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Education for Women
Women's Right to Know

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droit de la famille
Le droit de la femme à savoir

Separation Agreements: A Plan To Move On After Separation

March 7, 2014

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METRAC

METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

www.metrac.org

METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca
<http://undroitdefamille.ca/>

Presenters

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Topics to be Covered

1. What is a Separation Agreement?

- What it can do for you
- What makes it legal
- How to make one
- Be informed about your Family Law Rights

2. What to Include in a Separation Agreement

3. Dealing with Disputes

4. Enforcing a Separation Agreement

5. Setting Aside a Separation Agreement

6. Additional Resources

Accurate as of the date of this webinar presentation: March 7, 2014



What is a Separation Agreement?

What is a Separation Agreement?

Separation Agreement

- A type of domestic contract
 - legally binding agreements dealing with the termination of intimate/spousal relationships
- Deals with the rights and obligations arising when spouses/intimate partners separate, such as:
 - who will stay in the home
 - care of the children and where children will live
 - financial support
 - dividing property and money

Other Types of Domestic Contracts

- **Cohabitation Agreements**

- for partners who are or planning to live together
- made before or after you begin to live together
- set terms of the relationship (e.g. how to handle finances)
- set terms of separation (e.g. spousal support and dividing family property)
- **cannot** set terms for child custody/access or child support

- **Marriage Contracts**

- for partners who are married or about to get married (pre-nuptial agreement)
- set terms of the relationship and/or separation/divorce
- **cannot** set terms for child custody/access or child support

What is a Separation Agreement?

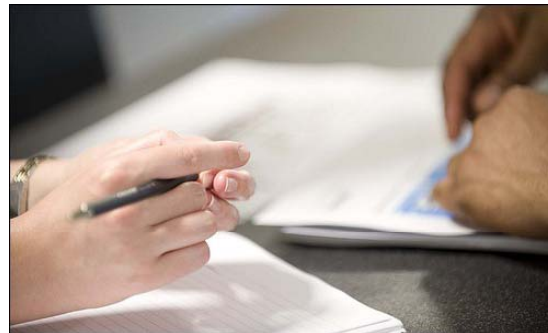
A Separation Agreement is:

- for married or unmarried partners after separation
- legally binding
- made with or without a lawyer
- enforceable by the Court
- “road map” to family issues after separation
- a good option to consider if you do not get a Court order

What is a Separation Agreement?

Separation Agreements can:

- be faster and less stressful than going to Court
- give you more control over the terms of your separation
- be easier to follow because you and your partner chose what to put into it



Validity of a Separation Agreement

Under the Ontario *Family Law Act*, in order to be legally binding, a Separation Agreement must:

- be in writing
- have a date
- be signed by both partners, and
- witnessed and signed by a third person



How to Make a Separation Agreement

1. Start with a list of important issues and concerns
2. Find out about your basic family law rights
 - Child Custody and Access <http://www.onefamilylaw.ca/en/childcustody/>
 - Child and Spousal Support <http://onefamilylaw.ca/en/webinar/#financial>
 - Staying in the family home <http://onefamilylaw.ca/en/webinar/#property>
 - Dividing family property <http://onefamilylaw.ca/en/webinar/#property>
 - Alternative Dispute Resolution <http://onefamilylaw.ca/en/webinar/#conflict>
 - Finding a family law lawyer <http://onefamilylaw.ca/en/webinar/#lawyer>
3. Negotiate on your own or with the help of a lawyer
4. Consider using a mediator
5. Consider using an arbitrator

Be Informed About Your Family Law Rights

- a Separation Agreement can take away important rights
- you should know what your rights are before you sign a Separation Agreement
- be careful of pressure to:
 - give up rights
 - trade away one right to get another
- **it is important to get legal advice from a family law lawyer, before you sign any domestic contract**

Domestic Violence and Abuse

Abuse in a partner relationship can be:

- Physical
- Sexual
- Verbal
- Psychological
- Emotional
- Financial
- Spiritual



Abuse can be bullying, or any behaviour that demeans, or removes a person's confidence or ability to act as she chooses

Domestic Violence and Abuse

- Separation Agreements require negotiation
- it is difficult to ensure fairness and respectful negotiations in abusive relationships
 - the safety of the abused person and children are at risk
 - the abused person may be afraid to talk openly and assert interests
 - a power imbalance can make it difficult for both partners to get a fair result
- usually going to Court for an Order is safer and will ensure your legal rights are protected

Domestic Violence and Abuse

For information, if her partner is abusive or violent:

Assaulted Women's Helpline www.awhl.org/

- 24 hours/7 days; multiple languages
- 1-866-863-0511 (toll free)
- 1-866-863-7868 (TTY)

Family Violence Authorization Program (Legal Aid Ontario)

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters, community legal clinics, Family Law Service Centres and by calling the main Legal Aid number
- Free telephone interpretation services for languages other than English and French
- 1-800-668-8258 (toll free)
- 1-866-641-8867 (TTY)

www.legalaid.on.ca/en/getting/type_domesticviolence.asp

FLEW (Family Law Education for Women) Resources page

www.onefamilylaw.ca/en/resources/



What to Include in a Separation Agreement

What to Include in a Separation Agreement

- Basic information
 - names of the partners
 - marriage date/length of relationship
 - separation date
- Plans for agreed issues:
 - child custody and access
 - be specific, include a schedule
 - child support payments
 - amount, timing
 - spousal support payments
 - amount, timing
 - property division
 - cars, savings, pensions, home furnishings
 - Matrimonial home -- who stays, how long
 - how to resolve disputes

What to Include in a Separation Agreement

Custody

- who will make the important decisions about caring for the children? (joint or sole custody)
- where will the children live?
- how much time with each parent?

Access

- schedule for when and how the children will visit or spend time living with each parent
- Consider days, nights, holidays, birthdays, summer

What to Include in a Separation Agreement

Child Support

- right of the child
- basic amount is set by the Federal and provincial *Child Support Guidelines*
www.justice.gc.ca/eng/fl-df/child-enfant/index.html
www.attorneygeneral.jus.gov.on.ca/english/family/divorce/support/
- include:
 - who pays, how and when
 - how the payor's income will be determined
 - the amount, for how long
 - how to review and change

What to Include in a Separation Agreement

Child Support (continued)

- who will pay for special expenses
 - e.g. daycare, activities, health insurance
- will the parents share these costs? how?
- how to review and change

www.onefamilylaw.ca/en/webinar/

What to Include in a Separation Agreement

Spousal Support

- not an automatic right, but partners can agree:
 - to pay
 - to not pay (waive right)
- amount of support to be paid, consider:
 - income of the payor and the recipient
 - recipient's need for support, and payor's ability to pay
 - the parties' roles during the marriage/partnership
 - recipient's ability to become self-supporting
 - can refer to *Spousal Support Advisory Guidelines* (but not mandatory to follow like *Child Support Guidelines*)
 - regularly (e.g. monthly) or in one payment
- if regularly, for how long?
 - indefinite, time-limited, or subject to review

What to Include in a Separation Agreement

Property Division - Married Couples

- right to divide family property equally, under Ontario's *Family Law Act*
- can agree how to divide property
 - cars, furnishings, savings, pensions, RRSPs
- decide what will happen to the matrimonial home
 - will someone keep it, or will it be sold
- be specific:
 - issues
 - amounts
 - times

What to Include in a Separation Agreement

Property Division - Common Law Couples

- no right to equally divide the couple's property under the Ontario *Family Law Act* (a Court can order property division)
- can agree how to divide or share property
- family home belongs to the person whose name is on the lease or legal title

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Dealing with Disputes

Dealing with Disputes

- plan for a disagreement about a term in the Separation Agreement
- set out the rules for how to resolve disputes
 - communicate in writing
 - negotiate
 - mediate
 - arbitrate
 - start Court action
- set out rules for changing terms





Enforcing a Separation Agreement

Enforcing a Separation Agreement

- include terms about what to do if there is a late payment of child and/or spousal support
- file your Separation Agreement with the Court to have the Court enforce support provisions as if it were a Court Order
 - **Family Responsibility Office (FRO)**
- the Court can also assist with enforcing other terms of the Separation Agreement

Enforcing Payment of Support

- **If Child/Spousal Support payments are missed**
 - receiving person provides payor's current information:
 - name
 - address
 - Social Insurance Number
 - place of work
 - income
 - owned property
- **FRO can get money from:**
 - deducting money from payor's wages, employment insurance, income tax refund, pension
 - putting a lien (a right to its value) on property
 - taking money from a bank account

Enforcing Payment of Support

- **FRO can:**

- get driver's license suspended
- affect credit rating for loans
- get passport cancelled

- **FRO can help:**

- across Canada
- in United States
- other countries with agreements with Ontario

- **Contact FRO:**

24-Hour Automated Information Line
416-326-1818 (Toronto)
1-800-267-7263 (toll free)

www.mcass.gov.on.ca/en/mcass/programs/familyResponsibility/Contact/payor_recipient.aspx



Setting Aside a Separation Agreement

Setting Aside a Separation Agreement

Under the *Family Law Act*, a Separation Agreement can be set aside, in whole or in part:

1. if one of the partners failed to tell the other about a significant asset or debt when the agreement was made
2. if one of the partners failed to understand the nature and consequences of the agreement
3. any other ground upon which an ordinary contract can be set aside

Setting Aside a Separation Agreement

1. Financial Disclosure

- this is a very common ground for a separation agreement to be set aside
- very important to give complete and honest information about all of your income, assets and debts (disclosure)
- extremely important that you insist on receiving complete and honest disclosure of your partner's income, assets and debts

Setting Aside a Separation Agreement

2. Independent Legal Advice

- it is very important to get legal advice before signing a Separation Agreement
- each partner should have her/his own lawyer
- make sure you understand all the terms of the agreement, and whether your rights under the agreement are different than what you would be entitled to under the law (in Court)
- if you give up your right to legal advice, you may not be able to argue later that you did not understand your legal rights

Setting Aside a Separation Agreement

3. Other Reasons

- **Fraud** – if a person misinforms you or withholds information
- **Duress or undue influence** – you were forced or pressured into signing the agreement
- **Unconscionability** – the agreement or a term in the agreement is extremely unfair
 - the deal has to be bad for you and the other party was preying on your weaknesses
 - a bad deal alone will not be enough to set aside, especially if there was full disclosure and independent legal advice

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Additional Resources

Resources (Family Law)

- **Legal Aid Ontario** www.legalaid.on.ca/en/getting/default.asp
 - Free telephone interpretation services for languages other than English & French
 - Toll-free: 1-800-668-8258
 - TTY: 1-866-641-8867
- **Ontario Women's Justice Network (OWJN)** www.owjn.org
- **FLEW (Family Law Education for Women)**
www.onefamilylaw.ca/en/resources/
- **FODF (Femmes Ontariennes et Droit de la Familles)**
www.undroitdefamille.ca/
- **Family Court Support Workers**
 - Check local community agency or call
 - Toll-free: 1-888-579-2888
 - 416-314-2447 (in Toronto)

Resources (Family Law)

- **Family Law Information Program (FLIP)**
www.legalaid.on.ca/en/getting/flip.asp
- **Family Law Information Centres (FLICs)**
www.legalaid.on.ca/en/getting/type_family.asp
- **Family Law Services Centres (FLSCs)**
www.legalaid.on.ca/en/contact/contact.asp?type=flsc
- **Your Legal Rights** www.yourlegalrights.on.ca
- **Canadian Family Law Lawyers Network (National)** www.cfln.ca
- **Family Responsibility Office**, Ministry Community & Social Services
 - Toll-free: 1-888-815-2757

Resources (Family Law)

- Child Support Guidelines:
 - **Department of Justice website**
 - www.justice.gc.ca/eng/fl-df/child-enfant/look-rech.asp
- Child Support Calculator
 - www.mysupportcalculator.ca
- Read more about Child Support:
 - Family Law Education for Women:
 - Booklet: www.onefamilylaw.ca/en/childsupport/
 - Webinar: onefamilylaw.ca/en/webinar/#financial
 - Guide to Parenting after Separation or Divorce: www.canada.justice.gc.ca/eng/fl-df/parent/mp-fdp/index.html
 - Your Legal Rights:
 - www.cleo.on.ca/en/publications/childsupport
 - www.yourlegalrights.on.ca

Resources (Domestic Abuse)

For information, if your partner is abusive or violent:

- **Assaulted Women's Helpline**

www.awhl.org

- 24 hours/7 days; multiple languages
- Toll-free: 1-866-863-0511
- TTY: 1-866-863-7868

- **Ontario Coalition of Rape Crisis Centres**

www.sexualassaultsupport.ca

- **Network of Sexual Assault/Domestic Violence Treatment Centres**

www.sadvtreatmentcentres.net

- **Victim Services Directory**

www.justice.gc.ca/eng/pi/pcvi-cpcv/vsd-rsv/index.html

Resources (Domestic Abuse)

For information, if your partner is abusive or violent:

- **Barbra Schlifer Legal Clinic**
 - Toronto: 416-323-9149 x278 (legal intake)
 - TTY: 416-3231361
 - Free counselling, referral, legal and interpreter services to survivors of violence (Family, Criminal and Immigration law)
- **Family Violence Authorization Program (Legal Aid Ontario)**
 - Free 2-hour emergency meeting with a lawyer
 - Offered through some shelters and community legal clinics
 - Toll-free: 1-800-668-8258
 - TTY: 1-866-641-8867

Additional Resources

- **Law Society of Upper Canada Lawyer Referral Service**

- www.lsuc.on.ca/with.aspx?id=697
- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

- **Justice Net**

- www.justicenet.ca/directory/search/
- Reduced fee lawyers for low income people not eligible for Legal Aid

- **Toolkit for a good Client-Lawyer Relationship**

- schliferclinic.com/vars/legal/pblo/toolkit.htm

- **Ministry of the Attorney General**

- www.attorneygeneral.jus.gov.on.ca/english/
- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575