

What you need to know about... Creating a Separation Agreement

If you are in a relationship in Alberta, you may want to consider creating 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're employed or retired, etc.

This information sheet covers many of the topics that you may want to 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 were married)
- Guardianship and parenting (if you were not married)
- Special holidays
- Other arranged contact time such as telephone calls, correspondence, etc.
- Supervision, if necessary (who makes arrangements, 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



Read our **Families & the Law Series: Child Custody and Parenting** booklet for more detailed information about the law around child custody and parenting in Alberta. Available for free by visiting www.cplea.ca/publications.

Special thanks to the Community Legal Information Association of Prince Edward Island, Inc. for allowing us to adapt, with permission, their information sheet "What Do I Include in a Separation Agreement?" available at www.cliapei.ca/content/page/publications_family

Child Support

- Amount
- Length of time
- Financial disclosure
- Administrative recalculation clause (www.justice.alberta.ca/programs_services/families/recalculation)
- Maintenance Enforcement Program (MEP) clause (www.justice.alberta.ca/programs_services/mep)
- Definition of significant change in circumstances
- Income of parent paying support for variation purposes
- 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 Alberta 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 purposes
- 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 Maintenance Enforcement Program (www.justice.alberta.ca/programs_services/mep)



Read our **Families & the Law Series: Financial Support** booklet for more detailed information about the law around child and spousal/partner support in Alberta. Available for free by visiting www.cplea.ca/publications.

Property Division

Family Home

Exclusive possession by one partner or spouse

- Who pays for what?
- When is the home to be sold?
- Buyout provision
- 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

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?



Read our **Families & the Law Series: Property Division** booklet for more detailed information about the law around division of property in Alberta. Available for free by visiting www.cplea.ca/publications.

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 of the agreement are independent of each other – if one term of the agreement is considered unenforceable, the contract as a whole 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.)

Further information

You can read all of the booklets in our **Families and the Law Series** for free, available online: www.cplea.ca/publications.

Government of Alberta - Resolution and Court Administration Services may be able to provide you with additional resources to help you prepare a separation agreement. Call 1-855-738-4747 or visit <http://alberta.ca/rcas.aspx>.

Lawyer Referral Service is a service operated by the Law Society of Alberta. If you're looking for a family law lawyer to help you draft or review a separation agreement, you can call 1-800-661-1095. You will receive contact information for three family law lawyers in your area. Lawyers will provide a free half hour consultation, but charges will apply after the initial session.

Community and Student Legal Clinics may be able to provide you with advice about preparing a separation agreement or may be able to review one you have put together, if you meet financial eligibility criteria. Visit <https://www.lawcentralalberta.ca/en/help/legal-clinics-and-services> for a complete list of locations and contact information.

Canadian Legal FAQs provides plain language information about family law matters in a question and answer format: www.law-faqs.org.



Centre for Public Legal
Education Alberta
800, 10050 112 Street
Edmonton, Alberta T5K 2J1
Tel 780 451 8764
www.cplea.ca

© 2020,
Legal Resource Centre of
Alberta Ltd. (operating
as the Centre for Public
Legal Education Alberta)

Funding provided by

Alberta **LAW**
FOUNDATION

You should not rely on this information sheet for legal advice.