



# THE LEGAL EAGLE

## SEPARATION AGREEMENT – MATTERS TO DECIDE

*INTRODUCTION: As a service to our legal assistance clients, we prepared this handout with frequently asked questions on separation agreement issues, decisions, and questions. It is, of course, very general in nature since no handout can anticipate and answer all your specific questions. We ask, however, that you read over this information carefully in connection with your visit to our legal assistance attorneys so that you may have the fullest information available to help you with your family law problem.*

1) HOME (assuming home has both names on deed):

a) If the home is to be sold to one spouse or put up for sale:

i) If sold to one spouse:

- (1) how much will buyer pay seller?
- (2) when will payment be made?

ii) If put up for sale:

- (1) when will it be put up for sale?
- (2) who will choose the real estate firm?
- (3) how will the proposed sale price be set?
- (4) after all sale expenses and payoff of home, will balance be divided equally?
- (5) who will stay in home while it is up for sale?
- (6) who will pay the home payments, the taxes and insurance while it is being sold?
- (7) who will pay for major home repairs while it is being sold?
- (8) who will pay for minor home repairs while it is being sold?
- (9) major home repairs are those over what dollar amount?

b) If the house is not to be sold at the present time:

- i) Who will move out and when?
- ii) Who will pay the home payments, the taxes and insurance while it is being sold?
- iii) Who will pay for major home repairs while it is being sold?
- iv) Who will pay for minor home repairs while it is being sold?
- v) Major home repairs are those over what dollar figure?

c) Will the spouse that moves out agree not to re-enter the home without the permission of the party who stays there?

1) FURNITURE, FURNISHINGS AND ACCESSORIES:

a) How will they be divided?

- i) Will or has each spouse already taken his or her share and the spouses agree to that division; or
- ii) Will all items be listed on two separate lists -- one for each spouse?
- iii) When will the spouse who is moving remove his or her property?
- iv) What payment, if any, is due from one spouse to the other as a result of this division?

- b) List all motor vehicles by name(s) on title, year, make, model, and lienholder (this is company to which payments are made).
    - i) Who will own each?
    - ii) Who will pay balance due (if any) on each?
    - iii) Where are payments to be made?
- 2) DEBTS:
- a) For debts already owed:
    - i) Who will pay for debts made just in one spouse's name?
    - ii) Who will pay for debts made in joint names?
    - iii) Is it necessary to list debts? (If so, list name, account number, name and address of creditor, amount presently owed, and who will pay for each debt.)
  - b) For debts made after separation:
    - i) Will each spouse be responsible for all debts made by that spouse...
      - (1) after their separation; or
      - (2) after this agreement is signed?
  - c) If one spouse has co-signed a loan but the other spouse used the proceeds, will that spouse agree to ask the lender to release the other from liability on that loan?
- 3) CASH, STOCKS, BONDS AND BANK ACCOUNTS, ETC.:
- a) List all cash, stocks, bonds, savings accounts, checking accounts, savings certificates, and credit union balances and state the location of each.
  - b) Who will own each? If an item is to be divided, state in what shares or prepare a list for each spouse.
- 4) RETIREMENT:
- a) If either spouse has a retirement benefit or a pension or profit-sharing plan:
    - i) What is the name and address of administrator of the plan?
    - ii) What is the percentage or dollar amount of each party's pension that is to be given to the other spouse?
    - iii) What agreement has been reached about a joint and survivor annuity in the event of the pensioner's death?
- 5) SUPPORT:
- a) Spousal support:
    - i) Will one spouse pay support to the other? If so:
      - (1) state amount and whether payments will be made weekly, every other week, twice a month or monthly;
      - (2) on what day or date will support be paid?
      - (3) on what date will it start?
      - (4) where will it be paid?
      - (5) will support cease if the supported spouse lives with an unrelated person of the opposite sex or upon remarriage?
      - (6) upon death of the paying spouse, will his or her estate continue payments as long as funds are available in the estate?
      - (7) or, upon the paying spouse's death, will the surviving spouse receive life insurance death benefits?

- ii) In addition to the above, will the paying spouse also be responsible for the medical, dental, hospital, drug and optical expenses of the other spouse? If so, what percentage of these expenses?
- iii) If there is a health insurance policy now in force:
  - (1) how long will it cover spouse?
  - (2) will insured provide comparable coverage if it is canceled or dropped?
  - (3) is it with employer or privately owned?
  - (4) what is the name and address of insurance company?

b) Child support:

- i) Will one parent pay support to the other for child support? If so:
  - (1) state amount and whether payments will be made weekly, every other week, twice a month or monthly;
  - (2) on what day or date will support be paid?
  - (3) on what day will it commence?
  - (4) where will it be paid?
  - (5) upon death of the paying parent, will his or her estate continue payments as long as funds are available in the estate?
  - (6) will support cease or be prorated if the child visits with the paying parent for extended periods?
- ii) In addition to the above, will paying parent also be responsible for the medical, dental, hospital, drug and optical expenses of the child? If so, what percentage of these expenses?
- iii) If there is a health insurance policy now in force:
  - (1) until what age will it cover child?
  - (2) will insured provide like coverage if it is canceled or dropped?
  - (3) is it with employer or privately owned?
  - (4) name of insurance company.
- iv) Will support continue after each child turns eighteen if he or she is enrolled in school? If so:
  - (1) until when will it continue? Will it stop:
    - (a) after child reaches a certain age;
    - (b) when child completes a certain amount of education;
    - (c) when the child marries, or
    - (d) when the child joins the armed forces?
    - (e) If the child goes to college or vocational school:
      - (i) who will choose the school?
      - (ii) what will be paid?
        - 1. Room & board?
        - 2. Books?
        - 3. Tuition?
        - 4. Fees?
        - 5. Transportation home at break?
        - 6. Food/eating out allowance?
      - (iii) for how long will expenses be paid?
      - (iv) will there be any change in the amount of support when child is away and living at school?

6) CUSTODY AND VISITATION:

- a) Will custody be:
  - i) Solely with one parent? Which one?
  - ii) Joint physical custody? If so:
    - (1) with whom shall the child reside and for what periods?

- (2) what effect will this have on child support, if any?
- iii) Joint legal custody? If so:
  - (1) what will happen if the parents cannot agree on any specific major decision regarding the child?
    - (a) who will be the tie-breaker?
- b) Visitation
  - i) Will this be defined as "at reasonable times" or will there be a schedule?
  - ii) Will advance notice be required for non-scheduled visits and, if so, how much?
  - iii) Will there be special arrangements (such as alternating every other year or half days each year) for special occasions?
    - (1) child's birthday
    - (2) Christmas holidays
    - (3) Thanksgiving
    - (4) Easter
    - (5) Father's Day/Mother's Day
  - iv) Will there be special arrangements for:
    - (1) school vacation periods
    - (2) each parent's vacations times
    - (3) school activities
    - (4) other opportunities (athletics, dance, music, etc.)
  - v) Will custodial parent inform the non-custodial parent of illnesses and injuries?
  - vi) Will there be any limitation on where the non-custodial parent can take the child during visits? If so, what are they?
  - vii) Any provision about removal of residence from area, and, if so, does that affect visitation or support?
  - viii) Any rights of visitation for grandparents or other relatives?

7) INCOME TAXES:

- a) File jointly or separately for the current tax year? [Parties entitled to file as "married" if they are not divorced by last day of the calendar year]
- b) If filing jointly, how will any tax refund be divided?
- c) If filing jointly, how will any tax liability be divided?
- d) Who will get the dependency exemption and child tax credit for each of the children?

8) LIFE INSURANCE (include company name/policy number):

- a) On life of either spouse or on child:
  - i) Who will be the beneficiary of each policy?
  - ii) Who will pay the premiums?

9) ATTORNEY FEES:

- a) Who will pay each spouse's counsel:
  - i) For work done on this agreement if either side needs services of private attorney?
  - ii) For any future divorce?

**Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?**

**A.** See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options, and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters. Bring with you to the interview a copy of any documents or court papers that might be helpful to your attorney.