

SEPARATION AGREEMENT CHECKLIST

I. IDENTIFYING DATA

- A. Names of parties
- B. Date/Place of marriage
- C. Last lived together (date, place)
- D. Name(s)/Date(s) of birth of children of the marriage
- E. Names of parties' attorneys

II. PARENTING PLAN

- A. Legal custody
- B. Physical custody
- C. Living arrangements/Parenting plan (including weekdays, weekends, holidays, vacations, birthdays)
  - 1. Current
  - 2. Future modification/Periodic review
  - 3. Each parent's access to kids, e.g., phone call, email, etc.
- D. Relocation (e.g. significant distance apart within the state or out of state)
- E. Travel outside Massachusetts
- F. Notification of illness
- G. Access to children's records (medical and school)
- H. Access of grandparents and/or other relatives to children
- I. Emergency decisions
- J. Parental cooperation; non-disparagement
- K. Religion and religious training

III. MARITAL HOME

- A. Property address/county/state/owners/form of ownership
- B. Use and possession
- C. If joint ownership
  - 1. Type (tenants in common; joint tenants)
  - 2. Responsibility/liability for expenses
    - a. Present/future mortgages (including equity lines)
    - b. Real estate taxes
    - c. Homeowner's insurance
    - d. Maintenance
    - e. Capital improvements

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- f. Repairs (major and minor)
  - g. Condo fees (if relevant)
  3. Division of rental income (if any)
  4. Duration (including circumstances such as remarriage or change of custody that would trigger change in ownership)
  5. Indemnification
  6. Tax consequences (e.g. who gets the deductions, etc.)
- D. If transfer to third party
1. Timing of transfer or sale
  2. Allocation of costs of preparation for sale (including repairs)
  3. Appraisal and setting asking/selling price
  4. Definition of proceeds
  5. Division of proceeds (including whether payor of mortgage gets credit for payment of principal)
  6. Capital gains tax consequences
- E. If transfer to spouse
1. Determining price (including any deductions from equity -- e.g. equivalent of realtor's fee, capital gains taxes)
  2. Time of transfer
  3. Method of payment
  4. Responsibility of sole owner for expenses after transfer
  5. Does non-owner stay on mortgage? If so, indemnification provision
  6. Tax consequences (e.g. transferee liable for capital gains taxes)

### IV. ADDITIONAL PROPERTY

- A. Pension/Retirement
1. Description of plan(s)
    - (a) Contributory plan
    - (b) Defined benefit plan
  2. Valuation of plan
  3. Transfer provisions
  4. Division
  5. QDRO requirements
- B. Securities (stocks, bonds, stock options)
1. Identification
  2. Balance of account(s)
  3. Ownership
  4. Division, buy-out, or other disposition
  5. Restrictions on voting, sale

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- C. Bank accounts (savings/checking accounts; money market funds; certificates of deposit)
  - 1. Balance of account(s)
  - 2. Ownership
  - 3. Division or other disposition
- D. Family business/Closely-held corporation
  - 1. Identification
  - 2. Description
  - 3. Form of ownership (if less than 100%, amount of ownership)
  - 4. Value
  - 5. Division, buy-out, or other disposition
- E. Real estate (Other than marital home)
  - 1. Usable property
    - a. Ownership form
    - b. Usage
    - c. Rental
      - (1) Right to income
      - (2) Obligation for expenses
      - (3) Tax consequences
  - 2. Partnerships and limited partnerships
    - a. Identification
    - b. Value
    - c. Division, buy-out or other disposition
- F. Cash value of life insurance
- G. Pending legal actions
- H. Tangible personal property
  - 1. Possession and storage
  - 2. Division; provision for removal
- I. Trusts
  - 1. Identification
  - 2. Value
  - 3. Division, buy-out or other disposition
- J. Vehicles
  - 1. Make/Model/Year
  - 2. Who holds title
  - 3. Ownership upon divorce
  - 4. Responsibility for loan/hold harmless
  - 5. Cooperation regarding applicable transfers
- K. Other property, including royalties, copyrights, trademarks, etc.

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- L. Pending inheritance(s)
- M. Cemetery plots
- N. Frequent flier miles
- O. Machines, equipment
- P. Pets
- Q. Photo albums, family videotapes
- R. Waiver of rights to any property purchased by spouse after agreement is executed but before the judgment of divorce becomes final

### V. DEBTS AND LIABILITIES

- A. Type of Debt
  - 1. Educational loans
  - 2. Automobile loans
  - 3. Real property leases
  - 4. Contracts to buy
  - 5. Guarantees
  - 6. Any installment purchase loans
  - 7. Judgments against you
  - 8. Counsel fees
  - 9. Medical fees
  - 10. Charge account debt
  - 11. Credit card debt (if not joint, specify in whose name)
- B. Amount of debt
- C. Allocation of responsibility for debts
- D. Indemnification

### VI. CHILD SUPPORT

- A. Support Amount
  - 1. Initial amount
  - 2. Method of establishing payment
  - 3. Additional expenses (e.g. camp, lessons)
  - 4. Health insurance for children
    - a. Policy in effect
    - b. Obligation of coverage
    - c. Duration of obligation
    - d. Notification of change in policy
    - e. Responsibility for payments
    - f. Uninsured medical expenses

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- B. Duration (including definition of emancipation); effect of death of payor
- C. Time of Payment
- D. Adjustments
  - 1. If more than one child: effect of emancipation of older child(ren) on child support
  - 2. Reduction when child attends college
  - 3. Periodic changes in amount: COLA, Guidelines, percentage method
  - 4. Renegotiation (without specific method for adjustment)
- E. Tax Effect
  - 1. Not taxable to recipient
  - 2. Not deductible by payor
- F. Dependency exemption(s)
- G. Children's accounts/investments
- H. Extra-curricular activities tutoring, camp, etc. - allocation of expenses.
- I. Cost of babysitters, day care
- J. Cost of vacations
- K. Cost of wedding (if any)

### VII. EDUCATION

- A. Definition of education (college/private elementary or secondary school) expenses (e.g. tuition, room, board, fees, travel and other expenses)
- B. Custodial account or children's trust (creation; contribution; control)
- C. Apportionment of expenses (children's funds; scholarships; parental contribution; parental borrowing; summer work; student loans)
- D. Involvement of parties in process of choosing college to which applications will be made
- E. Involvement of parties in financial aid applications

### VIII. ALIMONY

- A. Amount
- B. Duration; effect of remarriage or cohabitation
- C. Time of payment
- D. Adjustments
  - 1. Calculation method
  - 2. COLA
  - 3. Renegotiation (without specific method for adjustment)
- E. Tax effect
  - 1. Tax deductibility

2. Tax reporting for inclusion of income
- F. Waiver of future alimony?
- G. Effect of alimony termination on child support obligation

IX. HEALTH INSURANCE FOR SPOUSE

- A. Policy in effect
- B. Obligation of coverage (specify individual or shared obligation to provide coverage)
- C. Allocation of uninsured expenses
  1. Catastrophic coverage
  2. Orthodontia
  3. Cosmetic surgery
  4. Psychotherapy
  5. Eyeglasses and contact lenses
- D. Duration of obligation
- E. Notification of change in policy
- F. Responsibility for payments
  1. COBRA cost, if relevant
  2. Upon remarriage of employee spouse

X. LIFE INSURANCE

- A. Identification
- B. Allocation of cash value (if whole life)
- C. Amount, including reduction options and event triggers, if any.
- D. Future obligations
  1. Ownership of policy
  2. Responsibility for payment of premium
  3. Beneficiary
  4. Duration
  5. Documentation/option to review policy
  6. Default provision (claim on estate)
  7. Reduction of death benefit (method of calculation)

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### XI. TAXES

- A. How to file for last year of marriage
- B. Cooperation if joint filing
- C. Use and reporting of available deductions
- D. Division of refund or liability
- E. Contribution (if joint)
- F. Indemnification
- G. Cooperation for audit/investigation of prior year's tax returns
- H. Capital gains tax consequences for all assets and/or capital loss
- I. Adjustment if change in tax laws

### XII. ADDITIONAL PROVISIONS TO BE INCLUDED IN DOCUMENTS

- A. Space for signature of the parties
- B. Name of mediator
- C. Warranties about full disclosure of finances
- D. Mediator recommends separate and independent legal advice
- E. Procedure for future disputes (negotiation; mediation; arbitration)
- F. Responsibility for payment of mediation fee/legal fees/filing fees
- G. Privacy clause
- H. Merger/Survival of Agreement
- I. Debt payment designated as support and maintenance
- J. Promise of no past and future contraction of debt in the other's name
- K. Waiver of right to take against will
- L. Waiver of right to after-acquired property
- M. Right to dispose of property by will
- N. Mutual release of all claims
- O. Entire agreement (no oral or extrinsic agreements)
- P. Acknowledgment of fairness and reasonableness of provisions
- Q. Massachusetts contract.
- R. Severability - unenforceability of a provision shall not affect validity of other provisions
- S. Waiver of provision not waiver of subsequent breach/default of provision
- T. Modification, amendment or waiver in writing to be valid
- U. Forever binding and conclusive on heirs, executors, assigns
- V. Indemnification for breach by breaching party or his/her estate survives death
- W. Notarization