

MONTGOMERY FAMILY LAW

SEPARATION AGREEMENT QUESTIONNAIRE

PREFACE: Please take the time to read this questionnaire carefully. We are unable to complete your Separation Agreement for you and your spouse that reflects accurately your promises and intentions until you have completed this questionnaire in full. 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 your 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 terms set out in a Separation Agreement are, for all practical purposes, binding and permanent. 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 you and your spouse agree and consent to the change, if you record the change in writing, and then both 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 information regarding your assets and other 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 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 with which you do not agree. 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 actual 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.

* * * * *

PLEASE ANSWER THE FOLLOWING QUESTIONS

We will not be able to start drafting your Separation Agreement until you have completed this form in full.

Please indicate with “N/A” if any question is not applicable to your situation.

ATTACH COPIES OF YOUR FEDERAL & STATE TAX RETURNS FOR THE MOST RECENT YEAR — 3 YEARS IF YOU CAN GET THEM.

ATTACH YOUR PAY STUBS AND YOUR SPOUSE’S PAY STUBS (IF AVAILABLE TO YOU) FOR THE PAST 3 MONTHS.

Section A: Basic Information

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: _____
10. County and State of Marriage License: _____
11. Date of Separation: _____ - if you have not yet separated, please give a date that you expect the physical separation to occur.

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

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

Section B: Debt

Please take the time to review current statements to gather all information at this time. This information must be specific in the Separation Agreement. If you do not have access to the accounts, please indicate as much information as possible and that we must request this information from your spouse. Full disclosure is required.

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

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

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

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

Section C: Support

If there was infidelity during the marriage, known or suspected, please discuss this with the attorney, as this could affect your eligibility to receive or obligation to pay spousal support.

15. Alimony and Postseparation Support:

a. Waiver of Alimony and Postseparation Support: NOTE CAREFULLY: If you waive (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 (answer each number):

(1) Which party will be the payor (the person paying the alimony) ?

___ Husband ___ Wife

(2) Amount of alimony per month: \$_____

(3) Day of each month payment due: _____

(4) Do you want this Alimony to be:

___ Taxable to payee/recipient and deductible to
Payor (provided by the IRS Code, unless agreed otherwise), **or**
___ Nontaxable to payee/recipient and nondeductible to payor.

(5) When will the alimony payments end?

Check all that apply:

___ Upon the remarriage of the recipient (the “payee”);
___ Upon the regular cohabitation of the recipient to an unrelated person of the opposite sex;
___ Upon the death of the recipient (usually selected, please ask);
___ Upon the death of the person paying (the “payor”) (usually selected, please ask);
___ Upon the following date: _____.

16. **Medical Expenses for Spouse:** The spouse of a person with medical insurance will ordinarily be entitled to medical benefits until the date the divorce is actually entered by the presiding judge (typically occurring a year, plus approx. 45-60 days after the date of separation). 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?

What percentage will each party be responsible for?

___ Both parties in equal shares, **or**

Husband pays _____%, Wife Pays Remainder

Wife pays _____%, Husband Pays Remainder

- b. When will payment of uncovered medical expenses end (check all that apply)?

___ Upon remarriage of dependent spouse

___ Upon divorce (or death of supporting spouse, if earlier)

___ Upon death of supporting spouse (for payments continuing after divorce)

___ Other (please specify): _____

Section D: Children

NOTE: Questions 17 through 24 deal with any children born or adopted during the marriage of the parties. If none exist, skip to question 25. All questions must be answered or N/A indicated.

17. **Child Custody.** If there are any children of the marriage who are currently under the age of 18, please complete the following:

- a. Who will have legal custody (decision making authority) of the child/children?

___ Joint legal custody, **or**

___ Husband – sole legal custody, **or**

___ Wife – sole legal custody.

- b. Who will have physical custody of the child/children?

___ Joint physical custody, **or**

___ Husband – primary physical custody, **or**

___ Husband – sole physical custody, **or**

___ Wife – primary physical custody, **or**

___ Wife – sole physical custody.

c. What custody / visitation rights will the other parent have?

___ 50 % custodial time

___ every other week, alternating holidays **or**

___ other 50/50 time split (there are many options – please ask).

___ Other structured custody / 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.

Please indicate your specific preferences for the custodial schedule:

18. **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 (children not born to **both** parties)?
___ yes ___ no

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 (for the children only) and
responsible party: \$_____

f. Day of each month when child support should be 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.

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

___ Husband, **or**
___ Wife, **or**
___ Both

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

Husband = _____ %
Wife = Remainder

or

Wife = _____ %
Husband = Remainder

21. **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, unless there is a written agreement stating otherwise, the primary custodian of the children is allowed to claim the exemption for them. The primary custodian is the parent with whom a child lives for more than half the year. Please indicate below the parent claiming the exemption:

Indicate Below Parent Taking Exemption:

<u>Name of Child</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

22. **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:

Do you want a college education provision in this agreement: ___ Yes ___ No
If yes, answer all of the following questions. If no, skip to number 23.

- 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, **or**
___ 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, **or**

___ Each of us will pay one-half of the college expenses, **or**

___ 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, **or**

___ 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?

23. **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 or you would like to make this request, please complete the following:

a. What amount of life insurance is to be provided?

___ \$50,000, **or**

___ \$100,000, **or**

___ 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, **or**
___ Husband Only, **or**
___ 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.)

- d. Who will be named as beneficiary of the policy?

___ spouse, **or**
___ other: _____ (please specify).

24. **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 a "modification clause" in order to avoid the need to go to court several years later to seek 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 *North Carolina Child Support Guidelines* or the gross annual pay increases of the parents. In most cases, modification of child support is calculated based on the *North Carolina Child Support Guidelines*. 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), **or**
___ Father's gross annual increase in income from wages and all other sources, **or**

- ___ Mother's gross annual increase in income from wages and all other sources, **or**
___ Flat percentage rate of ___% each year, **or**
___ Other (Please specify): _____

Section E: Property

Please complete the following questions if you own **any** property (real or personal).

25. **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.":

Address of real property: _____

Who will take possession of the real property: _____

*** Please provide a copy of your deed and deed of trust and county tax bill.

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

26. **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>VIN</u>	<u>Name Title Registered In</u>
_____	_____	_____
_____	_____	_____

and Wife gets the following:

<u>Year/Make/Model</u>	<u>VIN</u>	<u>Registered Name on Title</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 # 13 and # 14 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):

Husband gets the following assets:

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

and Wife gets the following assets:

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

*** Please provide us with a copy of a date of separation statement of each above account.

- d. Division of Other Intangible Personal Property (i.e. cash value of life insurance, pension rights, 401-(k) accounts, IRA's, military retirement, civil service retirement, stock options, tax-deferred accounts, defined benefit plans, early retirement incentive packages, bonuses, annuities, tax loss carry-overs, etc.):

Husband gets the following:

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

and Wife gets the following:

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

*** Please provide us with a copy of a date of separation statement of each above account. ***

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

***** Please be aware that some types of the above listed accounts require Domestic Relations Orders (DROs) or Qualified Domestic Relations Orders (QDROs) to split the assets listed in the above sections. These documents require additional cost to prepare.**

Section F: Miscellaneous

Please be aware of all of the following things. Read carefully. If you are required to provide something please submit it at the same time you submit the questionnaire.

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.