

*Law Offices of Charles H. Montgomery
Cary, North Carolina*

SEPARATION AGREEMENT QUESTIONNAIRE

PREFACE: Please take the time to read this Questionnaire carefully. It will help us prepare a Separation Agreement for you and your spouse that reflects accurately your promises and intentions. Be very careful in preparing this Questionnaire and be sure to read this entire ~~Preface~~ # before you complete the items below.

Perhaps you do not agree with your spouse on a possible term or clause to be included in or left out of a Separation Agreement. This does not mean you should give up or forget about such a provision. Your attorney may need to negotiate some of these terms for you or go to court on your behalf.

Please remember that the promises set out in a Separation Agreement are, for all practical purposes, permanent and binding. They usually cannot be changed by the courts, with the exception of child custody, visitation and child support which may be reviewed by a court. They may be changed if both of you agree and consent to the change, if you put down the change in writing, and then properly sign the amendment to your Separation Agreement before a notary public.

For this reason, your Separation Agreement is very important to us. We want to prepare a Separation Agreement that is fair for you and your spouse (and your children if there are any). You should not rush into the signing of a Separation Agreement. We want to make sure all assets and relevant information are given to us by you and your spouse so the Separation Agreement we prepare will be fair and accurate.

Obviously your Separation Agreement is also very important to you. You need to have a good agreement, one that is really fair, and one that can be enforced. Please read carefully the questions and instructions below so we can better assist you. We do not want you to sign a Separation Agreement that you do not agree with. You should not do so - because the Separation Agreement will, in all probability, be absolutely binding and enforceable against you.

Be fair to yourself. Be reasonable. Do not give in on non-negotiable matters. This is your agreement and we want it to be fair to you and everyone concerned--your spouse and your children (if any). Be sure you are satisfied and in agreement with the terms of your Separation Agreement. Do not hesitate to ask any questions about the agreement or raise any concerns that you might have. In our eyes, there are no unimportant questions. It's Your Separation Agreement.

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PLEASE ANSWER THE FOLLOWING QUESTIONS

PLEASE ATTACH COPIES OF YOUR FEDERAL & STATE TAX RETURNS FOR THE MOST RECENT YEAR & 3 YEARS IF YOU CAN GET THEM. ALSO, ATTACH YOUR PAY STUBS AND YOUR SPOUSES PAY STUBS FOR THE PAST 3 MONTHS.

Date completed _____.

1. Full name of Husband: _____

2. Husband's date of birth: _____

3. Full name of Wife: _____

4. Wife's date of birth: _____

5. Husband's Social Security Number: _____

6. Wife's Social Security Number: _____

7. County and State Where Husband Resides: _____

8. County and State Where Wife Resides: _____

9. Date of Marriage: _____

County and State of Marriage License: _____

10. Date of Separation: _____

11. Full names & birth dates of all children born (or adopted) during this marriage:

	<u>Name</u>	<u>Birth date</u>
a.	_____	_____
b.	_____	_____
c.	_____	_____
d.	_____	_____

12. **Payment of Debts by Husband:**

<u>Nature or Purpose of Debt</u>	<u>Acct. No.</u>	<u>Name of Creditor</u>	<u>Balance Due as of Separation Date</u>	<u>Monthly Payment</u>
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

13. **Payment of Debts by Wife:**

<u>Nature or Purpose of Debt</u>	<u>Acct. No.</u>	<u>Name of Creditor</u>	<u>Balance Due as of Separation Date</u>	<u>Monthly Payment</u>
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

14. **Alimony and Postseparation Support:**

- a. Waiver of Alimony and Postseparation Support: PLEASE NOTE CAREFULLY . . . If you waive or give up alimony and postseparation support, this waiver is (for all practical purposes) PERMANENT.
- b. Payment of Alimony: Alimony will be paid as set forth below:
 - (1) Which party will be the payor? ___ Husband ___ Wife
 - (2) Amount of alimony per month: \$ _____
 - (3) Day of month when each payment is due: _____

- (4) Do you want this alimony to be:
 ___ Taxable to payee/recipient and deductible to payor (this is what the Internal Revenue Code provides), or
 ___ Nontaxable to payee/recipient and nondeductible to payor.
- (5) When will the alimony payments end? They sometimes end on the death of the payee/recipient; they may also end upon the happening of the following events (please choose all you wish to apply):
 ___ Upon the death of the payee/recipient
 ___ Upon the death of the payor
 ___ Upon the remarriage of the payee/recipient
 ___ Upon the regular cohabitation of the payee/recipient to an unrelated person of the opposite sex;
 ___ Upon the following date: _____.

15. **Medical Expenses for Spouse:** The spouse of a person with medical insurance will ordinarily be entitled to medical benefits until divorce. Whether or not you have agreed to alimony, you may agree to certain additional terms for coverage of medical expenses. Which, if any, of the following items do you wish to have in your separation agreement:

- a. Who will pay the uncovered health care expenses?
 ___ Husband
 ___ Wife
 ___ Both in equal shares
 ___ Husband = _____%, Wife = Remainder
 ___ Wife = _____%, Husband = Remainder
- b. When will payment of uncovered medical expenses end?
 ___ Upon divorce
 ___ Upon divorce of dependent spouse, death of supporting spouse or remarriage of dependent spouse, whichever comes first
 ___ Other (Please specify): _____

NOTE: Questions 16 through 23 deal with any children born or adopted by the marriage of the parties. If none exist skip to question 24.

16. **Child Custody.** If there are any children of the marriage under 18, please complete the following:

- a. Who will have legal custody of the child/children?

- ___ Husband-sole custody
- ___ Wife-sole custody
- ___ Joint custody legal custody

- b. What visitation rights will the noncustodial parent have?
- ___ Reasonable visitation rights (unspecified and by agreement)
 - ___ Specific and structured visitation rights, i.e. "every other weekend from 6:00 p.m. Friday to 6:00 p.m. Sunday, plus four weeks every summer and one week at Christmas vacation", etc.:

17. **Child Support (Monetary).** If there are any minor children of the marriage, please complete the following information:

- a. Husband's gross income before deductions: \$ _____
- b. Wife's gross income before deductions: \$ _____
- c. Are there any pre-existing child support payments?
If so, list monthly obligation and responsible party: \$ _____
- d. Are there work-related child care costs? If so, list
monthly obligation and responsible party: \$ _____
- e. Are there health insurance premium costs for the
children? If so, list monthly obligation and
responsible party: \$ _____
- f. Day of each month when child support is due: _____
- g. Address to which child support payments are to be sent:

- h. Child support for each child will end upon the first of the following incidents to occur: the death of the child, the marriage of the child, the emancipation of the child, or the child's moving away from the home of the custodian indefinitely or permanently; or when each child turns eighteen (18) years of age unless that child

is still in high school at that time, in which case child support continues until that child is graduated from high school so long as the child is under twenty (20) years of age.

18. **Medical Expenses.** Who will be responsible for providing a policy of medical insurance on the child at his or her own cost or through his or her employer?

Husband
 Wife
 Both

19. **Uncovered Health Care Expenses.** There are certain medical expenses which must be paid out-of-pocket and which are not covered or reimbursed. Examples of these are the initial deductible amount for medical insurance, the percentage of medical costs that is not covered after the initial deductible amount is met, and the costs of such things as routine physical or orthodontic work. Who will pay the cost of the uncovered health care expenses?

Husband
 Wife
 Both parties equally up to a maximum of \$_____ per year, after which the _____ shall pay all remaining costs not covered by insurance.
 Both parties in the following ratio:

Husband = _____%
Wife = Remainder

or

Wife = _____%
Husband = Remainder

20. **Tax Exemption.** If there are minor children of the marriage, the tax exemption (federal and state) is an important financial consideration. Under current tax laws effective 1/1/86, unless there is a written agreement stating otherwise, the custodian of the children is allowed to claim the exemption for them. The custodian is the parent with whom a child lives for more than half the year. Please indicate your choice below:

<u>Name of Child</u>	<u>Parent Taking Exemption</u>	
	<u>Federal Taxes</u>	<u>State Taxes</u>
_____	_____	_____
_____	_____	_____

Do you want this conditioned on the non-custodial parent being current with his/her child support duties under the Separation Agreement as of the end of the tax year?

YES NO

21. **College Education.** College is not a luxury today - it is, in many cases, a necessity for a child. No court in North Carolina can force you, without your consent, to provide or assist in providing a college education for a child of yours, but you may agree, in a Separation Agreement, to help with college expenses for a child. If you cannot reach agreement on such assistance, skip the rest of this question. If you have reached agreement, please answer the following for the each parent:

- a. What expenses for college will you pay?

Room & Board

Books

Tuition & Fees

(1) In-State tuition & fees as maximum amount

or

(2) Other maximum amount

Other (Please Specify): _____

- b. For how long in each child's case will the assistance be provided?

Four (4) years

Other (Please Specify): _____

- c. Will you require the child to be enrolled full-time?

YES NO

At an accredited institution: YES NO

In pursuit of a recognized undergraduate degree?

YES NO

Maintaining at least a "C" average? YES NO

- d. Do you want to put a limit or a "ceiling" on the amount to be paid?

YES NO

If so, which of the following do you want?

All of the college expenses will be paid by my

spouse.

___ Each of us will pay one-half of the college expenses.

___ All of the college expenses will be paid by my spouse but this obligation shall not in any event exceed the highest then-prevailing rate at the state college/university/technical institute in the state where the child/children then have legal residence for the purpose of paying in-state tuition.

___ Other (Please specify): _____

e. Do you have or do you want to create a college trust fund for your child/children?
_____ YES _____ NO

If so, who will be the trustee(s) of the fund and how will it be funded?

22. **Life Insurance:** If a parent dies before a child reaches eighteen years of age, there will often be no source of support for the child from the estate of a deceased parent. For this reason, parents want to provide for life insurance on their lives as a way of financially caring for a child after their death. If you have reached agreement on this, please complete the following:

a. What amount of life insurance is to be provided?
___ \$50,000
___ \$100,000
___ Other (Please Specify): \$_____

b. Will both parties agree to pay for and provide life insurance or will only one party provide life insurance?
___ Both Parties
___ Husband Only
___ Wife Only

- c. If private life insurance is involved, will each parent agree to name the other as owner of the policy for so long as a child support obligation exists?
___ YES ___ NO.

(This is a very important. The owner of the policy is the only one who can cancel the policy or change the beneficiary. The owner is the one who must be informed of a missed premium payment that might cause the policy to be canceled. Each parent should try to get the other parent to allow a transfer of ownership for at least as long as the child support obligation exists. If there is no change of ownership of a private policy, one parent might attempt to cancel a policy or change the beneficiary in violation of the promises set out in the Separation Agreement. If this were done, the other parent would have no way of knowing that the policy had been canceled or the beneficiary changed. Transfer of ownership is one good way of protecting against this. Transfer of ownership cannot be done with some group insurance plans - it can usually be done with individual insurance policies.)

23. **Modification Clause for Child Support.** Due to inflation and increased needs of children, an amount of child support set in one year will seldom be sufficient 5 or 10 years later. For this reason, some parents agree on an "modification clause" in their separation agreement to avoid going back to court several years later for an increase of child support. The "modification clause" provides for an automatic modification in child support each year, every second year, or every third year based on some objective standard, such as the ~~N~~orth Carolina Child Support Guidelines ~~#~~r the gross annual pay increase of the parents. If you agree on such a clause, please fill in the following for the type of modification standard that you want to be applied to adjust child support:

___ North Carolina Child Support Guidelines or such successor standard used by the courts of the state to decide the appropriate amount of child support (subject to modification after three (3) years based on increased income of the parties)

___ Non-custodial parent's gross annual increase in income from wages and all other sources

___ Non-custodial parent's net annual increase (after taxes) from wages and all other sources

___ Flat percentage rate of ___% each year

___ Other (Please specify): _____

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24. **Division of Real Estate** (i.e. land & buildings): State what will happen to any real estate that may be owned by either or both of you, such as "Husband gets full ownership and possession of house and lot at 123 Green Street, Cary, NC" or "Husband and Wife to immediately sell house at 123 Green Street, Cary, NC and divide net proceeds of sale equally.":

*** Please provide a copy of your deed and deed of trust and county tax bill if any real estate transfers will need to be made.

*** What was the source of any down-payments on jointly held real estate?

25. **Division of Personal Property** (This is everything except land and buildings):

- a. Household furnishings and personal effects (choose one):

___ Each spouse keeps what he or she now has in his or her possession (you can only choose this if you are already living apart from each other);

or

___ Husband shall have the following furnishings and personal effects (be specific): _____

and Wife shall have the following household furnishings and personal effects (be specific): _____

- b. Division of Motor Vehicles:

Husband gets the following:

<u>Year/Make/Model</u>	<u>Serial No.</u>	<u>Name Title Registered In</u>
_____	_____	_____
_____	_____	_____

and Wife gets the following:

<u>Year/Make/Model</u>	<u>Serial No.</u>	<u>Name Title Registered In</u>
_____	_____	_____
_____	_____	_____

Automobile Insurance. Who will be responsible for maintaining automobile insurance on the above-described motor vehicles following the date of separation (be specific)? (Often the insurance policy stays the same until the next renewal or premium date. Check with your insurer on their rules.)

Loan/Lease Payments. Please make sure you list who is responsible for car payments under item #12 and #13 above.

c. Division of Stocks, Bonds, Mutual Funds, Bank Accounts (savings & checking), Certificates of Deposit, Money Market Accounts, Brokerage Accounts, Credit Union Accounts, Limited Partnerships, etc. (choose one):

___ Each spouse gets all the assets in his or her own name and we have no jointly titled assets;

or

___ Husband gets the following assets:

<u>Asset Description</u>	<u>Acct. No.</u>	<u>Location</u>	<u>Value</u>
_____	_____	_____	\$ _____

_____ \$ _____

_____ \$ _____

and Wife gets the following assets:

<u>Asset Description</u>	<u>Acct. No.</u>	<u>Location</u>	<u>Value</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

26. **Division of Other Intangible Personal Property (i.e. cash value of life insurance, pension rights, incentive packages, bonuses, annuities, tax loss carry-overs, etc.):**

Husband gets the following: _____

and Wife gets the following: _____

5. Has your spouse retired with any vested retirement benefits? If so, when and what retirement benefits?
6. When is your spouse eligible to retire with any vested retirement benefits?

27. Are there any other terms you want in your separation agreement?

Are there other things you are concerned about that have not been asked about in this questionnaire?

28. Please bring to our attention any information about retirement benefits, IRA s, stock options, deferred compensation plans, pension benefits, deferred savings plans, 401-k and 403-b accounts, civil service pensions, military pensions, deferred dividends or distributions, tax loss carry-forwards, accumulated depreciation, survivorship rights, oil or timber rights, leases, time-share rights, disability payments, 401-(k) loans, frequent flier miles, or other rights to which you or your spouse might be entitled now or in the future, whether vested or non-vested.

29. Are you aware of any property of any kind held in the name of someone other than you or your spouse that was acquired during your marriage and for which you or your spouse might have a claim (i.e. bank account held in name of a third party with money acquired during your marriage, trust accounts, real property titled in a third party's name, foreign bank accounts, etc.)?

30. Please provide us with tax returns for the 3 most recent years along with all W-2's, 1099's, K-1's, and other tax reports.

31. Please provide us with all retirement account statements, tax-deferred account statements, brokerage account statements, pay stubs, bank statements for 3 most recent years, charge card statements for 3 years, etc.

32. If you suspect your spouse has hidden assets or plans to hide assets, please bring this to our attention immediately and provide as much information as possible.

33. Have you signed a pre-nuptial agreement of separation agreement with your current spouse?

If so, please provide a copy to us.

Note: *If you need assistance in securing records and financial information, make certain you tell us what you believe may exist and what you have been unable to secure. Full disclosure of all assets, liabilities, and contingent rights is essential to an equitable division of property and the appropriate assignment of support responsibilities.*