WILENTZ
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Divorce Modification

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

Getting divorced is the beginning of court involvement for many families. Oftentimes, after a few months or years after the entry of the judgment of divorce, either one or both of the parties realize that the ex-spouse has breached the agreement, or there are changes in the parties' circumstances that warrant a modification in the agreement or judgment of divorce. Post–judgment issues can involve enforcement of the division of property or payment of support. In addition, post-judgment litigation can involve modification of alimony or change in circumstances due to loss of employment or illness. This is very common, and fortunately, there are several ways in which this may be resolved through divorce modification with Wilentz family law attorneys:

1. You and your ex-spouse can reach an agreement (either on your own or through the assistance of your divorce lawyers or mediator) and memorialize the amendment in the same fashion that you memorialized your divorce agreement. The amendment should state the reasons why you are making the change and should be signed, dated, and witnessed. It should state that the amendment is expressly replacing a specific provision and that both of you make the amendment(s) willingly and voluntarily. As simple as that, you may then continue to live your lives in accordance with the new terms.
2. If your agreement or judgment of divorce has a provision that requires the parties to attend mediation before filing a motion with the court (i.e., post-judgment litigation), then you both should agree on the mediator or follow the provision in your agreement or divorce judgment that specifies how you will select a mediator. If the parties cannot agree on a mediator, one party can file a motion asking the court to appoint a mediator and requiring the other party to attend and/or apportion the fees for the retention of the mediator. Once a mediator has been retained, if they resolve the parties' issues, they can prepare the amendment for the parties to present to their attorneys or a memorandum of understanding, a document that outlines the new agreement, for the attorneys to prepare the revised agreement. If, however, the mediator cannot help the parties resolve the problem, you should get a letter from the mediator stating that the parties attempted mediation but could not reach a resolution. Once that is done, one of the parties can file a motion asking the court to help.
3. If your agreement or judgment of divorce does not have a provision for using a mediator before filing post-judgment litigation, then you can just file a motion with the court, asking the court to help you modify your divorce agreement. If you seek to modify your agreement, you must show a change in circumstances warranting the modification. Depending on what relief you are seeking, the court can grant your relief, set the matter down for a plenary hearing, allow the parties to engage in discovery (to look into the issues more closely and for additional evidence in support of each party's position) or deny the motion with specified reasons.

To speak with an attorney about your legal options, please call: 732-352-9871.