

ROAD MAP FOR SEPARATING COUPLES

Couple separates and each sees a lawyer for advice.

- A. Couple negotiates their own agreement directly with it reviewed by their lawyers who put it into contract form (separation agreement).
- B. Couple attends mediation to negotiate their agreement with it reviewed by their lawyers and put into contract form.
- C. Couple negotiates through their lawyers, hopefully collaboratively, and reach an agreement which one of the lawyers puts into contract form.
- D. Negotiations fail and recourse to an arbitrator or a judge is needed on one or more issues. It results in an order which one of the lawyers will draft.

Prior to the negotiations, the parties should exchange all potentially relevant financial information (e.g., RRSP statements, bank statements, pay stubs, tax returns, etc... ask your lawyer what you need to ask for and to provide).

The contract (separation agreement) or court order determines the issues (parenting, support and property division as may be applicable) and the parties may proceed to a divorce or not. A divorce is not required, but available if a ground is established.

The property issues, once resolved by a formal agreement or court order, are almost always resolved on a final basis and they are not subject to variation (unless there has been a clear mistake, fraud, etc.). Each party may acquire future assets or debts without the other having any interest or liability.

Parenting and support issues most often are subject to review in the future in the event of a relevant change in circumstances. Even after parties divorce, parenting and support issues may have to be revisited and adjusted.

If the parties wish a divorce, there are three possible grounds, any one of which will be sufficient: one year separate and apart with no intention to reconcile; legal cruelty by one spouse against the other; or adultery. The great majority of divorces are granted on the grounds of one year or more of separation with no intention to reconcile. If one year of separation is established, either party may apply for the divorce and it usually cannot be successfully opposed or obstructed (ask your lawyer about exceptions).

THE ABOVE IS GENERALLY TRUE BUT ALL OF THESE ISSUES SHOULD BE ADDRESSED WITH YOUR LAWYER AS CERTAIN SPECIFICS OF YOUR CASE MAY IMPACT YOUR DECISIONS AND THE OUTCOME.