



Unilaterally incriminating provisions in divorce settlements - Family Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Dusseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London - www.grprainer.com/en conclude: In its ruling of April 11, 2013 (File number: II-4 UF 232/12), the Superior Court [Oberlandesgericht / OLG] of Hamm decided that unilaterally incriminating provisions in divorce settlements, such as waiving the right of pension equalization in such a settlement, is to fall under the subject of being contrary to common practice only when there is good cause for assuming that such a settlement is based on interfering with subjective contractual parity. The unilateral distribution of burdens in a divorce settlement alone is said to be insufficient for assuming it to be contrary to common practice. It is necessary to take the overall individual situation of the parties into account when a settlement is concluded. A unilaterally incriminating provision is said to allow the assumption of a reprehensible attitude only if the unbalanced contents of the settlement point to a unilateral dominance of the favoured spouse based on the uneven negotiating positions of the spouses.

The OLG had to decide in a case where the spouses had agreed to waive their right of pension equalization in the divorce settlement.

In the opinion of the OLG, the divorce settlement did include unilaterally incriminating provisions. However, this alone should not be interpreted as being contrary to common practice. According to the OLG, an arrangement about pension equalization could possibly be ineffective due to being contrary to common practice if it results in individual advantages while negatively affecting the other party's basic social security. But it would be necessary to predict that one of the spouses would depend on basic social security in old age or in case of reduced earning capacity, and that such security would not be provided without the settlement.

Pension equalization is an equalization of pension entitlements which the spouses acquired during their marriage. These are for example claims under the public pension fund and company pensions. As a rule, pension equalization is regulated by the divorce court.

But many divorce questions can be settled out of court and without litigation. Mainly, an out of court settlement is the better route financially when companies must be divided. A prerequisite for a divorce settlement or a separation agreement is that both spouses agree in principle to find a solution out of court.

A lawyer with experience in family law will consistently watch that the interests of the client in a divorce settlement or separation agreement are maintained such that they are legally valid.

<http://www.grprainer.com/en/Divorce-Settlement-Agreement.html>

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Anlage: Bild

