

# Simple Steps to Getting a Legal Separation Agreement in Alberta ...The Friendly Affordable Way



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# “Simple Steps to Getting a Legal Separation Agreement in Alberta”

## ...The Friendly Affordable Way



### INTRODUCTION

It's tough dealing with the end of a relationship, even if the decision to separate is mutual. It does not need to be aggravated by an adversarial system that increases conflict and financial strain.

By design, the system is adversarial—two advocates represent the best interests of their clients before an impartial judge whose job is to then determine the truth.

Though archaic, the adversarial system is necessary when parties won't cooperate, can't agree, or if one or both parties can't be trusted. I personally know a number of lawyers who refuse to take on contested Divorces. So, it's not just consumers of legal services who dislike the adversarial system.

Fortunately, the trend towards uncontested Divorces is increasing. In 2010/2011, Statistics Canada reported that 80 percent of all Divorces were uncontested. Though the Separation Agreement that preceded it may have been contested, the fact that such a large percentage of Divorces are uncontested is promising.

A few of the reasons contributing to the trend towards collaborative Separation Agreements and Uncontested Divorces include:

- fewer dependencies due to a larger number of women entering the work force;
- the right of fathers to share in parenting has been accepted;

Included in this Free Guide you'll find information on:

- ☑ Child support calculator
- ☑ Spousal support calculator
- ☑ Property Workbook

- as women's lives are no longer defined by their children (since more are working), the idea of sharing parenting time with the father is more acceptable;
- more educated consumers, thanks to the internet; and
- Federal Child Support Guidelines which take out the subjectivity of child support calculations.

The purpose of this Guide is to help you reduce the burden of usual legal practices that are adversarial, inefficient, complicated and costly—yet still provide you with the benefit and protection from receiving independent legal advice from your lawyer, if a lawyer is needed in your particular case. By educating you as to how the collaborative Separation and Divorce process can work, you avoid finding yourself in an adversarial system or reduce (maybe eliminate) unnecessary conflict.

Proceeding through the adversarial system can eliminate any chance of reconciliation; damage relationships involving children, common friends and social activities; and aggravate the financial consequences of separation and divorce even further. At one time both parties shared the cost of one household. Upon Separation the parties now have to support two households. Lifestyles will decline. Spending thousands of dollars on legal fees will make this worse. I can't even begin to imagine how hard it might also be on your children (though some have told me that it sometimes can be easier on children when parties separate and there is less fighting).

## WHAT IS A LEGAL SEPARATION AGREEMENT?

A Legal Separation Agreement is a contract between two spouses resolving all matters concerning:

- Division of property, assets and debts;
- Custody, access and support of children; and
- Spousal support.

I would add that a "legal" Separation Agreement is also an Agreement which is complete (covers all issues), one in which both parties have received independent legal advice, and which has been signed by both spouses and their lawyers.

"When two people decide to get a Divorce, it isn't a sign that they 'don't understand' one another, but a sign that they have, at last, begun to."

- Helen Rowland

**Though often not mandatory**, a Legal Separation Agreement resolves matters between parties and provides protection from further claims from each other (or the estate of the other or from creditors). Often banks require parties to obtain a Legal Separation Agreement before issuing one or both parties new mortgages or to remove the name of one spouse from joint debt. Likewise, a Pension Administrator often won't divide a Pension Plan unless there is a Legal Separation Agreement or Matrimonial Property Order.

It is possible your Separation Agreement could cost as little as \$1,300.00 or about \$650.00 each (this includes drafting, review and signing with lawyers). Therefore, for such a small amount of money, getting a Separation Agreement might offer you peace of mind. Many people like certainty when they divide property, assets and debts—knowing that the division is final and that there will unlikely be any surprises down the road.

This guide will help you regardless of whether you decide to get a Separation Agreement. It will even help if your situation is adversarial and a collaborative separation and divorce is impossible.

## WHAT ARE THE LIMITATIONS OF A SEPARATION AGREEMENT

- The child support and/or spousal support provisions, if any, in a Separation Agreement are not enforceable by your Provincial Maintenance Enforcement Program. However, you can apply to obtain an enforcement order through your local court house to enforce the terms of the Agreement.
- The Separation Agreement is between you and your spouse. It's not between you, your spouse and your creditors. You may have to proceed through the courts for remedy for breach of Agreement, if say, you are forced to pay for joint debt by creditors if your spouse fails to keep his/her Agreement to pay that debt or have your name removed.
- Though most Pension Plan Administrators will divide a Pension Plan if its division is contemplated in the Separation Agreement, occasionally you may still need to get a Matrimonial Property Order. Obtaining a Matrimonial Property Order is not a complicated process. We can assist with this if needed.
- Most of my client files are completed from beginning to end within two weeks. More complicated files take longer. Therefore, sometimes a Separation Agreement can't be completed quickly enough to solve immediate concerns. If your priority is to obtain an order for child or spousal support, one option may be to attend your local Provincial Court House for an interim order to ensure payment of support before or while the Separation Agreement is in progress.

## BENEFITS OF MEDIATION & PROPERLY EXECUTED SEPARATION AGREEMENT

- Summarizes all Agreements between the spouses regarding property, children and spousal support.
- The Agreement is more likely to be followed when both parties mutually reach an Agreement.
- Less expensive and time consuming than having two lawyers draft & negotiate an entire Agreement.
- Lawyers review the final Agreement which saves time as all matters concerning property, children and Spousal support have already been thoroughly summarized for their quick review.
- Clients' rights are protected because they seek legal advice prior to signing the Agreement.
- The Agreement can be revised to incorporate any changes recommended by a lawyer.
- The Agreement is most likely to hold up in court if challenged by you, your spouse, or third party.
- The Courts will assist you in enforcing the terms of the Agreement, if it is not adhered to.
- There are provisions in the Agreement that typically state that the other is liable for all of your legal costs if in breach of Agreement.
- Banks are more likely to cooperate with the transferring or granting of mortgages.
- Exempts you from attending the mandatory 6-hour 'Parenting after Separation Seminar' most of the time (though there are many benefits to attending this free seminar).

## BENEFITS AND FREE STUFF

Of course, not all spouses will cooperate with the steps found in this free Guide. With or without your spouse's cooperation, you will still benefit from one or more of the solutions found in this Guide by:

**Gain knowledge → gain confidence.**

**Reduce the amount of time spent with your lawyer → reduce your legal fees.**

**Focus on the process, not the problem → avoid unnecessary conflict.**

Here is a list on how I can help you obtain a hassle-free low-cost Separation Agreement or Divorce and glide through your Separation and Divorce with confidence, more money in your pocket and the least amount of grief for you, your spouse and your children.

Here is how you will benefit...

- ✓ **1. Answers to legal questions that do not change regardless of your situation.** What's the difference between sole custody and joint custody? How much child support should I be paying according to the Federal Child Support Guidelines? Can I deviate from the guidelines? What is matrimonial property? What are the steps to getting a Divorce? Though we can't provide you with legal advice, we can provide you with general information and direct you to free published on-line resources. SAVINGS: hundreds in legal fees.
- ✓ **2. A Free Workbook that helps you collect and summarize information necessary for proceeding with your Separation and/or Divorce.** No one knows your situation better than you and your spouse. Why pay someone to tell you what information you need to collect to proceed with a Separation or Divorce? Further, you can summarize your information much better than a stranger to the facts. Or you can pay your lawyer \$250 or more per hour to do this for you. SAVINGS: \$250 or more. I've included this Workbook for you for free together with this Guide.
- ✓ **3. Hire My Typing Service to draft legal documents under your direction.** You can pay a flat fee to have my typing service prepare ROUTINE, STANDARD DOCUMENTS AT A FRACTION OF THE PRICE CHARGED BY LAWYERS. What's more important, is that when I bring both parties together, it's easier to ensure that nothing has been forgotten and there is no miscommunication or misunderstanding as to why the Agreement has certain paragraphs. I'll be releasing a NEW REPORT soon on how innocently an Agreement can become adversarial and contested due strictly to MISUNDERSTANDING and what you need to do to avoid these problems! SAVINGS: \$500 TO \$10,000+.
- ✓ **4. You get high quality legal advice in the minimum amount of time for the least amount of money.** If you learn about the law using free resources, gather and summarize your own information using my Workbook, and have me prepare your Agreement under the direction of you and your spouse, you can eliminate upwards of 90% of the lawyer's work! At any time throughout our process you can speak to a lawyer for legal advice. I will then incorporate any changes you request at no additional charge, based upon the advice of your lawyers, provided you and your spouse are in agreement to the changes. However, a lawyer will charge for each visit to him or her. My goal is to help the two of you minimize the back and forth between lawyers. And, you still benefit from receiving legal advice! Savings: Hundreds and maybe thousands of dollars.

**\*\*\*Because everything has been summarized for the lawyer's quick review you will only need to spend a small amount of time with a lawyer for the least amount of money.\*\*\***





**5. Confidence.** I charge one fixed fee. I do not make money when I delay your file, ignore your calls, or create conflict between you and your spouse. I get paid to help you as efficiently and effectively as possible. SAVINGS: priceless.



**6. Guarantee.** If you hire me, and your Separation and/or Divorce remains uncontested, I guarantee that I can complete your Separation Agreement and/or Divorce. If I can't I will refund my fee 100%.

## CAUTION!

Before notifying your spouse of a pending Separation and/or Divorce, you may wish to consult with a lawyer to protect your interests. Your spouse may have you locked out of your home, liquidate your assets, incur debt in both of your names, hide financial documents and clean out joint bank accounts. Further, your actions may set a precedence. For example, if you leave the matrimonial home for the purpose of obtaining a new home for you and the children but leave the children with your spouse for a day, a week, a month or more, this may affect your ability to obtain custody or return to the matrimonial home if that is your desire.

**If you or your children face the risk of harm (serious or otherwise) by a spouse that may be financial, emotional or physical in nature, immediately consult with a lawyer.**

This process will only work if your spouse is willing to cooperate and you are both confident that the financial information collected regarding your property, assets, debts and income are fully and truthfully disclosed.

**The author of this Guide is not a lawyer. Neither the author nor the publisher is providing legal advice or any guarantee that the general information in this Guide will provide you with specific results for your individual situation.** You should use your own judgment and/or consult with a lawyer for specific applications, if any, to your individual situation.

## FOCUS ON THE PROCESS, NOT THE PROBLEM

If you are contemplating Separation and/or Divorce, may I suggest you complete the following recommendations? **You may need to tailor the recommendations to fit your specific situation.** You may omit or add extra steps or you may reorder them to fit your situation (i.e. you may wish to contact a lawyer immediately for delicate situations or choose not to consult with a lawyer at any time).

## RECOMMENDATIONS

1. Learn about the law.
2. Collect and summarize relevant information using my FREE WORKBOOK.
3. Identify Agreements and disagreements BUT do NOT dwell on disagreements...just identify them! It's amazing how many of these disagreements simply disappear as individuals work through this collaborative process.
4. Choose your service provider(s). If you live in Alberta, call me (Debbie Ward) at 1-800-320-2477 (or 403-229-2774 in Calgary) for a FREE CONSULTATION.
5. Proceed with your Separation Agreement, Divorce and/or other required service.
6. Consult with a lawyer for legal advice (if applicable).
7. Resolve disagreements.
8. Finalize your Separation Agreement, Divorce and/or other required service.

TIP: If appropriate, ask your spouse to read this free Guide and help with the instructions.\*

## STRATEGIES FOR A FRIENDLY AND AFFORDABLE SEPARATION AND/OR DIVORCE

### **#1. Do NOT fight about disagreements until the first 7 steps have been completed.**

These Instructions help you **focus on the process** (facts), **not the problems** (disputes/reasons for marriage breakdown). Focus on the process and be seen as more credible and taken more seriously by your lawyer. You will be well organized and prepared. You will reduce the amount of time spent with a lawyer. You will understand and be in control of your Separation and/or Divorce. You will reduce conflict. You will save hundreds, and possibly thousands of dollars. More importantly, you will gain peace of mind and lessen the impact of marriage breakdown, Separation and Divorce on you, your spouse and your children.

Does it make sense to dwell on disagreements when all of the facts have not been gathered and summarized into a meaningful format, when you may not fully understand your legal rights and responsibilities, and prior to you and your spouse receiving independent legal advice? **It is okay to identify disagreements at the beginning of the process, just do NOT dwell on them until you've completed Step #1 to Step #7.**

### **#2. Until you have a fully executed Separation Agreement all Agreements are subject to change.**

If you are at all uncomfortable negotiating any kind of Agreement with your spouse, please keep in mind that any Agreement negotiated with your spouse will be reviewed with a lawyer before it is signed. If on that advice you decide you want changes, the Agreement can then be re-negotiated.

No one can be bound by an Agreement until there has been full disclosure, full appreciation for what is being negotiated (which is usually not apparent until a full Agreement has been drafted and a networth statement for each party created), and independent legal advice received.

### **#3. Recognize that I do NOT represent the bests interests of either party.**

I often tell each spouse that I do not represent the best interests of either or both parties. My interest is simply to help the parties with the drafting of an Agreement—which is why they must each take the Agreement to their respective lawyers for review, advice and signing. It is for their protection AND it is for my protection. First, each lawyer will represent their best interests. Secondly, neither party can say that they relied on me in any way for legal advice. I type the Agreement under your direction. I don't give legal advice. You rely on your lawyers for legal advice. I then incorporate any changes either of you wish, if any, based upon the advice of your lawyers.

We gather the facts (what you acquired in terms of property, assets and debts and how you propose to divide everything); document how you want custody, access and child support worded; and, indicate whether or not there will be spousal support. We discuss the possibility of exemptions. We discuss general procedures to divide property, assets and debts equally (though there may be exceptions were it is not necessary or appropriate to divide equally).

Keep in mind that:

- The parties can agree to deviate from an equal division—they need to consider the law but also have the right to consider situations where it might be appropriate or fair not to follow the letter of the law—to consider circumstances in the relationship which would make it fair to divide in some other manner.
- Perhaps it has always been the desire of both parties to keep some or all assets acquired solely as separate and not to be divided in the event of Separation or Divorce.

We also discuss situations where parties can negotiate trades—such as a waiver of spousal support and/or child support in consideration of an unequal division of matrimonial property. Any negotiated Agreement, whether equal or not, will be reviewed with each of your lawyers.

We discuss the fact that I am relying on the parties to provide complete, full and honest disclosure, that the parties may wish to pursue a more formal evaluation and disclosure process with their lawyers. We also discuss the fact that my services are completely inappropriate in situations where one or both spouses are hiding or disposing of assets and/or income, when the parties have complex situation or when the parties are unable or unwilling to cooperate in a friendly non-adversarial manner.

#### **#4. Advanced Planning**

Lawyers are great at giving advice. But, there are steps that may save time and money that can be made even before you go to a lawyer.

#### **Parenting after Separation Seminar**

If your disputes are over children, you and your spouse may want to attend the **free 6-hour Parenting After Separation Seminar**. The facilitators help parents understand how to minimize the impact of Separation on children, and offer general information (rights and responsibilities) about custody, access and child support. If you would like to attend this free seminar, please select the link below for a list of Cities (and telephone numbers) in Alberta that have the seminar:

[Parenting After Separation Seminar](#)

Short Link: <http://bit.ly/1pWqdge>

#### **Published Books**

There are several very good books that will help you with the process of Separation and Divorce found in your public library or local bookstore. Make sure that Divorce literature applies to Canada, property division applies to the laws of the Province you live in, and the publication date is recent.

#### **Financial Advisor**

Before taking the Agreement to a lawyer for advice and signing, you can each take the Agreement to a Financial Advisor (i.e. Investment Advisor, Chartered Accountant or Divorce Financial Analyst) to determine any financial consequences involving the proposed division (such as capital gains taxes, disposition costs and balancing of risks). You can both review your documentation with your financial advisor to ensure disclosure is accurate with respect to any financial accounts the financial planner is aware of. You can also ask if there are any financial considerations that you both ought to consider.

Some lawyers have a financial background and would be appropriate to advise on this. If there are complex financial issues, your lawyer will advise as to whether you should see a financial advisor.



### **Family Law Information Centre (operated by Family Justice Services)**

The Family Law Information Centre at the Court House can confirm child support calculations and standard of living tests—all for free, which take into account the incomes of both parties after payment of government source deductions, payment/receipt of spousal support and payment/receipt of child support. Standard of living tests are only applied in certain circumstances.

We also provide you with a copy of these calculations that you can take to your lawyer, along with your Separation Agreement (if we draft it for you) for review and advice.

You can also find the following free online lookups:

- [Federal Child Support Guideline Calculator](http://bit.ly/1mYulLT) Short Link: <http://bit.ly/1mYulLT>
- [MySupportCalculator.ca](http://mysupportcalculator.ca) Short Link: <http://mysupportcalculator.ca>

### **Banker / Creditor**

You can each take the Agreement to your banker or creditor to ensure that one spouse will qualify to assume a debt if that is the Agreement (assumptions of mortgages are not automatic as they once were—the party keeping the matrimonial home may have to re-qualify unless both spouses agree to remain on the mortgage jointly until one spouse qualifies on their own, obtains a co-signer, or until a set date in the future).

Normally, I would draft the Agreement for both parties. They would then take it to their bank to ensure that the bank will cooperate with the parties' wishes regarding division of debt. We would then make any relevant changes to the Agreement based upon the bank's agreement, prior to the parties' meeting with their lawyers.

### **Financial TIPS on sale of matrimonial home:**

- If you and your spouse intend to sell the matrimonial home and purchase new properties (i.e. one for each), be sure to negotiate with the bank to have them waive the mortgage penalties upon the sale of the matrimonial home. Often, they'll cooperate.
- If you are selling at one low interest rate and are being offered a higher rate for the purchase of a new home, you should use this to also waive the mortgage penalty. Why would there be a penalty when you are signing on at a higher mortgage rate?
- Negotiate negotiate negotiate with your Realtor! If one Realtor is used for the sale of your matrimonial home and purchase of two separate homes, you should be getting a very good deal on Real Estate Commissions.

### **Monthly Budget**

Preparing and following a monthly budget is always important. However, I normally don't expect people to prepare a budget and then say to their spouse "this is what I need, so this is what I want". Normally, property is divided fairly and an appropriate amount of child support and spousal support is paid. Then, you learn to live within your means. You don't usually get more money simply because you want it or pay less because you feel you can't afford to pay it.

Normally, you get what you are entitled to (or pay what you are required to pay) then learn to live within your means.

This is not legal advice, just my view of things. I mention this because some lawyers spend a lot of time having the couples prepare monthly budgets and I have yet to fully appreciate the value of this timely and expensive exercise, unless:

- A spouse might negotiate extra money upfront in order to keep the matrimonial home while the children are still in school.
- A monthly budget will help someone figure out if they can afford to keep the matrimonial home—but usually determining whether that person qualifies for a mortgage answers the same question.
- A monthly budget will help the parties figure out who pays what until such time as everything has been divided.

### **Child Tax Credits and GST Credits**

Curious as to how much child tax credits will increase or how much in GST credits you might qualify for? Though this is not likely to affect the division of things, if you find out that your child tax credits will increase a hundred or two, it might reduce your stress a little. Check here for free online calculators:

[Canada Revenue Agency CCTC and GST Benefits Calculator](http://www.cra-arc.gc.ca/benefits-calculator/)  
<http://www.cra-arc.gc.ca/benefits-calculator/>

### **Division of Property, Assets and Debts**

Click the link below for your FREE Divorce & Property Workbook.

[LINK: Divorce & Property Workbook](#)

### **CAN WE HELP YOU?**

With my help (but more importantly, with the cooperation of you and your spouse), if proceeding with a Legal Separation Agreement, you can reduce the amount of time you spend with a lawyer by as much as 90%. In situations where you must consult with a lawyer I ensure that you maximize the quality of your time and investment with the lawyer by helping you summarize the facts surrounding your situation for quick and easy review.

I can help with your **Legal Separation Agreement** if you and your spouse:

- reside in Alberta or lived in Alberta at the time of Separation (and the property is predominately situated in Alberta);
- are cooperative and willing to work together in the drafting of an Agreement;
- will be taking the Agreement to lawyers for review, advice and signing;
- are well-acquainted with your financial situation (or trust that each other will provide full disclosure); and
- are in full-Agreement (or almost full-Agreement) regarding all matters concerning property, assets, debts, children (custody, access and support) and spousal support.

We can still help if you decide you do not want or need a Legal Separation Agreement, and instead wish to proceed with an **Uncontested Divorce**.

### **GENERAL PROCEDURES for obtaining a Legal Separation Agreement**

If you hire me to assist you with a Legal Separation Agreement here are the general procedures I typically follow (which we may adjust to fit your specific situation):

- I interview you by telephone (or you complete the enclosed workbook and fax it to me).

- I book an appointment with you (and hopefully your spouse). Most initial appointments last 2 to 2.5 hours.
- I will tell you what documentation to bring to the appointment.
- I create the first draft of your Separation Agreement **before** you arrive to the first appointment.
- During the first appointment I go through the Agreement from beginning to end with you and your spouse (preferably) and edit it.
- You both leave the meeting with a fully drafted and edited Agreement.
- I always recommend that you both review it again once you get it home to ensure nothing was missed during the appointment.
- Either of you can advise as to further changes, if any, provided you both are in agreement.
- I then arrange for you and your spouse to review and sign the Agreement with your lawyers (I have a list of lawyers we refer or you can find your own lawyer).
- If upon the advice of your lawyers you wish to make further changes, I make them at no extra cost to you. However, it may mean an additional trip to your lawyers. Lawyer fees are in addition to my drafting fees. I try and help the two of you minimize the back and forth between lawyers.
- If applicable, land transfer(s) and a Divorce application is coordinated at the same time.

## ABOUT THE AUTHOR

I'm Debbie Ward, President of the Canadian Legal Resource Centre Inc. I have been working as a paralegal since 1987. I've owned and operated my company since 1995. I've processed over 5000 Uncontested Divorces and over 1000 Legal Separation Agreements. My company won the Consumer Choice for Business Excellent in the category of Paralegal Services for each of the past 9 years. We also enjoy an A+ Reputation with the Better Business Bureau.

Every time I draft one Separation Agreement it is reviewed by two different lawyers. As I have drafted over 1000 Separation Agreements, this means my work has been reviewed over 2000 times by different lawyers. I've learned what lawyers like and don't like and from time to time lawyers will provide new wording to different sections of the Agreement which ensures that my templates remain current and that I have many templates to access paragraphs that relate to many unique situations. Though I cannot give legal advice, I can still share my **26+** years of experience with you.

I've learned that the legal system is not as complicated as some might like you to think. Consumers of legal services are smart and capable of making wise decisions without excessive hand-holding from lawyers who routinely charge \$250 to \$500 per hour.

If there are trust issues or your situation is complex, you probably need to see a lawyer from beginning to end. Otherwise, you'll only need to see lawyers for independent legal advice and signing. I don't send you to lawyers so that they can simply rubber stamp your Agreement. The expectation is that they will review the Agreement and give good legal advice. I welcome any changes that arise following independent legal advice.

I have the following education:

- Bachelor of Commerce Degree;
- Two Legal Assistant Diplomas; and
- Immigration Practitioner Certificate.

I also designed and taught a seminar titled "The Paralegal Professional" for Chinook College (formerly the Calgary Board of Education). I've taken over 20 continuing education courses and seminars over the past 20 years in the areas of mediation, public relations, divorce financial analyst, addictions, marketing, personal growth and finance.

## CONTACT INFORMATION – FREE CONSULTATION

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