ensuring years of unhappiness. She moved out of the marital home and told Ike that the marriage was over.

Tina and Ike both immediately retained respective lawyers to represent them for their Family Law [property settlement](#). Despite negotiating through letters for six months, no progression has been made. Ike's lawyer only sends sporadic letters that don't address all the points of negotiation and it's clear that Ike does not instruct his lawyer correctly. This has led to a stalling of the process.

Tina is concerned that the matter will be prolonged for years as a result of Ike's half-hearted attempts to participate in the negotiations. What can Tina do to ensure Ike's involvement and consequently move the matter toward a resolution?

Answer:

Mediation

Tina and her lawyer could invite Ike and his lawyer to mediation. The mediation could possibly be undertaken as an informal mediation/round table conference with the parties and their respective lawyers, or they could attend a formal mediation with a

qualified mediator overseeing the negotiations.

Court proceedings

In the circumstances, Tina has every right to initiate court proceedings. Generally prior to court proceedings the parties must show that they have attempted mediation in an effort to resolve the dispute. Given that there has been some form of negotiation between the parties' lawyers, it is likely that Tina will be able to circumvent this requirement.

To initiate proceedings in the Federal Circuit Court (the jurisdiction that most commonly deals with matrimonial and de facto property settlement disputes) Tina, with the assistance of her lawyer, must pay the relevant filing fee and file the following documents:

1. An Initiating Application;
2. An Affidavit;
3. A Financial Statement (for financial cases only);
4. A Non-Filing of Dispute Resolution Certificate form.

Tina must discuss the options of mediation and going to court with her lawyer in order to determine which option is most suitable for her case.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.