

THEY SAY THAT BREAKING UP IS HARD TO DO: TIPS FOR MAKING IT EASIER

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INTRODUCTION

This document provides some general information for Alberta spouses who have recently separated or are considering separating. This guidance is subject to advice that your lawyer has given you, directions from parenting professionals, court orders, agreements made between you and your spouse, and any laws that might apply in another province, territory, or country. This document is not "legal advice"; you should speak to your lawyer prior to making any decisions which could significantly affect your situation. For convenience, this article uses the term "spouse" to refer to both married and unmarried ("common law") partners.

YOUR CHILDREN

Parenting After Separation Seminar. Most separating parents will be required to complete the Alberta Government's free Parenting After Separation Seminar. We recommend taking this course as soon as possible as it may help to minimize the impact of the separation upon your children and might assist you to resolve some parenting or child support issues with your spouse without needing lawyers. The course also provides information about methods to resolve disputes outside of court. The course can either be taken online, or in person in Edmonton or Calgary. Visit pas.albertacourts.ab.ca to complete the course online. In Edmonton the course is offered by The Family Centre and you can register by visiting www.the-family-centre.com or phoning (780) 413-9805. In Calgary the course is offered by Andrea Larochelle and you can register by visiting www.andrealarochelle.com or phoning (587) 999-9242. We recommend taking the course in person, as you will be able to speak to a psychologist and a family law lawyer for free, although we understand that it can be difficult to allocate time to a course when you're a single parent. There is also a free High Conflict PAS course, and a free course that will teach you how to communicate effectively with the other parent which is called Focus on Communication in Separation (FOCIS). While FOCIS is not mandatory, it is highly recommended. You can register for it here: www.alberta.ca/focis.aspx

Practical Suggestions in Parenting Disputes for Separated Parents. As post-separation parenting is an important and complex topic, we recommend reading the publication "*Practical Suggestions in Parenting Disputes for Separated Parents*" by Ken Proudman. The most recent version can be found at www.kenproudman.com/Parenting-Dispute-Tips.pdf

YOUR LAWYER

Do you need a lawyer? To enter into a valid agreement settling a distribution of matrimonial property (as well as the property of unmarried partners who separated on or after January 1, 2020), each spouse must receive independent legal advice from a lawyer, who will sign an independent legal advice certificate. If a spouse does not receive independent legal advice when signing an agreement, a Court may not consider itself bound by its terms. Where all matters are already agreed upon, some lawyers are willing to provide this for a fixed fee. We also recommend obtaining independent legal advice prior to entering into a final settlement of spousal support or partner support so that a lawyer can help protect against the settlement being challenged. Although independent legal advice is not necessary to resolve parenting or child support issues, or even the divorce itself, we recommend consulting a lawyer in any event so that you are aware of the fairness and potential impact of the arrangement.

Your lawyer's role. In family law, the lawyer's role is generally to help you distribute your family property, establish a new parenting regime, address child and sometimes spousal/partner support. Ideally, a mutually acceptable agreement will be negotiated which often ends up being a better result than what a court would have ordered. Sometimes your lawyer will help you engage in alternative dispute resolution such as mediation, arbitration, judicial dispute resolution (JDR), or parenting coordination. In negotiation, lawyers trained in interest-based negotiation will usually aim to keep communication on track and, if necessary, curb negative behaviour or incorrect views in order to come up with creative alternatives that may address each spouse's concerns. It can be uncomfortable for your lawyer to attempt to limit your negative behaviour or incorrect views, but know that they are doing so to help you resolve your legal dispute in a more efficient manner. Although always agreeing with clients would probably result in better reviews and more referrals, we would just be enabling conflict, and not helping you to resolve your dispute in an efficient manner.

Sometimes court may be necessary. Regardless of the process, your lawyer's role is not only to know the law and safeguard you from injustice, but may also include addressing legal deadlines, negotiating on your behalf, obtaining information or documentation necessary to perform calculations, and drafting final separation agreements or court documents.

Should you want your lawyer to focus on a specific issue, for example investigating potential fraud, you need to tell them that it's important to you and you want them to do so. Just know that doing so might increase the cost of legal representation, especially if it means hiring an expert such as a forensic accountant, actuary, valuator, or psychologist. It's important to consult your lawyer before making significant decisions.

Choosing a Lawyer. It's important that you choose a lawyer with whom you're comfortable. There are different styles of lawyers. For example, some might be known to be very aggressive, whereas others may be known to be more cooperative. Separations tend to be less expensive and less stressful when the lawyers can cooperate, although sometimes court is necessary. We

recommend asking potential lawyers about their style, and discuss what you can expect, such as how quickly they aim to respond to you. Some family law lawyers might be known to take on specific types of separation. For example, Marla Miller Q.C. is a mediator and also practices Collaborative family law, whereas Ken Proudman's practice primarily consists of divorces/separations where either or both spouses own a business. There are also family law lawyers who bring experience from a previous career, such as social work, policing, or nursing. Senior lawyers tend to have higher hourly rates, but may be able to resolve your dispute faster. Many firms have "articling students", who have graduated from law school but are completing the final requirements to become a lawyer, who work under the supervision of an experienced lawyer and would have lower hourly rates. If you Google a lawyer's name, followed by the word "reviews", you can often find out if other separated spouses have had positive experiences with that lawyer. Beware though, as it's not uncommon for most family law lawyers to have some negative reviews. Spouses who are experiencing one of the most stressful times in their life, with many issues that need to be negotiated and often significant cost (particularly when court is involved) might end up blaming their lawyers when things don't pan out as hoped.

Cost of traditional legal representation. It's difficult to predict the cost of legal representation, because each separation is different. The cost usually depends on the amount of cooperation, number of issues to resolve and complexity, patience of each spouse, and amount of communication between the client and lawyer (beware of sending frequent emails to your lawyer!). According to the Canadian Lawyer Magazine Legal Fees Survey published June 2016, the average lawyer's fees for a contested divorce in Western Canada was approximately \$16,507. Although many separations will be less costly, some are much more costly, raising the average cost. In the same survey, the average family law lawyer's fee for a trial of up to two days was an additional \$18,845, or an additional \$36,577 for up to five days in trial, which among other reasons is why we usually attempt to resolve disputes through negotiation. Again in the same survey, the average cost for an uncontested Separation Agreement was \$2,390; \$2,795 where parenting was involved; \$2,745 where spousal support was involved; or \$3,481 where assets were involved; plus an average of \$2,085 to obtain a consent desk divorce from the Court. Divorces involving businesses or substantial parenting conflict tend to be higher than average. In another survey, "An Evaluation of the Cost of Family Law Disputes" by the Canadian Research Institute for Law and the Family (December 2017), the average estimated legal fees for high-conflict litigation was \$54,390. These survey results only address the lawyer's fees. There may also be additional experts' fees (such as land or business valuers, pension actuaries, psychologists, or forensic accountants). Because not everyone is willing or able to afford these costs, below we discuss several alternatives to the traditional approach.

Minimizing your legal fees. Sometimes if there are no legally-mandated communication restrictions and you are not engaging in harassing behaviour, you can continue to resolve minor disputes with your former partner. When communicating with your lawyer the cost can be minimized by limiting the amount of emails that you send and instead condensing multiple discussions into less frequent meetings as well as resisting the urge to call for updates. That said, it's still important to speak with your lawyer when it's time to take the next step, there's an

emergency, or when circumstances change in a way that could affect any processes that are underway. As many lawyers charge no or a reduced cost for their assistants, it is sometimes helpful to contact them about inquiries relating to billing, scheduling, and financial disclosure. Meetings with your lawyer can become more efficient if you come with a list of questions and you take notes about what is said, so that you can refer to it later. If you review those notes in advance of the meeting, then you can spend less time discussing the same topics. Be aware that moving a matter forward at a faster pace and taking more aggressive steps often increases the cost because it means the lawyer is taking additional steps, often in a less efficient manner. It's understandable that you may be feeling anxious to resolve the matter but that urgency can lead to more anxiety in the form of higher legal fees. It can also be helpful to organize your documentation before you provide it to your lawyer and to send documents in larger batches rather than individually unless there is an impending deadline. It can also be beneficial to start seeing a counsellor as soon as you are able, not only to ensure that you are not contributing to conflict, but because the legal system is poorly equipped to address the emotional side of a dispute. It can help to have someone objective to speak to. It just makes sense to pay a skilled counsellor, who generally charge less than your lawyer does, to deal with emotional and adjustment issues and allow your legal dollars to be spent on your lawyer's legal expertise.

Coaching and Limited Scope Services. If you don't have the resources to hire a lawyer to handle every aspect of your separation, you can hire a lawyer on a "limited scope" basis. For example, it might be that you consult the same lawyer several times to obtain their advice and information, which is known as coaching. Or you may hire a lawyer just for one court application, to conduct a Questioning, or to prepare a form for you. A list of lawyers willing to provide limited scope services is maintained by Alberta Legal Coaches and Limited Services, which can be found at www.albertalegalservices.com Note that it is not meant to be a discount lawyer service and these lawyers generally still charge at their full hourly rate. However, by their nature, coaching and limited scope services can result in a lower legal cost.

Organizations providing lower cost legal representation. If your income and wealth is below their threshold, you might qualify for a lawyer through Legal Aid Alberta. Legal Aid provides lawyers at a lower hourly rate, and does not require a retainer or payment in advance. Not all lawyers provide services through Legal Aid, but if a lawyer provides Legal Aid services, you can ask that they help you through Legal Aid funding (i.e. you can still choose who represents you). You can find out more about Legal Aid and their eligibility criteria by visiting www.legalaid.ab.ca or phoning 1 (866) 845-3425. Even if you don't qualify for Legal Aid, you might be able to receive some services through other organizations, such as:

- Edmonton Community Legal Centre (www.eclc.ca or (780) 702-1725)
- Student Legal Services of Edmonton (www.slsedmonton.com or (780) 492-2226)
- Calgary Legal Guidance (www.clg.ab.ca or (403) 234-9266)
- Student Legal Assistance of Calgary (www.slacalgary.com or (403) 220-6637)

- Central Alberta Community Legal Clinic (www.communitylegalclinic.net or (403) 314-9129), which is headquartered in Red Deer but with services also offered in Lloydminster, Medicine Hat, and Fort McMurray
- Grande Prairie Legal Guidance (www.gplg.ca or (780) 882-0036)
- Lethbridge Legal Guidance (www.lethbridgelegalguidance.ca or (403) 380-6338)
- Medicine Hat Legal Help Centre (www.mhlhc.ca or (403) 712-1021)

Still not able to hire a lawyer? In addition to the above, there are still other ways to obtain legal advice. Resolution and Court Administration Services (RCAS or Resolution Services) is a central contact point for several court-related programs offered by the Government of Alberta. They can help you to fill out court forms, connect you with additional resources, and sometimes provide free mediators, psychologists or other similar services. RCAS can be contacted by phoning 1 (855) 738-4747, or filling out the online form at www.alberta.ca/rcas-contact-centre.aspx RCAS can also be visited in person in Calgary (7th Floor, 601 – 5th Street SW), Edmonton (8th Floor, 10365 – 97 Street NW), Red Deer (4909 – 48 Avenue), Grande Prairie (10260 – 99 Street), Lethbridge (320 – 4th Street S), or Medicine Hat (460 – 1st Street SE). Courthouses usually also have lawyers referred to as “duty counsel”, who can provide free advice to those who don’t have lawyers.

Completing your own divorce. While we recommend hiring a lawyer to ensure that your rights are protected or that you don’t miss any critical deadlines, if you will not or cannot do so, there are organizations that can help you to complete your own divorce. The Court of Queen’s Bench’s divorce forms and instructions can be found at www.albertacourts.ca/qb/areas-of-law/family/divorce-forms Also, Student Legal Services of Edmonton hosts seminars that instruct spouses how to complete their own divorces (www.slsedmonton.com or (780) 492-2226), as does Calgary Legal Guidance (www.clg.ab.ca or (403) 234-9266).

Alternative Dispute Resolution. There are many alternatives to going to court. They are often less expensive, less stressful, can lead to more creative and collaborative outcomes, and give you more control of the outcome. Both spouses must agree to the process to be able to use it.

- a. **Mediation** is where a neutral third party is present to help you resolve the issues arising out of your separation. While there are no requirements or licenses required to become a mediator in Alberta, there are voluntary organizations which require that their members meet certain qualifications and ongoing training, such as the Alberta Family Mediation Society (www.afms.ca or 1 (877) 233-0143 or in Calgary (403) 233-0143) or the ADR Institute of Alberta (www.adralberta.com/directory/ or 1 (800) 232-7214). The Government of Alberta offers free mediation when either spouse earns less than \$40,000 per year and there is at least one dependent child (www.alberta.ca/family-mediation.aspx, (403) 297-6981 in Calgary, or (780) 427-8329 in Edmonton). It can be advantageous to hire a mediator with a background in family law.
- b. **Arbitration** is where a neutral third party makes a decision. Although you need to pay for the arbitrator, arbitration usually results in a faster decision as the courts can be very backlogged, and can sometimes be less expensive than court, especially if you agree to

utilize a simpler process. The ADR Institute of Alberta maintains a directory of arbitrators (www.adralberta.com/directory/ or 1 (800) 232-7214). It can be advantageous to hire an arbitrator with a background in family law.

- c. Med-Arb is a hybrid of mediation and arbitration. If the mediation is unsuccessful, the arbitrator can make a decision.
- d. Collaborative Family Law or Collaborative Divorce is offered by some family law lawyers who meet certain educational and registration requirements and are Registered Collaborative Family Lawyers (RCFL). It is a process whereby both spouses agree to try to resolve the dispute outside of court. Instead, the spouses and their lawyers attend a series of meetings to attempt to negotiate a resolution. Everyone works together to reach mutually acceptable out of court agreements that are in the best interests of every family member. Often the process is enhanced by the assistance of specially trained Family Specialists, Financial Neutrals and/or Divorce Coaches. Because threats of court are minimized, Collaborative Family Law can be much less stressful than traditional separations. More information can be found at www.collaborativepractice.ca or www.divorceseparation.ca. If a resolution can't be negotiated and it is necessary to end the Collaborative process and proceed to court, the spouses agree that they will have to hire new lawyers and can't use the information that was produced solely for the Collaborative process.
- e. Four-way Meetings are informal meetings attended by both spouses and each of their lawyers (i.e. all four people). At these meetings, a resolution outside of court is attempted, through negotiation. Even if the meeting isn't able to resolve all issues, resolving some issues can make future negotiation or court much more efficient.
- f. Judicial Dispute Resolution (JDR) is mediation with a judge. All courts in Alberta provide this service. Even small-town courts can arrange for you to attend JDR, although you may have to travel to a larger centre. There is no fee for the judge's time. Settlement becomes more likely because each spouse will likely believe the judge. Higher courts require written briefs setting out the facts, issues to be addressed, and each spouse's position. There is no such requirement in Provincial Court. In many Provincial Court JDRs, there will be a court clerk in the room, so that if an agreement is reached, the Judge can make it into a binding order on the spot, making Provincial Court JDRs one of the most effective methods of Alternative Dispute Resolution. Arbitration with a judge is also possible, known as a "Binding JDR", although there are fewer judges willing to provide this service, and they may find that the matter is too complex to decide without a formal hearing or trial.
- g. Parenting Coordination is mediation and/or arbitration with a psychologist, or sometimes with a lawyer. Parenting Coordination with a psychologist can be beneficial if you have a dispute about parenting, because a psychologist is usually in a much better position than a lawyer or judge to say which parenting arrangements are best and how certain

arrangements might impact your children. Some lawyers also provide Parenting Coordination, primarily in relation to child support disputes. Parenting Coordination is most appropriate when there are frequent ongoing disputes, because going to court often is expensive and stressful. A list of psychologists who provide this service, and other services, can be found on AFCC Alberta's website, at <https://www.afccalberta.org/referral-list>

Paying your lawyer. In traditional family law disputes, it is very rare for lawyers to agree to a fixed fee or to do contingency work, because we're often part of small firms, and we often don't know at the outset whether or not you will actually receive a payment. Almost all family law lawyers will bill by the hour, and issue an invoice each month, which is expected to be paid, usually within a month. Family lawyers will also ask for a "retainer", which is a deposit to safeguard against non-payment. The amount of the retainer depends on the lawyer, and often depends on their estimation of how complex or contentious your dispute will be. Lawyers might ask for a higher retainer before you approach a larger step, such as needing to hire an expert or some larger court hearings or trial. If your lawyer isn't paid on time, they will likely charge high interest and may suspend their services. If you don't have sufficient funds, it can be beneficial to obtain a line-of-credit, personal loan, or high balance credit card which may let you withdraw funds. Many separating spouses will also obtain loans or funding from their parents or other family members. Sometimes it is necessary to sell property, although that should be with your former spouse's consent, so that you aren't accused of "dissipation" or selling or transferring property at less than fair market value. We recommend speaking to a lawyer prior to selling any property. Where one spouse holds almost all of the resources and income, it might also be possible to apply to the court for something called "advance costs", which is an advance on a property settlement for the purpose of being able to hire a lawyer or expert.

THE FIRST STEPS UPON SEPARATING

Dealing with the trauma of separation. We tend to grieve the loss of a relationship. If one spouse has had plenty of time to consider separation before terminating the relationship, they might have already dealt with their grief. However, the other spouse might not have, or a sudden event such as infidelity might mean that both spouses need time to grieve. There are many reactions to grief. Some people become more resilient, some delay their grief, others develop symptoms such as depression or PTSD for several months before returning to their previous selves, while some unfortunately develop chronic dysfunction, particularly in the case of a high conflict separation. Reactions to grief are often described in terms of five stages (denial, anger, bargaining, depression, and acceptance). Grieving can impact health and parenting ability, expose children to conflict, and affect employability. Difficulties in communication between parents can make this even worse. The stress of a separation can prioritize the animal part of our brain (the amygdala), making rational thought more difficult. We may interpret events in a biased self-serving manner. Because most of us are inexperienced at separating, it can also be difficult to know what to do in any given

situation. It's important to recognize changes in your own behaviour, and well as understand that your former partner may also be experiencing grief and not acting their usual selves. Try to be kind to yourself and your spouse. Separation is not a time of "business as usual" and you may find that both of you will act out of character. It may become necessary to establish boundaries and look after your safety and the safety of any children, particularly if there's a history of violence, threats to harm another person or property, or similar conduct, discussed below. To deal with your own conduct, and seek the assistance of someone experienced with separations, we recommend speaking to a counsellor. It can also be beneficial to seek post-separation couples counselling. Counselling resources are listed below. An excellent resource to help you through this time, whether you are the person who made the decision to leave or feel that you have been left, is the book called "Rebuilding: When Your Relationship Ends" by Bruce Fisher and Robert Alberti.

Safety concerns. There are various ways to address family violence. In addition to restraining orders, in more severe circumstances "Emergency Protection Orders" (EPOs) are available which permit more options to address a spouse and/or another person/child's safety, such as seizing weapons. Generally there must be violence or threats to a person or property, forced confinement, sexual abuse, or stalking before an EPO will be granted. This can include conduct that occurred before the separation. There must be reason to believe that the conduct will continue or resume and that because of seriousness or urgency an EPO is required to provide for immediate protection. The initial EPO is typically granted without first notifying the other party, who is notified later and provided the opportunity to respond at a review hearing. Even if conditions are not sufficient for an EPO to be granted, an ordinary restraining or no-contact order might still be granted, or sometimes Parenting Orders will address communication between parents. It is always inappropriate to obtain an EPO as a "tactical" step only. The potential disadvantage of obtaining an EPO when it would be not be appropriate to do so, is to increase negative emotions and legal fees. It can be beneficial to consult a lawyer before applying for an order, however that often isn't possible where there is an immediate threat to a person's safety. Fortunately, there is no cost or financial eligibility requirements to seek assistance through Legal Aid Alberta's Emergency Protection Order Program, which can be contacted at (780) 422-9222 in Edmonton, (403) 297-5260 in Calgary, (403) 388-3162 in Lethbridge, or 1 (866) 845-3425 elsewhere in Alberta. If a crime has occurred or you are in immediate danger, we recommend contacting the police. The police, RCMP, and Victim Services Alberta can also assist you to obtain these orders. The Edmonton and Calgary Courthouses also have Bail Hearing Offices which operate 24 hours a day, 7 days a week, which can provide assistance. More information can also be sought through the 24-hour Family Violence Information Line, by phoning 310-1818. If such an Order has been sought against you, there is no charge and no financial eligibility criteria to obtain a duty counsel lawyer to represent you at the review hearing through Legal Aid Alberta (1 (866) 845-3425).

Counselling. Whether it be individual counselling, post-separation couples counselling, or counselling for a child, there are many counselling resources throughout Alberta. Throughout most of Alberta, you can dial "211" on your phone, 24 hours each day, to speak to the Government of Alberta's community and social service referral service, which can connect you with local services. Many municipalities will also have a local Family and Community Support Services

(FCSS) office, which can usually direct you to additional resources (visit www.fcssaa.org/regions/ for a list of each office's contact information). Some services will also offer drop-in counselling, courses, free services, service fees on a sliding scale depending on your income, or telephone/online counselling. Schools often also offer counselling services. Sometimes it can be preferable to consult a psychologist, especially one with experience in separations and child development, particularly if you need to establish a new parenting regime now that you've separated, or if you're experiencing parental conflict.

Who gets to live in the home? Many spouses will continue to both live in the family home for some time, especially when neither can afford the mortgage on their own. However, that often isn't possible, especially if there has been violence or children are exposed to significant conflict. In those types of situations, it's possible to apply to the court for "exclusive possession", which is where a judge decides who lives in a home until the property division is resolved. Such an application can sometimes be used to allocate the household contents and vehicles as well. A person who possesses property is usually expected to pay the costs associated with that property, but an exclusive possession application is often paired with an application for child and/or spousal/partner support. Some spouses will simply change the locks, however that might increase conflict, lead to an exclusive possession application against you, find you liable for damage to the house, or even result in you being liable to pay "occupation rent" to your former partner if you are receiving the benefit of their equity in the home. We recommend speaking to a lawyer before taking any of these steps, or if you have been locked out of the home.

Bank accounts. At some point, spouses will usually begin using separate bank accounts. Doing so can sometimes reduce conflict. Unilaterally emptying the joint account in a situation which leaves your spouse and our children without funds will always increase conflict. In those circumstances, it can be beneficial to speak to a lawyer to determine the amount of any child support and/or spousal/partner support which should be paid, discuss support arrangements with your former partner, and begin paying. Unless both spouses agree (ideally in writing, such as text message or email), child support must be paid as unrestricted funds (e.g. a cheque or Interac e-Transfer). This means that if a spouse is paying an expense instead of unrestricted funds, and there wasn't an agreement to pay child support in a different form, they might be called upon to pay arrears of child support.

Large funds, investments, or lines of credit. Some families are fortunate to have large sums in bank accounts or investments, or have access to withdraw funds from a line of credit. Where these funds are in joint accounts, it can be tempting to move the funds to an account in your own name. However, doing so will not only increase conflict as well as distrust but may often lead to a court application for a "preservation order" freezing property (which, if it applies to other property, could mean that you would need a court order or agreement to sell or transfer any of your property, a step which might be very inconvenient). The withdrawing spouse would likely be responsible for any interest or penalties resulting from increasing the debt owing on a line of credit. Wasteful spending or transferring of family property can lead to a finding of "dissipation". Dissipation is typically addressed by treating it as if you still had the funds, and the other spouse is credited for

their share. This means that if you spend a large sum frivolously, you might receive a smaller share of family property. In some cases, if child and spousal/partner support isn't being paid but should have been, there might be a corresponding credit to your spouse for support arrears. Again, we recommend speaking to a lawyer before taking any of these steps. If you are concerned that your former spouse will take or spend the funds, it can be preferable to place the funds into a lawyer's trust account on the lawyer's trust condition or undertaking that the funds not be used without a court order or agreement in writing. If there are enough funds to justify the additional costs, the funds can even be put in a separate higher interest trust account.

Debts. Spouses are generally responsible for any debts which they incur after the separation, except in some rare circumstances. If a spouse has control of an asset with a debt against it after the separation, they will usually be expected to make the payments on those debts, and if they fail to do so their share of the family property might be reduced in the amount of those payments. Until joint debts are paid out or refinanced into only one spouse's name, both spouses remain liable to the bank, and both of their credit scores can be harmed by non-payment. It can be important to address how debts will be paid early on, which might go hand-in-hand with the resolution of child support and spousal/partner support. Similarly, it's a good idea to keep an eye on these debts, even if your former partner has agreed to pay them. If one spouse is responsible for a disproportionate share of the debts, they might have to pay less or receive more spousal/partner support, and in some very rare circumstances, less child support. Should debts such as lines of credit be closed immediately? That's a difficult question, because sometimes closing a joint line of credit or other joint debt can minimize the chances of your former partner increasing the overall debt load by using the line of credit or other debt, however in other circumstances it might mean that you might be limiting ways to settle a file and pay for legal representation. We recommend consulting a lawyer.

Reverting to a previous surname (maiden name). Reverting to the surname that you used prior to your marriage does not require a legal change of name. You can attend at a Motor Vehicle Registry Agent to update your identification. You will likely also need a Birth Certificate or Marriage Certificate to update your name with most organizations, which can also be ordered at a Motor Vehicle Registry Agent. You aren't legally required to revert to a previous surname. Many spouses choose to keep their married name so that theirs matches the children's or because they have used that name for a lengthy period of time. It's also possible to file a court application to amend children's surnames (e.g. to hyphenated surnames of each spouse), although whether that will be permitted will depend entirely upon your judge and the circumstances.

Financial disclosure. One of the first steps in most separations will be to exchange financial disclosure. This is because the only way to calculate a division of family property, child support, or spousal/partner support is with information about assets, debts, and income. There is a relatively simple court procedure to compel financial disclosure to be exchanged, called a Notice to Disclose in the Court of Queen's Bench, or a Request for Financial Information in the Provincial Court. The documents which can be compelled by a Notice to Disclose, which can give you an idea of what documents you'll likely also need to assemble, can be found at

<https://www.alberta.ca/assets/documents/rcas-court-of-queen-39-s-bench-notice-to-disclose-or-application.pdf>

If all or part of your income comes from a business which you control or own at least 1% of, there will be additional disclosure requirements, in which case we recommend speaking to a lawyer. Where your spouse is in a uniquely vulnerable position (for example, where they are unable to afford significant legal assistance, there is a vast difference in each of your resources, or you earn your income from self-employment), you have an additional duty to make full and honest disclosure of all relevant financial information. You must avoid psychologically or informationally exploitative behaviour and you should disclose any increases in value of any business interests you own or control. If your income increases significantly and you are the payor of child support or there is a shared parenting arrangement, you are required to recalculate child support, otherwise you may have to pay arrears.

Help, I've been served with court documents! If you've been served with court documents, please read them to note any deadlines or court dates, as well as the location of the court (usually labelled "Court Location" or "Judicial Centre" toward the top of the first page). If you've been served with a "Statement of Claim for Divorce" (or "for Divorce and Division of Matrimonial/Family Property"), there will usually be a deadline to respond (20 days if you're within the same province). To dissolve your marriage, it is necessary to start a court action by filing a Statement of Claim for Divorce. Just because you have been served with a Statement of Claim for Divorce it does not necessarily mean that your spouse wishes to engage in costly court processes. Sometimes Statements of Claim are simply served to see whether or not a person will be hiring a lawyer. In the vast majority of cases, divorces proceed by agreement of the parties once everything has been settled and the court is only asked to confirm the agreed upon child support arrangements and grant the divorce. This is what we call an "uncontested divorce". If you plan on hiring a lawyer, it's important to bring all of the court documents to them well in advance of any court deadlines. If you're not able or willing to hire a lawyer, alternative resources are listed under the "Your Lawyer" section of this paper.

SPLITTING YOUR PROPERTY

Household contents and personal effects. As it is very inefficient to hire lawyers to split and value household contents, most spouses will agree amongst themselves how to divide this property. One of the most problematic issues is when separating spouses put values on the household goods and furnishings. In law, this property is worth its market value not its replacement value, so the spouse keeping the property will tend to value it low and the spouse needing to replace the property will often value it high. We recommend trying to arrive at a division of household goods and effects that is not based on values, but which allows both parties to set up a household and perhaps balance the inconvenience to make each of their new households functional. It can be desirable to put a planned division of household contents in writing, for example an email or text message to your former spouse listing who will keep what. If there's a concern that the other spouse might take some household contents, or if you are planning on taking some household contents, it can be helpful to take photos to help show what was or was not taken. Where there is significant conflict,

it can also be beneficial to have an agreed-upon neutral third party supervise the retrieval of personal effects, or in some cases the police might be willing to supervise. If you intend to sell the home, it can be beneficial to leave some items for staging, in which case you should consult a realtor.

Transferring land. Transferring property into one spouse's name will not remove the other spouse from liability under the mortgage. To do that, there will need to be a refinancing, or a sufficiently-detailed letter from the bank confirming that a spouse has been removed from liability under the mortgage. To do that, the bank will probably want the spouses to sign a formal separation agreement, with each spouse obtaining independent legal advice from a lawyer. If you're transferring legal ownership of property, it's usually wise to do so as part of a proper separation agreement with independent legal advice, so that there is a final settlement of property rights and spousal/partner support. Separated unmarried partners can also generally only transfer property between themselves once as part of a final separation of property rights otherwise a transfer might be taxed.

Choosing realtors. If you and your former spouse jointly own land that you wish to sell you will either need to both agree upon a realtor or obtain a court order for sale. It can be beneficial to select a local realtor with other listings in your neighborhood, so that they are familiar with the location and pricing history and can show your home at the same time that they show other homes in the neighborhood. Experienced realtors might also be able to provide better assistance, however some of the more well-known realtors might pass clients on to other employees under their supervision. It can be beneficial to ask the realtor how involved they will be in selling your home. Some spouses will choose to attempt to sell without using a realtor so that the commission will be minimized. To do so, you can contact a realtor to tell them that you want to purchase a "bare listing" to be listed on MLS, or hire a company such as ComFree (www.comfree.com). However, purchasers often expect a lower price for a private sale, and it could take longer to sell your home, particularly because realtors can also provide advice about staging and sale prices, and bring potential purchasers to your residence.

Vehicles and insurance. It's important that vehicle and property insurance remain in place. The person in possession of a vehicle or property would generally be expected to pay for its insurance, however if they do not obtain insurance and there is an accident, both owners of any joint property can still be liable. If you have reason to believe that insurance is not place, you can put your former spouse on written notice (text message or email) that they're using a joint vehicle without your consent.

OTHER CONSIDERATIONS

Significant changes. Although separations are often accompanied with other changes, such as new residences, we recommend that you consult a lawyer before making any significant changes, such as leaving your job, closing or significantly altering a business, or moving the children far away.

Will and beneficiary designations. Now that you've separated, you may want to consider revising your Will so that your estate doesn't inadvertently pass to your former spouse (although they may still have a claim against your estate). If you have life insurance, RRSPs, or a pension, you might similarly want to revise the beneficiaries. Many people will prefer to make their children or other family members beneficiaries. Your Will can also specify who will take over your position as guardian of your children if you are to pass away, so that your side of the family does not need to bring a costly and uncertain court application if they want to obtain information about the children or exercise other guardianship rights. A Personal Directive can do the same if you are alive but incapacitated. If you've only recently separated, you might want to consider waiting a few months before taking these steps, so that you don't have to undo any changes if there is a reconciliation.

Medical/dental benefit plans. We recommend speaking to your lawyer before you remove your former spouse from your medical/dental benefits plan. Although you need to abide by the terms of the policy, prematurely removing a former spouse from a medical/dental benefit plan could strengthen their claim to spousal/partner support if they have significant medical expenses. In any event, you should let them know before you remove them from the plan, so that they aren't suddenly surprised by a significant uninsured expense.

Purchasing a new home. While you may wish to purchase a new home after moving out, there can be practical hurdles which you should be aware of. If you need mortgage financing, your bank will likely want to see a formal separation agreement where each spouse received independent legal advice. Doing so might also lead to unwanted tax consequences, because until you either have a proper separation agreement or are divorced, you and your former spouse can only claim one "principal residence exemption", meaning that the family home might be exempt, but if you sell your new property for a profit, you might have to pay some capital gains tax based on the proportion of the time that it was not your principal residence.

Gifts, inheritances, pre-relationship/marriage property, personal injury or settlement proceeds. Although there are some additional rules, these types of property, as well as any sale proceeds or exchanged property, will generally be considered "exempt", meaning that you will receive a credit for their value at the beginning of the relationship/marriage or when received, if received afterwards. However, the person claiming an exemption needs to prove it. That means that it's very important to gather paperwork proving your original exemptions and where they have ended up. Because you may lose half of an exemption each time it's placed into joint property, it's usually also a good idea to avoid transferring it into joint property or at least not do so until

obtaining legal advice as to consequences upon relationship breakdown so that you can make an informed decision in advance and perhaps take proactive steps to protect yourself.

Child expense (Section 7) receipts. As you will learn in the Parenting After Separation course, there is a type of child support referred to as “section 7 expenses”, “extraordinary expenses” or “special expenses” (which all refer to the same type of child support). Although what is a section 7 expense is a detailed topic beyond the scope of this article, the categories, described very broadly, are childcare expenses, many health-related expenses, extra-curricular activities, some school-related expenses, and often post-secondary education. It is very important that you keep receipts to prove what expenses you have paid.

Taxation of spousal/partner support. Spousal/partner support can be deducted from the payor’s income, and is taxable income to the recipient, if the support is paid periodically (e.g. monthly) because of a written agreement or court order. Lump sum spousal/partner support does not qualify for the tax deduction, which is why lawyers have access to computer programs which can account for the loss of the tax deduction when trying to calculate appropriate lump sum spousal/partner support amounts. If you are paying spousal support pursuant to a written agreement or court order you can either wait until you file your taxes to claim those payments and receive the tax benefit in your income tax refund or you can request to reduce your employee source deductions, increasing your net paycheques, by filing Form 1213 “Request to Reduce Tax Deductions at Source”, which can be found at <http://www.cra-arc.gc.ca/E/pbg/tf/t1213/t1213-16e.pdf> As there are other scenarios where spousal/partner support can be or will not be deductible or taxable, we recommend speaking to a lawyer to ensure that this is properly addressed.

Deducting legal fees from taxes. A recipient of support can deduct the legal fees required to establish child support that is payable under the terms of a court order, establish spousal/partner support (other than lump sum support), increase support, or collect arrears. (<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/p102/support-payments.html#LegalFees2>). As there are additional rules, we recommend speaking to a tax professional.

Spousal RRSP withdrawals. If your family established a spousal RRSP (or common-law partner RRSP) during the relationship, you might be aware that if, within three calendar years of the contribution to your spouse’s RRSP, your spouse withdraws from the RRSP, the income will be taxable in the hands of the contributor. Please note that this isn’t the case after separation. If a spouse withdraws funds from the spousal RRSP, they will be taxed on that withdrawal. Another important thing to know is that, with the proper supporting documentation, your own RRSP can be rolled over to your spouse’s name on a non-taxable basis, which may allow for increased options to allow you to settle claims for property or even support. If this is done properly, no tax is triggered at the time of settlement and the RRSPs are only taxable to your spouse whenever he or she draws funds out from them.

Director's liability. If you are a director of a corporation over which you no longer have any control or oversight (i.e. your spouse has excluded you from its day-to-day activities and records) it may be preferable to resign in writing. This is because by being a director, you can be liable for the corporation's misdeeds, such as failing to pay GST, employee source deductions (income tax, CPP, EI), and failing to meet safety and environmental standards. However as resigning as a director might also cause you to lose some oversight, we recommend consulting a lawyer before taking this step.

New relationships and pre-nuptial agreements. As of January 1, 2020, matrimonial property laws, which prior to that time only applied to those who had legally married, will apply in a similar fashion to many unmarried couples who separate on or after that date. With this knowledge you may wish to consider entering into a Cohabitation Agreement or Pre-nuptial Agreement should you enter into a new relationship. In a way, these agreements can act like "insurance" to help protect against a messy separation, as they usually address property division and spousal/partner support issues in advance. They can also help to protect the assets that you've accumulated, as they confirm the assets and debts that you brought into the relationship, which helps to prove your exemptions. They often take the approach that "what's mine is mine and what's yours is yours", but there's lots of room for creativity. For example, the agreement might only apply to protect a piece of land, a business, or a farm. Their cost is typically significantly less than the average cost of a contested separation.

Remarriage. You cannot legally remarry until you have been divorced. While a divorce is usually granted by the court only after all property, support, and parenting issues are settled, it is possible to apply to "sever" the divorce so that it can be dealt with independently. Whether or not you will be permitted to sever the divorce will be up to the judge and will depend on the circumstances, so we recommend speaking to a lawyer in advance. You also generally need to be separated for at least one year before you're able to divorce. There are exceptions, however they are very impractical (e.g. if the other spouse is willing to admit to adultery, or physical or mental cruelty).