

## SEPARATION AGREEMENT CHECKLIST

### **I. IDENTIFYING DATA**

- A. Formal names of parties
- B. Date/place of marriage
- C. Last lived together (date, place)
- D. Formal name(s)/date(s) of birth of children of the marriage
- E. First marriage (or not) for each party?
- F. Names of parties' attorneys (if any):

### **II. PARENTING PLAN**

- A. Legal custody
- B. Parenting schedule / physical custody - living arrangements
  - 1. School year
  - 2. Summer
  - 3. Vacations, holidays, and long-weekends
    - a. Martin Luther King Day
    - b. Presidents Day
    - c. February/March/April school vacations
    - d. Easter / Passover
    - e. Memorial Day
    - f. July 4<sup>th</sup>
    - g. Labor Day
    - h. Jewish High Holidays (Rosh Hashanah, Yom Kippur)
    - i. Columbus Day
    - j. Veterans' Day
    - k. Thanksgiving
    - l. Christmas / Chanukah / New Year's
    - m. School administrative days, teacher enrichment, etc.
  - 4. Children's Birthdays
  - 5. Parents' Birthdays
  - 6. Mothers' Day and Fathers' Day
- C. Flexibility / periodic review of parenting schedule
- D. Use of online parenting schedule resources (Google Calendar, Our Family Wizard, etc.)
- E. Extracurricular activities – responsibility and decision-making
- F. Attendance at children's events
- G. Child care - right of first refusal if one parent cannot be with the children
- H. Parental involvement and collaboration
- I. Phone and email access

- J. Communications with schools, camps, activities, and healthcare providers
- K. Emergencies and notification of illness
- L. Non-disparagement; relationships/contact with extended family
- M. Surviving parent and access of deceased parent's family
- N. Guardianship (applicable only if both parents die while child is a minor)
- O. Religious upbringing (schooling; worship)
- P. Introduction to/contact with parents' new partners
- Q. Removal and travel outside Massachusetts (including international travel)
- R. Use of parenting coordinator or other dispute resolution mechanism

### **III. MARITAL HOME**

- A. Property address/county/state/owners/form of ownership
- B. Use and possession
- C. If to be held in joint ownership
  - 1. Type (tenants in common; joint tenants)
  - 2. Responsibility/liability for expenses (both interim and long-term)
    - a. Present/future mortgages (including equity lines)
    - b. Real estate taxes
    - c. Homeowner's insurance / pending claims
    - d. Maintenance
    - e. Capital improvements
    - f. Repairs (major and minor)
    - g. Condo fees (if relevant)
  - 3. Rental income (if any)
    - a. Allocation of income
    - b. Allocation of depreciation and other tax deductions
  - 4. Duration (including circumstances such as remarriage or change of custody that could trigger change in ownership)
  - 5. Indemnification
  - 6. Tax consequences (e.g., who gets the deductions, capital gains exposure, etc.)
- D. If to be put on the market for sale
  - 1. Timing of transfer or sale
  - 2. Allocation of costs of preparation for sale (including repairs)
  - 3. Allocation of operating costs
  - 4. Appraisal and setting asking/selling price
  - 5. Definition of proceeds
  - 6. Division of proceeds (including whether payor of mortgage gets credit for payment of principal)
  - 7. Capital gains tax consequences
  - 8. Dispute resolution

- E. If transfer to spouse
  - 1. Appraisal or other mechanism for determining price (including any deductions from equity – e.g., equivalent of realtor's fee, capital gains taxes)
  - 2. Time of transfer
  - 3. Method, timing of payment
  - 4. Responsibility of sole owner for expenses after transfer
  - 5. Does non-owner stay on mortgage?
    - a. If so, indemnification provision
    - b. Obligations to seek refinance or other arrangements for removal of other spouse from mortgage
  - 6. Tax consequences (e.g., transferee liable for capital gains taxes)
- F. Allocation of transitional expenses (such as moving costs, costs of furnishing new residence)

#### **IV. ADDITIONAL PROPERTY**

- A. Pension/Retirement
  - 1. Description of plan(s)
    - a. Contributory plan
    - b. Defined benefit plan
  - 2. Valuation of plan (and who pays for valuation)
  - 3. Transfer provisions
  - 4. Division
  - 5. DRO/QDRO requirements (and who pays for preparation)
  - 6. Timing, interim contributions, withdrawals/borrowing, value fluctuations
- B. Securities (stocks, bonds, stock options, restricted stock, phantom shares)
  - 1. Identification
  - 2. Balance of account(s)/valuation
  - 3. Ownership
  - 4. Division, buy-out, or other disposition
  - 5. Restrictions on voting, sale
- 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 and description
  - 2. Form of ownership (if less than 100%, percentage of ownership)
  - 3. Value

4. Management and control
5. Division, buy-out, or other disposition
6. Capital calls
7. Buy-out arrangements
6. Non-compete / non-disparagement clause
- E. Real estate (other than marital home)
  1. Description
  2. Ownership form
  3. Usage
  4. Management
  5. Rental
    - a. Right to income
    - b. Obligation for expenses
  6. Tax consequences
    - a. Capital gains/losses
    - b. Recapture of depreciation
- F. Partnerships and limited partnerships
  1. Identification
  2. Value
  3. Division, buy-out or other disposition
- G. Pending legal actions
- H. Tangible personal property
  1. Possession and storage
  2. Division; provision for removal
- I. Trusts - current and/or future
  1. Identification
  2. Present or future interest/nature of interest
  3. Value
  4. Division, trade-off, or other disposition
- J. Inheritance - pending and/or future
  1. Identification
  2. Present or future interest / nature of interest
  3. Value
  4. Division, trade-off, or other disposition
- K. Vehicles
  1. Make/model/year
  2. Who holds title
  3. Ownership upon divorce
  4. Responsibility for loan or lease/hold harmless
  5. Cooperation regarding applicable transfers
  6. Insurance obligations
- L. Intellectual property, including royalties, copyrights, patents, trademarks, etc.

- M. Charitable Gift Accounts
- N. Cemetery plots
- O. Frequent flier miles
- P. Machines, equipment
- Q. Pets
- R. Photo albums, family videotapes
- S. Club memberships
- T. Other property
- U. 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. Installment purchase loans
  7. Adverse judgments
  8. Counsel fees
  9. Medical or dental fees
  10. Charge account debt
  11. Credit card debt (if not joint, specify in whose name)
  12. Other
- B. Amount of debt
- C. Allocation of responsibility for debts (including debts incurred after agreement is executed but before the judgment of divorce becomes final)
- D. Indemnification
- E. Debt payment designated as support/maintenance or asset/liability allocation

## **VI. CHILD SUPPORT**

- A. Support Amount
  1. Initial amount
  2. Method of establishing payment (e.g., Guidelines, formula, other)
  3. Impact of allocation of parenting time
- B. Duration of obligation (including definition of emancipation); effect of death of payor
- C. Time of payment
- D. Periodic review/future modification

1. If more than one child: effect of emancipation of older child(ren) on child support
  2. Effect on support when child attends college
  3. Periodic changes in amount: COLA, Guidelines, percentage method, income-based formula (including definition of income), other
  4. Renegotiation (without specific method for adjustment)
- E. Tax effect - not taxable to recipient, not deductible by payor
- F. Dependency exemption(s)
- G. Children's accounts/investments (creation; contribution; control)
- H. Allocation of child-care costs (e.g., after-school care, babysitters, day care)
- I. Cost of vacations
- J. Expenses are covered / not covered by child support; allocation of these expenses
1. Summer camp;
  2. Lessons and, if needed, tutoring;
  3. Extra-curricular activities, including sports, and the equipment for those activities;
  4. Clothing allowance (including footwear and outerwear);
  5. Spending allowance;
  6. Gift-giving (i.e., gifts given by the Child);
  7. At an appropriate age, cell phone and cell phone usage costs;
  8. Computer and related equipment;
  9. Uninsured medical, dental, ophthalmological and mental health expenses in excess of \$200; and
  10. At an appropriate age, car insurance, and/or any increase in car insurance premiums assessed to either Party as a result of the Children receiving their driver's license.
- K. Option: joint account for additional expenses
1. Initial amount of account
  2. Balance to be maintained
  3. Allocation of payments to account
  4. Disposition of account when the children are emancipated or upon death of one party prior to emancipation
  5. Transparency
  6. Management of account
  7. Tax reporting
- L. Cost of special events (bar/bat mitzvah, graduations, communions, wedding, etc.
- M. Adjustments, if any, when Children graduate high school

## VII. EDUCATION

- A. Definition of education (college/private elementary or secondary school) expenses (e.g. tuition, room, board, fees, travel, application fees, admissions tests and preparation courses, computer, and other expenses)
- B. Apportionment of expenses between/among the parties/Children

- (scholarships; parental savings; children's savings; parental contribution from current income; parental borrowing; summer work; student loans)
- C. Involvement of parties in process of choosing college to which applications will be made
- D. Involvement of parties in financial aid applications
- E. Notification of other parent regarding changes in child's college enrollment status
- F. Agreements between the parties regarding college to be in writing
- G. Parental access to Children's grades
- H. Tax effect - not taxable to recipient, not deductible by payor
- I. Duration limits, if any, on parental obligation

#### **VIII. ALIMONY**

- A. Initial alimony amount
  - 1. Method of establishing amount
  - 2. Description of type of alimony
- B. Duration; effect of death, remarriage or cohabitation
- C. Time of payment
- D. Periodic review / future modification
  - 1. Calculation method
  - 2. COLA
  - 3. Renegotiation (without specific method for adjustment)
- E. Effect of second jobs, bonuses and other incentive compensation, deferred compensation
- F. Definition of earned income (if that's used for calculation purposes)
- G. Tax effect
  - 1. Tax deductibility
  - 2. Tax reporting for inclusion of income
- H. Waivers of alimony - mutual or unilateral
- I. Effect of alimony termination on child support obligation
- J. Merger / survival

#### **IX. HEALTH AND DENTAL INSURANCE (for parties and children)**

- A. Policy in effect / self-insurance
- B. Obligation of coverage (specify individual or shared obligation to provide coverage)
- C. Duration of obligation
- D. Allocation of parents' uninsured expenses and co-pays
- E. Children's uninsured expenses and co-pays (including, orthodontia, cosmetic surgery, psychotherapy, eyeglasses and contact lenses)
  - 1. Allocation

- 2. Approval (not to be unreasonably withheld)
- F. Notification of change in policy
- G. Responsibility for premium payments
  - 1. COBRA cost, if relevant
  - 2. Upon remarriage of employee spouse
- H. Loss of coverage/alternative coverage
- I. Tax effect of payments - not taxable or deductible as alimony
- J. Allocation of tax for benefits received by non-employee spouse

## **X. LIFE INSURANCE**

- A. Identification of policies by type, issuer, term, and policy number
- B. Allocation of cash value (if whole life)
- C. Amount (i.e., death benefit)
- D. Responsibility for payment of premium
- E. Remedies if premium is not paid
- F. Ownership of policy
- G. Beneficiary (optional establishment of trust)
- H. Future obligations
  - 1. Duration
  - 2. Adjustment of amount (reduction options, event triggers)
  - 3. Documentation/option to review policy
  - 4. Default provision (claim on estate)
- I. Obligations apply to after-acquired policies
- J. Option: scale-down of death benefits
- K. Estate planning provisions (optional)

## **XI. TAXES**

- A. How to file for last year of marriage and allocation of taxes for that year
  - 1. Cooperation if joint filing
  - 2. Allocation of costs of tax return preparation
- B. Use and reporting of available deductions
- C. Division of refund or liability
- E. Contribution (if joint)
- F. Indemnifications
- G. Cooperation for audit/investigation of prior years' tax returns
- H. Capital gains tax consequences for all assets and/or capital loss
- I. Adjustment if change in tax laws
- J. Capital loss carry forward / net operating loss
- K. Timing of divorce filing / impact on taxes

## **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. Effect of bankruptcy
- 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

## **XIII. MISCELLANEOUS**

- A. Forwarding of phone messages and mail
- B. Changing names on accounts, utilities, etc.
- C. Terminating joint accounts
- D. Future relationships with CPAs, tax preparers, financial advisors, etc.
- E. Changing names on insurance policies (auto, home, etc.)