

LEGAL SEPARATION



JOINT BASE ANDREWS LAW CENTER

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A “Legal Separation” is simply the term used to describe when spouses live apart, but with some legal action taken. The legal action is either a separation agreement or a decree of a court. Separated couples are still married, so all support obligations continue. Also, adultery can still be committed. A “Legal Separation” is not required to get a divorce.

SEPARATION AGREEMENTS

A separation agreement is a contract between spouses that spells out the rights and responsibilities of each party during the separation. (See attached “Sample Legal Agreement”) It should address issues such as child support and custody, spousal support, property division, etc. There are advantages to having a separation agreement. The main advantage is that you will have a say in what the terms are; you may not be so lucky if a judge is making the decisions. Living under a separation agreement for a specific time is grounds for divorce. The attorneys at the Andrews Law Center do not prepare separation agreements. We recommend that you see a civilian attorney to ensure that all of your rights are protected.

However, if you and your spouse are trying to agree on some terms, consider the follow tips:

- Meet on neutral ground.
- Put aside time. A reasonable amount of time should be set aside to deal with the issues.
- Set an agenda.
- Do not get bogged down. Try to talk about what you agree on.
- Reschedule as needed.
- Keep the kids out of it.
- Start talking early.

While Virginia does not have a status for legal separation, couples in the state can still create a separation agreement.

WHAT CAN A SEPARATION AGREEMENT NOT DO?

It cannot bind third parties (banks or finance companies) – so even if you agree to split financial obligations, you continue to be jointly liable for payment of debts in both spouse’s name. A separation agreement cannot legitimize adultery (i.e., allow for dating others). Most importantly, a separation agreement does not bind a court in areas relating to child custody or child support, as this is decided by the court in the best interest of the child.

GOING TO COURT FOR A LEGAL SEPARATION

Without a separation agreement, you can go to court and get a legal separation if you prove one of the following:

- ***Willful Desertion or Abandonment:*** this occurs when one spouse leaves with the intent to stay away. Separation by mutual consent is neither desertion nor abandonment. If one spouse leaves because the other spouse has committed acts which legally amount to cruelty, the spouse who leaves has not committed desertion.
- ***Cruelty or Apprehension of Bodily Harm:*** proof of physical or mental cruelty must show action by the guilty spouse that makes living together unsafe or dangerous to life, limb, or health. Usually, more than one instance is needed unless the one act is severe or is likely to be repeated.

If you have any questions, please schedule an appointment with a legal assistance attorney by calling (240) 612-5750.

SAMPLE SEPARATION AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____ at _____ between _____, hereinafter referred to as the Husband and _____, hereinafter referred to as the Wife.

The parties hereto were married on _____, in _____, _____, and have been and are now Husband and Wife.

Differences have arisen between them and the relations between the parties are and have been of such a character as to render the separation a matter of necessity for the health, welfare, and happiness of both. Because of these differences, the parties have separated and now live separate and apart and intend to continue living separate and apart.

It is the desire of both, finally and for all time, to settle, adjust, compromise, and determine their property rights, all rights of support and maintenance by either party against the other by reason of their marriage, all dower, alimony, and homestead rights, and any and all other rights existing between the parties growing out of the marriage relationship.

There is/are ___ child/children born of this marriage: _____, age ___; _____, age ___; and _____, age ___.

In consideration of the mutual promises hereinafter described, the parties have agreed and by this agreement do agree as follows:

SEPARATION OF THE PARTIES: The parties hereto may continue to live separate and apart for the rest of their natural lives. Each shall be free from interference, authority, and control, direct or indirect, by the other as fully as if he or she were single and unmarried. Subject to the provisions of this agreement, each may reside at such place or places as he or she may elect. The parties shall not molest each other or compel or endeavor to compel the other to cohabit or dwell with him or her by any legal or other proceedings for restitution of conjugal rights or otherwise.

ACCEPTANCE AND MUTUAL RELEASE: Each of the parties agrees to receive the property set apart to them and the undertakings hereof in the full and complete settlement and release of all claims and demands of every kind, name, or nature against the other party hereto, including all liability now or at any time hereafter existing or accruing on account of support, maintenance, alimony (temporary or permanent), dower, or other allowances, either statutory or arising at common law, incident to the marriage relation, and after this settlement the Husband and Wife shall require nothing whatever of the other except as herein provided, as though the marriage relationship between them had never existed.

WAIVER OF CLAIM AGAINST ESTATE: The Wife agrees that the estate of the Husband upon completion of the terms of this agreement, shall belong to the person or persons who would have become entitled thereto if the Wife had died during the lifetime of the Husband, and the Wife further agrees that she will not contest any Will of the Husband to be probated and will allow administration upon his personal estate to be taken out by the person or persons who would have become entitled to do so had the Wife died during the lifetime of the Husband.

The Husband agrees that the estate of the Wife upon completion of the terms of this agreement, shall belong to the person or persons who would have become entitled thereto if the Husband had died during the lifetime of the Wife, and the Husband further agrees that he will not contest any Will of the Wife to be probated and will allow administration upon her personal estate to be taken out by the person or persons who would have become entitled to do so had the Husband died during the lifetime of the Wife.

Each party releases to the other and to their heirs, executors, administrators, and assigns thereof all claims and rights of dower, or inheritance, descent, distribution, elections, or alimony (except that accruing under provisions of this agreement) in and to all property, real or personal, of the other, whether now owned or hereafter acquired.

PRESENT AND FUTURE INDEBTEDNESS: The parties covenant and represent that they have not heretofore incurred or contracted any debt, charge, or liability for which the other is now or may become liable except as expressly disclosed in this Agreement, and that henceforth they shall not incur or contract any such debt, charge, or liability. The parties further covenant and represent that they will keep each other free, harmless, and indemnified of and from any and all debts, charges, and liabilities heretofore incurred by them and not disclosed and those hereafter incurred.

The Husband will be liable for: _____.

The Wife will be liable for: _____.

PERSONAL PROPERTY: The parties have divided their property to their mutual satisfaction. Henceforth, each of the parties shall own, have and enjoy, independently of any claim or right of the other party, all items of personal property of every kind, nature and description, and wheresoever situated, which are now owned or held by or which may hereafter belong to the Husband

or Wife, with full power to the Husband or Wife to dispose of same as fully and effectually, in all respects and for all purposes as if he or she were unmarried. All items of personal property shall be divided between the parties as follows:

The Husband shall have as his separate property and his share of the marital property: _____.

The Wife shall have as her separate property and her share of the marital property: _____.

CHILD CUSTODY: Sole care, custody and control of _____ shall be in the _____, who agrees to properly care for, support, rear, train and education same to the best of his or her ability; however, the _____ shall have reasonable visitation rights.

CHILD SUPPORT: The _____ shall pay to the _____ as and for the support of the minor child(ren) of the parties, the sum of _____ per month (per child, for a total child support payment of _____ monthly), beginning _____ and continuing (for each child), until the child dies, reaches majority, marries, enters the Armed Forces, or otherwise becomes emancipated.

SPOUSAL SUPPORT: The _____ shall pay to the _____ the sum of _____ per month for spousal support. These payments shall begin on _____ and continuing each succeeding month thereafter until _____. If, however, after a divorce between the parties, the _____ should remarry or die, spousal support shall terminate at that time.

INCOME TAX: The parties agree that the _____ shall be entitled to claim the child(ren) as an exemption on all state and federal tax forms. The parties may elect to file a joint tax return until such time as a court-ordered separation or divorce occurs. If such a joint tax return is filed, the parties will be entitled to a pro rata share of any refund that is due.

MILITARY PRIVILEGES: The _____ shall assist in arranging for the use of military facilities and privileges including, but not limited to, the base exchange, hospital, laundry, and commissary to the extent permitted by law. The parties understand that the eligibility of the _____ to use such privileges terminates upon the granting of a final divorce.

SUBSEQUENT DIVORCE: Any cause presently existing justifying the divorce shall not be abrogated by the terms of this agreement. In the event that an action for divorce is instituted at any time hereafter by either party against the other, in this or in any other state or country, the parties hereto agree that they will make every effort to see to it that the terms of this agreement are included, to the greatest extent agreeable to the court, in the final divorce decree.

ADDITIONAL INSTRUCTION: Each of the parties shall promptly execute and deliver such deeds, title documents, releases, assignments, identity cards, tax returns, or other written instruments as may be required from time to time to carry into effect fully the terms and conditions of this agreement according to its true intent and meaning.

PRIOR AND SUBSEQUENT AGREEMENTS: The parties hereto hereby cancel, annul, and invalidate any and all prior property settlements by them at any time heretofore made, and any powers of attorney which either has heretofore given to the other, and each party agrees to return to the grantor and power of attorney document still in the grantee's possession. All modifications of this agreement shall be of no effect unless expressed in writing and signed by both parties.

ENTIRE AGREEMENT: The parties acknowledge that this agreement is fair and sound and not the result of any fraud, duress, or undue influence exercised by either party upon the other, or by any other person or persons upon either, and they further agree that this agreement contains the entire understanding of the parties. Both agree that there are no representations, promises, warranties, covenants, or undertakings other than those expressly set forth herein.

PERFORMANCE OF COVENANTS: The failure of either of the parties to insist, in any one or more instance, upon a strict performance of any of the covenants or provisions of this agreement shall not be construed as a waiver or a relinquishment for the future of such covenant or provision, but the same shall continue and remain in full force and effect.

BINDING EFFECT: All covenants, promises, stipulations, agreements, and provisions contained herein shall apply to, bind, and be obligatory upon, the heirs, executors, administrator, personal representatives, and assigns of the parties hereto.

IN WITNESS WHEREOF, we have at _____ this _____ day of _____, _____, set our hands and seal to this agreement consisting of _____ pages, including this page.

(SEAL) _____

(SEAL) _____

WITNESSES:

