

# Index

## CHILDREN

- Generally, **1:65 to 1:76**
- Access, **1:70**
- Convenience of the children, **1:74**
- Cooperation, **1:72**
- Custody, **1:69**
- Decision making responsibility, **1:67**
- Family violence, **1:75**
- Mediation, **1:73**
- Mobility, **1:71**
- Parental responsibilities, **1:68**
- Parenting time, **1:66**
- Vacation time, **1:76**

## CLAUSES, USE OF

- Generally, **1:97**

## COHABITATION AGREEMENTS

- See also Same Sex Cohabitation Agreements
- Agreement for persons ceasing to cohabit
  - generally, **3:92 to 3:101**
  - attestation, **3:101**
    - case law, **3:101**
  - case law, **3:92**
  - commencement, **3:93**
  - consideration, **3:95**
  - disclosure, **3:99**
  - executors, **3:100**
  - heirs, **3:100**
  - legal advice, **3:99**
  - parties, **3:93**
  - preamble to recitals, **3:93**
  - property rights, **3:96**
  - recitals, **3:94**
  - responsibilities for debt, **3:97**
  - support, **3:98**
- Clauses
  - generally, **3:7 to 3:23, 3:25 to 3:84**
  - adoption, **3:68**
  - amendments, **3:22, 3:41, 3:81**
    - case law, **3:81**
  - applicable law, **3:19, 3:37, 3:78**
  - attestation, **3:23, 3:42, 3:84**
    - case law, **3:84**

## COHABITATION AGREEMENTS

### —Cont'd

- Clauses—Cont'd
  - business, **3:59**
    - case law, **3:59**
  - careers and opportunities, **3:69**
  - care of children of former unions, **3:49**
  - children of the union, **3:51**
  - commencement, **3:7, 3:25, 3:43**
  - compromise, **3:72**
  - consideration, **3:9, 3:27, 3:45**
  - debts, **3:14, 3:32, 3:64**
    - case law, **3:64**
  - disclosure, **3:21, 3:80**
    - case law, **3:80**
  - division of property
    - generally, **3:10, 3:28, 3:47**
      - case law, **3:47**
    - classes of property to remain separate, **3:10, 3:28, 3:47**
    - dispute, **3:47**
    - division of property on separation or dissolution, **3:10, 3:28, 3:47**
    - exclusion of interest as a result of operation of law, **3:10, 3:28, 3:47**
    - gifts from third parties, **3:47**
    - gifts or transfers between the parties, **3:10, 3:28, 3:47**
    - management of property, **3:47**
    - statement of assets and liabilities, **3:47**
    - tracing and compensation of benefits, **3:10, 3:28, 3:47**
    - valuation, **3:47**
      - case law, **3:47**
    - value of existing assets and liabilities, **3:47**
- documents, **3:16, 3:34, 3:75**
- enforcement, **3:74**
- entire agreements, **3:17, 3:35, 3:76**
- estates, **3:15, 3:33, 3:66**
  - case law, **3:66**
- executors, **3:20, 3:36, 3:79**

**COHABITATION AGREEMENTS****—Cont'd**

## Clauses—Cont'd

- fair agreement, **3:21, 3:80**
  - case law, **3:80**
- heirs, **3:20, 3:36, 3:79**
- home, **3:13, 3:56**
  - case law, **3:56**
- home furnishings, **3:57**
  - case law, **3:57**
- household chores, responsibility for, **3:71**
- household expenses, **3:12, 3:30, 3:55**
  - case law, **3:55**
- income of the parties, **3:54**
- income tax, **3:60**
- intention to achieve certainty, **3:40**
- jurisdiction, **3:78**
- legal advice, **3:21, 3:39, 3:80**
  - case law, **3:80**
- legal expenses, **3:73**
- life insurance, **3:62**
- marriage of the parties, **3:83**
  - case law, **3:83**
- names, **3:67**
- negotiation, **3:72**
- other property regimes, **3:48**
- other residences, **3:58**
  - case law, **3:58**
- ownership of property
  - generally, **3:10, 3:28, 3:47**
  - case law, **3:47**
  - classes of property to remain separate, **3:10, 3:28, 3:47**
  - dispute, **3:47**
  - division of property on separation or dissolution, **3:10, 3:28, 3:47**
  - exclusion of interest as a result of operation of law, **3:10, 3:28, 3:47**
  - gifts from third parties, **3:47**
  - gifts or transfers between the parties, **3:10, 3:28, 3:47**
  - management of property, **3:47**
  - racing and compensation of benefits, **3:10, 3:28, 3:47**
  - statement of assets and liabilities, **3:47**
  - valuation, **3:47**
    - case law, **3:47**

**COHABITATION AGREEMENTS****—Cont'd**

## Clauses—Cont'd

- ownership of property—Cont'd
    - value of existing assets and liabilities, **3:47**
  - parents, **3:53**
  - parties, **3:7, 3:25, 3:43**
  - pensions, **3:61**
    - case law, **3:61**
  - preamble to recitals, **3:7, 3:25, 3:43**
  - recitals, **3:8, 3:26, 3:44**
    - cohabitation, **3:44**
      - case law, **3:44**
    - purpose of agreement, **3:44**
  - religion, **3:70**
  - residence, **3:29**
  - severability, **3:18, 3:38, 3:77**
  - statement of assets and liabilities, **3:63**
  - statistics, **3:46**
  - support, **3:11, 3:31, 3:52**
    - case law, **3:52**
  - support obligations relating to former unions, **3:50**
    - case law, **3:50**
  - term of agreement, **3:82**
  - transfer of property between parties, **3:65**
- Continuation of after period of separation
- generally, **3:102 to 3:109**
  - attestation, **3:109**
  - case law, **3:102**
  - commencement, **3:103**
  - consideration, **3:105**
  - continuation of cohabitation agreement, **3:108**
  - disclosure, **3:106**
  - legal advice, **3:106**
  - parties, **3:103**
  - preamble to recitals, **3:103**
  - property right, **3:96**
  - recitals, **3:104**
  - return of property, **3:107**
  - review of agreements, **3:106**
- Interview checklist
- generally, **3:1 to 3:5**
  - assets, **3:4**
  - income, **3:4**
  - instructions, **3:5**
  - liabilities, **3:4**

**COHABITATION AGREEMENTS**

—Cont'd

Interview checklist—Cont'd  
 present cohabitation, **3:2**  
 prior marriages, **3:3**  
 statistics, **3:1**

Introduction, **3:6, 3:24**

Pitfalls, **3:124**

Termination of

generally, **3:117 to 3:123**

attestation, **3:123**

cancellation, **3:121**

case law, **3:117**

commencement, **3:118**

consideration, **3:120**

legal advice, **3:122**

parties, **3:118**

preamble to recitals, **3:118**

recitals, **3:119**

termination, **3:121**

Variation of

generally, **3:85 to 3:91**

amendment, **3:88**

attestation, **3:91**

commencement, **3:85**

consideration, **3:87**

continuation of agreement, **3:89**

disclosure, **3:90**

legal advice, **3:90**

parties, **3:85**

preamble to recitals, **3:85**

recitals, **3:86**

**CORPORATE**

Generally, **1:41 to 1:43**

Operation of business, **1:43**

Sale of shares between spouses, **1:42**

**COURT INTERVENTION**

Generally, **1:80 to 1:96**

At common law, **1:81**

Formalities, **1:88**

Interpretation of Domestic contracts, **1:93**

Religious contracts, **1:94**

Specific provision in the contract, **1:91**

Under statute

generally, **1:82 to 1:87**

British Columbia Family Law Act

generally, **1:83**

child support agreements, **1:83**

contact agreements, **1:83**

**COURT INTERVENTION—Cont'd**

Under statute—Cont'd

British Columbia Family Law Act

—Cont'd

effect of court orders upon agree-  
 ments, **1:83**

guardianship agreements, **1:83**

parenting arrangement agreements,  
**1:83**

penalties for non-disclosure, **1:83**

pension division agreements, **1:83**

priority between child and spousal  
 support, **1:83**

property division agreements, **1:83**

spousal support agreements, **1:83**

support arrears, child and spousal,  
**1:83**

British Columbia Family Relations Act,  
**1:84**

Divorce Act, **1:85**

Ontario Family Law Act, **1:82**

Wills, Estates and Succession Act, **1:86**

**DRAFTING**

Generally, **1:1 to 1:17**

Avoid agreements, **1:8**

Clarity, **1:2**

Commitment to terms outside client's  
 control, **1:14**

Correctness, **1:14**

Descriptions

complete, **1:7**

proper, **1:6**

Formal requirements, **1:9.50**

Future events, **1:5**

Legalese, **1:4**

Legal knowledge, **1:12, 1:13.50**

Loose ends, **1:5**

Practicality, **1:13**

Precedents, **1:15**

Recitals, **1:11**

Repetition, **1:3**

Schedules, **1:10**

**INCOME TAX**

Generally, **1:56 to 1:63**

Checklist

alimony, **1:64**

common law spouses, **1:64**

joint and several liability, **1:64**

maintenance, **1:64**

**INCOME TAX—Cont'd**

- Checklist—Cont'd
  - non-resident parties, **1:64**
  - property transfers between parties, **1:64**
  - RRSPs, **1:64**
- Common law spouses, **1:63**
- Joint and several liability, **1:59**
- Non-resident parties, **1:62**
- Property transfer between parties, **1:58**
- RRSPs, **1:61**
- Support payments, **1:57**
- Tax planning, **1:60**

**LEGAL ADVICE FORMS**

- Affidavit, **7:3**
- Solicitor's certificate of independent legal advice, **7:2**
  - case law, **7:2**
  - clause group, **7:2**

**MARRIAGE AGREEMENTS**

- Agreement for change of jurisdiction
  - generally, **2:155 to 2:161**
  - amendment, **2:160**
  - attestation, **2:161**
  - commencement, **2:155**
  - consideration, **2:157**
  - continuation of agreement, **2:158**
  - interpretation, **2:159**
  - legal advice, **2:158**
  - parties, **2:155**
  - preamble, **2:155**
  - recitals, **2:156**
- Clauses
  - generally, **2:8 to 2:24, 2:26 to 2:49, 2:51 to 2:123**
  - adoption, **2:105**
  - adoption of recitals, **2:80**
  - alternative clause for providing further information and documents, **2:69**
  - amendments, **2:23, 2:48, 2:75, 2:120**
    - case law, **2:120**
  - applicable law, **2:20, 2:45, 2:72, 2:116**
    - case law, **2:116**
  - attestation, **2:24, 2:49, 2:76, 2:123**
    - case law, **2:123**
  - business
    - generally, **2:94**
    - case law, **2:94**
    - farming operation, **2:94**
    - joint corporate interests, **2:94**

**MARRIAGE AGREEMENTS—Cont'd**

- Clauses—Cont'd
  - business—Cont'd
    - ownership of, **2:94**
  - careers and opportunities, **2:106**
  - care of children of former unions, **2:84**
    - case law, **2:84**
  - children of former marriages, **2:29, 2:54**
  - children of the marriage, **2:56, 2:86**
    - case law, **2:86**
  - commencement, **2:8, 2:26, 2:51, 2:77**
  - compromise, **2:109**
  - consideration, **2:10, 2:28, 2:53, 2:79**
  - contracting in name of other party, prohibition against, **2:40, 2:65**
  - credit cards, **2:66**
  - debt between the spouses, **2:67**
  - debts, **2:14, 2:101**
    - case law, **2:101**
  - disclosure, **2:22, 2:46, 2:73, 2:118**
    - case law, **2:118**
  - division of property
    - generally, **2:11, 2:31, 2:55, 2:82**
    - assets to be shared, **2:82**
      - case law, **2:82**
    - cash payment, **2:82**
      - case law, **2:82**
    - classes of property to remain separate, **2:11, 2:31, 2:55, 2:82**
    - dispute, **2:82**
      - case law, **2:82**
    - exclusion of interest by spouse as a result of operation, **2:11, 2:31, 2:55, 2:82**
    - gifts from third parties, **2:82**
      - case law, **2:82**
    - gifts or transfers between the parties, **2:11, 2:31, 2:55, 2:82**
      - case law, **2:82**
    - management of property, **2:82**
    - on separation, dissolution, or death, **2:11, 2:31, 2:55, 2:82**
      - case law, **2:82**
    - reference to arbitrator, **2:31, 2:82**
      - case law, **2:82**
    - statement of assets and liabilities, **2:31, 2:82**
    - tracing and compensation for benefits, **2:11, 2:31, 2:55, 2:82**

## INDEX

### MARRIAGE AGREEMENTS—Cont'd

- Clauses—Cont'd
  - division of property—Cont'd
    - value of assets and liabilities, **2:31, 2:82**
  - documents, **2:17, 2:42, 2:113**
  - effective date of agreement, **2:121**
    - case law, **2:121**
  - enforcement, **2:112**
    - case law, **2:112**
  - entire agreement, **2:18, 2:43, 2:70, 2:114**
    - case law, **2:114**
  - estates
    - generally, **2:16, 2:103**
    - case law, **2:103**
    - claim on estate, **2:103**
    - interest in joint property on death, **2:103**
    - maintaining a valid will, **2:103**
  - fair agreement, **2:22, 2:46, 2:73, 2:118**
    - case law, **2:118**
  - heirs, **2:21, 2:47, 2:74, 2:117**
  - home furnishings, **2:62, 2:92**
  - home owned by trust, **2:38**
  - household chores, responsibility for, **2:108**
  - household expenses
    - generally, **2:13, 2:59, 2:90**
    - case law, **2:90**
    - sharing of living expenses, **2:59**
  - income of the parties, **2:89**
  - income tax, **2:95**
  - indemnity for stepparent, **2:33**
  - jurisdiction, **2:116**
    - case law, **2:116**
  - legal advice, **2:22, 2:46, 2:73, 2:118**
    - case law, **2:118**
  - legal expenses, **2:111**
  - life insurance
    - generally, **2:97**
    - case law, **2:97**
    - delivery of policy, **2:97**
    - no obligation to maintain, **2:97**
    - proof of coverage, **2:97**
    - provision of insurance for children, **2:97**
    - purchase of insurance for benefit of spouse, **2:97**

### MARRIAGE AGREEMENTS—Cont'd

- Clauses—Cont'd
  - life insurance—Cont'd
    - statement regarding designation of beneficiaries, **2:97**
  - living expenses, sharing of, **2:35**
  - marriage and statistics
    - generally, **2:81**
    - children, **2:81**
    - former unions, **2:81**
    - marriage, **2:81**
  - matrimonial home
    - generally, **2:12, 2:91**
    - case law, **2:91**
    - designation of (Ontario), **2:91**
    - encumbering of (British Columbia), **2:91**
    - existing home, **2:91**
    - future purchases, **2:91**
    - gift from parents, **2:91**
    - loan from parents, **2:91**
    - option relating to purchase on death, **2:91**
    - option to purchase, **2:91**
    - ownership of existing or contemplated, **2:91**
    - possession on separation (British Columbia), **2:91**
      - case law, **2:91**
    - purchase of, **2:91**
    - renovations, **2:91**
    - renovations for handicapped child, **2:91**
    - right to reside in after death of spouse, **2:91**
    - sale of, **2:91**
    - substituted, **2:91**
    - transfer to one spouse on separation, **2:91**
    - upkeep of, **2:91**
  - matrimonial home, description of
    - ownership and reimbursement for contribution, **2:36**
  - matrimonial home, designation of (Ontario), **2:61**
  - matrimonial home, purchase of, **2:60**
  - matrimonial home, upkeep of, **2:37**
  - mediation, **2:119**
    - case law, **2:119**
  - names, **2:104**
  - negotiation, **2:109**

**MARRIAGE AGREEMENTS—Cont'd**

## Clauses—Cont'd

- no claim on estate, **2:41**
- no express or implied agreement for support, **2:34**
- other personal property, **2:99**
  - case law, **2:99**
- other property regimes, **2:83**
- other residences
  - generally, **2:93**
  - home owned by trust, **2:93**
  - summer residences, **2:93**
- ownership of property
  - generally, **2:11, 2:31, 2:55, 2:82**
  - assets to be shared, **2:82**
    - case law, **2:82**
  - cash payment, **2:82**
    - case law, **2:82**
  - classes of property to remain separate, **2:11, 2:31, 2:55, 2:82**
  - dispute, **2:82**
    - case law, **2:82**
  - exclusion of interest by spouse as a result of operation, **2:11, 2:31, 2:55, 2:82**
  - gifts from third parties, **2:82**
    - case law, **2:82**
  - gifts or transfers between the parties, **2:11, 2:31, 2:55, 2:82**
    - case law, **2:82**
  - management of property, **2:82**
  - on separation, dissolution, or death, **2:11, 2:31, 2:55, 2:82**
    - case law, **2:82**
  - reference to arbitrator, **2:31, 2:82**
    - case law, **2:82**
  - statement of assets and liabilities, **2:31, 2:82**
  - tracing and compensation for benefits, **2:11, 2:31, 2:55, 2:82**
  - value of assets and liabilities, **2:31, 2:82**
- parents, **2:58, 2:88**
  - case law, **2:88**
- parties, **2:8, 2:26, 2:51, 2:77**
- pensions, **2:63, 2:96**
  - case law, **2:96**
- personal representatives, **2:21, 2:47, 2:74, 2:117**
- preamble to recitals, **2:8, 2:26, 2:51, 2:77**

**MARRIAGE AGREEMENTS—Cont'd**

## Clauses—Cont'd

- purchase for benefit of spouse, **2:64**
  - recitals, **2:9, 2:27, 2:52, 2:78**
  - religion, **2:107**
  - sale, **2:39**
  - separation agreement with former spouse, **2:30**
  - severability, **2:19, 2:44, 2:71, 2:115**
    - case law, **2:115**
  - spouse not to be parent, **2:32**
  - spouse to have life interest, **2:68**
  - statement of assets and liability, **2:100**
    - case law, **2:100**
  - support
    - generally, **2:15, 2:87**
    - during marriage, **2:87**
      - case law, **2:87**
    - on separation - children, **2:87**
      - case law, **2:87**
    - on separation - spouse, **2:87**
      - case law, **2:87**
    - other payments, **2:87**
      - case law, **2:87**
    - variation of maintenance by the court, **2:87**
    - variation of maintenance - cost of living, **2:87**
  - support for wife if assumes childrearing responsibilities, **2:57**
  - support obligations relating to former unions, **2:85**
    - case law, **2:85**
  - term of agreement, **2:122**
    - case law, **2:122**
  - transfer of property between parties, **2:102**
  - transfers between parties, **2:39**
  - trusts, **2:98**
    - case law, **2:97**
  - valuation on failure to agree on price, **2:39**
- Continuation of marriage agreement after period of separation
- generally, **2:148 to 2:154**
  - attestation, **2:154**
  - commencement, **2:148**
  - consideration, **2:150**
  - continuation of agreement, **2:153**
  - disclosure, **2:151**

INDEX

**MARRIAGE AGREEMENTS—Cont'd**

Continuation of marriage agreement after  
period of separation—Cont'd

legal advice, **2:151**  
parties, **2:148**  
preamble, **2:148**  
recitals, **2:149**  
return of property, **2:152**  
review of agreements, **2:151**

Interview checklist

generally, **2:1 to 2:6**

assets

generally, **2:5**  
boats, **2:5**  
bonds, **2:5**  
business, **2:5**  
cars, **2:5**  
cash in bank, **2:5**  
debts, **2:5**  
foreign assets, nature and value of,  
**2:5**  
furnishings, **2:5**  
income, nature and value of, **2:5**  
income, sources of, **2:5**  
inter vivos trusts, interest in, **2:5**  
liabilities, nature and value of, **2:5**  
life insurance, **2:5**  
miscellaneous assets, **2:5**  
mortgages, **2:5**  
pension plans, **2:5**  
planes, **2:5**  
real estate, **2:5**  
stocks, **2:5**  
testamentary trusts, interest in, **2:5**

date, **2:1**

income

generally, **2:5**  
boats, **2:5**  
bonds, **2:5**  
business, **2:5**  
cars, **2:5**  
cash in bank, **2:5**  
debts, **2:5**  
foreign assets, nature and value of,  
**2:5**  
furnishings, **2:5**  
inter vivos trusts, interest in, **2:5**  
liabilities, nature and value of, **2:5**  
life insurance, **2:5**  
miscellaneous assets, **2:5**

**MARRIAGE AGREEMENTS—Cont'd**

Interview checklist—Cont'd

income—Cont'd

mortgages, **2:5**  
nature and value of, **2:5**  
pension plans, **2:5**  
planes, **2:5**  
real estate, **2:5**  
sources of, **2:5**  
stocks, **2:5**  
testamentary trusts, interest in, **2:5**

instructions

generally, **2:6**  
business, **2:6**  
children of the marriage, **2:6**  
debts, **2:6**  
estates, **2:6**  
furnishings, **2:6**  
household expenses, **2:6**  
income of parties, **2:6**  
insurance, **2:6**  
matrimonial home, **2:6**  
miscellaneous, **2:6**  
obligations relating to children of  
prior marriages, **2:6**  
parents, **2:6**  
pensions, **2:6**  
property, ownership and division of,  
**2:6**  
support obligations, **2:6**

liabilities

generally, **2:5**  
boats, **2:5**  
bonds, **2:5**  
business, **2:5**  
cash in bank, **2:5**  
debts, **2:5**  
foreign assets, nature and value of,  
**2:5**  
furnishings, **2:5**  
income, nature and value of, **2:5**  
income, sources of, **2:5**  
inter vivos trusts, interest in, **2:5**  
life insurance, **2:5**  
miscellaneous assets, **2:5**  
mortgages, **2:5**  
nature and value of, **2:5**  
pension plans, **2:5**  
planes, **2:5**  
real estate, **2:5**

**MARRIAGE AGREEMENTS—Cont'd**

- Interview checklist—Cont'd
  - liabilities—Cont'd
    - stocks, **2:5**
    - testamentary trusts, interest in, **2:5**
  - present marriage, **2:3**
  - prior marriages, **2:4**
  - statistics, **2:2**
- Introduction, **2:7, 2:25, 2:50**
- Pitfalls, **2:169**
- Review of (British Columbia)
  - generally, **2:132 to 2:138**
  - attestation, **2:138**
  - commencement, **2:132**
  - consideration, **2:134**
  - continuation of agreement, **2:136**
  - legal advice, **2:137**
  - parties, **2:132**
  - preamble, **2:132**
  - recitals, **2:133**
  - review of agreement, **2:135**
- Termination of
  - generally, **2:162 to 2:168**
  - attestation, **2:168**
  - cancellation, **2:166**
  - commencement, **2:163**
  - consideration, **2:165**
  - legal advice, **2:167**
  - parties, **2:163**
  - preamble, **2:163**
  - recitals, **2:164**
  - termination, **2:166**
- Variation of
  - generally, **2:124 to 2:131**
  - amendment, **2:128**
  - attestation, **2:131**
  - case law, **2:124**
  - commencement, **2:125**
  - consideration, **2:127**
  - continuation of agreement, **2:129**
  - legal advice, **2:130**
  - parties, **2:125**
  - preamble, **2:125**
  - recitals, **2:126**

**MERGER**

- Generally, **1:77 to 1:79**
- Property settlements, **1:79**
- Support settlements, **1:78**

**NEGOTIATION**

- Generally, **1:18 to 1:34**
- Access, **1:30**
- Analyze case, **1:22**
- Children, **1:30**
- Children's maintenance, **1:31**
- Confirmation of ownership and value, **1:20**
- Form of the agreement, **1:28**
- Information regarding assets and liabilities, **1:19**
- Insurance
  - life, **1:32**
  - medical, **1:33**
- Interim separation agreements, **1:26**
- Obtain information relating to child and support issues, **1:21**
- Offers of correspondence/settlement negotiations, **1:27**
- Pensions, **1:34**
- Prepare game plan, **1:22**
- Relationship
  - with client, **1:23**
  - with counsel, **1:24**
- Spousal maintenance, **1:29**

**PARENTING AGREEMENTS**

- Clauses
  - generally, **6:2 to 6:16**
  - agreement to survive, **6:10**
  - amendments, **6:14**
  - child support, **6:7**
  - commencement, **6:2**
  - consideration, **6:4**
  - custody, **6:5**
  - documents, **6:9**
  - financial disclosure, **6:6**
  - guardianship, **6:5**
  - heirs, **6:15**
  - jurisdiction, **6:13**
  - legal advice, **6:16**
  - mediation of dispute, **6:8**
  - other agreements, **6:11**
  - parties, **6:2**
  - personal representatives, **6:15**
  - preamble to recitals, **6:2**
  - recitals, **6:3**
  - severability, **6:12**
- Parenting agreements, **6:1**

## INDEX

### PARENTING AGREEMENTS—Cont'd

- Variation of
  - generally, **6:17 to 6:22**
  - amendment, **6:17**
  - commencement, **6:17**
  - consideration, **6:19**
  - continuation of agreement, **6:21**
  - legal advice, **6:22**
  - parties, **6:17**
  - preamble to recitals, **6:17**
  - recitals, **6:18**
- Variation of child support provisions of
  - generally, **6:23 to 6:30**
  - amendment, **6:27**
  - commencement, **6:23**
  - consideration, **6:25**
  - continuation of agreement, **6:28**
  - financial disclosure, **6:26**
  - legal advice, **6:29**
  - parties, **6:23**
  - preamble to recitals, **6:23**
  - recitals, **6:24**

### REAL ESTATE

- Generally, **1:35 to 1:40**
- Jointly held property, **1:40**
- Occupancy by one or both spouses, **1:37**
- Options to purchase, **1:38**
- Sale to third party, **1:39**
- Transfer between spouses, **1:36**

### SAME SEX COHABITATION AGREEMENTS

- See also Cohabitation Agreements
- Agreement for persons of same sex ceasing to cohabit
  - generally, **4:75 to 4:83**
  - attestation, **4:83**
  - commencement, **4:76**
  - consideration, **4:78**
  - disclosure, **4:81**
    - case law, **4:81**
  - executors, **4:82**
  - heirs, **4:82**
  - legal advice, **4:81**
    - case law, **4:81**
  - parties, **4:76**
  - preamble to recitals, **4:76**
  - property right, **4:79**
    - case law, **4:79**
  - recitals, **4:77**

### SAME SEX COHABITATION AGREEMENTS—Cont'd

- Agreement for persons of same sex ceasing to cohabit—Cont'd
  - support, **4:80**
- Clauses
  - generally, **4:7 to 4:67**
  - amendments, **4:25, 4:65**
  - applicable law, **4:22, 4:62**
  - attestation, **4:26, 4:67**
    - case law, **4:67**
  - business, **4:15, 4:44**
  - careers and opportunities, **4:53**
  - care of children of former unions, **4:34**
  - children of the union
    - generally, **4:11, 4:36**
    - adoption of one or more children, **4:36**
      - case law, **4:36**
    - conception by one party, **4:36**
  - commencement, **4:7, 4:28**
  - compromise, **4:56**
  - consideration, **4:9, 4:30**
  - debts, **4:16, 4:49**
    - case law, **4:49**
  - disclosure, **4:24, 4:64**
    - case law, **4:64**
  - division of property
    - generally, **4:10, 4:32**
    - classes of property to remain separate, **4:10, 4:32**
    - dispute, **4:32**
    - division of property, **4:10, 4:32**
    - exclusion of interest as a result of operation of law (British Columbia and Ontario), **4:10, 4:32**
    - gifts from third parties, **4:32**
    - gifts or transfers between the parties, **4:10, 4:32**
    - management of property, **4:32**
    - statement of assets and liabilities, **4:32**
    - tracing and compensation for benefits, **4:10, 4:32**
    - valuation, **4:32**
    - value of existing assets and liabilities, **4:32**
- documents, **4:19, 4:59**
- enforcement, **4:58**
- entire agreement, **4:20, 4:60**

## **SAME SEX COHABITATION AGREEMENTS—Cont'd**

### **Clauses—Cont'd**

estates, **4:17, 4:51**  
 executors, **4:23, 4:63**  
 fair agreement, **4:24, 4:64**  
   case law, **4:64**  
 heirs, **4:23, 4:63**  
 home, **4:14, 4:41**  
   case law, **4:41**  
 home furnishings, **4:42**  
 household chores, responsibility for, **4:18, 4:55**  
 household expenses, **4:13, 4:40**  
 income of the parties, **4:39**  
 income tax, **4:45**  
 jurisdiction, **4:22, 4:62**  
 legal advice, **4:24, 4:64**  
   case law, **4:64**  
 legal expenses, **4:57**  
 life insurance, **4:47**  
 marriage, **4:52**  
   case law, **4:52**  
 negotiation, **4:56**  
 other property regimes, **4:33**  
 other residences, **4:43**  
 ownership of property  
   generally, **4:10, 4:32**  
   case law, **4:32**  
   classes of property to remain separate, **4:10, 4:32**  
   dispute, **4:32**  
   division of property, **4:10, 4:32**  
   exclusion of interest as a result of operation of law (British Columbia and Ontario), **4:10, 4:32**  
   gifts from third parties, **4:32**  
   gifts or transfers between the parties, **4:10, 4:32**  
   management of property, **4:32**  
   statement of assets and liabilities, **4:32**  
   tracing and compensation for benefits, **4:10, 4:32**  
   valuation, **4:32**  
   value of existing assets and liabilities, **4:32**  
 parents, **4:38**  
 parties, **4:7, 4:28**

## **SAME SEX COHABITATION AGREEMENTS—Cont'd**

### **Clauses—Cont'd**

pensions, **4:46**  
   case law, **4:46**  
 preamble to recitals, **4:7, 4:28**  
 recitals, **4:8, 4:29**  
 religion, **4:54**  
 severability, **4:21, 4:61**  
 statement of assets and liabilities, **4:48**  
 statistics  
   generally, **4:31**  
   responsibilities relating to former union, **4:31**  
   statement regarding children born prior to the relationship - both parties, **4:31**  
   statement regarding children born prior to the relationship - one party, **4:31**  
 support, **4:12, 4:37**  
   case law, **4:37**  
 support obligations relating to former unions, **4:35**  
 term of agreement, **4:66**  
 transfer of property between parties, **4:50**  
   case law, **4:50**  
 Interview checklist  
   generally, **4:1 to 4:5**  
   assets, **4:4**  
   income, **4:4**  
   instructions, **4:5**  
   liabilities, **4:4**  
   present cohabitation, **4:2**  
   prior relationships, **4:3**  
   statistics, **4:1**  
 Introduction, **4:6**  
 Pitfalls, **4:84**  
 Recitals, **4:69**  
 Variation of  
   generally, **4:68 to 4:74**  
   amendment, **4:71**  
   attestation, **4:74**  
   commencement, **4:68**  
   consideration, **4:70**  
   continuation of agreement, **4:72**  
   disclosure, **4:73**  
   legal advice, **4:73**  
   parties, **4:68**

**SAME SEX COHABITATION AGREEMENTS—Cont'd**

Variation of—Cont'd  
preamble to recitals, **4:68**

**SAMPLE AGREEMENTS, USE OF**  
Generally, **1:97**

**SEPARATION AGREEMENTS**

Clauses

generally, **5:26 to 5:106, 5:163 to 5:206**  
access, **5:33, 5:68**  
adoption of recitals, **5:166**  
agreement conclusive, **5:50, 5:96**  
agreement to survive, **5:52, 5:98**  
alternate care of and time with children (British Columbia), **5:33**  
amendments, **5:59, 5:105, 5:205**  
case law, **5:205**  
amount of support not based on child support guidelines, **5:77**  
arbitration, **5:204**  
case law, **5:204**  
attestation, **5:60, 5:106, 5:206**  
case law, **5:206**  
barrier to remarriage, **5:203**  
basis of child support, **5:39**  
business  
generally, **5:182**  
case law, **5:182**  
income derived from business, **5:182**  
ownership, **5:182**  
protection from liabilities arising from business interests, **5:182**  
sale of shares to third party, **5:182**  
transfer of ownership between parties, **5:182**  
children's articles, **5:176**  
commencement, **5:27, 5:62, 5:163**  
compensation for career-related loss or assumption of child-rearing responsibilities, **5:171**  
consideration, **5:29, 5:64, 5:165**  
consultation between parties, **5:70**  
custody  
generally, **5:32, 5:67, 5:169**  
access, **5:169**  
access conditions, **5:169**  
care of children when parties both working, **5:169**

**SEPARATION AGREEMENTS—Cont'd**

Clauses—Cont'd

custody—Cont'd  
case law  
generally, **5:169**  
access concerns, **5:169**  
alienation of children/family relationship torts, **5:169**  
best interests of the child, **5:169**  
cultural heritage, **5:169**  
income tax, **5:169**  
joint custody, **5:169**  
meaning of custody and access, **5:169**  
mobility, **5:169v**  
children to choose custodial parent, **5:169**  
consultation, **5:169**  
contact (British Columbia), **5:169**  
cultural heritage, **5:169**  
encouraging contact, **5:169**  
family violence (British Columbia), **5:169**  
joint custody/guardianship, **5:169**  
joint guardianship and alternating custody, **5:169**  
mediation, **5:169**  
medical authorization, **5:169**  
notice, **5:169**  
notice of school events, illness, and providing records, **5:169**  
other access matters, **5:169**  
other dispute resolution, **5:169**  
parental responsibilities (British Columbia), **5:169**  
parenting guidelines, **5:169**  
parties have considered best interest of children (British Columbia), **5:169**  
percentage of time spent with each party, **5:169**  
residential moves, **5:169**  
review of custody by child psychiatrist, **5:169**  
sole custody/joint and sole guardianship, **5:169**  
split arrangements, **5:169**  
supervised access, **5:169**  
surname, **5:169**  
travel, **5:169**

**SEPARATION AGREEMENTS—Cont'd**

- Clauses—Cont'd
  - debts, responsibility for, **5:82, 5:173**
  - credit cards, **5:173**
    - case law, **5:173**
  - income tax liabilities, **5:173**
    - case law, **5:173**
  - payment of current debts, **5:173**
    - case law, **5:173**
  - payment of debts between the parties, **5:173**
    - case law, **5:173**
  - payment of future expenses, **5:173**
  - pledging credit, **5:173**
- dental insurance, **5:78**
- disclaimer of interest in trust, **5:190**
  - case law, **5:190**
- disclosure
  - generally, **5:51, 5:97, 5:104, 5:194, 5:202**
  - case law
    - generally, **5:194, 5:202**
    - common law defects, **5:202**
    - fair agreement, **5:202**
    - legal advice, **5:202**
    - understanding rights, **5:202**
    - valuation, **5:202**
- documents, **5:53, 5:99, 5:197**
  - case law, **5:197**
- encumbrances, **5:87**
- estates, **5:49, 5:189**
  - case law, **5:189**
- fair agreement
  - generally, **5:58, 5:104, 5:202**
  - case law
    - generally, **5:202**
    - common law defects, **5:202**
    - disclosure, **5:202**
    - legal advice, **5:202**
    - understanding rights, **5:202**
    - valuation, **5:202**
- geographical limitation, **5:72**
- guardianship
  - generally, **5:32, 5:67, 5:169**
  - access, **5:169**
  - access conditions, **5:169**
  - care of children when parties both working, **5:169**
  - case law
    - generally, **5:169**

**SEPARATION AGREEMENTS—Cont'd**

- Clauses—Cont'd
  - guardianship—Cont'd
    - case law—Cont'd
      - access concerns, **5:169**
      - alienation of children/family relationship torts, **5:169**
      - best interests of the child, **5:169**
      - cultural heritage, **5:169**
      - income tax, **5:169**
      - joint custody, **5:169**
      - meaning of custody and access, **5:169**
      - mobility, **5:169v**
  - children to choose custodial parent, **5:169**
  - consultation, **5:169**
  - contact (British Columbia), **5:169**
  - cultural heritage, **5:169**
  - encouraging contact, **5:169**
  - family violence (British Columbia), **5:169**
  - joint custody/guardianship, **5:169**
  - joint guardianship and alternating custody, **5:169**
  - mediation, **5:169**
  - medical authorization, **5:169**
  - notice, **5:169**
  - notice of school events, illness, and providing records, **5:169**
  - other access matters, **5:169**
  - other dispute resolution, **5:169**
  - parental responsibilities (British Columbia), **5:169**
  - parenting guidelines, **5:169**
  - parties have considered best interest of children (British Columbia), **5:169**
  - percentage of time spent with each party, **5:169**
  - residential moves, **5:169**
  - review of custody by child psychiatrist, **5:169**
  - sole custody/joint and sole guardianship, **5:169**
  - split arrangements, **5:169**
  - supervised access, **5:169**
  - surname, **5:169**
  - travel, **5:169**
- heirs, **5:57, 5:103, 5:201**
  - case law, **5:201**

**SEPARATION AGREEMENTS—Cont'd**

- Clauses—Cont'd
  - hospital insurance, **5:78**
  - household furnishings, **5:47, 5:88, 5:175**
    - case law, **5:175**
  - income tax, **5:191**
    - case law, **5:191**
  - indemnity with respect to acting as a director or officer of the company, **5:91**
  - indemnity with respect to liabilities of the company, **5:90**
  - interest, release of, **5:95**
  - jurisdiction, **5:56, 5:102, 5:200**
    - case law, **5:200**
  - legal advice
    - generally, **5:58, 5:104, 5:202**
      - case law
        - generally, **5:202**
        - common law defects, **5:202**
        - disclosure, **5:202**
        - fair agreement, **5:202**
        - understanding rights, **5:202**
        - valuation, **5:202**
  - legal expenses, **5:192**
  - life insurance, **5:48, 5:94, 5:186**
    - case law, **5:186**
  - living separate and apart, **5:30, 5:65, 5:167**
    - case law, **5:167**
  - lump sum to husband, **5:73**
  - matrimonial home
    - generally, **5:174**
      - case law, **5:174**
    - description of, **5:174**
    - encumbering, **5:174**
    - home sold and proceeds divided, **5:174**
    - improvements, **5:174**
    - moving costs, **5:174**
      - case law, **5:174**
    - option to purchase, **5:174**
    - possession of, **5:174**
      - case law, **5:174**
    - renovations, **5:174**
    - repairs, **5:174**
    - sale of, **5:174**
      - case law, **5:174**

**SEPARATION AGREEMENTS—Cont'd**

- Clauses—Cont'd
  - matrimonial home—Cont'd
    - transfer of ownership between parties, **5:174**
      - case law, **5:174**
    - under construction, **5:174**
    - upkeep of, **5:174**
  - matrimonial home, description of, **5:45, 5:83**
  - matrimonial home, possession of, **5:84**
  - matrimonial home, sale of, **5:46, 5:84**
  - matrimonial home, upkeep of, **5:85**
  - mediation, **5:204**
    - case law, **5:204**
  - medical insurance, **5:78**
  - merger and enforcement, **5:196**
    - case law, **5:196**
  - monies held in trust, **5:188**
  - notice, **5:69**
  - orthodontic expense, **5:79**
  - other agreements, **5:54, 5:100, 5:198**
    - case law, **5:198**
  - other real property, **5:180**
    - case law, **5:180**
  - other valuable personal property, **5:179**
    - case law, **5:179**
  - ownership of property, **5:42, 5:80, 5:172**
    - case law, **5:172**
  - parties, **5:27, 5:62, 5:163**
  - payment of current debts, **5:44**
  - pensions, **5:92, 5:184**
    - case law, **5:184**
  - personal representatives, **5:57, 5:103, 5:201**
    - case law, **5:201**
  - pets, **5:177**
  - photographs, **5:178**
  - pledging credit, **5:43, 5:81**
  - preamble to recitals, **5:27, 5:62, 5:163**
  - prior support payments for child, **5:36**
  - prior support payments for wife, **5:35**
  - recitals
    - generally, **5:28, 5:63, 5:164**
    - ceasing cohabitation, **5:164**
    - children, **5:164**
    - interim agreement, **5:164**
    - marriage, **5:164**
    - marriage and cohabitation, **5:164**

**SEPARATION AGREEMENTS—Cont'd**

- Clauses—Cont'd
  - recitals—Cont'd
    - prior marriage agreement, **5:164**
      - case law, **5:164**
    - proceedings, **5:164**
    - purpose of agreement, **5:164**
  - releases
    - generally, **5:193**
      - case law, **5:193**
    - general releases, **5:193**
    - property releases, **5:193**
  - renovations, **5:86**
  - rental accommodation, **5:181**
  - resumption of cohabitation, **5:31, 5:66, 5:168**
    - case law, **5:168**
  - return of documents, **5:195**
    - case law, **5:195**
  - RRSPs, **5:93, 5:185**
    - case law, **5:185**
  - settlement monies, **5:187**
    - case law, **5:187**
  - severability, **5:55, 5:101, 5:199**
    - case law, **5:199**
  - shares, transfer of, **5:89**
  - special expenses, **5:40**
  - support obligations
    - children, **5:38, 5:74, 5:170**
      - case law, **5:170**
    - children of former marriage, **5:170**
    - death of payor spouse, **5:170**
      - case law, **5:170**
    - direct deposit, **5:170**
    - disclosure, **5:170**
      - case law, **5:170**
    - handicapped children, **5:170**
    - imputing income, **5:170**
      - case law, **5:170**
    - income tax costs, **5:170**
      - case law, **5:170**
    - no variation of maintenance, **5:170**
      - case law, **5:170**
    - other payments for children or spouse, **5:170**
      - case law, **5:170**
    - postdated cheques, **5:170**
    - remarriage, **5:170**
      - case law, **5:170**

**SEPARATION AGREEMENTS—Cont'd**

- Clauses—Cont'd
  - support obligations—Cont'd
    - retroactive payments, **5:170**
      - case law, **5:170**
    - security for payment, **5:170**
      - case law, **5:170**
    - spouses, **5:170**
      - case law, **5:170**
    - variation of child support based on child support guidelines, **5:170**
      - case law, **5:170**
    - variation of child support based on expenses, **5:170**
    - variation of spousal support based on change in expenses or asset base, **5:170**
    - variation of support based on cost of living, **5:170**
      - case law, **5:170**
    - variation of support by the court, **5:170**
      - case law, **5:170**
    - wife, **5:37**
    - withholding tax for non-residents, **5:170**
  - undertakings, **5:195**
    - case law, **5:195**
  - valuation, **5:51, 5:97, 5:194**
    - case law, **5:194**
  - variation, **5:41, 5:76**
  - variation of child support based on cost of living, **5:75**
  - Interim separation agreement, **5:9 to 5:25**
    - alternate care of and time with children (British Columbia), **5:14**
    - attestation, **5:25**
    - automobile costs, **5:19**
    - commencement, **5:9**
    - consideration, **5:11**
    - custody, **5:13**
    - dispute resolution, **5:22**
    - financial disclosure, **5:20**
    - future proceedings, **5:24**
    - living separate and apart, **5:12**
    - matrimonial home, possession of, **5:17**
    - non-entry to residence, **5:12**
    - parties, **5:9**
    - pledging credit, **5:21**
    - preamble to recitals, **5:9**
    - property (British Columbia), **5:18**

**SEPARATION AGREEMENTS—Cont'd**

Interim separation agreement, **5:9 to 5:25**  
 —Cont'd  
 recitals, **5:10**  
 support  
   for children, **5:16**  
   for wife, **5:15**  
 termination, **5:23**

Interview checklist  
 generally, **5:1 to 5:8**  
 assets, **5:5**  
 date, **5:1**  
 decision-making, **5:7**  
 income, **5:5**  
 instructions, **5:8**  
 liabilities, **5:5**  
 maintenance, **5:6**  
 parenting time, **5:7**  
 present marriage, **5:3**  
 prior marriage, **5:4**  
 statistics, **5:2**

Introduction, **5:26, 5:61**

Mediated separation agreement  
 generally, **5:107 to 5:134**  
 agreement conclusive, **5:124**  
 agreement to survive, **5:126**  
 alternate care of and time with children  
   (British Columbia), **5:114**  
 amendments, **5:133**  
 attestation, **5:134**  
 commencement, **5:107**  
 consideration, **5:109**  
 custody, **5:113**  
 disclosure, **5:125**  
 documents, **5:127**  
 estates, **5:123**  
 guardianship, **5:113**  
 heirs, **5:131**  
 household furnishings, **5:122**  
 jurisdiction, **5:130**  
 legal advice, **5:132**  
 living separate and apart, **5:110**  
 matrimonial home, **5:121**  
 mediation, **5:117**  
 no child support, **5:116**  
 other agreements, **5:128**  
 ownership of property, **5:118**  
 parties, **5:107**  
 payment of current debts, **5:120**  
 personal representatives, **5:131**

**SEPARATION AGREEMENTS—Cont'd**

Mediated separation agreement—Cont'd  
 pledging credit, **5:119**  
 preamble to recitals, **5:107**  
 recitals, **5:108**  
 resumption of cohabitation, **5:111**  
 severability, **5:129**  
 travel, **5:115**  
 waiver of support of both spouses,  
   **5:112**

Pitfalls, **5:225**

Termination of  
 generally, **5:220 to 5:224**  
 cancellation and termination (British  
   Columbia and Ontario), **5:223**  
 commencement, **5:220**  
 consideration, **5:222**  
 legal advice, **5:224**  
 parties, **5:220**  
 preamble to recitals, **5:220**  
 recitals, **5:221**

Variation of, **5:213 to 5:219**  
 generally, **5:207 to 5:212**  
 amendment, **5:210, 5:217**  
 commencement, **5:207, 5:213**  
 consideration, **5:209, 5:215**  
 continuation of agreement, **5:211,**  
   **5:218**  
 financial disclosure, **5:216**  
 legal advice, **5:212, 5:219**  
 parties, **5:207, 5:213**  
 preamble to recitals, **5:207, 5:213**  
 recitals, **5:208, 5:214**

Where prior marriage agreement  
 generally, **5:135 to 5:162**  
 access, **5:141**  
 agreement conclusive, **5:152**  
 agreement to survive, **5:154**  
 amendments, **5:161**  
 attestation, **5:162**  
 commencement, **5:135**  
 consideration, **5:137**  
 custody, **5:140**  
 debts, responsibility for, **5:150**  
 disclosure, **5:153**  
 documents, **5:155**  
 estates, **5:151**  
 fair agreement, **5:160**  
 guardianship, **5:140**  
 heirs, **5:159**

**SEPARATION AGREEMENTS—Cont'd**

- Where prior marriage agreement—Cont'd
  - jurisdiction, **5:158**
  - legal advice, **5:160**
  - living separate and apart, **5:138**
  - matrimonial home, **5:148**
  - other agreements, **5:156**
  - ownership of one party property, **5:146**
  - ownership of property not constituting one party property, **5:147**
  - parties, **5:135**
  - personal representatives, **5:159**
  - pledging credit, **5:149**
  - preamble to recitals, **5:135**
  - prior support payment, **5:143**
  - recitals, **5:136**
  - resumption of cohabitation, **5:139**
  - severability, **5:157**
  - support obligations
    - children, **5:144**
    - spouses, **5:142**

**SEPARATION AGREEMENTS—Cont'd**

- Where prior marriage agreement—Cont'd
  - valuation, **5:153**
  - variation, **5:145**

**VALUATION**

- Generally, **1:44 to 1:55**
- Approaches to, **1:53**
- Company accountants, meeting with, **1:50**
- Future plans for assets, **1:52**
- Initial contact with expert, **1:45**
- Meeting with expert prior to final report, **1:54**
- Opposing part obtaining expert, **1:48**
- Providing documents to experts, **1:49**
- Retaining expert
  - jointly, **1:46**
  - on client's behalf, **1:47**
- Sources
  - for obtaining valuers, **1:55**
  - of information, **1:51**