

Q: Is a court bound by terms in our agreement concerning our children?

A: No. Although provisions in a separation agreement regarding children are persuasive and frequently accepted by a court, the court retains power to alter the provisions. Custody, support and other provisions affecting a child's welfare are always subject to review by the court to ensure the child's best interests are protected. In some cases the court will appoint a disinterested person to represent the child's interests where the court feels that the parents are not acting in the child's interests.

Q: Is a court bound by terms in our agreement concerning ourselves?

A: Generally, yes. Unlike terms concerning children, the terms in your agreement relating to you and your spouse can only be modified by a court under limited circumstances. However, you should be aware that the court can set aside any provision (or even the entire agreement), if the court determines that the agreement was signed due to coercion, fraud, ignorance, or lack of mental capacity of either spouse. The court can even set aside the agreement if it believes the agreement is grossly unfair to one spouse.

Note: The 31 FW Legal Office may review existing ones, but cannot draft new separation agreements.

HOURS OF OPERATION

Legal Assistance

(Attorney consults by appointment only)

Will Appointments

Please complete Will worksheet BEFORE you make a will appointment! Stop by or call our office for more information.

Italian Legal Assistance

(Attorney consults by appointment only)

Powers of Attorney/Notaries

Mon-Fri 0745 - 1630

You can complete power of attorney & will worksheets, and read information at <https://aflegalassistance.law.af.mil>

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SEPARATION AGREEMENTS



31ST FW LEGAL OFFICE

Current as of April 2022

SEPARATION AGREEMENTS

Q: What is a separation agreement?

A: A separation agreement is a binding legal contract between spouses which temporarily establishes their mutual rights and obligations during the period of separation. It usually covers division of property, responsibility for debts, spousal support, and child custody and child support. If properly drafted, it can become part of a subsequent divorce decree.

Q: Do we have to enter into a separation agreement before we can separate?

A: Absolutely not! There is no requirement, legal or otherwise, that spouses execute a separation agreement prior to separating. However, in many instances it can be very beneficial.

Q: If a separation agreement is not required, why should we have one?

A: A husband and wife usually are better able than a divorce court to resolve disputed matters in the marriage. The parties know their problems, their children, their assets and liabilities, and their other needs better than a judge. Further, most lawyers and courts find that a voluntary separation and property settlement agreement, with fair and

reasonable compromise, on both sides, usually results in the parties voluntarily following the provisions set out in the separation agreement. Court-imposed divorce terms are often ignored and frequently require court enforcement.

Q: If my spouse and I execute a separation agreement and then decide to file for divorce, will the agreement simplify the divorce procedure?

A: In some jurisdictions, a properly drafted and executed separation agreement may make it easier to get a divorce. For example, in some states a written agreement may be necessary to proceed in a no-fault divorce. In New York, if you have filed a separation agreement, you must live at least one year apart before going forward with the divorce.

Q: Does my spouse have to sign the separation agreement?

A: Yes, if you want the agreement to have any legal value. An "agreement" means just that—both you and your spouse have reached a mutual understanding, and your signatures make binding the obligations that each of you has assumed. You cannot force your spouse to sign an agreement or to agree to terms that you dictate.

Q: Can we include provisions in our separation agreement that a court would not otherwise include in the divorce decree?

A: Yes. For example, a court will not ordinarily require child support after the child reaches age 18. However, you can require it in your separation agreement and it will be enforced in most jurisdictions. Also, instead of requiring motions or petitions to a court for an increase or decrease in child support because of changed circumstances, the separation agreement can set up a formula by which the couple will compute child support according to current financial resources. You can include an obligation to obtain or maintain life insurance and/or health insurance for the child or spouse.

Q: My spouse and I have decided to split our marital debts in our agreement. What happens if my spouse refuses to pay the debts in a few months? Am I still liable?

A: Yes. A separation agreement is a private contract between spouses. It cannot bind third parties (for example, banks or finance companies) who have not signed the agreement. If both you and your spouse fail to pay, there may be an impact on both your credit reports. However, if your spouse promises to pay and subsequently refuses, you may sue your spouse for breach of contract and be reimbursed for the payment of those debts and possibly associated fees.