

Self-Drafted Separation Agreement Checklist

If you are in a relationship in Ontario and are thinking of separating, you might create a separation agreement. What you include in the agreement will depend on your personal circumstances such as whether you have children, if you own a home together, if you are employed or retired, etc.

This information sheet covers many topics that include in your separation agreement. However, this list is not exhaustive and you may need to address other topics not included here. It is highly recommended that you and your partner each seek independent legal advice before signing a separation agreement to ensure it is fair to both sides.

Child Custody & Parenting

- Custody and access (if you are married)
- Guardianship and parenting (if you are not married)
- Special holidays
- Other arranged contact time such as telephone calls, correspondence, etc.
- Supervision, if necessary (who arranges, who pays, what are the conditions)
- Who pays travel costs to see the children?
- What happens if one parent wants to move to a different jurisdiction or province?
- Future name changes for the children
- Who gets family and child government benefits and child tax credits?
- Passport provisions

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Child Support

- Amount
- Length of time
- Financial disclosure
- Administrative recalculation clause
- Family Responsibility Office Program
- Definition of significant change in circumstances
- Income of parent paying support for variation
- Retroactivity
- Whether support will be in cash or through other benefits provided
- Allocation of funds for future contingencies (e.g. post-secondary tuition)
- Special agreements for extraordinary expenses as outlined by Ontario and Federal Child Support Guidelines (i.e. medical and dental insurance premiums, counselling, physiotherapy, glasses, educational programs, etc.)

Partner or Spousal Support

- Amount
- Length of time
- Financial disclosure
- Circumstances when it will increase, decrease, or stop
- Definition of significant change in circumstances
- Taxes
- Income of partner or spouse paying support for variation
- Retroactivity
- Whether support will be in cash or through other benefits provided
- Allocation of funds for future contingencies (e.g. serious illness or disability)
- Special agreements
- Whether support is paid through the Family Responsibility Office

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Property Division

Matrimonial Home

Exclusive possession by one partner or spouse

- Who pays for what?
- When is the home to be sold?
- Buyout provisions
- Occupation rent while living in the home
- Date of valuation of the home
- What happens if it is destroyed
- Conditions limiting occupation to one spouse (e.g. no possession if one spouse cohabits with another person)

Sale of home

- How home will be sold
- How real estate agent will be chosen (if applicable)
- How proceeds from the sale will be divided
- Reduction of list price by advance agreement

Financial Assets

- Canada Pension Plan
- Any other pension plans
- Life insurance policies with cash surrender value
- Tax refunds
- RRSPs
- Stocks and bonds
- Trusts
- Other investments (GICs)
- Profit sharing plans
- Bank accounts - joint and individual

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Physical Assets

- Pets or animals
- Tools
- Employment equipment
- Furniture and appliances
- Automobiles, trailers, boats, other vehicles
- Real estate leasehold interests
- Other land
 - Farmland
 - Investment properties
 - Cottages
 - Condos
- Business assets of either party
- Inherited assets and gifts
- Jewelry
- Art

Valuation of Assets

- Do any of your assets need to be valued by an expert?
- Who will assess value of assets?
- Employment equipment

Allocation of Debts and Outstanding Payments

- Who will pay existing debts?
- What happens to existing loans?
- Will loans and lines of credit be renegotiated? Who will remain responsible for them?

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Other Important Issues

- Whether the separation agreement binds the estates of the partners / spouses (e.g. if the father passes away, will his estate have to continue paying child support?)
- Severability clause stating that terms are independent of each other – if one term of the agreement is considered unenforceable, the contract will not be deemed unenforceable.
- Whether either spouse or partner will maintain medical and dental insurance for the other spouse or partner and child(ren)
- Whether life insurance will be maintained and who will be the beneficiary
- Who will pay for the drafting and/or negotiation of the separation agreement (note: both spouses / partners cannot pay one lawyer)?
- If married, whether divorce will be applied for and who will do it
- Use of mediation for conflicts regarding interpretation of the agreement or to negotiate changes to the agreement
- Clause requiring spouses or partners to disclose and exchange all relevant financial information for the last three years (e.g. tax returns, bank account statements, credit card statements, property assessment notices, pay stubs, corporate financial statements, etc.)