

ROSEN LAW FIRM

NORTH CAROLINA
DIVORCE

Sample Separation Agreement

This agreement is a sample separation agreement intended only to provide you with an example of this type of document to illustrate the other materials on this site. Use of this form as your separation agreement would be a mistake. This agreement contains language tailored to the situation of the parties involved and your agreement will be different. Please utilize the services of an attorney in preparing your documents.

NORTH CAROLINA SEPARATION AGREEMENT

WAKE COUNTY AND PROPERTY SETTLEMENT

This Separation Agreement and Property Settlement between John Glenn Doe, of Durham County, North Carolina, hereinafter referred to as "John", and Mary Jane Doe, of Wake County, North Carolina, hereinafter referred to as "Mary", shall become effective as of the date that it has been executed by each party hereto;

WITNESSETH:

THAT, WHEREAS, the parties hereto were married on **December 25, 1990, and certain differences have arisen between them rendering it undesirable for them to continue to live together as John and Mary, by reason whereof they separated on April 15, 1997, and have agreed to live separate and apart permanently;** and WHEREAS, there were no children born of the marriage; and WHEREAS, each of the parties is more than 18 years of age, and they desire to confirm their separation and to make arrangements in connection therewith, including the settlement and adjustment of their property rights and other rights, responsibilities, and obligations growing out of their marital relationship; and WHEREAS, after mature consideration and judgment, each party having had the opportunity to seek independent legal counsel from an attorney of his or her respective choice, each party believes it is in his or her own respective best interests to enter into this Separation Agreement and Property Settlement and each party considers this Agreement to be fair, reasonable and equitable; and WHEREAS, each party has read this Agreement, fully understands the terms, conditions and provisions hereof and deems such to be fair, just, and equitable; NOW, THEREFORE, in consideration of the premises, the mutual promises and undertakings herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, each party stipulates, agrees and covenants with the other as follows:

1 General. From and after the date of this Agreement, it shall be lawful for John and Mary to live separate and apart, each from the other, as fully, completely and **in the same manner and to the same extent as though they had never been married.**²

2 Interference. John and Mary each shall be free from interference, restraint, authority and control, direct or indirect, by the other, as fully as if he or she were single and unmarried. Neither party hereto shall hereafter disturb, annoy, molest, harass or in any way interfere with the other, directly or indirectly, nor compel or endeavor to compel the other to cohabit or dwell with him or her.

3 Residence. **Subject to the limitations set out herein with respect to the payment of alimony,** John and Mary may reside at such place or places and reside or associate with such person or persons as each of them may deem fit or as each of them may desire.

4 Visitation. Neither John nor Mary shall call upon or visit the other except by express invitation by one accepted by the other.

5 Employment. Each of the parties may, for his or her separate benefit, engage in any employment, business or profession he or she may choose.

6 Right To Contract. Both John and Mary shall have the right to contract and to be fully contracted with, independently of the other, as fully and to all intents and purposes as if they had never been married.

7 Marital Residence. The parties are the owners of a house and lot located at 1000 Chimney Rock Road, Raleigh, North Carolina. Contemporaneously with the execution of this Agreement, Mary has by quitclaim deed conveyed her interest in said property to John subject to the existing note and deed of trust encumbering the property, the balance of which John assumes and agrees to pay. John shall indemnify and hold the Mary harmless therefrom.

8 Tangible Personal Property Located at Marital Residence. Until the date of separation of the parties, the aforementioned residence was occupied by the parties as their marital residence. On that date Mary departed the premises and has since resided elsewhere. At the time of Mary's departure, she removed from the marital residence all of the tangible personal property she is to receive. Thus, all of the furniture, appliances and other articles of tangible personal property presently located in and around the marital residence shall be and become the sole and separate property of John. Mary hereby relinquishes any and all claims he may have in and to the same. All of the furniture, appliances and other articles of tangible personal property removed from the marital residence by Mary shall be and become the sole and separate property of Mary. John hereby relinquishes any and all claims she may have in and to the same.

Tips

Input your date of marriage and date of separation here. Don't fret over the "undesirable to live together" language - it's just standard. And don't add your own ideas as to why it is undesirable to live together. . .ie, don't add "because John is a cheater" or "because Mary is lazy." This is not the place to air your dirty laundry.

But keep in mind, you are still legally married until you obtain a divorce decree.

You don't get to tell your spouse what to do, and they don't get to tell you what to do.

Be careful about ****who**** you live with if you are receiving alimony. We'll discuss this more below.

The house is usually the biggest asset. You'll want to address how you plan to handle it here. This provision works if one party is buying the other party out, but if you plan to sell it and split the proceeds you'll need to use other language. You should be specific - what realtor is being used, what should the initial asking price be, how far from that price are you willing to settle for, etc.

Customize this provision to suit your needs. If you have specific items that still need to be removed address it here. For example: "Mary will remove bedroom and office furniture within 30 days of the execution of this agreement."

- 9 **Automobiles.** The parties are the owners of the following automobiles:
A 1991 Ford Taurus automobile and a 1974 Ford Mustang which are titled to John's name and driven by John. The title to these automobiles is unencumbered. Mary conveys all of her right, title and interest in and to the aforementioned automobiles to John so that the said automobiles shall be and become the sole and separate property of John. Henceforth, John shall be solely responsible for all maintenance, repairs and insurance premiums for said automobile, and shall render Mary harmless from and against all obligations, claims and expenses, including reasonable attorney's fees, arising out of or relating to any of these obligations.
- 10 **Intangible Personal Property.** The parties have divided between themselves, to their mutual satisfaction, all intangible personal property owned by them individually and jointly, including but not limited to checking and savings accounts, stocks, bonds, mutual funds, IRA's, interests in pension and profit sharing plans, promissory notes, franchises, partnerships and the like. Hereafter, neither party shall make any claim against the other for any intangible personal property in the name, possession or control of the other.
- 11 **Future Debts.** Neither party hereafter shall charge or cause to be charged to or against the other party any purchase which either party may; and neither John nor Mary shall create any engagements or obligations in the name of or against the other hereafter nor shall they secure or attempt to secure any credit upon or in connection with the other or in his or her name. Each party shall promptly pay all debts and discharge all financial obligations, to the best of his or her respective ability, which either may incur for himself or herself hereafter; and each shall hold the other free and harmless and shall indemnify and defend the other from any and all subsequent debts, obligations or liabilities which are incurred or sustained individually hereafter.
- 12 **Debts.** John agrees to promptly pay, when due, all debts incurred in his name alone and to indemnify and hold Mary harmless therefrom. Mary agrees to promptly pay, when due, all debts incurred in her name alone and to indemnify and hold John harmless therefrom.
- 13 **Distributive Award.** John shall pay to Mary a distributive award of \$12,500 **upon execution of this Agreement.**
- 14 **Health Insurance Continuation.** The parties recognize that Mary may be eligible to continue coverage through COBRA under the group health insurance carried by John through his employer. John shall, within ten days of any event that would cause Mary's health insurance coverage to end, either under the terms of the policy or by reason of a qualifying event under the COBRA requirements, notify the plan administrator of the event. At the same time, John shall inform Mary in writing that such notice has been given to the plan administrator.
- 15 **Support Of Mary.** John agrees to pay Mary as alimony for her sole use and benefit the sum of \$600 per month in cash on or before the first (1st) day of each calendar month, commencing with April 1, 1997. Such payments shall continue until the first to occur of the following events: (i) the death of Mary, (ii) the remarriage of Mary, (iii) the death of John, (iv) **cohabitation of Mary with an unrelated adult** or (v) the 1st day of November 1, 2010. In no event and under no circumstances shall alimony payments extend beyond November 1, 2010 and shall finally conclude with the payment for the month of November, 2010, unless terminated sooner by John's death, Mary's death, or Mary's remarriage (marriage being defined herein as a church or civil marriage ceremony following the issuance of a marriage license in the jurisdiction where performed), or cohabitation. The parties further agree that there is no liability to make any of the foregoing alimony payments for any period after the death of Mary and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of Mary. **Any monthly payment that is not paid when due under this Agreement shall bear interest, from the due date until paid, at the rate of 9% per year.** Mary accepts the payments specified in and to be made under this section in full satisfaction and settlement of all her right, claim and demand against John for support, maintenance and alimony. The provisions for the support, maintenance and alimony of Mary are independent of any division or agreement for division of property between the parties, and shall not for any purpose be deemed to be a part of or merged in or integrated with the property settlement of the parties.

If you haven't already divided these accounts, change this to reflect how the accounts should be split. If you have several accounts, consider including a table that identifies each account. Below the table you can explain, "Accounts A, B, and C shall become the sole and separate property of John. Accounts D, E, and F shall become the sole and separate property of Mary. Be sure to include the balance information and last four digits of each account so that there is no confusion."

This is important! If you forget about a joint credit card and your spouse racks up the bill, you don't want to be on the hook for it.

Remember how John got to keep the house in this scenario (see #7)? Well, he owes her some money to 'buy her out' of the house. This number may include more than the house buy-out. For instance, since he is keeping both vehicles, she is owed half the value of those vehicles as well. The way you calculate the distributive award will be different in each case - but this number is ultimately what one spouse owes the other to effectuate a fair split of the property.

You might be thinking: I don't have this kind of cash lying around!! What if I can't write a check when I sign the agreement? You can change this to reflect a structured payment. For instance, maybe include that \$6,250 will be paid now and \$6,250 will be paid at a later date. However you and your spouse decide to structure the transaction should be reflected here.

You don't have to get coverage under COBRA; this is just one way to approach the issue of health insurance. If you each plan to maintain your own plan - put it in writing here. If Husband plans to carry wife until a specified date - put it in writing here.

This is where you'll include any amount of alimony. Be specific as to what day of the month the alimony is due and how long the payments will last. No alimony in your case? Include an alimony waiver here. If you have agreed there will be no alimony, put it in writing or your spouse could still file a complaint for alimony.

Watch out! If you are receiving alimony and start living with a significant other, it will be grounds for your spouse to cease payments. You can't "cheat the system" but opting to live with your significant other instead of marrying them. Either of these acts will terminate the alimony obligation.

Include Interest. Although you may trust your spouse to make timely payments, you'll want to have some extra protection if he or she starts paying late or stops paying.

16 Waiver Of Rights To Equitable Distribution And Other Rights In Marital Property.

John and Mary expressly acknowledge and agree, pursuant to G.S. Section 50-20(d), that the division and distribution of marital property set forth herein is just, fair and reasonable, is deemed by the parties to be equitable and satisfactory, and that this Agreement shall be binding on the parties. Except as otherwise provided herein, John and Mary further acknowledge that the foregoing provisions for the division and distribution of property are made in full and complete satisfaction of any and all claims specified hereinbelow. Each party expressly waives any and all claims, whether now in existence or acquired hereafter, which either party may have against the other party or the property of the other party under the present and future laws of this or any other jurisdiction relating to the distribution of marital property, including, but not limited to, rights to division of real and personal property, payment of capital sums or periodic payments, distributive shares, pension or retirement benefits, life insurance and every other form of property, real or personal, tangible or intangible, vested or contingent. Each party accepts the provisions of this Agreement in lieu of and in full and final settlement and satisfaction of any and all claims and rights which either party may now or hereafter have against the other party for the distribution of property; and the parties agree that this provision and this Agreement may be pleaded in bar of any such claim for relief in any suit filed hereafter.

17 Mutual Release Of Property Rights. John and Mary grant, release, and forever quitclaim each to the other, all right, title, interest, claim and demand whatsoever in the real estate of which either is now seized or may hereafter become seized; and each of said parties may from this date and at all times hereafter **purchase**, acquire, own, hold, possess, encumber, transfer, dispose of and convey any and all classes and kinds of property, real or personal, tangible or intangible, or mixed, as though unmarried and free from the consent, joinder and interference of the other party, it being the understanding and agreement on the part of each of the parties hereto that in the sale, transfer and conveyance of any property hereafter it shall not be necessary in order for the grantee to have a good title, that the other party hereto shall sign and execute to the grantee the deed, conveyance, deed of trust, mortgage or bill of sale conveying or selling the property; it being the agreement and covenant of the parties hereto that in this respect, each of the parties hereto has forever released and discharged, and by these presents each does hereby now forever release and discharge the property of the other from all claims, interest and estate of his or her part, and that each shall be in the same position as if such party were single and unmarried.

18 Sale Of Property. In the event of a sale, transfer, or conveyance of any real or personal property now owned or hereafter acquired by either of the parties, if (notwithstanding the mutual releases contained in this Agreement) either party to this Agreement is called upon to execute a deed, conveyance, bill of sale or other instrument conveying said property, then the party called upon will sign any such instrument which may be reasonably required or reasonably necessary to perfect title in the grantee of the property which is sought to be conveyed.

19 Waivers Of Claims Against Estate. Except as otherwise expressly provided for in this Agreement, John does hereby waive, release, discharge, quitclaim and renounce unto the Mary and her heirs and assigns, and Mary does hereby waive, release, discharge, quitclaim and renounce unto John and his heirs and assigns:

All and every right to a share in the estate of the other party upon said party's death as provided in G.S. Section 29-14, or otherwise, now and hereafter by law provided;

All and every right to elect to take a life estate in real estate upon the death of the other party in lieu of the share provided in G.S. Section 29-14, as provided in G.S. Section 29-30, or otherwise, now and hereafter by law provided;

All and every right to a year's allowance upon the death of the other party as provided by G.S. Section 30-15, or otherwise, now and hereafter by law provided;
All and every right to dissent as provided by G.S. Section 30-1, or otherwise, now and hereafter by law provided; and

All and every right to administer upon the estate of the other party as provided by G.S. Section 28A-4-1, or otherwise, now and hereafter by law provided.

i Tips

You want this to be a done deal. Including this waiver acknowledges that your property issues are settled. Your spouse can't decide the following year that he or she wants to revisit your property settlement by filing a claim for equitable distribution. This waiver ensures that this is a final settlement of property.

If you plan to purchase real property before you are legally divorced, you will want to obtain a Free Trader Agreement in addition to including this mutual release. There are certain rights regarding real property that are automatically exist between spouses, a free trader allows a party to buy real property before obtaining a divorce

You'll want to include this so that you can compel your spouse to cooperate if you are sell something in the future. For instance, say you owned a boat that you thought was only titled in your name. Years after you execute this agreement, you try to sell the boat and you realize your Mary's name is on the title. Oops. Well, if you included this in your agreement you have a way to compel her to convey title.

You'll want to include this provision because your spouse will retain certain statutory rights with regard to your estate unless you are divorced. If something were to happen to you before you either party filed for divorce, you'd want to make sure that your former spouse wouldn't be entitled to make a claim against your estate.

20 Mutual Release. Subject to the rights and privileges provided for in this Agreement and in any deed or other instrument executed contemporaneously or in connection herewith, each party does hereby release and discharge the other of and from all causes of action, claims, rights or demands whatsoever, at law or in equity, which either of the parties ever had or now has against the other, known or unknown, by reason of any matter, cause or thing up to the date of the execution of this Agreement, except the cause of action for divorce based upon the separation of the parties. It is the intention of the parties that henceforth there shall be, as between them, only such rights and obligations as are specifically provided for in this Agreement, the right of action for divorce, and such rights and obligations as are specifically provided for in any deed or other instrument executed contemporaneously or in connection herewith, provided, however, that the releases in this Agreement shall not apply to rights to any social security benefits the parties may have by reason of their marriage to each other.

21 Waivers Of Rights, Claims, Or Benefits Relating To Wills, Trusts, Death Benefits, And Insurance Proceeds For Property Damage. John and Mary expressly waive any right, claim or benefit (including an appointment as personal representative, a bequest or devise) under any Will executed by the other party prior to the date of this Agreement. Each party further waives, releases, and renounces, and hereby conveys, quitclaims and assigns over to the other party and his or her heirs, executors and administrators, any beneficial or administrative right arising under any trust created by the other party prior to the date of this Agreement, any right to insurance proceeds or employment benefits payable by reason of the death, disability or retirement of the other party except as set forth herein, and any right to insurance proceeds payable by reason of damage or destruction to any real or personal property owned separately by the other party, whether such property was distributed under this Agreement or acquired before or after the execution of this Agreement by the other party. John and Mary further agree upon the death of the other to execute such other and further documents including documents of renunciation as may be reasonably required to give full force and effect to this agreement.

22 Effect Of Reconciliation. In the event of the reconciliation of the parties hereto, the distribution of property under this Agreement shall remain in force, whether or not such provisions are executed or executory; and the property distributed under this Agreement shall not thereafter be subject to the provisions of the North Carolina Equitable Distribution of Marital Property Act. In the event any transfer of property to be made under this Agreement has not been completed prior to any reconciliation, the transferor is not relieved of his or her obligation to effectuate such transfer. Likewise, all obligations for the payment of debts provided for herein shall remain in effect.

23 Transfers Of Property Incident To Divorce. The parties agree (i) that the transfer of property hereunder is related to the divorce; (ii) that the transfer of property hereunder is a transfer incident to divorce and is related to the cessation of the marriage; (iii) that the intent and purpose of this Agreement is for the transfer of property hereunder to be tax free pursuant to Section 1041 of the Internal Revenue Code and the applicable provisions of North Carolina law and for no gain or loss to be recognized by either party as a result of such transfer; and (iv) that they will file a formal election if necessary or otherwise take such actions as may be required by applicable provisions of the state or federal income tax law and regulations to give full force and effect to their aforesaid intent and purpose.

24 Subsequent Divorce; No Incorporation; Confidentiality. Nothing herein contained shall be deemed to prevent either of the parties from maintaining a suit for absolute divorce against the other based on the ground of separation as provided by law; however, the rights and obligations hereunder shall survive any such divorce, regardless of who obtains or petitions for said divorce. **The parties further agree that this Agreement will not be incorporated, by reference or otherwise, in any final judgment of divorce, that this Agreement and the terms hereof will not be made generally known to the public, and that this Agreement will not be recorded in the Public Registry of Wake County or in the Public Registry of any other county in this State.**

Tips

To be safe, make sure you proactively change your will and any beneficiary designations that would result in your spouse taking in the event of your death.

"There's no way we are getting back together." That is the attitude most people have by the time you are ready to execute the separation agreement. But the reality is that you never know what the future holds. You want to make sure you consider what you want to happen to this agreement if you do, in fact, reconcile. Do you want it to remain in place? Do you want it to be void?

Good news, right? No gift tax or capital gain/loss issues to consider when you are transferring property from one spouse to another, incident to divorce.

In this agreement, the parties have decided not to have their separation agreement incorporated. You may in fact want to have your agreement incorporated. To learn more about what this means, be sure to read our article addressing incorporation. Make sure you understand the consequences and/or benefits of incorporating (or not incorporating) your agreement before you execute it.

25 Construction. This Agreement is not an agreement between the parties to obtain a divorce. The same is an agreement settling their property and marital rights.

26 Additional Instruments. Each of the parties shall from time to time, at the request of the other, execute, acknowledge, and deliver to the other party, any further instrument that may be reasonably required to give full force and effect to the provisions of this Agreement.

27 Memorandum Of Agreement. In order to protect the privacy of each party, they agree to execute a Memorandum of Separation Agreement which shall be recorded in lieu of the full text of this Agreement in the event such recording is needed by either party.

28 Amendment. This Agreement can be altered and amended only by further **written agreement duly executed by the parties**. Any failure by either party to specifically perform or to enforce performance exactly according to the letter of this Agreement shall not constitute an alteration of the same by way of enlargement, waiver, reduction, estoppel, or otherwise, unless confirmed in writing by the parties. It is understood that the parties may, by mutual agreement, make temporary modifications from time to time as conditions require, but this Agreement shall nonetheless be binding upon the parties as written, except in the event of a material breach.

29 Situs. This Agreement, and the rights and duties of the parties hereunder, shall be construed in accordance with, and governed by, the laws of the State of North Carolina.

30 Binding Effect. Except as otherwise stated herein, all the provisions of this Agreement shall be binding upon the respective heirs, estates, next of kin, executors, administrators, and assigns of the parties.

31 Entire Agreement. This Agreement, together with any exhibits and schedules attached hereto, contains the entire understanding of the parties with respect to the subject matter; and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. This Agreement supersedes and replaces all prior agreements and understandings of the parties.

32 Voluntary Act. Each of the parties acknowledge that he or she has read this Agreement and understands its contents and provisions; that it is a fair and reasonable agreement to each of them, having due regard to the conditions and circumstances of the parties hereto on the date hereof; that each has signed and executed the Agreement freely and voluntarily and without fear, compulsion, duress, coercion, persuasion or undue influence exercised by either party upon the other or by any other person or persons upon either.

33 Representation By Counsel. Mary has been represented by independent counsel of her own choice, Lee S. Rosen, and John has been represented by independent counsel of his own choice, Lisa M. Angel. Both parties have been fully advised of their rights and obligations arising from their marital relationship, have asked questions of their respective counsel and have received answers to said questions which are fully satisfactory to them. Each party has accepted, and is fully satisfied with, the legal services, counsel and advice rendered to each party by his or her attorney. Each party understands that the agreements and obligations assumed by the other are assumed with the express understanding and agreement that they are in full satisfaction of all rights which each of them now has or might hereafter or otherwise have in the property or estate of the other and in full satisfaction of all obligations which each of them now has or might hereafter or otherwise have toward the other. The parties acknowledge that both the legal and practical effects of this Agreement have been fully explained to them by their respective counsel.

34 Specific Performance. Either party shall have the right to compel the performance of the provisions of this Agreement by suing for specific performance in the courts where jurisdiction of the parties and subject matter exists. Both parties acknowledge that neither party has a plain, speedy or adequate legal remedy to compel compliance with the provisions of this Agreement, that neither party shall be required to repeatedly file suit for any breach of this Agreement, that this Agreement is fair and equitable to both parties and that an order of specific performance enforceable by contempt is an appropriate remedy for a breach by either party.

Tips

Should you wish to divorce after your one year separation period is over, you'll have to file a complaint for absolute divorce. A separation agreement won't automatically divorce you.

This is to protect your privacy. Often, separation agreements will contain confidential financial information or other embarrassing or private facts. Agreeing to record a memorandum of the agreement results in this sensitive information remaining private, and not becoming a matter of public record.

This agreement is binding - unless you "both" agree to make a change. Perhaps you've had the marital home on the market for many months and you both agree to take it off the market and use it as a rental property? You can draft an amendment to the agreement with the new terms regarding the marital home. Keep in mind, however, that both parties must agree to any changes.

No one held a gun to your head - you, after reading and understanding everything, have signed it. This is important to include as one of the grounds for later challenging a separation agreement is that it was signed under duress.

If you didn't use attorneys to draft the agreement, don't include that either party was represented by counsel.

What happens if my spouse doesn't abide by the terms in this agreement? Well - you can sue for breach and ask for specific performance. Specific Performance is a fancy way of saying that you will do what you agreed to do. If you sue because your spouse failed to convey title per the agreement, a judge has the power to make your spouse comply.

- 35 Rescission.** No action to rescind this Agreement shall be brought until the party making such rescission request has first returned, or offered to return, all benefits received hereunder.
- 36 Terms.** The terms “John” and “Mary” used herein shall refer to the parties herein whether they remain married or become unmarried.

IN WITNESS WHEREOF, the parties have signed, sealed and acknowledged this Agreement in duplicate originals, one of which is retained by each of the parties.

This the _____ day of _____, 1998.

_____(SEAL)
Mary Jane Doe

This the _____ day of _____, 1998.

_____(SEAL)
John Glenn Doe

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

I, _____, a Notary Public in and for said County and State, do hereby certify that Mary Jane Doe, of Wake County personally appeared before me this day, and acknowledged the due execution of the foregoing Separation Agreement and Property Settlement; that the said Mary Jane Doe stated that she signed the same freely and voluntarily, without fear or compulsion of her spouse or any other person; and that she voluntarily assents thereto.

Witness my hand and seal this _____ day of _____, 1998.

Notary Public

My Commission Expires: _____

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

I, _____, a Notary Public in and for said County and State, do hereby certify that John Glenn Doe personally appeared before me this day, and acknowledged the due execution of the foregoing Separation Agreement and Property Settlement; that the said John Glenn Doe stated that he signed the same freely and voluntarily, without fear or compulsion of his spouse or any other person; and that he voluntarily assents thereto.

Witness my hand and seal this _____ day of _____, 1998.

Notary Public

My Commission Expires: _____



Tips

This is important! In order for a separation agreement to be considered valid, it must be (1) in writing; (2) signed by both parties; and (3) *notarized!* Don't forget the notary section.