

## SEPARATION AGREEMENT CHECKLIST

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*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 cover protect cover your interests and concerns.*

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### **A. Standard Clauses**

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
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)

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

1. Alimony provisions
  - 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 (see 3.c. below)
  - 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. Visitation rights by non-custodial parent (NCP)
  - d. "Reasonable visitation"-unstructured, left to consent of spouses with reasonable advance notice

- e. "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)
3. Child support by NCP
    - a. Cash amount of support per week, month, etc. (considering North Carolina Child Support Guidelines)
    - b. Medical insurance for child-who pays premiums?
    - c. 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)
  4. Additional child-related terms
    - a. Annual modification-"escalator clause" (see B.1.b. above)
    - 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 eighteen, graduation from high school, or emancipation (if earlier)
    - 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)
  5. Tax issues
    - a. Filing status of parties
    - b. Dependency exemption (see 4.e above)
    - c. Taxes due -- who pays? Refunds -- who receives?
  6. Payment of debts-how much and by whom?
  7. Property division
    - a. Real property (land and buildings)
    - 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
    - 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)
      - v. Partnerships, business interests, tax shelters
    - d. Miscellaneous
      - i. Accrued leave at work?
      - ii. "Frequent Flyer" points?

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