

Kit #9

Preparing a Separation Agreement

Self-Help Kit*

You can use this kit to prepare your own separation agreement.

If you have any questions, please feel free to contact:

Family Law Information Centre

1-888-218-2822 (extension 2)

(306) 787-5837

svp@gov.sk.ca

*This self-help kit is not a substitute for professional legal advice. It does not address all possible situations nor does it cover all areas of applicable legislation. You use this kit entirely at your own risk. The legal process can be complicated and ***it is recommended that you consult with a lawyer*** before filing any documents and proceeding to court.

(September 2018)

Is this Kit for Me?

This kit is designed to help a person or persons create a separation agreement to outline some rights and obligations that may arise after separation. The template for a separation agreement attached does not cover all possible scenarios, nor is it guaranteed to be enforceable or upheld in Court. Agreements can cover a variety of topics, and some parts of agreements can be changed in the event of a change in circumstances.

It is highly recommended that you consult with a lawyer to ensure that any agreement made covers any concerns that you may have.

You may wish to review the applicable laws in Saskatchewan and Canada, including, but not limited to the Children's Law Act, the Family Maintenance Act, the Family Property Act, and the Divorce Act.

Saskatchewan Acts can be found here: www.publications.gov.sk.ca

Federal Legislation can be found here: www.laws.justice.gc.ca

How can an agreement be reached?

You may be able to negotiate an agreement directly between yourselves with no further assistance.

If you are looking for information about other resources to assist you in negotiating an agreement, you can contact the Family Matters Program (1-844-863-3408) to find out whether there is material might help with this process. If both parties agree, a free 3-hour problem-solving session can also be scheduled for both parties to come in and obtain further information and make a plan to move forward.

You can also call the Family Law Information Centre (1-888-218-2822 ext. 2) to speak to their lawyer to get general legal information.

Legal information is also provided by the Public Legal Education Association of Saskatchewan (PLEA). You can visit their specialized family law website to obtain additional information here: www.familylaw.plea.org

If you are interested in trying to resolve any outstanding issues with the help of a mediator, you can contact the Dispute Resolution Office at 1-866-257-0927, or (306) 787-5747 (Regina) or (306) 933-7864 (Saskatoon).

When deciding how to proceed, you may also wish to consider Collaborative Law, which is a process for resolving issues with the advice and assistance of lawyers but without going to court. You can find more information about this, or a list of Collaborative Law professionals, by calling Collaborative Lawyers of Saskatchewan at 1-866-347-8545, or visiting their website: <http://www.collabsask.com/>

Do I need a Lawyer?

You have the choice to retain a lawyer or not retain a lawyer when preparing a separation agreement.

However, if you choose not to retain a lawyer to prepare an agreement, or obtain independent legal advice before signing an interspousal contract, then there are possible risks involved, such as:

- 1) Either party might later successfully apply to the court to have all or part of the agreement set aside;
- 2) Your agreement may not be acceptable to a third-party (e.g. Bank, government agency, or other organization);
- 3) You may give up rights that you would normally have under existing law.

The attached draft agreement template contains a Certificate of Independent Legal Advice for each party to take to a lawyer of their choice to minimize the risks described above. Please note that some lawyers will not provide Independent Legal Advice for agreements that they have not drafted themselves.

If you want to find a lawyer to represent you, or to obtain legal advice:

- Check the yellow pages listings in the telephone book; or
- Speak to family or friends for recommendations.

When looking for a lawyer, if you are only looking for the lawyer to provide legal advice and not draft the agreement, you may wish to ask if any lawyers in a particular office offer “unbundled legal services”. Lawyers offering this are more likely to be willing to provide independent legal advice separate from other legal services.

Even if you decide not to hire a lawyer for any aspect of this matter, it is still a good idea to consult a lawyer before you use this kit. A lawyer can advise you about the law, help you evaluate your rights and obligations and tell you what the cost of legal representation might be. The lawyer will likely charge you for their advice.

You may also need to retain a lawyer to process any transactions involving the transfer of title to any real property.

If you are a low income earner or do not earn any income at all, you may qualify for Legal Aid. Consult the blue pages of your telephone book for the Saskatchewan Legal Aid Commission office nearest you.

You cannot rely on this kit to provide you with legal advice. You use this kit entirely at your own risk.

Are there any courses or information sessions?

There is a Parenting After Separation and Divorce course available to the public. The course is currently free and is offered by Family Justice Services, a division of the Saskatchewan Ministry of Justice.

You must register for the course in advance by calling

1-888-218-2822 (south Saskatchewan)

1-877-964-5501 (north Saskatchewan)

The course is not mandatory unless either party is bringing a court application for a judge to decide on any issue involving children of the relationship.

How can I prepare a Parenting Plan?

The Federal Department of Justice has created a section on their website to assist people in preparing a parenting plan. You can find that information here:

<http://www.justice.gc.ca/eng/fl-df/parent/plan.html>

What are the Child Support Guidelines?

The *Child Support Guidelines* are rules that the court must follow when deciding how much child support to order. The *Child Support Guidelines* include tables that are used to figure out a child support amount. The child support amount is generally based on:

- income of the party paying support;
- province where the paying party resides;
- the number of children for whom child support is paid.

In some cases, the child support amount also includes an extra amount for certain kinds of special expenses that children may have. These special expenses are often referred to as “Section 7” expenses because the definition of special expenses is found in section 7 of *The Child Support Guidelines*.

Further information about *the Child Support Guidelines* can be found here:

<http://www.justice.gc.ca/>

Many people will choose to use the *Guidelines* to set the child support payments in their separation agreements.

What are the Spousal Support Advisory Guidelines?

The Spousal Support Advisory Guidelines set out formulas for arriving at spousal support figures in situations where there are, and where there are not, child support figures to factor in. Unlike the Child Support Guidelines, the Spousal Support Guidelines are not mandatory. They are not law. Therefore, a judge does not have to follow them in every situation. The Spousal Support Advisory Guidelines can be found on the Department of Justice Canada website here:

<http://www.justice.gc.ca/eng/fl-df/spousal-epoux/ssag-ldfpae.html>

You can find an online Spousal Support Advisory Guideline calculator here:

<http://www.mysupportcalculator.ca/Calculator.aspx>

Many people will choose to use the *Guidelines* to set the spousal support payments in their separation agreements.

How do I use the agreement attached to the kit?

If you have access to a computer, you can create your own agreement, using the attached template as a guide. You may wish to include items not contained within the template. Alternatively, you may wish to omit certain sections of the template if they do not apply to you.

There is nothing in the attached template that is absolutely mandatory. You can make any amendments that you would like.

What if I have questions when I am using this kit?

If you have questions, you can contact us at:

Family Law Information Centre

1-888-218-2822

(306) 787-5837

svp@gov.sk.ca

The staff at the Family Law Information Centre cannot give you legal advice or represent you in court. However, they can answer general questions you may have about this kit.

You may also wish to obtain an electronic copy of this kit for ease of completion and/or modification. If you would like to have this kit e-mailed to you, please feel free to contact us.

THIS AGREEMENT made this ____ day of _____, 20__.

BETWEEN:

[YOUR NAME]

of _____, Saskatchewan,

[NAME OF CITY OR TOWN],

OF THE FIRST PART

AND:

[OTHER PARTY'S NAME]

of _____, Saskatchewan,

[NAME OF CITY OR TOWN],

OF THE SECOND PART

INTERSPOUSAL AGREEMENT

1. (choose one)

WHEREAS the parties hereto are husband and wife, having been married to each other on the ____th day of _____, _____ at the City
(day) (month) (year)
of _____, in the Province of _____.
(city) (province)

~ or ~

WHEREAS the parties cohabited in a common-law spousal relationship from the ____th day of _____, _____ until
(day) (month) (year)
separation which occurred on or near the ____th day of _____, ____.
(day) (month) (year)

2) AND WHEREAS the parties hereto have _____ dependent children.

3) AND WHEREAS unhappy differences have arisen between the parties and, as a result, they are consequently living separate and apart from each other and propose to continue to live separate and apart from each other in the future;

4) AND WHEREAS the parties desire to confirm their separation, and each of them desires to settle by agreement all rights, claims, demands and causes of action which each has or may have against the other with respect to:

(choose all that apply)

- matters of child maintenance;
- matters of spousal maintenance;
- custody and access of dependent children;
- distribution and division of their family property as contemplated by the provisions of *The Family Property Act*.
- other: _____.

5) **PARENTING OF DEPENDANT CHILDREN**

a) The names and dates of birth of the children of the relationship are:

<u>NAME</u>	<u>BIRTHDATE</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

b) The following are the details of the custody arrangements of the above children:

c) The following are the details of the access arrangements of the above children:

and according to the applicable child support table set out in the Federal Child Support Guidelines, the amount of child support payable for the children (the “child support table amount”) is currently \$_____.

_____ will pay to _____ child support of \$_____ per month for the children referred to above plus:

The income of _____ is \$_____ per year.
(party receiving child support) (gross annual income)

[Include any expenses to be paid by the paying party, such as portion of child care/extracurricular costs]

<u>Nature of Expense</u>	<u>Amount to be paid</u>
_____	_____
_____	_____
_____	_____

(B) Future Adjustments to Child Support and disclosure of income:

(C) Spousal Support:

The annual income of _____ is \$ _____.

The annual income of _____ is \$ _____.

The parties agree that _____ will pay to _____
spousal support in the amount of:

\$ _____ per month, or

\$ _____ in a lump sum.

7. **DIVISION OF FAMILY PROPERTY**

The parties hereby agree that they have full knowledge and particulars of information as to all personal and real property that is the subject of division and distribution between them and the valuation thereof. The parties hereby agree that the following division shall be made of the real and personal property that is subject to the division and distribution between them:

(a) Family Home

(b) Household Contents

(c) Canada Pension Plan

The parties hereto have the option to have a division of either party's unadjusted pensionable earnings or credits under Section 55 and Section 55.1 or any successor sections of *The Canada Pension Plan Act*, as earned by either party to the date of this Agreement or hereafter. Furthermore, this Agreement is intended to comply with Section 55.2 of *The Canada Pension Plan Act* in all respects and is made pursuant to the provisions of Section 38(5) of *The Family Property Act* for Saskatchewan.

- Yes, the parties agree to a division of Canada Pension Plan credits.
- No, the parties decline to divide Canada Pension Plan credits.

(d) Vehicles

The following is a summary of who shall have the exclusive possession, use, enjoyment and title to each vehicle owned by the parties:

<u>VEHICLE</u>	<u>NAME OF PARTY RECEIVING VEHICLE</u>
_____	_____
_____	_____
_____	_____
_____	_____

(e) Pensions

(choose one)

Each party hereto agrees that the other shall have the exclusive possession, use, enjoyment and title to the Pension Plans currently in each parties own name. Each party hereto waives and releases any claim or demand that they might have under any statute or cause of action to the others pension.

The Pension plans of each party will be split as follows:

(f) Other Property:

(g) Debts to be divided:

(g) Equalization:

(choose one)

- There shall be no payment to equalize the parties' property.
- _____ shall pay to _____ the sum of \$_____ to equalize the parties' property.

8. **OTHER**

9. **INDEPENDENT LEGAL ADVICE**

The parties each acknowledge that:

- (a) Each has had independent legal advice;
- (b) Each understands their respective rights and obligations under this Agreement;
- (c) Each is signing this Interspousal Agreement voluntarily.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals, as of the day and year first above written.

SIGNED, SEALED & DELIVERED in)
the presence of _____)
(name of witness))
) _____)
) (signature of first party)
)

Signature of WITNESS as to the signature
of the first party

SIGNED, SEALED & DELIVERED in)
the presence of _____)
(name of witness))
) _____)
) (signature of second party)
)

Signature of WITNESS as to the signature
of the second party

ACKNOWLEDGEMENT

(of the first party)

I, _____, of _____, in the Province of Saskatchewan, acknowledge that:

1. I have executed the attached Agreement between myself and _____ voluntarily;

2. I have executed the said Agreement separate and apart from the said _____;

3. I am aware of the nature and effect of the said Agreement; and

4. I am aware of the possible future claims to property I may have in accordance with *The Family Property Act*, S.S. 1979, Ch. M-6.1, and I intend to relinquish those claims to the extent necessary to give effect to the said Agreement.

Signature

ACKNOWLEDGEMENT

(of the second party)

I, _____, of _____, in the Province of Saskatchewan, acknowledge that:

1. I have executed the attached Agreement between myself and _____ voluntarily;

2. I have executed the said Agreement separate and apart from the said _____;

3. I am aware of the nature and effect of the said Agreement; and

4. I am aware of the possible future claims to property I may have in accordance with *The Family Property Act*, S.S. 1979, Ch. M-6.1, and I intend to relinquish those claims to the extent necessary to give effect to the said Agreement.

Signature

C A N A D A)
PROVINCE OF SASKATCHEWAN)
TO WIT:)

AFFIDAVIT OF EXECUTION

(of witness to signature of the first party)

I, _____, of the City of _____, in the Province of Saskatchewan, MAKE OATH AND SAY AS FOLLOWS:

- 1. THAT I was personally present and did see _____, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

- 2. THAT the same was executed at the City of _____, in the Province of Saskatchewan, on the _____ day of _____, 20____, and that I am the subscribing witness thereto.

- 3. THAT I know the said _____ and he/she is in my belief of the full age of eighteen (18) years or more.

SWORN before me at the City of _____)
_____, in the Province of _____)
Saskatchewan, this _____ day _____)
of _____, 20____. _____)
) [WITNESS]
_____)

A Commissioner for Oaths in and for the Province of Saskatchewan.
My Commission expires:_____.
OR: Being a Solicitor

C A N A D A)
PROVINCE OF SASKATCHEWAN)
TO WIT:)

AFFIDAVIT OF EXECUTION

(of witness to signature of the second party)

I, _____, of the City of _____, in the Province of Saskatchewan, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I was personally present and did see _____, named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.
2. THAT the same was executed at the City of _____, in the Province of Saskatchewan, on the _____ day of _____, 20____, and that I am the subscribing witness thereto.
3. THAT I know the said _____ and he/she is in my belief of the full age of eighteen (18) years or more.

SWORN before me at the City of _____)
_____, in the Province of _____)
Saskatchewan, this ____ day _____)
of _____, 20____. _____)
_____) [WITNESS]
_____)

A Commissioner for Oaths in and for the Province of Saskatchewan.

My Commission expires: _____.

OR: Being a Solicitor

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

(lawyer advising the first party)

I, _____ of the City of _____, in the Province of Saskatchewan, a practising Barrister and Solicitor, do hereby certify as follows:

1. That I have independently advised the said _____ with respect to the terms and conditions of the within Interspousal Contract.
2. That the said _____ executed the Interspousal Contract separate and apart from his/her spouse.
3. That I do not act for his/her spouse in this matter.
4. That the said _____ is aware of the possible future claims to property he/she may have under *The Family Property Act*, and he/she freely intends to give up those claims to the extent necessary to give effect to this Contract.
5. That it appeared the said _____ entered into the Agreement willingly and not under any duress, undue influence or deception.

A Practising Barrister and Solicitor
in and for the Province of Saskatchewan

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

(lawyer advising the second party)

I, _____ of the City of _____, in the Province of Saskatchewan, a practising Barrister and Solicitor, do hereby certify as follows:

1. That I have independently advised the said _____ with respect to the terms and conditions of the within Interspousal Contract.
2. That the said _____ executed the Interspousal Contract separate and apart from his/her spouse.
3. That I do not act for his/her spouse in this matter.
4. That the said _____ is aware of the possible future claims to property he/she may have under *The Family Property Act*, and he/she freely intends to give up those claims to the extent necessary to give effect to this Contract.
5. That it appeared the said _____ entered into the Agreement willingly and not under any duress, undue influence or deception.

A Practising Barrister and Solicitor
in and for the Province of Saskatchewan