

SAMPLE SEPARATION AND PROPERTY SETTLEMENT AGREEMENT

This sample separation and property settlement agreement is **NOT** intended for use in all cases. It is **NOT** a fill-in-the-blank type of form that you can go through quickly. Instead, it is simply a sample containing the types of provisions that may be found in many such agreements. Some of these provisions may be inappropriate in your case, and there may be other provisions that you need to include in your case. **YOU WILL HAVE TO PREPARE YOUR OWN AGREEMENT.**

If you use this sample agreement as a model for preparing an agreement in your case, you will need to make the agreement fit the particular facts of your situation. For some issues, such as visitation or division of property, the sample agreement contains several different options that you might choose from. An actual agreement would not include all of these options, but would include only those provisions that fit the situation.

Make sure that your agreement does not include provisions that are inconsistent with each other, or provisions that you do not want to agree to.

If you follow the general format of the sample agreement, you will probably need to re-number at least some sections to fit your situation. You will also need to make sure the wording of your agreement fits your situation (for example, if you have only one child, you will need to change "children" to "child"). Read through your agreement to make sure it makes sense to you.

The material in brackets - [] - is not part of the agreement itself, and should not be included in any agreement that you prepare for your case. The material in brackets is included in the sample only to explain the sample.

Some provisions in the sample agreement have blanks in them, and most of these provisions show how the blanks could be filled in. If you use provisions from this sample, make sure that you fill in the blanks properly, in accordance with the facts of your own case and what you want your agreement to say.

If you use this sample as a model in preparing an agreement in your own case, use only those provisions that apply and that you want to include. If the sample does not have a provision that deals with a situation in your case in the way that you want to deal with it, you will have to write up your own provision for that situation. You can and should revise the provisions of the sample to fit your situation.

West Virginia Legal Services Plan is willing to review settlement agreements for participants in its pro se divorce workshops. If you wish for one of our lawyers to review your agreement, you should call our office for an appointment after you have prepared the agreement the way you want it, but before you or your spouse have signed it.

YOU WILL BE RESPONSIBLE FOR MAKING SURE YOUR AGREEMENT SAYS WHAT YOU WANT IT TO SAY, SO MAKE SURE YOU UNDERSTAND EVERYTHING THAT YOU INCLUDE IN THE AGREEMENT.

Section-by-Section Explanation of Sample Agreement

1. Custody -- After the introductory paragraphs, the first section of the sample agreement deals with custody. If you have children with your spouse, any settlement agreement in your case

should say who will have custody of the children. There are two options set out in the agreement -- the first is for use where one parent has all the children, and the second is for use where each parent has custody of one or more of the children. There are additional requirements for joint custody cases, and West Virginia Legal Services does not deal with joint custody in its pro se workshops.

2. Visitation -- There are many different provisions included in the sample agreement. You will not need them all. In general, you can agree to (a) broad and liberal visitation, without setting out specific times for visits, (b) visitation restricted to a particular place, (c) supervised visitation, (d) no visitation, or (e) specific visitation. There are many different ways of dealing with each of options -- those included in the sample as 2(a), 2(b), 2(c), 2(d) and 2(e) are only examples of how an agreement could be drafted.

Ordinarily, a non-custodial parent will be entitled to visitation of some sort unless he or she has severely abused the children or presents a serious risk of harm to them. Restricted or supervised visitation - 2(b) and (c) - may be appropriate where there is some fear that the non-custodial parent will mistreat or neglect a child, particularly in the case of a younger child. Non-specified "broad and liberal visitation" - 2(a) - may be appropriate where you and your spouse are able to work well with one another in arranging visits. If you are the non-custodial spouse, it is probably in your interest to get specific visitation with your children, - 2(e) - so that you will have a clear right to visit with the children at particular times.

Sections 2(f) through (m) set out provisions that you may want to consider with regard to visitation. Include only those that make sense in your situation and that you are willing to agree to.

3. Support and Maintenance of the Minor Children -- If you have done a child support calculation, using the West Virginia child support guidelines, you can use section 3(c) or (d), which include a particular amount for child support. If you haven't done a calculation yet, you can use 3(a) or (b), which say that support will be based on the guidelines.

Section 3(e) or (f) can be used in those limited situations where the non-custodial parent is not able to pay child support at this time. 3(e) includes a requirement that the parent at least look for work and report his or income when he or she finds work. You should insist on this provision as a minimum if you have custody and your spouse is able to work.

Section 3(g) can be used if the non-custodial spouse is on Social Security and the children receive children's benefits. If you have custody of the children, you should not agree to this if you believe that your spouse earns or is able to earn enough to provide additional support for the children.

Section 3(h) can be used when each spouse has custody of one or more of the children. Before agreeing to this type of provision, you should make sure that you are not entitled to child support under the guidelines. Even if each parent has one or more of the children, the guidelines may call for one parent to pay child support to the other.

4. Medical Support for the Children -- Sections 4(a) and (b) of the sample agreement would require one or both parents to get insurance on the children, although (b) would require insurance only if it becomes available at reasonable cost through one of the parent's employer. Sections (c) and (d) deal with medical and other costs not covered by insurance, including costs where there is no insurance or medical card, costs for meeting deductibles, and other costs not covered by insurance. You should consider including provisions like these, even if your children are now covered by Medicaid, just in case you may need them in the future.

5. Other Provisions Concerning Children -- You may want to consider including provisions like these if you are the non-custodial parent and want to be informed about things that affect your children. Even if you are the custodial parent, you may also want to include provisions like these to encourage the other parent to maintain ties with the children. These provisions are not required, however, and you do not have to address these issues in your agreement.

6. Alimony -- If you and your spouse both agree to give up any right you may have to alimony, you can use section 6(a) only, filling in the first blank with "Both Husband and Wife". If your agreement involves the payment of alimony, you will need to set out when the alimony is to end. If you give up your right to alimony now, you cannot come back to court after your divorce to ask for alimony.

7. Personal Property -- Any property settlement agreement should set out who gets what property. Don't forget about bank accounts or other property. Issues about how property is divided by the courts in divorce cases is discussed at West Virginia Legal Services' pro se divorce workshop. If you don't understand your rights concerning the division of property and debts, DON'T AGREE TO ANYTHING UNTIL YOU FIND OUT YOUR RIGHTS.

If there is debt associated with any of the property, you will need to say who is to pay the debt. The sample agreement includes a provision showing how this could be done with a car, and that provision could be a model for writing a similar provision for furniture or other property being bought on credit.

8. Real Estate -- If you and your spouse have any interest in real estate together, or if either of you obtained an interest in real estate while you were married, do NOT use a provision like the one included in the sample agreement. Do NOT use this provision if you or your spouse made payments on real estate while you were married, whether the payments were under a land contract, a mortgage, or a deed of trust. If you are unsure, check with a lawyer.

9. Debts -- The sample agreement includes several different ways that debts can be divided in a settlement agreement. Section 9(a) can be used along with 9(b), (c) or (d). It is generally a good idea to spell out who will be responsible for which debts.

10. Marital Home -- If you and your spouse are still living together, you need to decide which of you will be moving out and when. This provision in the sample agreement doesn't deal with the ownership of any real estate, and should not be used except where the parties are living in an apartment or house that they are

renting.

11. Injunctive Relief -- You can use a provision like this one if you need an order requiring your spouse to stay away from you or to keep from bothering you. Sometimes both spouses will agree to this type of an order.

12. Releases -- These provisions say that each spouse gives up his or her right to make any claim against the property of the other, including any right to inherit from the other. A provision like this one is generally found in property settlement agreements in divorce cases.

13. Miscellaneous -- These provisions say that both spouses will cooperate with each other in carrying out the agreement and in getting the divorce completed. They also say that each understands the agreement and thinks that it is fair. Provisions like these are included in most property settlement agreements in divorce cases.

THIS SEPARATION AND PROPERTY SETTLEMENT AGREEMENT, made and entered into this the _____ day of _____, 199____, by and between _____ wife's name _____, party of the first part, hereinafter referred to as "Wife," and _____ husband's name _____, party of the second part, hereinafter referred to as "Husband."

WITNESSETH: That for and in consideration of the mutual covenants and agreements hereinafter set forth, Husband and Wife covenant and agree with one another as follows:

1. Custody

_____ Husband or Wife _____ shall have the complete care, custody and control of the minor children of the parties, namely _____ names of children _____.

[-OR, IF EACH PARENT HAS CUSTODY OF AT LEAST ONE CHILD-]

Wife shall have the complete care, custody and control of _____ names of children with mother _____, minor children of the parties, and Husband shall have the complete care, custody and control of _____ names of children with father _____, minor children of the parties.

2. Visitation

(a) The non-custodial parent shall have the right of broad and liberal visitation with the minor children, at reasonable times and places and under reasonable circumstances.

(b) The non-custodial parent shall have the right of visitation with the minor children of the parties, with such visitation to take place at the home of the custodial parent or at another location agreed upon by the parties, at such times as the parties may mutually agree.

(c) The non-custodial parent shall have the right of visitation with the minor children of the parties, provided that such visitation shall be supervised by the custodial parent or by a person designated by the custodial parent, until such time as the minor children attain the age of _____ years.

(d) The parties mutually agree that it is in the best interests of the minor children that the non-custodial parent shall not have any contact with the minor children, because of unusual and unfortunate circumstances that have arisen between the non-custodial parent and the children. Accordingly, the non-custodial parent shall not have any right to visit with the minor children.

(e) The non-custodial parent shall have the right of visitation with the minor children of the parties as follows:

i. On alternating weekends from Friday evening at 7:00 until Sunday evening at 6:00.

ii. One evening per week, other than weekends, from _____ until _____.

iii. On alternating holidays. In even numbered years, the non-custodial parent shall have the children on President's Day, Memorial Day weekend, Labor Day weekend, and Christmas eve, and the custodial parent shall have the children on Easter weekend, the Fourth of July, Thanksgiving Day through the following Sunday, and Christmas afternoon. This schedule shall be reversed in odd numbered years.

iv. On alternating holidays, according to a schedule to be agreed upon by the parties.

v. Wife and Husband will share the holidays with the minor children according to a mutually agreed upon schedule.

vi. One-half of the children's vacation from school during the Christmas season and in the spring.

vii. _____ weeks during the summer months, which shall be scheduled by agreement of the parties no later than _____ each year.

viii. One-half of the children's summer vacation from school.

ix. Wife shall have the children on Mother's Day and on her birthday, and Husband shall have the children on Father's

Day and on his birthday.

x. The parties shall have the children on an alternating basis for each child's birthday.

xi. Wife and Husband will each share a portion of each child's birthday with the infant children.

xii. The non-custodial parent shall have the further right to visit with the children at such other times as the parties may agree.

(f) During summer visitation by the non-custodial parent, the custodial parent shall have the right to visit with the minor children at reasonable times and places, including the right to visit with the children on alternating weekends.

(g) The provisions of this agreement concerning holiday and birthday visitation take precedence over the provisions concerning weekend and other visitation, but do not otherwise modify the visitation schedule set forth above.

(h) The parties shall schedule visitation in such a manner that all of the children shall be in the physical care of the same parent during such visitation, it being the intention of the parties that all of the children be allowed to celebrate holidays together and to spend a significant portion of the summer months together.

(i) The parties agree that they shall each cooperate in good faith in arranging for visitation, and that they each shall provide reasonable advance notice of their plans that would affect visitation.

(j) In arranging for visitation, the parties agree that they shall take into consideration the routines and schedules of the minor children, and that they will take into consideration the wishes and desires of the minor children concerning visitation.

(k) Each party shall exert a reasonable effort to

maintain free access and unhampered contact between the minor children and the other party, and to foster a feeling of affection between the children and the other party. Each party shall permit free and open communications between the other party and the children, including telephone communications, during all periods when the children are in that party's physical care. Neither of the parties shall criticize the other in the presence of the children, or do anything which may estrange the children from the other party, or which may hamper the free and natural development of the children's love and respect for the other party.

(l) All visitation shall be conducted in a peaceful and sober manner, and in a suitable environment for the children.

(m) The non-custodial parent shall provide to the custodial parent with notice of his/her intention to exercise his/her right of visitation at least 48 hours in advance.

3. Support and Maintenance of the Minor Children.

(a) Husband or Wife shall pay to Wife or Husband for the support, maintenance and education of the minor children, a reasonable amount of money which shall be determined pursuant to the West Virginia Child Support Guidelines. Both parties shall exchange within 30 days of the signing of this Agreement verified financial statements which indicate their financial status and which shall be submitted to the Court for determination of a support award.

(b) Husband or Wife shall pay to Wife or Husband for the support, maintenance and education of the minor children, a reasonable amount of money which shall be determined pursuant to the West Virginia Child Support Guidelines, but not less than _____ per month. Both parties shall exchange within 30 days of the signing of this Agreement verified financial statements which indicate their financial status and which shall be submitted to the Court for determination of a support award.

(c) Husband or Wife shall pay to Wife or Husband for the support, maintenance and education of minor children the sum of _____ per month, with the first such payment coming due and payable on the _____ day of _____, 19_____, and with like payments continuing on the _____ day of each and every month thereafter, until such time as the children attain the age of eighteen years, sooner die, become emancipated or self-supporting, or until further agreement of the parties or order of a court of competent jurisdiction.

(d) Husband or Wife shall pay to Wife or Husband for the support, maintenance and education of minor children the sum of _____ per month, in semi-monthly installments of _____ each, with the first such payment coming due and payable on the _____ day of _____, 19_____, and with like payments continuing on the _____ and _____ days of each and every month thereafter, until such time as the children attain the age of eighteen years, sooner die, become emancipated or self-supporting, or until further agreement of the parties or order of a court of competent jurisdiction.

(e) Husband or Wife [THE NON-CUSTODIAL PARENT] represents that he/she is currently unemployed, and the parties therefore agree that he/she should not be required to pay any amount [OR] should be required to pay only \$----- per month for the support, maintenance and education of the minor children of the parties at this time. [DO NOT INCLUDE BOTH OF THE PHRASES IN THE BLANK -- PICK THE ONE THAT FITS YOUR SITUATION.] Husband or Wife [THE NON-CUSTODIAL PARENT] agrees that he/she shall diligently seek full-time employment, and upon obtaining employment, he/she shall provide an updated Financial Statement to Husband or Wife [THE CUSTODIAL PARENT], to the Court, and to the Child Advocate's office within ten (10) days of gaining employment. At that time, Husband or Wife [THE NON-CUSTODIAL PARENT] shall pay to Husband or Wife

[THE CUSTODIAL PARENT] each month a reasonable amount of money, which shall be determined in accordance with the West Virginia Child Support Guidelines, for the support, maintenance and education of the minor children of the parties. The support payments required by this paragraph shall continue until such time as the children attain the age of eighteen years, sooner die, become emancipated or self-supporting, or until further agreement of the parties or order of a court of competent jurisdiction.

(f) Based upon the respective incomes of the parties and in accordance with the Child Support Guidelines promulgated by the West Virginia Department of Health and Human Resources, the parties agree that Husband or Wife [THE NON-CUSTODIAL PARENT] shall not be responsible for the payment of any amount as child support at this time, and Husband or Wife [THE CUSTODIAL PARENT] hereby waives his/her right to child support for the minor children, to the extent that he/she is lawfully able to do so, subject to the continuing jurisdiction of the Circuit Court of _____ County, West Virginia.

(g) The minor children receive benefits from the Social Security Administration on the non-custodial parent's account, and the parties agree that these payments should be considered to satisfy the non-custodial spouse's obligation to provide support for the minor children at this time.

(h) Husband and Wife agree that each shall be fully responsible for the support and maintenance of the children in his or her custody, and each voluntarily waives any right that he or she may have to contribution in the form of child support from the other, to the extent that he or she may lawfully do so.

4. Medical Support for the Minor Children

(a) Husband, Wife or Both parties agrees to obtain and maintain medical and hospitalization insurance on the minor children of the parties, until such time as they attain the age of

eighteen years, sooner die, become emancipated or self-supporting.

(b) Husband, Wife or Both parties agrees to obtain and maintain medical and hospitalization insurance on behalf of the minor children as a form of support if it is available to him/her/them at a reasonable cost through his/her/their place of employment.

(c) All reasonable medical, dental, optical, pharmaceutical and hospitalization expenses on the minor children not covered by any form of insurance or government assistance program shall be divided equally between the parties, as a form of support.

(d) Husband, Wife or Both parties agrees to pay all reasonable medical, dental, optical, pharmaceutical and hospitalization expenses on the minor children not covered by any form of insurance or government assistance program, as a form of support.

5. Other Provisions Concerning the Children

(a) Each party shall have full access to all medical, dental, and school records and any other records maintained on the minor child.

(b) The custodial parent shall take the necessary action with the authorities of the schools in which the children are enrolled to:

i. list the non-custodial parent as a parent of the children;

ii. authorize the school to release to the non-custodial parent any and all information concerning the children; and

iii. insure that the non-custodial parent receives copies of any notices regarding the children.

(c) The custodial parent shall promptly transmit to the non-custodial parent any information received concerning parent-

teacher meetings, school programs, athletic schedules and any other school activities in which the children may be engaged or interested.

(d) The custodial parent shall promptly furnish to the non-custodial parent a photocopy of the children's grades or report cards and copies of any other reports concerning the child's status or progress, upon receipt of these reports.

(e) The custodial parent shall, when possible, arrange appointments for parent-teacher conferences at a time when the non-custodial parent can be present, and whenever possible, they shall be attended by both parents.

(f) Each party shall promptly inform the other of any illness of any of the children which requires medical attention. The custodial parent shall authorize and consent to elective surgery only after consultation with the non-custodial parent. The parties agree that either of them may authorize emergency medical treatment necessary for the preservation of life or to prevent a further serious injury or condition, without consultation with the other party; provided, however, if time permits, the other party shall be consulted, and in any event, the other party shall be informed as soon possible.

6. Alimony.

(a) Husband/Wife/Both Husband and Wife hereby release and relinquish any and all right to alimony or support which he or she may have from the other as a result of this marriage, and each of them/he/she hereby expressly acknowledges that he or she understands that the waiver of alimony, as herein provided, constitutes an irrevocable waiver of all support rights he or she might have from the other, and that he or she can never again look to the other for support.

(b) Husband or Wife agrees to pay to Husband or Wife the sum of \$_____ per month as alimony. This sum shall be due

and payable on the _____ day of each month, beginning with the month of _____, 19____.

(c) Alimony payments under this Agreement shall terminate upon the occurrence of any of the following events:

- i. the death of Husband, Wife, or either party; or
- ii. the remarriage of Husband or Wife; or
- iii. the completion of Husband or Wife's current educational program; or
- iv. Husband or Wife becoming self-supporting; or
- iv. after a period of _____ years/months.

7. Personal Property.

(a) Husband and Wife hereby covenant and agree that there is no dispute as to any division of marital property and that Husband and Wife shall each have the exclusive use, possession and title of all personal property currently in their respective possessions as of the date of this agreement.

(b) Husband and Wife hereby covenant and agree that there is no dispute as to any division of marital property and that Husband and Wife shall each have the exclusive use, possession and title of all personal property currently in their respective possessions as of the date of this agreement, except that Husband or Wife shall have the exclusive use, possession and title to list items, currently in Wife's or Husband's possession.

(c) Husband shall have exclusive use, title and possession of list items. Wife shall have exclusive use, title and possession of list items.

(d) Husband or Wife shall have the exclusive use, title and possession of the [DESCRIBE VEHICLE -- FOR EXAMPLE, 1985 Ford Escort automobile], and shall be solely responsible for the payment of all items of taxes, insurance, maintenance, indebtedness, license, and all other items of expense associated

with that vehicle.

8. Real Estate. Husband and Wife hereby covenant and agree that neither of them own any interest in real estate that would be subject to equitable distribution between them.

[NOTE: YOU SHOULD CONSULT A LAWYER CONCERNING THE DIVISION OF ANY INTEREST IN REAL ESTATE TITLED IN BOTH PARTIES' NAMES OR THAT EITHER PARTY ACQUIRED OR MADE PAYMENTS ON DURING THE MARRIAGE.]

9. Debts.

(a) Husband and Wife hereby covenant and agree that each of them shall be responsible for the payment of all debts that they have individually incurred since the date of their separation.

(b) Husband and Wife hereby covenant and agree that they each shall be responsible for the payment of one half of the joint obligations existing as of the date of the separation of the parties.

(c) Husband hereby agrees that he shall be responsible for the payment of debts owed to _____ in the amount of _____, to _____ in the amount of _____, and to _____ in the amount of _____, and that he shall hold Wife harmless for the payment of these debts. Wife hereby agrees that she shall be responsible for the payment of debts owed to _____ in the amount of _____, to _____ in the amount of _____, and to _____ in the amount of _____, and that she shall hold Husband harmless for the payment of these debts.

(d) Husband or Wife hereby covenants and agrees that he/she shall assume all of the outstanding indebtedness of the parties, and shall indemnify and save Wife or Husband [the one NOT responsible for debts] harmless from the payment of such indebtedness.

10. Marital Home. Husband or Wife shall have the exclusive use and possession of their last marital home, identified as address , and Wife or Husband shall vacate the premises no later than , 19 .

11. Injunctive Relief. Husband, Wife, or Husband and Wife each agrees to the entry of an Order in the divorce action now pending between them permanently enjoining him or her to refrain from bothering, hindering, interfering, harassing, intimidating or otherwise imposing any restraint on the personal liberty or safety of the other party or interfering with the other party's custodial or visitation rights.

12. Releases.

(a) Husband hereby releases, relinquishes, grants and forever quitclaims unto Wife all of his right of dower, right of distribution, be it equitable, economic or otherwise, and all other right, whether at common law, in equity, or by statute, which he now has or may hereafter have by reason of being her husband, out of any and all estate, real or personal, which she now has or may hereafter acquire.

(b) Wife hereby releases, relinquishes, grants and forever quitclaims unto Husband all of her right of dower, right of distribution, be it equitable, economic or otherwise, and all other rights, whether at common law, in equity, or by statute, which she now has or may hereafter have by reason of being his wife, out of any and all estate, real or personal, which he now has or may hereafter acquire.

13. Miscellaneous.

(a) Husband and Wife covenant and agree to execute, acknowledge and deliver any and all papers, documents, instruments and writings that may be reasonably required to effectuate the objects and purposes of this Agreement.

(b) Husband and Wife covenant and agree that they will,

insofar as they have the ability so to do, cause the provisions of this agreement to be ratified and confirmed by the Court in the divorce action now pending between them in the Circuit Court of _____ County, West Virginia.

(c) If any of the provisions become or are held to be invalid or unenforceable, all other provisions hereof shall nevertheless continue in full force and effect.

(d) The parties hereto certify that they have read and understood the provisions of this Agreement; that they have both had the opportunity to consult with counsel of their choice prior to the execution hereof, and that this Agreement, in the opinion of both parties, is fair and equitable.

(e) This instrument is not binding upon Husband or Wife until executed and acknowledged by both of them.

WITNESS the following signatures.

Wife

Husband

STATE OF WEST VIRGINIA,
COUNTY OF _____, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of _____, 19____, by _____.

My Commission Expires: _____

Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF _____, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of _____, 19____, by _____.

My Commission Expires: _____

Notary Public