

# Separation Agreement Checklist

You may want to make a separation agreement if:

- you are in a relationship and thinking of separating, or
- you were in a relationship and recently separated.

What you include in the agreement depends on your personal circumstances. Do you have children, own a home together, share investments, etc.?

This document encourages you to think through some of the topics you may want to include in your separation agreement. This list is not exhaustive. You may need to address other topics not listed here.

You and your partner should each get **independent legal advice** before signing a separation agreement.

**If your agreement deals with dividing property, you must each get a Certificate of Independent Legal Advice if you want the Alberta courts to recognize your agreement.**

If the courts recognize your agreement, they can enforce it if someone is not following it. If the courts do not recognize your agreement, they cannot do anything if someone is not following it.



For more information on separation and divorce, see the **Families and the Law: Separation and Divorce** booklet.



**Independent legal advice** is the advice that each person involved in a legal issue must get from their own lawyer. A lawyer can only give independent legal advice to one person named in the agreement, not everyone. Each person must see a different lawyer. Your lawyer will review the agreement with you to make sure you understand the agreement. The lawyer will also advise you if the agreement is fair or not.

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You should *NOT* rely on this publication for legal advice.

It provides general information on Alberta law only.

## Parenting Arrangements

- How will you and the other parent share parenting time and responsibilities? Who will the children live with? Who will make big decisions about the children? Do you need to make a schedule?
- What contact will the children have with people who don't have decision-making responsibilities or guardianship (such as grandparents or other family members)?
- Where will the children spend special holidays (such as Thanksgiving, Christmas, Easter or summer vacation)?
- How can the children keep in contact with either parent (for example, with the other parent while the children are with you)?
- How will you and the other parent communicate with each other? (There are apps that can help you and the other parent co-parent effectively.)
- Are supervised visits with one parent necessary? If so, who makes these arrangements? Who pays any costs? Are there any conditions on the visits?
- Does one parent have to travel to see the children? If so, who makes the travel arrangements? Who pays the travel costs?
- Can one parent move with the children?
  - See the **Families and the Law** tipsheets called **Moving With Children** and **Moving and the Divorce Act** for more information on what the law says.
- Can one parent change the children's names in the future?
- Which parent can apply for family and child government benefits and tax credits?
- Which parent will keep the children's passports? Can one parent travel with the children? Are there any other conditions on travelling with the children?
  - See the **Families and the Law** tipsheet called **Travelling With Children** for more information on what the law says.



For more information on parenting and contact, see the **Families and the Law: Parenting Time and Contact** booklet.

## Child Support

- Will one parent pay child support? If so, how much will they pay?
  - The **Child Support Guidelines** set out the basic amount of child support depending on the parenting arrangement. The federal and Alberta guidelines are similar.
- How will you and the other parent share extraordinary expenses (such as medical and dental insurance premiums, medical treatments, glasses or braces, extracurricular activities, educational programs, etc.)?
- How long will you pay child support? Until the child is 18? Or until the child is older if they are going to school or otherwise dependent on the parents?
- How will you pay child support? In cash or through other benefits provided? Through the **Maintenance Enforcement Program** (MEP)?
- You and the other parent must share financial information, such as your incomes, with each other. How and when will you share financial information?
- How often will you recalculate child support? Should you include an administrative recalculation clause?
  - The **Child Support Recalculation Program** is an Alberta government program that annually recalculates child support based on the parents' current income tax information. You can register with the program if you have a valid child support order or child support agreement.
- Child support is often recalculated if there is a significant change in circumstances. Should your agreement include a definition of a significant change in circumstances?
- How will you and the other parent deal with retroactive support claims? (If one parent is not paying child support or not paying enough child support.)
- Will one or both of you save funds for future expenses, such as post-secondary tuition or emergencies? If so, how much and where will this money be kept? Are there any conditions on who can use this money and for what?



Use the federal government's online calculator to calculate child support: <http://bit.ly/39GJQ9Z>

Find more information about the **Maintenance Enforcement Program** (MEP) at: <http://bit.ly/3j9vAcl>

Find more information about the **Child Support Recalculation Program** at: <http://bit.ly/3aoJ00M>



For more information on child support and partner or spousal support, see the **Families and the Law: Financial Support** booklet.

## Partner or Spousal Support

- Will one partner/spouse pay support? If so, how much will they pay?
  - The **Spousal Support Advisory Guidelines** are a starting point for calculating spousal/partner support in Alberta.
- How will you and your partner/spouse share extraordinary expenses (such as medical and dental insurance premiums, medical treatments, educational programs, etc.)?
- How long will you pay support? Until a certain event or date?
- How will you pay your partner/spouse support? In cash or through other benefits provided? Through the Maintenance Enforcement Program (MEP)?
- You and the other parent should share financial information with each other. How and when will you share financial information?
- Will you recalculate support if there is a significant change in circumstances? Should your agreement include a definition of a significant change in circumstances?
- How will you and your partner/spouse deal with retroactive support claims? (If one partner/spouse is not paying support or not paying enough support.)
- Partner/spousal support payments are taxable income for the recipient. What are the tax consequences of receiving support payments?
- Will one or both of you save funds for future expenses, such as a serious illness or disability? If so, how much and where will this money be kept? Are there any conditions on who can use this money and for what?



Find the **Spousal Support Advisory Guidelines** at:  
<http://bit.ly/3rnbHIC>

# Dividing Property

## Family Home

What happens with the family home? Will one of you continue to live in (possess) the home? Or will you sell it?

### EXCLUSIVE POSSESSION

- Should the person staying in the home pay rent to the other person? If so, how much?
- Are there any conditions limiting occupation to one spouse (such as no possession if one spouse lives with another person)?
- Who pays the home expenses (mortgage, insurance, utilities, maintenance, etc.)?
- Will one partner buy out the other partner's share in the home?
- What happens if the home is destroyed (such as in a flood or fire)?

### SALE OF HOME

- How will you share the sale proceeds?
- What is the process for selling the home? How will you choose a realtor, lawyer, etc.?
- How will you agree on the price? Do you need a formal valuation completed? Will you agree ahead of time to reduce the price if necessary?
- How will you divide the proceeds from the sale?

## Financial Assets

How will you divide your financial assets? **Below is a list of common financial assets:**

- Canada Pension Plan (CPP)
- Any other pension plans
- Life insurance policies
- Tax refunds
- RRSPs or RRIFs
- Stocks and bonds
- Trusts
- Other investments (GICs, TFSAs, savings accounts, etc.)
- Profit sharing plans
- Bank accounts (joint and individual)

*You should also consider the tax benefits of splitting, moving or cashing in assets.*

## Physical Assets

How will you divide your physical assets? Below is a list of common physical assets:

- Pets or animals
- Tools
- Employment equipment
- Furniture and appliances
- Vehicles, trailers, boats, etc.
- Leased property (homes, vehicles, etc.)
- Other real estate (farmland, investment properties, cabins, condos, etc.)
- Business assets
- Inherited assets and gifts
- Valuables (such as jewelry and art)

## Valuation of Assets

- Do you need an expert to value any of your assets?
- If so, what is the process for choosing an expert? What is the valuation process?

## Allocation of Debts and Outstanding Payments

- Who will pay existing debts (including mortgages, loans, lines of credit, credit cards, etc.)?
- Do you need to renegotiate any debts (including loans, lines of credit, mortgages, etc.)?



For more information on dividing property on separation, see the **Families and the Law: Property Division for Married and Unmarried Couples** booklet.

## Other Important Issues

- Will the agreement bind your estate? Your partner's estate?
  - For example, if one partner passes away, will their estate have to continue paying child support?
- Will either partner maintain medical and dental insurance for the other partner or the children or both?
- Will either partner maintain life insurance? If yes, who will be the beneficiaries of the policy?
- Should you include a clause requiring you and your partner to disclose and exchange all relevant financial information for the last 3 years (such as tax returns, bank account statements, credit card statements, property assessment notices, pay stubs, corporate financial statements, etc.) before signing the agreement?
- How will you and your partner resolve conflicts over interpreting the agreement or making changes to the agreement?
  - There are many dispute resolution options that do not involve court, such as mediation or arbitration.
- Should your agreement include a severability clause?
  - Severability clauses state that the terms of the agreement are independent of each other. If one term is unenforceable, the agreement as a whole will still be valid.
- Who will pay for drafting or negotiating the agreement?
- Who will apply for divorce (if applicable)?
- How will you and your partner deal with each other after you sign the agreement? Examples include not incurring debts in the other partner's name, not interfering in the other partner's personal life, and not harassing or annoying the other partner.
- What happens if you and your partner reconcile?
- What happens if one partner has not disclosed all of their assets?
- Will the agreement be filed with the court and turned into a consent order? If so, who will do this? Who will pay any court fees?



For more information on resolving a family law dispute, see the **Families and the Law: Resolving Family Law Disputes** booklet.

## Where to Get More Information?

You can download copies of the **Families and the Law** series and other legal information for free from:

[www.cplea.ca/publications](http://www.cplea.ca/publications)

You can also order print copies from our store at:

[www.cplea.ca/store](http://www.cplea.ca/store)

For more information about legal clinics or other places that can help with legal programs, visit:

[www.lawcentralalberta.ca/en/help](http://www.lawcentralalberta.ca/en/help)

Special thanks to Community Legal Information of Prince Edward Island for allowing us to adapt, with permission, their information sheet “What Do I Include in a Separation Agreement?” available at: <https://bit.ly/2YKABiI>

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