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# Community Legal Information Association of Prince Edward Island, Inc.

## What Do I Include in a Separation Agreement?

Separation agreements vary according to the circumstances of the couple involved in the agreement. This list covers most of the things that you might include in your separation agreement. However, it is a general list and your agreement may need other contents. This list is intended to be used to guide you through the development of a separation agreement. You will have to add items if the list is not complete for you.

### 1. Children

- Custody
- Visitation
- Regular
- Special holidays
- Other arranged contacts –telephone, correspondence etc.
- Supervision, if necessary (who makes arrangements, who pays, what are the conditions)
- Guardianship (if required)
- Who pays travel costs
- What happens if someone moves outside the province
- Future name changes for the children
- Who gets family allowance benefits and child tax credits
- Passport provisions

### 2. Child Support

- Amount
- Duration
- Administrative recalculation clause
- Definition of “material change in circumstances”
- Income of support payor for variation purposes
- Retroactivity
- Whether in cash or through other benefits provided
- Allocation of funds for future contingencies (e.g. University costs)
- Special agreements (i.e. orthodontist fees, medical expenses, children’s insurance for parents’ automobiles, life insurance etc.)

#### 2.1. Spousal Support

- Amount
- Duration
- When to increase
- Definition of a “fundamental change in circumstances”

- Taxes
- Retroactivity
- Whether in cash or through other benefits provided
- Allocation of funds for future contingencies
- Special agreements
- Whether support is paid through the Director of Maintenance Enforcement

### **3. Division of Assets**

The matrimonial home

a) Exclusive possession by one party

- Who pays for what
- When to be sold
- Buyout provision
- Occupation rent
- Date of valuation
- What if destroyed
- Conditions limiting occupation by one spouse (e.g. if one spouse cohabits with another person)

b) Sale of home

- How proceeds divided
- Credits to either party
- Reduction of list price by advance agreement

Other assets

- Canada Pension Plan credits
- Any other pension plans
- Life insurance policies with cash surrender value
- Tax refunds
- Leasehold interests
- R.R.S.P.'s
- Stocks and bonds
- Pets or animals
- Other investments (G.I.C.'s etc.)
- Tools and employment equipment
- Furniture and appliances
- Automobiles, trailers, boats, other vehicles
- Other land
  - Farmland
  - Investment properties
  - Cottages
  - Condos
- Business assets of either party
- Profit sharing plans
- Bank accounts
  - Joint
  - Individual
- Inherited assets and gifts

- Contingent expectations
- Receivables
- Investment valuables (e.g. jewelry, art)
- Anything else that is relevant

Allocation of debts and obligations to pay (note: not only who takes care of existing debts but also what happens to renegotiate existing joint loans/debts of both)

#### **4. Miscellaneous Matters**

- Whether separation agreement binds estates
- Severability clause needed
- Whether either spouse will maintain Blue Cross or other medical insurance for the other spouse and child(ren)
- Whether life insurance will be maintained and who will be the beneficiary
- Who will pay for the drafting and/or negotiation of the separation agreement (note: both cannot pay one lawyer)
- Whether divorce will be applied for, and who will do it
- Use of mediation for conflicts of interpretation or to negotiate changes
- Interference in each other's lives

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