



SEPARATION AGREEMENT CHECKLIST

We have prepared this list of provisions for separation agreements for you to consider in the preparation of your Separation Agreement. You may wish to review and discuss these terms with your spouse. Using this checklist, which is not all-inclusive by any means, you can help us to prepare a Separation Agreement that will best protect and cover your interests and concerns.

A. Standard Clauses (these make sure you can live independent during your separation)

1. Right to live separate and apart as if single and unmarried.
2. Mutual non-harassment provisions
3. No modification of agreement except in writing and same formality as agreement
4. Mutual release of all claims and marital rights
5. Rules for interpreting and enforcing agreement
6. Attorney's fees recoverable if one spouse breaches Agreement
7. Representation of parties by attorneys (or not)
8. Future Conveyance
9. Nothing to prevent either party from obtaining absolute divorce
10. Provision determining if the Agreement can or cannot be incorporated
11. Provisions for integration of alimony and equitable distribution
12. Naming of Parties: referred to as "Husband" and "Wife" whether remarried or unmarried
13. Entire Understanding of parties
14. Severability
15. Effect of Reconciliation on Property Settlement
16. Effect of Reconciliation on Support Provisions
17. Equitable Distribution of property
18. Waiver of Grievances-Releases: waiver of third party claims
19. Tax Impact-Property Sale: capital gains consequences
20. Indemnification clauses.
21. Forwarding Correspondence to each party

B. Optional clauses (depending on particular circumstances of spouses)

1. **ALIMONY**
 - a. Waiver of alimony (spousal support)--this is permanent, even if there is later reconciliation!
 - b. Amount of alimony--flat amount or modifiable according to some standard (i.e., income of payor or payee, Consumer Price Index for each year or flat percentage)

- c. Tax consequences (ordinarily taxable to payee and deductible to payor, unless agreed otherwise)
- d. Medical insurance for spouse/ex-spouse
- e. Unreimbursed health care expenses for spouse/ex-spouse
- f. Termination of alimony based on death of either spouse, payee's remarriage (or payee's cohabitation?)

2. **CHILD CUSTODY**

- a. Joint legal custody-shared decision-making for major choices in child's life (i.e., religion, non-emergency health care, private/public school, tutoring)
- b. Sole custody
- c. Primary and Secondary physical custody
- d. Visitation rights by non-custodial parent (NCP)
- e. "Reasonable visitation"-unstructured, left to consent of spouses with reasonable advance notice
- f. "Structured visitation"-specified times (i.e., one-half Christmas and summer vacation, every other weekend during school year, plus half of each year's major holidays)
- g. Visitation as agreed upon between the parties
- h. Where to meet to exchange for visitation
- i. Can the primary physical custodian move from area? Notice to other party?
- j. If agreement incorporated into order, then custody provisions enforcement by law enforcement.

3. **CHILD SUPPORT**

- a. Cash amount of support per week, month, etc. (considering North Carolina Child Support Guidelines)
- b. Pay a different amount than guideline support?
- c. Medical insurance for child-who pays premiums?

d. Uncovered health care expenses-who pays for what, or for what portion? (i.e., routine physicals, eyeglasses, prescription drugs, psychological/psychiatric treatment, initial deductible amount for insurance, remaining percentage uncovered)

e. Pay to primary custodian directly or pay to NC Centralized Collections?

f. In the event of modification, modify pursuant to guidelines?

4. **ADDITIONAL CHILD-RELATED TERMS**

a. Annual modification-"escalator clause"

b. College expenses

c. Maintain life insurance for benefit of child (if NCP dies before child support obligation ceases)

d. When child support ends: age 18, through the first month concluding with his/her graduation from high school, whichever occurs last, but in no event after he/she turns 20 even if child is still in high school, or if the child marries, or becomes emancipated.

e. Exemption for each child for federal and/or state returns (as of 1985, this belongs to parent with custody for over 50% of the year unless agreement otherwise) If custody is 50/50, who will claim what child on even/odd years?

5. **TAX ISSUES**

a. Filing status of parties, joint or separate?

b. Dependency exemption

c. Who pays what portion of taxes due?

d. Who receives what portion of tax refund?

6. **DEBTS**

a. List of debts

b. Who Pays?

c. How Much?

7. **PROPERTY DIVISION**

a. Real property (land and buildings)

- i. Who will keep the house?
- ii. Will parties list house for sale?
- iii. Will one party refinance the home into sole name?
- iv. Will one party Quit Claim the home?
- v. How will the value of the home be divided?
- vi. Who will live in the house during the sale period?
- vii. Who will make payments until sold?

b. Tangible personal property

- i. Division of household furnishings
- ii. Personal effects of each spouse
- iii. Books, tools of a trade, business equipment
- iv. Motor vehicles (cars, boats, planes, motorcycles)
- v. Collections, jewels, china, silver
- vi. Pets

c. Intangible personal property

- i. Stocks and bonds
- ii. Individual Retirement Accounts (IRA's), Keogh Plans, vested pension rights and retirement plans
- iii. Bank assets (checking and savings accounts, money market fund, certificates of deposit)

iv. Life insurance (whole-life, universal-life and other cash-value insurance)-Will the parties continue to list each other as beneficiaries? What is the cash value of the life insurance policy? Will one party receive a portion of the other party's cash value of the policy?

v. Partnerships, business interests, tax shelters

d. Miscellaneous

i. Accrued leave at work?

ii. "Frequent Flyer" points?

iii. Deposits -- apartment leases, utilities, leased car?

Ready to discuss your options with an attorney? Give us a call today to review this checklist and to receive your personalized, flat fee quote for representation! 704-944-3115

