Drafting Marital Settlement Agreements: Less Is More. Or Is It?

Presented by the
American Bar Association
Section of Family Law,
Young Lawyers Division and
Center for Professional Development

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Drafting Marital Settlement Agreements: Less Is More. Or Is It?

Thursday, July 28, 2016 | 1:00 PM Eastern

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Drafting Marital Settlement Agreements

Less is more…*or is it?*

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1. Introductory Clauses

Agreement Reached

"Whereas the parties have come to an agreement settling all of their respective rights and obligations relevant to this action…"

Voluntary Execution

"The parties herein both acknowledge that each has freely entered into this Agreement. This Agreement was executed free of any duress, coercion, collusion or undue influence. In some instances, it represents a compromise of disputed issues. However, both parties believe the terms and conditions to be fair and reasonable, and have executed same freely and voluntarily."

1. Introductory Clauses

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Joint Request for Immediate Submission to Court

"The parties hereto do jointly request and consent to an immediate submission of this Agreement to the Court and to an entry of Judgment consistent therewith, and waive any further notice prior to the entry of said judgment."

1. Introductory Clauses

Absence of Duress

"Each party states that they have voluntarily entered into this Agreement, that same was executed free from any duress, coercion, collusion, or undue influence. In some instances, it represents a compromise of disputed issues; however, both parties believe that the terms and conditions contained herein to be reasonable and fair."

Complete Agreement / Entire Agreement

"The parties acknowledge that no representations, warranties, promises, covenants, or undertaking or any kind have been made as an inducement to enter into this Agreement other than those expressly set forth herein and this Agreement is intended to be, and is, the complete agreement of the parties herein."

Agreement to Execute

"Upon demand, now or in the future, each party agrees to execute, acknowledge, and delivery any document which may be reasonably necessary or merely convenient to carry into effect the terms of this Agreement. Should either party fail to do so upon fifteen (15) days notice, the Clerk of Court shall be empowered to execute same in their stead."

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1. Introductory Clauses

Financial Disclosure

"By the execution of this Agreement, each party warrants and represents to the other that they have fully disclosed all of their respective assets and liabilities, or, that they have had the opportunity to made a reasonable and prudent inquiry regarding same and have either done so or forever waive their right to same."

OR

"By the execution of this Agreement, each party warrants and represents to the other that they have fully and accurately disclosed their financial status upon which this Agreement is predicated, and that given such warranty, that the terms and conditions of this Agreement are Fair, just, and equitable."

1. Introductory Clauses

Divesting of Property Rights

"That except as otherwise provided for in this Agreement, each party shall be divested of and each party waives, renounces, and gives up all right, title, and interest in and to the property awarded to the other. All property and money received and retained by the parties shall be the separate property of that party, free and clear of all right, title, interest, or claim or the other party, except as is specifically stated herein. Any property which is not mentioned in this Agreement, but which is held sole in the name of a party shall be and remain the sole property of that party and the other is forever divested or any right, title, or claim thereto."

--the last sentence assumes that the property was disclosed

Release

"Except for those rights and obligations contained in this Agreement, both parties release and forever discharge the other from all other actions, causes of actions, claims, and demands whatsoever arising our of their marriage. It is the specific intent and purpose of this paragraph to release and discharge any and all claims, known or unknown (fraud, misrepresentation, or failure to disclose excepted), mentioned or not, which may now exist or may have existed prior to the execution of this Agreement."

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1. Introductory Clauses

Incorporation / Merger into Judgment of Divorce

Incorporation into Final Judgment (Not Enforceable as a Contract)

"The parties will submit this Agreement to the Court for approval and request that the Court incorporate its terms in the Final Judgment of Divorce and make them enforceable as part of said judgment. However, this Agreement shall be null and void and of no legal force or effect without Court approval and incorporation (merger) into the Final Judgment of Divorce.

Agreement not incorporated into FJD (enforceable as a contract)

"Integrated Bargain Agreement"

"It is further ORDERED by the Court that the Agreement of the parties filed in this cause, which is affixed hereto, is hereby approved and adopted and made a part of this decree to the same extent as if fully set out herein and the parties hereto are ORDERED to comply with same. HOWEVER, it is further ORDERED that notwithstanding this approval and adoption, and confirmation of said Agreement, it shall not be merged into the Final Judgment of this Court but shall survive and be binding upon the parties as a separate and independent legal contract, enforceable as such."

1. Introductory Clauses

Future Interpretation

(a) With respect to the form of this Agreement, the parties assume joint responsibility for the form and composition of each paragraph, and each further agrees that this Agreement shall be interpreted as though each of the parties participated equally in the composition of each and every part thereof.

(b) This Agreement is not to be strictly construed for or against either party. This Agreement shall be interpreted simply and fairly to both parties.

(c) The captions contained herein are for convenience and references only and shall not be construed in any way to control the interpretation of the provisions of this Agreement as may be set forth under such captions.

(d) This Agreement shall be controlled by the laws of the State of [your jurisdiction].

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1. Introductory Clauses

Stipulation for Revision or Modification (future)

"Any future revision, modification, amendment, or waiver of any of the provisions of this Agreement shall be effective only if made in writing, dated, signed, and submitted to the Court of proper jurisdiction for ratification. No oral revisions, modifications, or amendments shall be effective to revise, modify, amend, or waive any term or condition contained in this Agreement."

Enforcement

"Each party herein, upon being found in contempt of this Court, agrees to reimburse the other for all expenses, costs, and attorney's fees resulting from or made reasonably necessary or prudent resulting from the bringing of any suit or other proceeding to enforce the performance of any of the terms, covenants, or conditions of this Agreement, or for damages for breach of same."

2. Spousal Support (Alimony)

This is 2016—is spousal support still even a thing?

Handing the visceral response one may get when demanding it on behalf of a client

- -Who needs it/the financially dependent spouse

How to ensure payments are made

- -Life insurance on the obligor spouse
- -Pledge of assets by the obligor spouse
- -Disability benefits on the obligor spouse

2. Spousal Support (Alimony)

Alimony – There are many different types

Permanent Periodic – payments occur unless and until a terminating event

The simplest to draft: terminating events are usually defined by statute; usually reserved for long-term marriages where one spouse has contributed to the financial success of the marriage in intangible ways, making that party the "financially dependent" spouse.

Sample language for Permanent Periodic:

The Husband shall pay or cause to be paid to the Wife the sum of $5,000.00 (Five Thousand and NO/100 Dollars) per month as periodic alimony. Said payments shall begin on the [begin date of payment—usually the first day of the month after the agreement is executed] and shall continue to be paid on the first day of each month thereafter until it terminates upon the Husband's death, Wife's death, Wife's remarriage, Wife's commission of those acts contemplated by Section 30-2- 55 of the Alabama Code, or as otherwise provided by law."

2. Spousal Support (Alimony)

Alimony – There are many different types

Rehabilitative -- the theory being that a financially dependent spouse needs a period of time during which he or she receives financial support from the other spouse in order to become self-sufficient. Usually the case in a shorter term marriage and where the recipient spouse has earning potential, but needs to re-enter the workforce or look for a better job, etc.

You draft these provisions much the same as permanent periodic, but you state a definitive end date, the total amount to be paid, and (important!) language that states that "the support herein shall not be modified or extended," otherwise the law of your jurisdiction may allow for a modification/extension of the support payments—and if you represent the payor spouse….

…"the Wife is awarded the sum of $36,000 (thirty-six thousand dollars exactly) as rehabilitative alimony to be paid by the Husband beginning August 1, 20XX in monthly installments of $1,000 and continuing for a period of thirty-six (36) months, unless terminated by law, otherwise, said sum shall not be modified or extended."

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2. Spousal Support (Alimony)

Alimony – There are many different types

Payment of Debts as Alimony --

This is a creative one. I've used this when the financially dependent spouse has substantial debts in their name which are truly "marital debt," but are not legally joint debts in the eyes of the creditor. The theory being that the creditor gets the payment directly, helping the payor spouse swallow the "alimony pill."

-Recipient spouse doesn't usually receive the funds—they go directly to the creditor each month, so that spouse has to keep track and ensure that they payments are being made or there will be a default with the creditor and negative credit reporting.

-Recipient spouse will be taxed on 100% of these payments, a negative trade-off, BUT, if it results in 100% of this marital debt getting paid, it might be worth it.

-Calling it alimony gives you stronger enforcement mechanisms than simply an assignment of debt to one spouse if there is a default.

-Be detailed in your wording and keep in mind that account numbers can change.

2. Spousal Support (Alimony)

Alimony – There are many different types

Medical Insurance as Spousal Support --

Always keep in mind that one spouse may need health insurance coverage that might not be easily obtainable (or affordable) immediately after a divorce. One such example is COBRA continuation coverage, which may be had for up to thirty-six (36) months after the entry of the Final Judgment of Divorce.

The language would need to be specific…

"…that the Husband, at his sole expense, shall provide for the Wife for a period of no less than thirty-six (36) months COBRA continuation coverage of the current health/dental/vision insurance policies in coordination with the Husband's employer (if for any reason insurance is no longer offered, e.g. Husband changes employment, then Husband shall purchase and pay for a private health insurance policy with no less benefits and no higher out-of-pocket costs that the current policy at his sole expense. Wife shall cooperate with same). Husband shall provide Wife all forms/cards/information which may be reasonably necessary or convenient for her use/information regarding the above. Said insurance payment and coverage is in the nature of spousal support and therefore, may be terminated by any event contemplated by law, such as the death of either party, the re-marriage of the Wife, or any other event contemplated by [insert your jurisdiction's statutory reference here]."

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2. Spousal Support (Alimony)

Alimony

RESERVATION

The parties can generally agree to reserve the issue of spousal support for future determination.

When would this be beneficial to your client?

What is your jurisdiction's law regarding re-visiting the issue at a later date? Plan for contingencies so that you're not stuck with the default rule.

"That the issue of spousal support payable by the Husband to the Wife is hereby RESERVED for future determination by this Court; however, the parties agree that said future determination shall be based upon the assumption of Wife's continued employment with ACME, INC. at the average total compensation for the three (3) years immediately preceding the execution of this Agreement, or by any other circumstance provided by law."

2. Spousal Support (Alimony)

Alimony

WAIVER

If there is to be no spousal support, you need to expressly waive it.

"Each party to this agreement does hereby expressly waive any claim of alimony, of any type whatsoever, past, present, or future. The parties hereto agree and acknowledge that adequate consideration exists for said waiver."

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2. Spousal Support (Alimony)

Alimony

TAX CONSEQUENCES

If alimony is paid, it is generally excluded (deducted) from the income of the payor spouse and included (added) to the income of the recipient spouse for federal income tax purposes.

MUST MEET ALL OF THE FOLLOWING IRS REQUIREMENTS:

You pay in cash (including checks or money orders)

The payment is received by (or on behalf of) your spouse or former spouse

The divorce or separate maintenance decree or written separation agreement does not say the payment is not alimony

If legally separated under a decree of divorce or separate maintenance, you and your former spouse are not members of the same household when you make the payment

You have no liability to make the payment (in cash or property) after the death of your spouse or former spouse, and

Your payment is not treated as child support or a property settlement

3. Children (not money)

The Custodial Arrangement:

-Physical & Legal Designations

How important are they?

-Designation of a primary residence

-Custodial Access Schedule (Visitation)

-How detailed should it be?

-Use a calendar (see example)

Sample Custodial Calendar

D = DAD'S TIME
M = MOM'S TIME
→ EXCHANGE

SUN	MMN	TUE	WED	THURS	FRI	SAT
					D 6PM →	D
D 6PM →	M	M	M	D 4PM →	M 8AM →	M
M	M	M	M	M	D 6PM →	D
D 6PM →	M	M	M	D 4PM →	M 8AM →	

Mom is primary custodial parent, Dad receives visitation every first and second weekends from Friday at 6PM until Sunday at 6PM and in the weeks not immediately preceding a weekend visit, Dad has the kids overnight on Thursday from 4PM until they are returned to school or the residence of the Mom at 8AM on Friday.

3. Children (not money)

-The parent who is designated as providing the "primary residence" for the children is generally the parent who will be entitled to the tax deduction/dependency exemption for the children, unless otherwise negotiated (addressed later).

-50/50 Custodial Arrangements:

Must be artfully drafted, and the greatest success with these arrangements is with parents who are extremely cooperative and truly put their children first.

[See pg. 11 of the written materials]

The "tried and true" is week on/week off, which helps ease confusion.

What's the #1 question you're going to get about a true 50/50 arrangement? WILL THERE BE CHILD SUPPORT?

3. Children (not money)

ACTIVITIES OF THE CHILDREN [pg 14]

Planning/notice to other parent

Consent required?

→Becoming a frequently litigated post-divorce topic, so careful drafting is critical

TIEBREAKERS

Frequently left out of agreements, but important

ACADEMIC
MEDICAL
RELIGIOUS
EXTRA-CURRICULAR
ATHLETIC
CULTURAL

3. Children (not money)

RELOCATION OF THE CHILDREN, POST-DIVORCE

Planning/notice to other parent

Consent required?

Your jurisdiction may have a specific statute that must be incorporated into any agreement and followed, but you may be able to work around it, if the parties agree.

Example: Custodial parent plans to relocate to a nearby city which would be outside of the range normally allowed for by your jurisdiction's relocation statute—negotiate that move as part of the divorce agreement and state that the move is deemed authorized and is agreed to. Reasonable time limit on when it should take place?

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3. Children (not money)

GENERAL PROVISIONS FOR THE WELFARE OF THE CHILD

The “feel good” language

-No overnight guests with whom a party is involved romantically

-Do not disparage the other parent

-No excessive drinking while supervising children

-No use of illicit drugs (even if they’re legal) while supervising children

-Maintain harmonious relationship for benefit of child

GREAT TO INCLUDE, MAY BE HARD TO ENFORCE

4. Children (money)

COMMON ISSUES

-Cash contribution made by one parent to the other for the support of the children, what we might think of as the traditional notion of child support

-Usually set by statute or your jurisdiction’s formula or application of guidelines to the incomes of the parties

-Private School Expenses as child support

-College Education Expenses as child support

-Daycare Expenses (may be accounted for by guidelines)

-Medical Expenses: Out of pocket reimbursements

-Dental Expenses: Out of pocket reimbursements

-Extra-Curricular Expenses: how to split, what counts as such an expense?

4. Children (money)

-Provision of an automobile for a child (and related expenses)

Enforceable? Limits?

-Agreement to pay for a wedding of a child

Enforceable? Limits?

THE DEPENDENCY EXEMPTION

Generally, the IRS regulations allow the parent who is considered to be the "custodial" parent to claim the children for federal income tax purposes; this can be negotiated and negated by **IRS Form 8332.**

-Splitting the dependency exemption

-Swapping the dependency exemption

4. Children (money)

Health/Dental/Vision Insurance for the Children

The allocation of the cost for insurance may be included in your jurisdiction's child support guidelines. If not, it will need to be very clearly spelled out in the agreement of the parties.

Always have a requirement that the parent responsible for the provision of the insurance furnishes the appropriate cards and other relevant and/or convenient information to the other parent on a reasonable basis or upon request and that the responsible parent immediately provide the other parent of notice regarding any changes which effect the policy or the coverage.

4. Children (money)

Life Insurance for the benefit of the children

Life insurance on the life of the parents provides for financial support in the event the parent dies prior to the termination of any obligation to provide financial support.

-The policy that a parent has with their employer is not enough, even if they have additional coverage which would be a sufficient amount. Why?

-Require a separate policy be purchased with the following terms:

-Term policy for X years

-Payable to the other parent as TRUSTEE for the benefit of the kids

-Agreement language that provides the other parent has the right to proof of the policy, biannually, or for good cause (e.g. she thinks he's cancelled it because she's received a letter).

4. Children (money)

Life Insurance for the benefit of the children

CONSIDER having TRUSTEE parent be the owner of the policy and pay the premiums as part of the agreement, with the other parent being simply the INSURED.

-a hassle, BUT: Eliminates virtually all problems associated with the life insurance provisions; your client has an "insurable interest;" and the amount of the premium can be factored in the child support or other maintenance payments.

FROM PERSONAL EXPERIENCE, I am a huge proponent of this arrangement.

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5. Property Division ("The Big Stuff")

Real Property

The marital residence; any additional residences/timeshares, etc. which may be owned by the parties, including leases for hunting camps, etc.

The marital residence:

-Who will occupy it

-Will it be sold

HOW ARE SALES PROCEEDS TO BE DIVIDED?

HOW IS A REALTOR TO BE SELECTED?

HOW WILL EQUITY BE AFFIXED/DIVIDED IF ONE SPOUSE KEEPS AND RE-FINANCES/BUYS THE OTHER OUT?

ASSIGN RESPONSIBILITY FOR PREPARATION OF DEEDS – generally better if you do this for your client

5. Property Division ("The Big Stuff")

Real Property

-Who is responsible for the payment of the related expenses of these various residences?

-Mortgage

-Repairs

-Insurance

-General Maintenance

-HOA fees/assessments

-What access rights will the parties have to the various other residences?

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5. Property Division ("The Big Stuff")

Financial Accounts (Everything BUT Retirement)

Generally best to deal with these in two categories:

→ ACCOUNTS THAT DO NOT CHANGE BASED ON VARYING MARKET CONDITIONS

-Checking and savings accounts
-Money Market Accounts
-Certificates of Deposit
(be careful about maturity dates)

These accounts are easy to identify and quantify: the balance is the balance. Quantify as of a date certain and award/divide as of that date. If at all possible, award one party $X from an account with the other party having the remainder—prevents pillaging.

5. Property Division ("The Big Stuff")

Financial Accounts (Everything BUT Retirement)

Generally best to deal with these in two categories:

→ ACCOUNTS THAT MAY CHANGE BASED ON VARYING MARKET CONDITIONS

-Brokerage/Stock Accounts/Investment Accounts
-Deferred Compensation Plans/stock accounts
-Stock Grants (usually associated with employment and may not be vested)

→Who bears the risk of loss until the division?

5. Property Division ("The Big Stuff")

Financial Accounts (RETIREMENT)

An excellent resource for types of plans can be found here: https://www.irs.gov/retirement-plans/plan-sponsor/types-of-retirement-plans-1

(Alternatively: www.irs.gov and search "types of retirement plans")

→ **ALL RETIREMENT ACCOUNTS ARE INDIVIDUAL ACCOUNTS. I repeat: Retirement accounts cannot be held jointly.**

Generally best to deal with these in two categories:

→ **"Qualified" Accounts—those that require a QUALIFIED DOMESTIC RELATIONS ORDER to divide**

-*Generally* accounts such as 401(k); 403(b)

-THE PREPARATION OF A QDRO IS NOT FOR THE NOVICE—consult with a professional QDRO firm (such as QDRO Solutions, LLC) for drafting.

5. Property Division ("The Big Stuff")

Financial Accounts (RETIREMENT)

***Qualified* Plans REQUIRE a *Qualified* Domestic Relations Order (QDRO)**

-A well-drafted agreement will include reference to a Joint Motion for Entry of Qualified Domestic Relations Order(s) and a list of the specific orders/entities to which these orders are to be directed

-A seasoned practitioner will prepare a Joint Motion for Entry to be signed along with the Agreement, and have the QDROs already prepared, even though they cannot be entered until after the Final Judgment

-As soon as the FJD is entered, file the motion and proposed order(s).

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5. Property Division ("The Big Stuff")

Financial Accounts (RETIREMENT)

NON-QUALIFIED PLANS: A non-qualified plan is a type of tax-deferred, employer-sponsored retirement plan that falls outside of employee retirement income security act (ERISA) guidelines. Non-qualified plans are designed to meet specialized retirement needs for key executives and other select employees. These plans also are exempt from the discriminatory and top-heavy testing that qualified plans are subject to.

Simply put, these are plans that DO NOT require a QDRO to divide. The administrator of the plan will be able to inform you of their specific requirements for language or forms required for division, and it is far better to find this out prior to the finalization of the agreement than after.

An IRA, or "Individual Retirement Account" is NOT a qualified plan and therefore, no QDRO is needed to divide it—the plan administrator will provide the requirements for division. Find out the requirements prior to finalization of the agreement.

→Who will bear the risk of loss until the date of division?

5. Property Division ("All the small things")

PERSONAL PROPERTY

"Anything that isn't real property is personal property."

-client should make a room-by-room inventory of the contents of each residence, starting with the marital residence for purposes of property division

-Description of the item, date acquired, funds used to acquire, approximate purchase price, estimated "yard sale" value (unless a collectible or antique)

-A narrative and a photograph of each item is an invaluable tool to the lawyer

5. Property Division
("All the small things")

PERSONAL PROPERTY

Things that clients should include in the inventory:

- household goods
  - -furniture
  - -kitchenware
  - -decorative items
- -Collectibles
  - -Antiques
  - -Artwork
  - -Jewelry
- -Automobiles/RVs/Watercraft

5. Property Division
("All the small things")

PERSONAL PROPERTY

Automobiles, RVs, and Watercraft:

-Generally have a Certificate of Title which may need to be transferred, but, in any event, should be inventoried for your file (a photocopy is all you need); along with a listing of the VIN (Vehicle Identification Number) for any such item, as well as the tag number, if applicable, as well as the address where any such item is registered (e.g. watercraft may be registered at the lake house, which is in a different county than the marital residence)

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5. Property Division
("All the small things")

PERSONAL PROPERTY

TRANSFER OF TITLE: Anything with a title may need to be transferred. In any event, you should prepare a Bill of Sale for the transfer and assign responsibility to one spouse (usually the one receiving the vehicle) for ensuring that the transfer takes places formally (think DMV) within the applicable period to avoid fees and/or penalties from the relevant governmental authority, AND provide that if there are any such fees/penalties that they are to be borne by the spouse who is responsible for ensuring the transfer is completed

6. Debts
Assignment, Division, and Related Issues

DEBTS:

Three kinds: Yours, yours, and yours
Actually: Yours, Mine, and Ours

-A credit report from your client (all three bureaus) is an invaluable tool in divorce agreement planning

-There might be accounts for which she is responsible, but doesn't know about

-There might be accounts for which she is not responsible, but mistakenly thinks she is

-Planning for the assignment of responsibility when one spouse is paying the legal obligation (debt) of the other spouse

-Should be a last resort—WHY?

6. Debts
Assignment, Division, and Related Issues

DEBTS:

-The creditor is not a party to the divorce action and is therefore not bound by any of its terms

-Payment of debts should be labeled as alimony, but specific language exempting tax treatment, for enforceability purposes (*"Neither party shall incur any tax benefit or liability pursuant to the terms of this specific section, and, if any taxing authority shall determine otherwise, the obligor spouse shall be fully responsible for the payment of any tax due thereupon."*)

-INDEMNIFICATION LANGUAGE IS CRITICAL regarding the payment of any debt of the other party, provide for the agreement to pay all costs of collection, attorney's fees, etc.

6. Debts
Assignment, Division, and Related Issues

BANKRUPTCY OF OBLIGOR SPOUSE, POST-DIVORCE

-Any time that a spouse has any continuing obligation to the other, it should be clearly labeled as "in the nature of support, as defined by the United States Bankruptcy Code, and is therefore *non-dischargeable.* Further, if the obligor spouse files any bankruptcy petition and includes therein the debts listed herein, the obligor spouse shall be responsible for any and all costs, legal fees, and any expenses, without limitation, with may reasonably be incurred by the recipient spouse in order to enforce their rights pursuant to this agreement."

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7. Tax Issues—Generally
(No specific tax advice is given)

FILING STATUS

-Per IRS regulations, marital status for the entire year is determined by marital status on the last day of the year (December 31st).

-Married, Filing Jointly (MFJ): Results in the lowest tax rates, per the IRS tax tables, but if parties agree to file jointly for the last year(s) of their marriage (as a divorce may take more than one year to complete), be aware of the issues surrounding liability for joint filing, such as:

- -Joint filing means joint liability
- -Will the parties be able to agree on how to pay any tax due/split any refund(s) received

7. Tax Issues—Generally
(No specific tax advice is given)

FILING STATUS

-Married Filing Separately (MFS) imposes the highest tax rates in income allowed, per the most recent IRS tax table. *However*, if your client has any reason to believe that the spouse is a tax-cheat, this might be much like divorce itself: EXPENSIVE, BUT WORTH IT.

-Innocent Spouse Relief/Status: It doesn't mean what most people think it means. Simply put, if there is an audit and the imposition of additional taxation due to the underreporting of one spouse (or outright fraud), the other spouse is deemed, by virtue of signing a joint return, to be equally liable in the eyes of the IRS. *Remember their unofficial motto:*

WE'VE GOT WHAT IT TAKES TO TAKE WHAT YOU'VE GOT

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7. Tax Issues—Generally
(No specific tax advice is given)

FILING STATUS

-To qualify for Innocent Spouse Relief (which is *completely discretionary*), the taxpayer must prove to the satisfaction of the IRS that they had no knowledge of the underreporting (hence the "innocent" part) and, further, that they did not benefit from the funds received but not reported/under-reported. **This is a high burden.** The reality is that your client can be left with significant tax debt (including interest and penalties, which may result in a lien filing if not paid in full upon demand), but depending on the exact wording of the agreement, may leave your client with little to no recourse in the domestic relations court regarding these issues.

7. Tax Issues—Generally
(No specific tax advice is given)

FILING STATUS

Language regarding indemnification as it relates to tax filings:

[pg. 18 of the written materials]

"If, in connection with any joint federal or state income tax return(s) heretofore filed by the parties, there is a deficiency assessment, the amount ultimately determined to be due thereon shall be borne by the individual found to be responsible, depending on whether the deficiency arose out of the individual income, deduction, or misreporting of one of the parties (and if so, to what extent). The parties represent, by execution of this Agreement, to one another and to the Court that all income tax returns filed during the marriage are, in all material respects, true, correct, and complete, and that same fully and accurately reflect income and deduction(s) for those years."

8. Attorney Fees

VARIOUS TYPES OF ARRANGEMENTS

-Each pays own

Probably the most common

Don't shortchange your client by agreeing to this when the other party

-Has substantially more available cash

-Has contributed to prolonged litigation

-Contribution to one spouse's fees by the other

One spouse is to contribute to the other a set amount for legal fees

-Always have the agreement award this amount to the CLIENT and not to the ATTORNEY/FIRM (bankruptcy issues)

Q & A

- Questions?

DRAFTING MARITAL SETTLEMENT AGREEMENTS
Less is more. *Or is it?*

Some helpful tips and clauses as they relate to the drafting of the Marital Settlement Agreement: When saying less may benefit your client, and when less may create hazards for both you and your client.

Presented by:

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I. **Introductory Clauses / General Provisions:**
   a. Agreement Reached;
   b. Voluntary Execution;
   c. Absence of Duress;
   d. Complete Agreement / Entire Agreement;
   e. Future Interpretation;
   f. Stipulation for Revision/Modification;
   g. Agreement to Execute Documents:
      i. *Basic;*
      ii. *Detailed;*
   h. Enforcement;
   i. Financial Disclosure:
      i. *Basic;*
      ii. *Detailed.*
   j. Release;
   k. Incorporation (Merger) into Judgment – Integrated Bargain Agreement Provision:
      i. *Why usually not needed;*
      ii. *Examples of why you would consider it;*
   l. Divesting of Property Rights;
   m. Joint Request for Immediate Submission to Court/no further notice required to either party prior to entry of judgment of divorce and adoption of agreement.

II. **Spousal Support:**
   a. Alimony:
      i. *Rehabilitative* –presumed termination date, which should be clear in the agreement, some jurisdictions allow alimony to be modified/extended at any time prior to termination: use language to ensure modification/extension by the court would violate the agreement, adequate consideration further supports this provision.

ii. *Permanent Periodic* - typically for marriages of a longer duration, where there was a financially dependent spouse, or where there was gross misconduct by one spouse;

iii. *Payment of Debts as Alimony;*

iv. *Terminating Events* – usually defined by statute, but also by terms/conditions contained in the agreement;

v. *Waiver of Alimony;*

vi. *Reservation of Alimony;*

vii. *Tax treatment / consequences of amounts paid to/for alimony.*

b. Medical Insurance as part of an alimony award:

i. COBRA coverage: always provide an outlet, even when your client can, at the time of the signing of the agreement, obtain their own coverage through their then-employer.

ii. Tax treatment of payments made under a provision such as this?

c. How to secure the standard of living of the recipient spouse when dependent on alimony:

i. *General clause for life insurance;*

ii. *Recipient Spouse Owns Policy clause;*

iii. *Pledge of assets* by Payor Spouse to secure payment (in lieu of or in conjunction with life insurance clauses), e.g. pledge of a stock account, a lien given on a parcel of real property: value and liquidity concerns (would be used in lieu of life insurance when the Payor Spouse is uninsurable);

iv. *Disability Insurance* – most Payor Spouses are working people, dependent on their own income to meet obligations, including alimony: consider the Recipient Spouse as a beneficiary of disability payments if plan allows it—a new spouse might not be so willing to fork over alimony payments if/when they become in charge of Payor Spouse's finances upon catastrophic illness/injury.

III. CHILDREN: Custody, Visitation, and Parenting Provisions:

a. *Custodial Arrangement*: physical / legal designations; Primary Residence with Husband/Wife (important for school purposes);

b. *Visitation / Custodial Access Periods* to parent who is not the provider of the primary residence:

i. "*As may be agreed by the parties*" (a minefield!);

ii. *Week on / week off;*

iii. "*Standard Visitation*" *schedule – varies by jurisdiction.*

c. *Relocation Provision* – required by some jurisdictions, good practice even if not required;

i. *Provision for Activities of Children:*

1. Scheduling / Payment / Limitations as to Amounts for which each parent is responsible.

ii. *Provisions for "Welfare of the Child:"*

1. What might be referred to as "morals clauses;"

2. Agreements not to engage in "parental alienation," *effective*?

IV. Child Support: (Monetary; Health Insurance; Life Insurance; Right to claim Dependency Exemption/other tax benefits)

a. *Cash contribution to other spouse for support of minor children:*
    i. *May be required/equitable even if truly a 50/50 schedule* if the spouses have dissimilar incomes;
    ii. Many jurisdictions have *formulas ("guidelines") for the computation of cash child support:*
        1. Deviations from guidelines:
            a. Why/When appropriate:
                i. Private School Expenses;
                ii. Daycare/Childcare expenses that exceed the maximum allowable for consideration in your jurisdiction;
                iii. Provision of automobile for child / payment of automobile insurance;
b. Insurance on life of obligor parent:
    i. *Children as irrevocable beneficiaries*
        1. Life Insurance Trust
            a. Trustee
    ii. *Other parent as irrevocable beneficiary;*
    iii. *Determination of amount of insurance required;*
    iv. *Provision that recipient parent may obtain proof of coverage* – authorization for insurance company to release information.
c. Health/Dental/Vision Insurance for benefit of minor children:
    i. *Who is responsible:*
        1. Contingency plan;
        2. Agreement as authorization to release information to other parent.
    ii. *Keep other spouse updated on coverage limits / insurance cards and the like;*
    iii. *Agreement not to elect coverage that is inferior* to coverage maintained during marriage (would except changes by employer when policies change that are less beneficial to employees).
d. Reimbursement of out-of-pocket medical expenses:
    i. *Most common:* each parent pays half (some jurisdictions have a dollar amount that the parent providing the primary residence is presumed to assume prior to any reimbursement being required from secondary residential parent);
    ii. *Timeline for notice/reimbursement*: parent incurring expense to notify within thirty days of payment (or waive right to reimbursement) and other parent required to reimburse one-half (or whatever amount agreed to) within thirty days after notification received; method of notification (certified mail; scan & e-mail, etc.).
    iii. *Out of Pocket Maximums*: Establishing a maximum amount that the non-custodial parent will be required to reimburse the custodial parent for medical care. A workable idea?
e. <u>Dependency Exemption: who claims</u>? Many jurisdictions have a presumption that the parent providing the primary residence is entitled but may usually be negotiated: ALWAYS USE IRS FORM 8332 (may be obtained at www.irs.gov).
    i. *Reasons for using 8332 – There really is no good reason NOT to use it:*
        1. One form required for each child;

2. Execute at time of Settlement Agreement ;

f. College Education Expenses:

i. *Who pays? Limits? Duration of expenses/minimum academic requirements to be maintained by child in order to trigger liability by either parent?*

1. *Standard*/Required Expenses;
2. *Elective* Expenses;
3. Trust Accounts for payment of college education expenses;
4. Use of college savings plans to off-set college education expenses.

V. Property Division/Settlement – the division of marital property upon divorce:

a. *Marital Residence*

i. Lake House; Ski Condo; Beach House/Condo

1. Responsibility for:

a. Mortgage;
b. Taxes;
c. Insurance
d. Maintenance;
e. Homeowner's Association / Condo Fees (these are separate contracts which may not be directly affected by your divorce settlement agreement—provide for indemnification).

b. Financial Accounts:

i. *Bank Accounts (checking, savings, money-market, Certificate of Deposit, etc.);*
ii. *Brokerage/Investment Accounts (excluding retirement accounts);*
iii. *Retirement Accounts – does your jurisdiction have requirements which must be met in order to make these accounts divisible?*

1. Preparation of QDRO's may be necessary:

a. *Who prepares*? Who pays for the preparation? Fees for transfer incident to a divorce/who pays? Many lawyers outsource this (QDRO Solutions, LLC is one such service whose fees are very reasonable: http://www.qdrosolutions.net).
b. *Allocation of gains/losses until date of division*? Apportioned equally?
c. *"For a reasonable time" provision regarding equal apportionment of losses.*

iv. *Pension Plans* – division / requirements for division.

c. Deferred Compensation:

i. *Stock Options*

1. Vested / Not Vested

ii. *Restricted Stock Grants* (may not be exercised until a certain date, which may be after the termination of the marriage)

1. Determination of divisibility and allocation to each spouse

VI. Personal Property

a. *Household Goods;*
b. *Automobiles;*
c. *Collections;*

d. *Jewelry;*

VII. Debts:

a. *Who is responsible for what*? A comprehensive listing of debts is often best, and prevents overlooking any particular item; ***Clients should pull a current credit report from all three reporting agencies and provide it to you to assist in this aspect of settlement*

b. *Indemnification language:* hold the other party harmless in the event of non-payment. Note: there may be enforcement issues when you are dealing with enforcement of paying one spouse's debts by the other party—use alimony instead.

i. *If one spouse agrees to pay the debts of the* other: include language that the payment of this debt is in the nature of support to prevent potential discharge in any subsequent bankruptcy proceeding.

VIII. Tax Issues:

a. *How to file?* IRS rules stipulate that marital status on the last day of the year is determinative of marital status for the entire year; therefore, it may be beneficial for the parties to file one last joint return for the tax savings, as "Married Filing Jointly" has the lowest tax rates ("Married Filing Separately has the highest).

i. E.g. if the total taxable income (below the line) shown on Line 43 of the 1040 is $85,000 for 2015, the following are the taxes levied on that income:

Single	Married/Joint	Married/Separate	Head of Household
$17,050	$12,844	$17,333	$15,579

The above figures were taken directly from the *2015 Tax Table* available at www.irs.gov

If the parties have traditionally filed jointly during their marriage and there are no issues anticipated with future audits or deficiency assessments, continuing that for the tax savings may be advisable. ***Always advise client to consult a tax professional and advice that you are (1) not a tax professional and (2) do not give tax advice above the level of "for informational purposes" and as a general understanding of the law.*

b. *Best Practice:* If the parties have, at any point during their marriage, filed a joint tax return, address the following:

i. *If there is an audit of any previously filed return:* Who will be responsible for the payment of any deficient taxes, fines, penalties, and interest? If to be shared, in what proportion? (The IRS can generally only go back three years in auditing a tax return; however, there are exceptions);

ii. *Tax return for last year of marriage:* How will any deficiency be paid, and in what proportion?

1. *Deficiency:* Place part of the marital estate in trust for the express purpose of payment of taxes;

2. *Overpayment/Refund:* How will this be split amongst the parties?

IX. Attorney Fees / Costs

a. *Each pays own:* Each party is to pay their own counsel of record in accordance with the fee agreement entered into with said counsel;

b. *Specified Contribution:* Husband is to pay to the Wife the sum of *X* as compensation for her attorney's fees incurred in this action. Said amount is not a judgment of the value of the services of said attorney, merely the amount that Husband shall be required to contribute.

   i. *Always have the fee awarded to the client and not to you, the lawyer, even if you are owed money.* Judgments for attorney fees to former spouses are in the nature of support and are not discharged in bankruptcy, debts to attorneys are unsecured and may very well be discharged. If your client owes you money, have the agreement state that "said payment shall be made no later than thirty days after the execution of this agreement and shall be delivered to the office of the attorney for the Wife.

The following clauses are from the author's library.

**These clauses are in no particular order within each section.*

*These clauses relate to "**I. Introductory Clauses/General Provisions**" in the author's outline.*

Agreement Reached:

WHEREAS, the parties have come to an agreement settling all of their respective rights and obligations relevant to this action; and,

Voluntary Execution:

Husband and Wife acknowledge that each has freely entered into this Agreement. This Agreement was executed free of any duress, coercion, collusion or undue influence. In some instances, it represents a compromise of disputed issues. However, both parties believe the terms and conditions to be fair and reasonable.

Absence of Duress:

Each party states that he or she has freely entered into this Agreement. This Agreement was executed free of any duress, coercion, collusion, or undue influence. In some instances, it represents a compromise of disputed issues; however, both parties believe that its terms and conditions are fair and reasonable.

Complete Agreement:

Wife and Husband acknowledge that no representations, warranties, promises, covenants, or undertakings of any kind have been made to him or her as an inducement to enter into this Agreement other than those expressly set forth herein. This Agreement is intended to be and is the complete agreement of the parties.

Entire Agreement:

Both parties acknowledge that no representations, warranties, promises, covenants, or undertakings of any kind have been made to him or her as an inducement to enter into this Agreement, other than those expressly set forth herein. This Agreement is intended to be, and is, the complete agreement of the parties.

Future Interpretation:

(a) With respect to the form of the Agreement, Wife and Husband assume joint responsibility for the form and composition of each paragraph, and each further agrees that this Agreement shall be interpreted as though each of the parties participated equally in the composition of each and every part thereof.

(b) This Agreement is not to be strictly construed for or against the Wife or Husband. This Agreement shall be interpreted simply and fairly to both the Wife and Husband.

(c) The captions contained herein are for convenience of reference only and shall not be construed to be a part of or in any way control the interpretation of the provisions of this Agreement as set forth under such captions.

(d) This Agreement shall be controlled by the laws of the State of _____.

Stipulation for Revision/Modification:

Any future revision, modification, amendment or waiver of any of the provisions of this Agreement shall be effective only if made in writing, dated, signed and submitted to the Court of proper jurisdiction for ratification. No oral revisions, modifications, or amendments shall be effective to revise, modify, amend or waive any terms or conditions of this Agreement.

Agreement to Execute:

Upon demand, now or in the future, both parties agree to execute, acknowledge, and deliver all documents which may be necessary to carry out the terms and conditions of this Marital Settlement Agreement. Should Husband and/or Wife fail to execute the deeds provided for in this Marital Settlement Agreement within fifteen (15) days of delivery for execution, then in said event, the Clerk of the Circuit Court, Domestic Relations Division, Jefferson County, Alabama, shall be authorized to execute said deeds in their stead.

Or:

Each party shall promptly execute and deliver to the other party all instruments which may be necessary, convenient, or appropriate to carry into effect any provision of this Agreement.

Enforcement of Agreement:

Each party, upon being found in contempt of this Court, agrees to reimburse the other for all expenses, costs and attorney's fees resulting from or made necessary by the bringing of any suit or other proceeding to enforce the performance of any of the terms, covenants or conditions of this Agreement, or for damages for the breach of the same.

Financial Disclosure:

By execution of this Agreement, each party warrants and represents to the other that they have fully disclosed all of their respective assets and liabilities, or, that they have had the opportunity to make reasonable inquiry and have either done same or waive their right to such.

Or

By the execution of this instrument, each party warrants and represents to the other party that he or she has fully disclosed his or her financial status; that the terms of this Agreement are fair, just and equitable.

General Release:

Except for those rights and obligations contained in this agreement, both parties release and forever discharge the other party from all other actions, causes of actions, claims and demands whatsoever arising out of their marriage. It is the specific intent and purpose of this paragraph to release and discharge any and all claims and causes of action of any kind or nature whatsoever, whether known or unknown, and whether specifically mentioned or not, which may now exist or might be claimed to exist at or prior to the date of this Agreement.

Merger or Enforceable as a contract?

Incorporation of Agreement into Judgment:

Husband and Wife will submit this Agreement to the Court for approval. Husband and Wife request that the Court incorporate its terms in the Judgment of Divorce and make them enforceable as part of said judgment. However, this Agreement shall be null and void and of no legal force and effect in the absence of Court approval and incorporation into the judgment.

Or

Integrated Bargain Agreement

It is further ORDERED, ADJUDGED and DECREED by the Court that the Agreement of the Parties filed in this cause, attached hereto, is hereby approved and, adopted and made a part of this decree the same as if fully set out herein and the parties to this cause are ordered to comply herewith. However, it is further ordered and adjudged that notwithstanding the approval, adoption, confirmation of the aforesaid agreement, it shall not be merged into the final judgment, but shall survive and be binding upon the parties and thereby fixing as provided in the aforesaid agreement all **property rights of the parties** and the Wife's **right to support and maintenance**, past, present and future is hereby fixed as provided in the aforesaid agreement.

Divesting of Property Rights:

Except as otherwise provided for in this Agreement, each party shall be divested of and each party waives, renounces and gives up all right, title and interest in and to the property awarded to the other. All property and money received and retained by the parties shall be the separate property of the respective party, free and clear of all right, title, interest or claim of the other party, except as is specifically stated herein. Any property which is not mentioned in this Agreement, but is held solely in the name of a party shall be and remain the sole property of that party and the other is forever divested of any right, title, or claim thereto.

Joint Request for Immediate Submission to the Court:

WHEREAS, Husband and Wife do hereby jointly request and consent to an immediate submission of this Agreement of the Parties to the Court and to an entry of judgment by incorporation of said Agreement into the Final Judgment of Divorce, and waive any further notice prior to said judgment.

*These clauses relate to "**II. Spousal Support**" in the author's outline.*

Alimony

Periodic, with sliding scale and presumed termination (rehabilitative)

The husband shall pay or cause to be paid to the wife the sum of $5,000.00 (Five Thousand and NO/100 Dollars) per month as alimony. Said payments will begin on the first day of the first month following the signing of this Agreement, and continue to be paid on the first day of each month thereafter for a period of six (6) months. Following the expiration of six (6) months, husband shall pay or cause to be paid to wife the sum of $2,500.00 (Two Thousand Five-Hundred and NO/100 Dollars) per month for a period of six (6) months. Following the expiration of these six (6) months, husband shall pay or cause to be paid to the wife the sum of $1,000.00 (One Thousand and NO/100 Dollars) per month, as alimony, for a period of twenty-four (24) months. Husband's obligation to pay alimony to the Wife shall terminate upon the earlier of Husband's death, Wife's death, Wife's remarriage, Wife's commission of those acts contemplated by Section 30-2-55 of the Alabama Code, or as otherwise provided by law.

Permanent Periodic:

The Husband shall pay or cause to be paid to the Wife the sum of $5,000.00 (Five Thousand and NO/100 Dollars) per month as periodic alimony. Said payments shall begin on the [begin date of payment—usually the first day of the month after the agreement is executed] and shall continue to be paid on the first day of each month thereafter until it terminates upon the Husband's death, Wife's death, Wife's remarriage, Wife's commission of those acts contemplated by Section 30-2-55 of the Alabama Code, or as otherwise provided by law.

Payment of Debts as Alimony:

That the Husband shall be responsible for the debt existing in the sole name of the Wife, owed to Mr. Clayton Farlow in the outstanding principal amount of $1,725,550 (One Million Seven Hundred Twenty-Five Thousand Five-Hundred Fifty Dollars) and shall indemnify and hold Wife harmless from payment of same. The parties agree and acknowledge that legally sufficient consideration exists, has been paid, had and received for same. *Payment of said debt shall be treated as alimony and therefore shall be considered taxable to the recipient (Wife) and excludable from the income of the payor (Husband).*

Terminating Events:

That the Husband's obligations under this section ("Alimony") shall terminate upon the first to occur of the following events: The Wife's death, re-marriage, co-habitation with a member of the opposite sex, or by any other triggering event enumerated by law. The estate of the Husband shall not be bound by the provisions herein: all alimony terminates upon the death of the Husband.

Waiver:

That each party hereto forever waives their claim to alimony paid by the other, to include past, present, and future payments.

Reservation:

That the issue of alimony awarded to the Wife/Husband is hereby RESERVED and this Court shall retain jurisdiction to entertain an award of same at a later date. This reservation is not intended and shall not preclude any judgment entered in this cause from being a final judgment pursuant to the applicable rule of civil procedure.

Tax Consequences of Payments:

That all payments made by the Husband pursuant to this section ("Alimony") are meant to be and shall be construed as spousal support under the relevant I.R.S. regulation(s) and shall therefore be INCLUDABLE in the TAXABLE INCOME to the recipient/beneficiary spouse (Wife) and shall be DEDUCTIBLE from the TAXABLE INCOME of the payor/obligor spouse (Husband), on a dollar-for-dollar basis, as is required.

<u>Medical/Dental Insurance for the Benefit of the Former Spouse:</u>

Husband shall arrange for Wife to remain on medical and hospital insurance through Husband's employer under COBRA coverage at the Wife's expense for a period of thirty-six (36) months from

the date of the Final Judgment of Divorce. *The Husband is to be responsible for the payment of the premiums for said coverage / The Wife is to be responsible for the payment of the premiums for said coverage.*

Life Insurance to protect alimony payments:

The Husband shall maintain life insurance on his life in the amount of $1,000,000.00 (One Million Dollars) with the Wife as the irrevocable beneficiary of such insurance policy for so long as the Husband is responsible for payment of the alimony as referenced herein. The Husband shall take no action to diminish or encumber the death benefits payable to the Wife as provided for herein, and shall provide to the Wife proof of continuing coverage upon her request at reasonable intervals. Husband's execution of this agreement shall constitute his consent for the Wife to obtain such proof directly from the insurance company.

Alternative, where recipient spouse OWNS the policy and makes the payments: Wife is owner of policy and beneficiary. Husband is the insured.

The Husband herein has an obligation to make certain payments to the Wife upon which she will rely for her support and maintenance, and that, without same, Wife would be reduced to a standard of living far beneath that to which she has become accustomed during the term of the marriage of the parties, which would be unequitable. Therefore, to secure the payment of said payments, in the event that the Husband should predecease her, Wife shall be authorized by this agreement to take out a life insurance policy of her choosing, insuring the life of the Husband, in an amount not to exceed $1,000,000.00 (One Million Dollars). Wife shall be the owner of said policy and may designate herself as beneficiary thereof (and shall be allowed to change beneficiaries as she may deem appropriate) as the Court finds that she has a legally insurable interest in the life of the Husband. The Husband shall cooperate with all necessary and/or required examinations and other routine items which may be required, from time to time, for the maintenance of said policy, but shall have no responsibility for any premium whatsoever which may become due, now or in the future, or any policy related expense thereon. Wife shall be solely responsible for any and all costs and/or expenses associated with said policy.

Disability Insurance:

Husband shall maintain his current disability policies with Acme Insurance Company, bearing account number 01234 (for so long as the policy is available to him) and shall provide proof of said coverage to Wife, annually, for so long as he has an obligation to provide support to Wife and/or the parties' children.

**In lieu of providing life insurance, the Husband may secure this responsibility by providing Wife with appropriate security (lien, etc.) of equal value and liquidity.*

*These clauses relate to "**III. Children: Custody, Visitation, and Parenting Provisions**" in the author's outline.*

SHARED CUSTODY

It is agreed by the parties that it is in the best interest of the minor children, Johnny Smith (DOB: 12-2-2000) and Janie Smith (DOB: 2-22-2005) for their care, custody and control to be shared with the Wife having the primary physical custody of said children and they shall reside with her. Husband and Wife understand that shared custody means both parties shall retain full parental rights and responsibilities with respect to their children regardless of which party has physical custody at any particular time. The parties further agree that shared custody means shared parental responsibility and requires both parents to confer so that major decisions affecting the

health and welfare of the children will be jointly determined. In this regard, each party hereby expressly agrees that he or she, as the case may be, shall promptly notify the other party in the event said children may be exposed to circumstances, experiences any substantive illnesses, accidents, or other events that could conceivably adversely affect the health and welfare of the children.

Should the Husband and the Wife be unable to agree on any aspect of the academic, religious, civic, cultural, athletic, clothing, medical, and dental activities of the children, the following party is hereby designated as having the primary authority and responsibility regarding involvement in said activity:

Academic	--	Wife
Religious	--	Husband
Civic	--	Wife
Cultural	--	Wife
Athletic	--	Husband
Medical	--	Wife

The exercise of this primary authority is in no way intended to negate the responsibility of the parties to notify and communicate with each other as set forth herein above. Each parent shall have access to all school, educational, doctor, hospital, or other medical reports, tests, and evaluations of said children. This provision constitutes each party's consent for and release of such information to the other.

A. Shared Custody Schedule: The minor children's primary residence and physical custody shall be with the Wife. The parties have worked out a schedule for sharing the custody of the children based on their respective schedules and needs and those of the children. This schedule includes sharing custody of the children for extended periods with each party and permitting liberal visitation by and between each parent. It is the intent of the parties that this arrangement continues and the parties shall work together to review the custody schedule in effect and shall each make a good faith effort to set a schedule considering the best interest of the minor children.

B. Holidays: The parties shall mutually agree upon with which parent the children shall spend holidays. It is the intent of the parties that, if feasible, the children shall spend some time with each parent and their respective families on holidays. Every effort shall be made to keep the minor children in touch with both families at holidays and other times, and this shall be the responsibility of both parties. The Husband shall have the minor children on Father's Day and the Wife shall have the minor children on Mother's Day, when feasible.

C. Christmas: The minor children shall spend a portion of the Christmas holidays with each parent.

D. Summer Vacation: Both Husband and Wife are expected to receive an extended period of time with the children during the summer months to include vacations, travel, etc.

E. Birthdays: Each party shall have the right to spend some time with the children on the children's birthday, as well as on the party's birthday.

F. Specified Visitation: In the event that the parties are unable to reach an agreement regarding any of the visitation periods, the Husband shall have the right to have the minor children with him as follows:

(1) The first and third full weekends of each month from 6:00 p.m. on Friday until 6:00 p.m. the following Sunday.

(2) Each Christmas Day from 3:00 p.m. until 3:00 p.m. on the following New Year's Day.

(3) Thirty-one (31) days during the summer (June, July and August), to be selected by the Husband, but upon written notice to the Wife at least thirty (30) days in advance of said visitation.

(4) Each Thanksgiving Day from 3:00 p.m. on said date until 7:00 p.m. of the same day.

(5) Every birthday of the children from 3:00 p.m. on said date until 7:00 p.m. of the same day.

(6) Every Father's Day from 10:00 a.m. until 6:00 p.m. of the same day.

(7) At such other times as agreed upon between the parties.

G. If the Husband does not present himself within one (1) hour of the designated visitation, then he shall be deemed to have waived the visitation for that time.

H. Each party shall keep the other informed on a current basis as to the residence address and telephone number where the children reside with him or her.

RELOCATION

Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this Decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this Order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this Order, you must provide the following information to each other person who has custody or visitation rights under this Decree as follows:

1. The intended new residence, including the specific street address, if known.

2. The mailing address, if not the same as the street address.

3. The telephone number or numbers at such residence, if known.

4. If applicable, the name, address, and telephone number of the school to be attended by the child, if known.

5. The date of the intended change of principal residence of a child.

6. A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.

7. A proposal for a revised schedule of custody of or visitation with a child, if any.

8. Unless you are a member of the Armed Forces of the United States of America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within thirty (30) days of receipt of the notice or the relocation will be permitted.

The relocating parent must give notice by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a 45-day notice, you must give such notice by certified mail not later than the 10th day after the date that you obtain such information.

Failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

If the non-relocating party does not commence an action seeking a temporary or permanent order to prevent the change of principal residence of a child within thirty (30) days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized.

ACTIVITIES OF THE MINOR CHILD

Both Wife and Husband desire to be involved in the various activities of the minor child. These include academic, religious, civic (such as Scouts or other civic related organizations or community projects), cultural (such as music, theater, and the like), athletic, purchase of clothing, and mental health, medical and dental activities of the child. Husband and Wife agree to cooperate one with the other in adjusting their schedules to assure that the child is delivered to and returned from any such activity. It is further agreed and understood that both parties will notify one another of all conferences, programs, or events relating to such activities in such a way that both parties will have an opportunity to participate in such activities of the child.

PARENTAL AGREEMENT FOR THE WELFARE OF THE CHILD

Neither party shall have overnight guests of the opposite sex, unless family members or spouse, while the child is present.

Neither party shall in any way attempt to harm, hinder, decrease, or destroy the natural love of the child for the other parent. Neither party shall criticize the other parent in the presence of the child. Both parents will strive to maintain harmonious relations for the good of their child.

Each parent shall be provided with an itinerary which shall include a list of planned activities, and the address and phone number where the minor child can be reached at such time when either parent plans to take the minor child out-of-state for a period which includes an overnight stay.

In the event that the minor child shall have a scheduled extra-curricular activity, the parties shall cooperate to promote the attendance of the child.

The child shall be entitled to unimpeded and routine telephonic, written and/or e-mail communication with both parents. Said communication may be initiated by either the minor child or the parent, and shall be exercised at such times as will be the least disruptive to the normal routine of the child.

*These clauses relate to "**IV. Child Support**" in the author's outline.*

Child Support:

A. The Husband shall pay to the Wife the sum of $7,500.00 (Seven Thousand Five-Hundred and No/100 Dollars) per month for the support and maintenance of the minor children of the parties. The first such payment is to be paid on or before (date) and all subsequent payments shall be made on first day of each month thereafter until such time as the said minor children reach the age of nineteen (19) years, marry or become self-supporting. Said amount is *not in compliance* with the Alabama Child Support Guidelines, as the combined income of the parties exceeds the uppermost limit of the Child Support Guidelines most recently published. The parties believe and represent to the Court that this amount is adequate to maintain and secure the material well-being of the minor children herein.

B. That reference is hereby made in this Agreement to a separate order entitled Order/Notice to Withhold Income for Child Support which is specifically incorporated herein as part of this Agreement; said Order shall be entered but NOT served upon Husband's employer until further order of the Court because the parties hereto have agreed upon an alternate means of payment whereby the Husband shall pay said child support directly to the Wife.

MEDICAL AND LIFE INSURANCE FOR THE BENEFIT OF THE CHILD

Medical Insurance:

The Husband shall provide and maintain hospitalization and major medical insurance for the use and benefit of the minor child for so long as he has an obligation to pay child support or post-minority support, subject to the condition that it is available to him through his employment. The Husband shall provide the Wife with valid insurance cards to be used for the child's medical services. This agreement shall serve as authorization for the Wife to obtain information regarding coverage directly from the insurance company or other appropriate individual/entity.

NON-COVERED MEDICAL EXPENSES

Any reasonable and medically necessary medical, dental, orthodontic, optical and/or other expenses incurred for the mental and/or physical well-being of the child not covered by said insurance, or in excess of said insurance coverage (including deductibles and co-pays) shall be equally shared by the parties for as long as child support or post-minority support is payable.

That each party shall provide the other party with statements, bills, receipts or other written proof of her or his expenses as set out above on a monthly basis. Each party shall then reimburse the other for one-half of any said expenses within thirty (30) days of receiving the statements from the other party.

LIFE INSURANCE FOR THE BENEFIT OF THE MINOR CHILD

The Husband shall provide life insurance on his life in the amount of $100,000.00 (One Hundred Thousand and NO/100 Dollars) with the minor child as the irrevocable beneficiary of such insurance policy for so long as the Husband is responsible for payment of any support or expense for the benefit of the minor child. However, in the event of the Husband's death during the said child's minority, the proceeds of said policy or policies shall be placed in trust for the exclusive benefit of the said child and [name of individual] shall be the Trustee of any and all such insurance proceeds to be used for the benefit of the said minor child.

PRIVATE SCHOOL

Assuming that the parties agree upon the choice of a private school to be attended by the child, the Wife shall be responsible for all tuition and associated fees related to the tuition of the minor child attending private school. The Wife shall pay tuition and associated fees, including the cost of lunches, and other school related activities directly to the school.

*These clauses relate to "**V. Property Division/Settlement**" in the author's outline.*

INTRODUCTION

The following is a full, final, equitable and complete property division between Husband and Wife.

REAL ESTATE

Marital Residence:

The parties have a home located at 789 Any Street, Popular City, Alabama 00000, presently titled in the parties' names jointly with right of survivorship. With respect to said home, the parties agree as follows:

A. Upon execution of this Agreement of the parties, or earlier, the Wife shall begin paying all mortgage payments, including principal, interest, taxes and insurance, and any other payments due and owing in connection with the said property and she shall indemnify and hold the Husband harmless therefor.

B. The Wife shall immediately take any steps necessary to remove the Husband's name on any mortgage or debt obligation secured by said residence and to place title and all mortgage indebtedness thereon in her name alone. These steps shall be completed by the Wife within ninety (90) days from the date of entry of a Final Judgment of Divorce.

C. The Husband shall, upon the Wife's completion of the conditions set out in subparagraph B above, execute a statutory warranty deed conveying to the Wife all his right, title and interest in said house and property.

*These clauses relate to "**VI. Personal Property" in** the author's outline.*

PERSONAL PROPERTY

Automobiles:

A. Title to the 2015 Chevrolet Tahoe is hereby confirmed in the Husband, and the Wife hereby relinquishes any and all interest she may have therein. The Husband shall be responsible for pay any and all indebtedness thereon and shall indemnify and hold the Wife harmless therefor.

B. Title to the 2010 Lexus is hereby awarded to the Wife and the Husband hereby relinquishes any and all interest he may have therein. The Husband shall execute any and all documents which may be necessary to effectuate transfer of title of said automobile to the Wife within ten (10) days of the date of entry of a Final Judgment of Divorce. The Wife shall be responsible for pay any and all

indebtedness thereon and shall indemnify and hold the Husband harmless therefor.

Household Contents:

C. The Wife shall have all right, title and interest in and to all of the furniture, furnishings, fixtures, appliances, goods, and wares located in the home 789 Any Street, Popular City, Alabama 00000, with the exception that it is specifically agreed and understood that the Husband shall retain title to the list of household goods heretofore set forth on Exhibit A which he shall be allowed to obtain from said home within ten (10) days from the date of entry of a Final Judgment of Divorce, or earlier, on a date mutually agreed upon by the parties.

RETIREMENT ACCOUNTS

The parties acknowledge that the Wife is a participant in an Employee Retirement Plan [description of employee retirement plan] through her employment with [name of employer]. The parties hereby agree that the Husband shall receive, as an "Alternate Payee" under the Plan Fifty Percent (50%) OR the amount of $300,000.00 (Three Hundred Thousand and NO/100 Dollars) of Participant's vested account balance in the Plan as of [date of final judgment] or, if the Plan cannot provide a valuation of Participant's account balance for [date of final judgment], then said account shall be valued as of the normal valuation date used by the Plan in the ordinary course of business which is closest in time to the date of entry of the Final Judgment, together with interest, dividends, gains, and losses on the Alternate Payee's share of Participant's account balance from that date until the date a separate account is established for the Alternate Payee pursuant to an appropriate Qualified Domestic Relations Order to be entered by the Court in accordance with this Agreement. The Wife shall cooperate to obtain an effective QDRO to ensure that Husband receives his share, as provided herein, at the earliest date he is eligible to receive said proceeds, as provided by the plan and applicable law. The parties further agree that this Court shall retain jurisdiction in order to enter such orders and amendments as may be necessary in order to effectuate the division of the Wife's retirement Plan and for the Husband to receive his share as specified herein.

BANK ACCOUNTS

Any and all bank accounts shall be titled to the respective parties and is hereby confirmed in their name.

OTHER PERSONAL PROPERTY

D. The Husband shall take sole title to and possession of all items of personal and real property currently in his name or belonging solely to him (and not specifically referred to in this agreement), including without limitation business interests, partnerships, boats, automobiles, cash, checking and savings accounts, IRA's, securities, insurance policies, and the like, and the Wife hereby renounces any interest she may have therein.

*These clauses relate to "**VII. Debts**" in the author's outline.*

MARITAL DEBTS

A. The Husband shall be responsible for the indebtedness to Bank of America (Acct. No.: 123456789) and shall pay said indebtedness in a timely manner and shall indemnify and hold

harmless the Wife for all such indebtedness. Neither party shall cause, as of the date of the execution of this agreement, any further or future indebtedness to accrue on said account.

The payment of this indebtedness shall be deemed a property settlement to the Wife and shall not be taxable to the Wife nor deductible by the Husband. The parties specifically intend that the Husband's obligation for payment not be dischargeable in any bankruptcy proceeding (either voluntary or involuntary).

B. The Wife shall pay the indebtedness to American Express (Acct. No. 0003) and shall pay said indebtedness in a timely manner and shall indemnify and hold harmless the Husband for all such indebtedness.

The payment of this indebtedness shall be deemed a property settlement to the Husband and shall not be taxable to the Husband nor deductible by the Wife. The parties' specifically intend that the Wife's obligation for payment not be dischargeable in any bankruptcy proceeding (either voluntary or involuntary).

OTHER DEBTS

A. Except as otherwise provided herein, each party shall be responsible for all debts incurred in his or her separate name. On each debt for which a party is responsible, that party shall indemnify and hold the other party harmless therefrom.

B. Neither party shall hereafter directly or indirectly incur further debts or credit obligations which would obligate the other party, either individually or jointly.

*These clauses relate to "**VIII. Tax Issues**" in the author's outline.*

TAXES

TAX CONSIDERATIONS

Tax Liability for Term of Marriage:

A. Tax Advice. The Husband acknowledges that he has been advised by his attorney that it may be in his best interest to consult a tax professional for advice regarding the issues herein, and that he has been advised that his attorney, John Litigator, is not a tax professional and has not provided any tax advice beyond the provision of general information about the law. The Wife acknowledges that she has been advised by her attorney that it may be in her best interest to consult a tax professional for advice regarding the issues herein, and that she has been advised that her attorney, Jane Litigator, is not a tax professional and has not provided any tax advice beyond the provision of general information about the law.

B. Tax Liability for the Term of the Marriage. If, in connection with any joint federal or state income tax return(s) heretofore filed by the parties, there is a deficiency assessment, the amount ultimately determined to be due thereon shall be borne by the individual found to be responsible, depending on whether the deficiency arose out of the individual income, deduction, or misreporting of one of the other parties (and if so, to what extent). The parties represent and warrant to each other and to the Court that all federal and state income tax returns during the marriage are, in all material respects, true, correct, and complete and that same fully and accurately reflect income and deductions for those years.

C. The parties shall file individual income tax returns for the 20XX income tax year and each subsequent year thereafter.

Dependency Exemptions:

The Husband shall be entitled to claim the minor children of the parties, Johnny Smith and Janie Smith, as dependents for state and federal income tax purposes. Wife shall complete any and all IRS forms necessary to effectuate this provision.

*These clauses relate to "**IX. Attorney's Fees**" in the author's outline.*

Each Pays Own:

That each party to this action shall be responsible for the costs and fees associated with their representation by counsel, in accordance with their respective agreements. Neither party shall be entitled to an award of any sum to be used as reimbursement by the other party, and each party expressly waives their right to request such an award.

Contribution by one Party:

That as remuneration for the attorney's fees incurred by the Husband in this action, the Wife shall pay to the Husband the sum of $10,000 (Ten Thousand Dollars). Said sum is not a value judgment as to the services provided to the Husband herein, merely the amount that the Wife shall be required to contribute towards same. Said amount is in the nature of a property settlement, paid from the marital estate, and therefore non-taxable per the relevant IRS regulations. Said amount is to be paid to the Husband, but delivered to the attorney for the Husband, John Litigator at his business address, which is: 2956 Rhodes Circle, Birmingham, AL 35205. Said sum shall be due and payable immediately upon execution of this agreement; however, it shall be paid no later than thirty (30) days after execution, and at such time, if not paid, LET EXECUTION ISSUE.

Percentage Contribution (with limit):

That the Husband shall, as remuneration for the attorney's fees incurred by the Wife in this action, pay to the Wife a sum equal to 50% of the attorney's fees incurred past September 1, 2015. Said amount is to be determined by the billing statements/invoices of Wife's attorney *or* by affidavit of same. In no event shall said sum exceed $10,000.

PERSONAL PROPERTY LISTING

Husband's List: COMPREHENSIVE

Description of Item

Guest Bedroom

Bed
Nightstands
Chest of Drawers
Dresser
Decorative Items

Living Room

Bookcase and contents
Coffee Table
Candleabra (H's grandmother's)

Family Room

Sectional
End Tables
Recliner
Rug
Television
Sound System
Other Décor Items

Dining Room

Buffet

Kitchen

Everyday Dishes
Utensils
Glasses
Grilling Tools
Knives
Island

Misc.

Artwork in Foyer (Gift from H's Sister)
Lawn Equipment

Wife's List: COMPREHENSIVE

Description of Items

Master Bedroom

Bed
Nightstands
Chest of Drawers
Dresser
Decorative Items

Son's Bedroom

Bed
Nightstand
Chest of Drawers
Dresser
Decorative Item
Television

Daughter's Bedroom

Bed
Nightstands
Chest of Drawers
Dresser
Decorative Item
Television

Living Room

Sofa
Chairs
Rug
All other décor items

Family Room

Ottoman
Portrait of Children
Lamps
Sofa Table
Curtains

Dining Room

Table
Chairs
Rug
Heirloom Candlesticks
Chandelier

Kitchen

China
Stainless Steel Cookware
Kitchenaid Mixer
Ninja Food Processor
Cast Iron Cookware
Crystal Cakestand (W's Mother's)

Misc.

Patio Furniture

PERSONAL PROPERTY LIST

MASTER BEDROOM

Description of Item	Awarded To
Bed	Wife
Nightstands	Wife
Chest of Drawers	Wife
Dresser	Wife
Decorative Items	Wife

GUEST BEDROOM

Bed	Husband
Nightstands	Husband
Chest of Drawers	Husband
Dresser	Husband
Decorative Items	Husband

SON'S BEDROOM

Bed	Wife
Nightstand	Wife
Chest of Drawers	Wife
Dresser	Wife
Decorative Item	Wife
Television	Wife

DAUGHTER'S BEDROOM

Bed	Wife
Nightstands	Wife
Chest of Drawers	Wife
Dresser	Wife
Decorative Item	Wife
Television	Wife

LIVING ROOM

Sofa	Wife
Chairs	Wife
Bookcase and contents	Husband
Rug	Wife
Coffee Table	Husband
Candelabra (H's grandmother's)	Husband
All other décor items	Wife

FAMILY ROOM

Description of Item	Awarded To
Sectional	Husband
End Tables	Husband
Ottoman	Wife
Recliner	Husband
Portrait of Children	Wife
Rug	Husband
Lamps	Wife
Sofa Table	Wife
Television	Husband
Sound System	Husband
Curtains	Wife
Other Décor Items	Husband

DINING ROOM

Table	Wife
Chairs	Wife
Buffet	Husband
Rug	Wife
Heirloom Candlesticks	Wife
Chandelier	Wife

KITCHEN

Everyday Dishes	Husband
China	Wife
Utensils	Husband
Stainless Steel Cookware	Wife
Glasses	Husband
Kitchenaid Mixer	Wife
Ninja Food Processor	Wife
Grilling Tools	Husband
Knives	Husband
Island	Husband
Cast Iron Cookware	Wife
Crystal Cakestand (W's Mother's)	Wife

MISCELLANEOUS ITEMS

Artwork in Foyer (Gift from H's Sister)	Husband
Patio Furniture	Wife
Lawn Equipment	Husband

DEBT LISTING

Debts / Party to be responsible
J.R. Ewing vs. Sue Ellen Ewing

CREDITOR	IDENTIFY/ACCOUNT NUMBER	PARTY CONTRACTUALLY RESPONSIBLE	PARTY TO BE RESPONSIBLE BY AGREEMENT	BALANCE AGREED TO	INITIALS OF RESPONSIBLE PARTY
American Express	Reserve Delta Skymiles Card (XXX140001)	J.R. Ewing	J.R. Ewing	100%	___
American Express	Platinum Card (XXX652002)	J.R. Ewing	J.R. Ewing	100%	___
Porsche Motor Credit, N.A.	2016 Spyder Lease - XX115706	J.R. Ewing	J.R. Ewing	100%	___
Lexus Financial Services, N.A.	2015 LS 460 Lease - XX15660	J.R. Ewing	Sue Ellen Ewing	Remaining lease payments	___
BMW N.A. Financial Services	2014 550i Lease (driven by child) - XX15661	J.R. Ewing	J.R. Ewing	Remaining lease payments	
Southern Methodist University	Tuition Balance for John Ross Ewing	J.R. Ewing & Sue Ellen Ewing	J.R. Ewing	100%	___
Neiman Marcus Charge	Credit Account XXX55599	Sue Ellen Ewing	Sue Ellen Ewing	100%	___
Barney's Charge	Credit Account XXX123456	Sue Ellen Ewing	Sue Ellen Ewing	100%	___
Bank of America VISA	Credit Account XXX1234567	Sue Ellen Ewing	J.R. Ewing	100% of balance on statement dated 10/31/2015	___
I.R.S. Tax Debt	Joint Tax Debt of the parties	Joint	J.R. Ewing	100% of balance due as of audit date	___
					___
					___
					___
					___
					___
					___
					___
					___
					___
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					___
					___
					___

HUSBAND'S DEBTS

CREDITOR	IDENTIFY/ACCOUNT NUMBER	PARTY CONTRACTUALLY RESPONSIBLE	PARTY TO BE RESPONSIBLE BY AGREEMENT	BALANCE AGREED TO	INITIALS OF RESPONSIBLE PARTY
American Express	Reserve Delta Skymiles Card (XXXI40001)	J.R. Ewing	J.R. Ewing	100%	___
American Express	Platinum Card (XXX652002)	J.R. Ewing	J.R. Ewing	100%	___
Porsche Motor Credit, N.A.	2016 Spyder Lease - XXI15706	J.R. Ewing	J.R. Ewing	100%	___
BMW N.A. Financial Services	2014 550i Lease (driven by child) - XXI5661	J.R. Ewing	J.R. Ewing	Remaining lease payments	
Southern Methodist University	Tuition Balance for John Ross Ewing	J.R. Ewing & Sue Ellen Ewing	J.R. Ewing	100%	___
Bank of America VISA	Credit Account XXXI234567	Sue Ellen Ewing	J.R. Ewing	100% of balance on statement dated 10/31/2015	___
I.R.S. Tax Debt	Joint Tax Debt of the parties	Joint	J.R. Ewing	100% of balance due as of audit date	___

WIFE'S DEBTS

CREDITOR	IDENTIFY/ACCOUNT NUMBER	PARTY CONTRACTUALLY RESPONSIBLE	PARTY TO BE RESPONSIBLE BY AGREEMENT	BALANCE AGREED TO	INITIALS OF RESPONSIBLE PARTY
Lexus Financial Services, N.A.	2015 LS 460 Lease - XX15660	J.R. Ewing	Sue Ellen Ewing	Remaining lease payments	___
Neiman Marcus Charge	Credit Account XXX55599	Sue Ellen Ewing	Sue Ellen Ewing	100%	___
Barney's Charge	Credit Account XXX123456	Sue Ellen Ewing	Sue Ellen Ewing	100%	___

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Form **8332**
(Rev. January 2010)
Department of the Treasury
Internal Revenue Service

Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

▶ **Attach a separate form for each child.**

OMB No. 1545-0074

Attachment Sequence No. **115**

Name of noncustodial parent

Noncustodial parent's social security number (SSN) ▶

Part I Release of Claim to Exemption for Current Year

I agree not to claim an exemption for _____
Name of child

for the tax year 20____.

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Note. If you choose not to claim an exemption for this child for future tax years, also complete Part II.

Part II Release of Claim to Exemption for Future Years (If completed, see **Noncustodial Parent** on page 2.)

I agree not to claim an exemption for _____
Name of child

for the tax year(s)_____ .
(Specify. See instructions.)

Signature of custodial parent releasing claim to exemption | Custodial parent's SSN | Date

Part III Revocation of Release of Claim to Exemption for Future Year(s)

I revoke the release of claim to an exemption for _____
Name of child

for the tax year(s)_____ .
(Specify. See instructions.)

Signature of custodial parent revoking the release of claim to exemption | Custodial parent's SSN | Date

General Instructions

What's New

Post-2008 decree or agreement. If the divorce decree or separation agreement went into effect after 2008, the noncustodial parent cannot attach certain pages from the decree or agreement instead of Form 8332. See *Release of claim to exemption* below.

Definition of custodial parent. New rules apply to determine who is the custodial parent and the noncustodial parent. See *Custodial Parent and Noncustodial Parent* on this page.

Purpose of Form

If you are the custodial parent, you can use this form to do the following.

- Release a claim to exemption for your child so that the noncustodial parent can claim an exemption for the child.
- Revoke a previous release of claim to exemption for your child.

Release of claim to exemption. This release of the exemption will also allow the noncustodial parent to claim the child tax credit and the additional child tax credit (if either applies). Complete this form (or sign a similar statement containing the same information required by this form) and give it to the noncustodial parent. The noncustodial parent must attach this form or similar statement to his or her tax return each year the exemption is claimed. Use Part I to release a claim to the exemption for the current year. Use Part II if you choose to release a claim to exemption for any future year(s).

Note. If the decree or agreement went into effect after 1984 and before 2009, you can attach certain pages from the decree or agreement instead of Form 8332, provided that these pages are substantially similar to Form 8332. See *Post-1984 and pre-2009 decree or agreement* on page 2.

Revocation of release of claim to exemption. Use Part III to revoke a previous release of claim to an exemption. The revocation will be effective no earlier than the tax year following the year in which you provide the noncustodial parent with a copy of the revocation or make a reasonable effort to provide the noncustodial parent with a copy of the revocation. Therefore, if you revoked a release on Form 8332 and provided a copy of the form to the noncustodial parent in 2010, the earliest tax year the revocation can be effective is 2011. You must attach a copy of the revocation to your tax return each year the exemption is claimed as a result of the revocation. You must also keep for your records a copy of the revocation and evidence of delivery of the notice to the noncustodial parent, or of reasonable efforts to provide actual notice.

Custodial Parent and Noncustodial Parent

The custodial parent is generally the parent with whom the child lived for the greater number of nights during the year. The noncustodial parent is the other parent. If the child was with each parent for an equal number of nights, the custodial parent is the parent with the higher adjusted gross income. For details and an exception for a parent who works at night, see Pub. 501.

Exemption for a Dependent Child

A dependent is either a qualifying child or a qualifying relative. See your tax return instruction booklet for the definition of these terms. Generally, a child of divorced or separated parents will be a qualifying child of the custodial parent. However, if the special rule on page 2 applies, then the child will be treated as the qualifying child or qualifying relative of the noncustodial parent for purposes of the dependency exemption, the child tax credit, and the additional child tax credit.

For Paperwork Reduction Act Notice, see back of form. Cat. No. 13910F Form **8332** (Rev. 1-2010)

Special Rule for Children of Divorced or Separated Parents

A child is treated as a qualifying child or a qualifying relative of the noncustodial parent if all of the following apply.

1. The child received over half of his or her support for the year from one or both of the parents (see the *Exception* below). Public assistance payments, such as Temporary Assistance for Needy Families (TANF), are not support provided by the parents.

2. The child was in the custody of one or both of the parents for more than half of the year.

3. Either of the following applies.

a. The custodial parent agrees not to claim an exemption for the child by signing this form or a similar statement. If the decree or agreement went into effect after 1984 and before 2009, see *Post-1984 and pre-2009 decree or agreement* below.

b. A pre-1985 decree of divorce or separate maintenance or written separation agreement states that the noncustodial parent can claim the child as a dependent. But the noncustodial parent must provide at least $600 for the child's support during the year. This rule does not apply if the decree or agreement was changed after 1984 to say that the noncustodial parent cannot claim the child as a dependent.

For this rule to apply, the parents must be one of the following.

- Divorced or legally separated under a decree of divorce or separate maintenance.
- Separated under a written separation agreement.
- Living apart at all times during the last 6 months of the year.

If this rule applies, and the other dependency tests in your tax return instruction booklet are also met, the noncustodial parent can claim an exemption for the child.

Exception. If the support of the child is determined under a multiple support agreement, this special rule does not apply, and this form should not be used.

Post-1984 and pre-2009 decree or agreement. If the divorce decree or separation agreement went into effect after 1984 and before 2009, the noncustodial parent can attach certain pages from the decree or agreement instead of Form 8332, provided that these pages are substantially similar to Form 8332. To be able to do this, the decree or agreement must state all three of the following.

1. The noncustodial parent can claim the child as a dependent without regard to any condition (such as payment of support).

2. The other parent will not claim the child as a dependent.

3. The years for which the claim is released.

The noncustodial parent must attach all of the following pages from the decree or agreement.

- Cover page (include the other parent's SSN on that page).
- The pages that include all of the information identified in (1) through (3) above.
- Signature page with the other parent's signature and date of agreement.

CAUTION *The noncustodial parent must attach the required information even if it was filed with a return in an earlier year.*

The noncustodial parent can no longer attach certain pages from a divorce decree or separation agreement instead of Form 8332 if the decree or agreement was executed after 2008.

Specific Instructions

Custodial Parent

Part I. Complete Part I to release a claim to exemption for your child for the current tax year.

Part II. Complete Part II to release a claim to exemption for your child for one or more future years. Write the specific future year(s) or "all future years" in the space provided in Part II.

TIP *To help ensure future support, you may not want to release your claim to the exemption for the child for future years.*

Part III. Complete Part III if you are revoking a previous release of claim to exemption for your child. Write the specific future year(s) or "all future years" in the space provided in Part III.

The revocation will be effective no earlier than the tax year following the year you provide the noncustodial parent with a copy of the revocation or make a reasonable effort to provide the noncustodial parent with a copy of the revocation. Also, you must attach a copy of the revocation to your tax return for each year you are claiming the exemption as a result of the revocation. You must also keep for your records a copy of the revocation and evidence of delivery of the notice to the noncustodial parent, or of reasonable efforts to provide actual notice.

Example. In 2007, you released a claim to exemption for your child on Form 8332 for the years 2008 through 2012. In 2010, you decided to revoke the previous release of exemption. If you completed Part III of Form 8332 and provided a copy of the form to the noncustodial parent in 2010, the revocation will be effective for 2011 and 2012. You must attach a copy of the revocation to your 2011 and 2012 tax returns and keep certain records as stated earlier.

Noncustodial Parent

Attach this form or similar statement to your tax return for each year you claim the exemption for your child. You can claim the exemption only if the other dependency tests in your tax return instruction booklet are met.

TIP *If the custodial parent released his or her claim to the exemption for the child for any future year, you must attach a copy of this form or similar statement to your tax return for each future year that you claim the exemption. Keep a copy for your records.*

Note. If you are filing your return electronically, you must file Form 8332 with Form 8453, U.S. Individual Income Tax Transmittal for an IRS *e-file* Return. See Form 8453 and its instructions for more details.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Internal Revenue Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

4

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*These clauses relate to "**I. Introductory Clauses/General Provisions**" in the author's outline.*

MISCELLANEOUS RECITALS

Cohabitation Not to Abrogate Agreement:
This agreement shall not be abrogated or terminated, in whole or in part, by any attempted reconciliation between the parties. It is anticipated that the parties may continue to occupy the same premises for a period of time as a matter of economy or convenience. Neither the occupation of the same premises nor any resumption of cohabitation shall operate to waive or terminate any provision of this agreement.

Informed Consent:
Husband and Wife each acknowledges entering freely and voluntarily into this agreement, each having been separately represented and advised by independent counsel of his or her own choosing in the negotiations for and preparation of this agreement. Each party and counsel has had an opportunity to conduct a complete examination and review of all related records and documents, and each party has had this agreement fully explained by counsel and is fully aware of its contents and its legal effect.

Settlement:
Husband and Wife intend by this agreement to settle fully and finally all respective rights and obligations arising out of or related to the marriage. These matters include all property, debts, support, attorney's fees and costs, and any other matters that otherwise could be adjudicated in action.

Severability:
In the event that any provision of this agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed severable from the remainder of this agreement and shall not cause the validity or unenforceability of the remainder of this agreement. If a provision shall be deemed invalid only because of excessive scope or breadth, the provision shall be deemed valid to the extent of the scope and breadth permitted by law.

Submission to the Court:
This agreement may be submitted by either party to any court before which a petition for the dissolution of the marriage may be pending for approval by the court and for incorporation into final judgment decreeing the dissolution of the marriage.

Successors:
This agreement shall inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and assigns.

Counsel:
_____ acknowledges that he/she has had the opportunity to retain counsel, but has decided not to do so. _____ fully understands the facts and terms of this agreement and enters into it voluntarily. _____ also acknowledges that _____ (the attorney for the other party) did not represent him/her.

Maintenance:
_____ (Husband/Wife) waives and surrenders any rights that he/she may have to maintenance (formerly known as alimony) from _____ (Husband/Wife). _____ (Husband/Wife) understand that having waived said maintenance, he/she may not seek maintenance at

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any time in the future from _____ (Husband/Wife) in this court or in any court. _____ (Husband/Wife) acknowledges that he/she understands that maintenance or alimony is his/her right to support from _____ (Husband/Wife) arising from the marital relationship. _____ (Husband/Wife) acknowledges that he/she has adequate income to provide for his/her own support.

Releases from Claims and Causes of Action:
Except as otherwise provided here, on entry of this judgment of divorce, each of the parties hereby releases the other form any claim or cause of action that either may have against the other for any reason occurring prior to this agreement, whether that claim is founded in contract, tort, or any other basis. This agreement is intended to be a settlement of all claims, known or unknown, between the parties.

Retirement Accounts:
_____ (Husband/Wife) hereby waives all right to claim any interest or share in _____ (Husband's/Wife's) individual retirement account(s), which shall become his/her sole property.
[NOTE: Alternatively, rights to IRAs could be divided.]

Right to – Administer Estate:
Husband and Wife each waives all right to act as administrator of the other party's estate and all right to request or petition for the appointment of any person to serve as such representative or to act as the executor of the other's will, unless expressly names in a will, codicil, or republication of will by the other party, executed subsequent to this date.

Right to – Inheritance:
Husband and Wife each forever waives any right to inherit from the other and the right to receive any property on the death of the other, except by reason of a will, codicil, or republication of will by the other party, executed subsequent to this date.

ENFORCEMENT

Breaching Party to Pay Enforcement Expenses:
In the event that hit shall be determined by a court of competent jurisdiction that either party shall have breached any provision of this agreement or of any court decree incorporating by reference or otherwise this agreement or portions of it, the offending party shall pay to the other party reasonable attorney's fees, court costs and other expenses incurred in the enforcement of the provision of this agreement or judgment or decree incorporating any or all of its provisions.

Nonenforcement Does Not Constitute Waiver:
The failure of either party to this agreement to insist in any one or more instances upon the strict performance of any term or provision of this agreement or to exercise any option to make any election contained or provided for shall not be construed as a waiver or as a relinquishment for the future of any such term, option, or election, and the same shall continue in full force and effect. No waiver of any default hereunder shall be deemed a waiver of any subsequent default.

*These clauses relate to "**II. Spousal Support**" in the author's outline.*

SPOUSAL SUPPORT

Duration:
_____ shall pay to _____ for spousal support (maintenance) (alimony in any form), the sum of $___ per month payable in advance on the ___ day of each month commencing _____ and continuing

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thereafter until the earliest of the following events: (i) death of either party, or (ii) remarriage of _____, (iii) the cohabitation by _____ with a person of the opposite sex for a continuous period of more than three months.
[NOTE: (1) The following phrase could be substituted for (iii): The cohabitation by __ with a person of the opposite sex in a relationship similar to a husband-wife relationship for 90 continuous or non-continuous days in any 12 month period. (2) If the parties have agreed to a termination date, that date may be substituted here.]

Non-modifiable:
The provisions of this agreement for payments of spousal support/alimony/maintenance are intended to be a contractual and non-modifiable obligation, both as to duration and as to amount. The obligation shall not be subject to modification by any order or judgment of any court, and neither party shall request modification at any time or under any circumstances to any court.

Modifiable:
Notwithstanding any provision of this agreement to the contrary, a court of competent jurisdiction shall retain jurisdiction until the death or remarriage of _____ or death of _____ to modify or terminate spousal support.
[NOTE: Some states may not permit a non-modifiable clause.]

Tax Consequence:
The parties acknowledge and agree that the periodic payments from _____ (Husband/Wife) to _____ (Husband/Wife), pursuant to paragraph __, will be deductible by him/her on federal and state income tax returns for all years in which such payments are made.

The parties agree that all payments received by _____ (Husband/Wife) from _____ (Husband/Wife) (as stated above) shall be included as gross income by him/her in all federal and state income tax returns filed for all years in which such payments are received, and _____ (Husband/Wife) is obligated to pay all taxes due on same.

In the event of any court decision, Internal Revenue regulation, ruling or determination, or amendment of the laws applicable to the payments by _____ (Husband/Wife) to _____ (Husband/Wife) under paragraph ____, which results in a determination of a tax treatment different form that specified herein, the payments required to be made by _____ (Husband/Wife) to _____ (Husband/Wife) for support shall be renegotiated by the parties. The parties shall attempt to achieve an equitable adjustment in payments provided, taking into consideration the new tax treatment of the payments so that the tax saving to _____ (Husband/Wife), if any, and additional taxes paid by _____ (Husband/Wife) shall be shared as equitable as possible, so as to achieve as nearly as possible the same net positions of the parties as would have resulted had the tax treatment as specified in paragraph (a) and (b) above been afforded to the payments provided for in this agreement.

*These clauses relate to "**II. Spousal Support**" and **"IV. Child Support"** in the author's outline.*

LIFE INSURANCE

Cooperate in Providing:
_____ (husband/wife) shall provide all documents and information necessary for _____ (husband/wife) to obtain and pay for a life insurance policy on the life of _____ (husband/wife). _____ (husband/wife) shall have no obligation to purchase or maintain a life insurance policy on himself/herself, but shall cooperate in taking reasonable steps to ensure _____ (husband/wife) can

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obtain a life insurance policy. If _____ (husband/wife) fails to cooperate, _____ (husband/wife) may apply to the court for an order requesting a judge to execute documents in _____ (husband's/wife's) place.

Duty to Maintain for Child:

_____ (husband/wife) shall maintain a life insurance policy in the amount of $_____, naming the children, or a trust for their benefit, as primary beneficiaries until the youngest child reaches the age of ____. _____ (husband/wife) shall provide _____ (husband/wife) with proof of coverage before the expiration of the policy within ____ days of the granting of divorce. The policy shall not be encumbered by liens.

Obligation Tied to Spousal and Child Support:
_____ (husband/wife) shall designate _____ (husband/wife) as irrevocable beneficiary to the extent of $_____ of life insurance. The policy shall be payable to _____ (Husband/Wife) in a lump sum so long as he/she is required to pay maintenance. At such time as _____ (Husband/Wife) is no longer required to pay maintenance, _____ (Husband's/Wife's) obligation shall be to designate $_____ of said insurance for each child as irrevocable beneficiary payable in a lump sum upon the death of _____ (Husband/Wife). This obligation may terminate upon the completion of the children's post-high school education. _____ (Husband/Wife) agrees to furnish _____ (Husband/Wife), upon request, with proof of insurance with the specified companies in the specified amounts and that the beneficiary of said insurance policies is designated as required by this agreement.

One Party May Insure the Other:
_____ (Husband/Wife) shall be permitted to purchase within twelve (12) months life insurance on _____ (Husband/Wife) life with a death benefit of up to one hundred thousand ($100,000) dollars. _____ (Husband/Wife) shall cooperate in obtaining a physical examination or supplying other information if required by the insurer. The premium and all other costs associated with obtaining said insurance shall be paid solely by _____ (Husband/Wife) who shall own the policy.

*These clauses relate to "**III. Children: Custody, Visitation, and Parenting Provisions**" in the author's outline.*

CHILD CUSTODY

Child Abduction Prevention – Prohibit Removal:
The _____ (father/mother) is prohibited from removing the child from this country for any reason, unless advance written consent is secured from _____ (father/mother) or this court, and neither party is permitted to obtain a passport for the child without written consent of the other parent or a court order issued after notice to the other parent and an opportunity to be heard.

Child Abduction Prevention – Surrender Passport:
Prior to exercising parenting time with the child, _____ (father/mother) shall surrender the child's passport(s) to _____ (father/mother/attorney/court/clerk of court, etc.).

Joint or Shared Custody – Emergency Decisions:
It is understood that some decisions must be made on an emergency or urgent basis and, in such an event, each of the parties acknowledges full confidence in the other's ability to make a unilateral decision for the children's welfare, which otherwise would be a joint decision of the parties. When a unilateral decision on a significant matter is made, the party making that decisions shall promptly notify the other party.

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Joint or Shared Custody – Joint Decision Making:
The parties agree to share parental responsibility of the minor children, including decision-making regarding education, medical care, dental care, summer camp, ages for dating and driving, and other significant matters affecting the children. [NOTE: Perhaps specify particular additional issues of importance to the parties.] The parties also will seek to agree insofar as possible regarding the children's religious training, but the parties recognize that each party has the right to expose the children to his or her respective religious beliefs.

Joint or Shared Custody – Agreement to Consult:
The parties agree to consult with each other regarding major decisions affecting the children. [NOTE: particular issues might be specified, including major expenditures on behalf of the children.] The requirement of consultation means that _____ (generally the parent without the primary decision making authority) shall have meaningful input into decisions affecting the children before final decisions are made. In the event that an agreement cannot be reached, _____ (normally the parent with primary decision making authority) shall have final authority on the decision (unless a court determines otherwise).

Notification – Change of Address, Telephone Numbers, and Email:
Each parent shall keep the other advised of his or her current address and telephone numbers for residence and work and email addresses. In the event either parent travels out of town for a period of four days or more, the traveling parent shall provide the other parent with a telephone number at or through which he or she may be reached or the name and telephone number of a third party who will be able to contact the traveling parent. On all trips of more than two days on which a parent is taking the children out of town, the parent taking the trip shall provide the other parent with an itinerary that includes addresses and telephone numbers at which the children can be reached.

Notification – Children's Health Problems:
Each parent shall promptly notify the other in the event that one of the children suffers an illness or accident requiring hospitalization or medical care of a physician or dentist. Each parent shall notify the other regarding results of the children's medical and dental examinations and supply copies of health records, if requested.

Notification – School Records and Progress Reports:
_____ (primary residential parent) shall keep (secondary residential parent) fully advised of the children's progress in school and social adjustments. _____ (primary residential parent) shall promptly provide _____ (secondary residential parent) with copies of the children's report cards and other reports pertaining to the children's academic performance and conduct. _____ (primary residential parent) shall notify _____ (secondary residential parent) of any planned teacher conferences, which both parents shall have the right to attend. Insofar as possible, _____ (primary residential parent) shall attempt to schedule teach conferences so that they are convenient to _____ 's (secondary residential parent) schedule.

Notification – Special Events:
_____ (primary residential parent) shall notify _____ (secondary residential parent) in advance of any school open houses, performances, athletic events, or other significant extra-curricular events involving the children.

Parenting Time – Nonspecific:
In light of the age and maturity of _____ (child), no specific times and places for parenting time are set forth here. It is understood that parenting time between _____ (child) and _____

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(secondary residential parent) shall be such times as places as _____ (child) and _____ (secondary residential parent) agree upon, subject to reasonable notice to _____ (primary residential parent).

Parenting Time – Failure to Exercise:
The failure of _____ (secondary residential parent) to exercise in whole or in part his/her right to spend time with the children as provided here shall not constitute a waiver of such rights in the future.

Parenting Time – Penalty for Nonexercise:
In the event that _____ (secondary residential parent) fails to exercise scheduled parenting time and alternate parenting time was not agreed to by the parties, _____ (secondary residential parent) shall pay _____ (primary residential parent) $_____ ($50.00). That amount shall be paid to compensate _____ (primary residential parent) for additional expenses incurred in caring for the children during that time period.

Parenting Time – Pick Up and Drop Offs:
Pick-ups and drop-offs are to be from _____'s residence and shall be done on a timely basis. If _____ is going to be more than 30 minutes late, he/she must advise _____ by telephone. If _____ is more than one hour late and has not called, then parenting time will be considered cancelled. _____ agrees to be particularly mindful of returning the children on time on school evenings.

Parenting Time – Right of First Refusal:
In the event the child cannot be taken care of by one parent for a period of five hours or more because of that parent's work schedule, out-of-town travel, or another reason, the other parent shall be given the opportunity to care for the child, rather than having the child in the care of a sitter.

Positive Relationships:
Each parent shall make reasonable efforts to promote a positive relationship between the children and the other parent. Neither parent shall undermine the children's relationship with the other parent, nor shall either party permit third persons to undermine the children's relationship with the other parent.

Relocation – Anticipated and Allowed:
In the event that _____ (primary residential parent) shall remove the children to a location more than 500 miles from the children's present residence, _____ (primary residential parent) shall be responsible for arranging and paying for the transportation of the children for the purposes of parenting time with _____ (secondary residential parent). Travel shall be by air, and prior to the date of the children's anticipated departure from the residence of _____ (primary residential parent) shall provide to _____ (secondary residential parent) the paid airline ticket for the return of the children after period of parenting time. _____ (primary residential parent) shall be responsible for placing the children upon the designated aircraft, and _____ (secondary residential parent) shall be responsible for picking the children up at the destination. [The child shall not be booked on flights that require a change of planes, and flights shall be nonstop whenever reasonably possible.] If more than one airport serves the area where _____ (secondary residential parent) is to pick up the children, _____ (secondary residential parent) shall have the right to designate which particular airport in that area.

Relocation – Restricted:
[NOTE: Many states have statutory requirements for relocation and, in such cases, the statutory language should be incorporated into the agreement.]

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In the event that _____ (primary residential parent) wishes to move out of state [or more than ____ miles from _____] with the children, _____ (primary residential parent) shall notify _____ (secondary residential parent) of the proposed move at least ____ [60] days before the proposed move. _____ (primary residential parent) will not move out of state with the children without written permission from _____ (secondary residential parent) or permission from the court.
[NOTE: If one wishes to create further impediments to a parent's moving with the children, the following language might be used: The parties agree that a proposed relocation of the children would be a substantial change in circumstances affecting the children, and thus, could be a basis for modification of custody.]

Relocation – Right to Move:
The parties recognize that it is important to the children's best interest that their parents be able to pursue their individual professional training and careers and that such pursuit may involve relocation by one or both parents from the _____ area. The parties further recognize that it is important that the children have as frequent contact as is reasonably possible with their secondary residential parent. Accordingly, the parties have agreed on the complete freedom to relocate within the relocation area for professional reasons defined here, and upon the restrictions on their ability to relocate outside the relocation area, set forth below, and upon the alternative parenting-time schedule, set forth in paragraph ___ below, to be implemented in the event of a parent's relocation.
Exhibit __ is a list of states (or metropolitan area) that are collectively referred to as the "relocation area." In selecting the states on this list, the parties have considered the location of desirable training programs, future practices, the availability of transportation to foster parenting time, and the distance from _____. It is both parents' present desire to finish their training and to reside in the _____ region of the United States. However, both parties recognize the individual discretionary decision-making process involved in selecting either ____ training program and/or the location of a professional practice. In recognition of these factors, they agree that either parent is free to relocate anywhere in the relocation area to pursue his or her training or to enter practice.
If either or both parents relocate within the relocation area, then the parenting time shall be as provided in paragraph ____, commencing two weeks after the relocation.
[NOTE: For a sample parenting time order for parents who live in different states, see "Parenting Time – Out of State Secondary Residential Parent," earlier in this section.

Telephone Contact:
[NOTE: If the secondary residential parent lives out of town, telephone contact may be replaced by or supplemented with Skype or other teleconference contact.]
Each parent shall allow the other parent reasonable telephone contact with the children, both by allowing the children to receive telephone calls and by allowing them to make telephone calls. The children shall be given privacy for their telephone calls with the other parent.
[NOTE: If telephone contact is a source of major contention, add the following language, which specifies times at which telephone contact is permitted.] The children shall be allowed to receive telephone calls from ____ (secondary residential parent) between _____ [7 P.M.] and _____ [8 P.M.] on _____ [Mondays and Thursdays], and _____ (primary residential parent) shall not interfere with the receipt of those phone calls.
[NOTE: If there is a concern that one parent will harass the other parent with excessive telephone calls, the following language may be used.] _____ is permitted to contact the children by telephone no more than three times per week. Such calls shall be between the hours of ___ [7 P.M.] and _____ [8 P.M.], and no individual call may exceed _____ [one-half hour].

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*These clauses relate to "**IV. Child Support**" in the author's outline.*

CHILD SUPPORT

Extracurricular Activities:
In addition to any sums the Payor pays to the Payee, pursuant to the preceding paragraphs, the Payor shall make the following additional payments for the benefit of the children:

A. One-half of the agreed upon tuition and fees for nonpublic school attended by a child;
B. One-half of the costs of any agreed upon summer camp attending by a child;
C. One-half of the fees charged for any agreed upon music, art, extracurricular educational, and athletic lessons received by a child.

The parties shall select any nonpublic school, camp, or lesson for any child, in accordance with paragraph ___.
[NOTE. Consider whether you want to state an age limit for the above. Consider whether you want to include a cap for such expenses on an annual basis and/or on a per child basis.]

Tax Exemptions:
As long as the Payor is required to make payments to the Payee for the support of any child of the parties, he/she shall be entitled to claim the child as a dependent for federal income tax purposes. The Payee shall execute annually such form as may be required by the Internal Revenue Service to enable the Payor to claim the benefit of any dependency exemption. The foregoing provisions shall apply only in years in which the Payor has paid in full all child support due for the subject year by or before the last day of the year.

Temporary Suspension of Payments:
The child support payment provided for under paragraph ___ of this agreement shall be suspended under the following conditions:

A. For any calendar week in which the children spend ____ or more days with the Payor;
B. During the children's summer stay with the Payor, commencing in the first full calendar week after their arrival and terminating in the calendar week of the return of the children to the Payee.

[NOTE: Some states provide for suspension during sustained periods of parenting time. Some do not allow such suspension; research your state law.]

*These clauses relate to "**V. Property Division/Settlement**" and **"VI. Personal Property"** in the author's outline.*

MARITAL HOME

Capital Gains Taxes:
_____ shall be responsible for payment of all capital gains taxes that may become due as a result of this transfer or as a result of any subsequent sale of the premises by _____. _____ agrees to hold _____ harmless from liability for any capital gains taxes or ordinary income taxes that might be assessed against _____ or that _____ might be required to pay as a result of this transfer or the subsequent sale of this property by _____. _____ may, in addition to the other remedies provided by law, deduct the amounts from the sums payable by _____ to _____ under this agreement.

Execution of Deed:
_____, at the time of the signing or promptly thereafter, shall execute and deliver to _____ and _____ as escrowees, a deed duly acknowledged in such form as _____'s counsel shall prepare,

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conveying all of his/her right, title, and interest in the premises to _____. Upon the issuance of a final divorce decree, the escrowees shall deliver the deed (and insurance policies mentioned in subparagraph above) to _____ or his/her counsel.
[NOTE: The following additional language may be added: In the event that no final decree is entered within ___ months as provided in this agreement, the deed and insurance policy shall be returned to _____ as counsel for _____.]

Future Mortgage Payments:
_____ hereby agrees that as of _____ [date] he/she solely will be responsible for all future mortgage payments, real estate taxes, and payment for utilities and insurance for the premises.

Hold Harmless Agreement:
_____ agrees to hold _____ harmless form any and all liability, claims, damages, or expenses (including attorneys' fees and legal expenses) that _____ may sustain, or for which he/she may become liable or answerable if _____ defaults on a mortgage or tax payments or sustains injuries on the premises.

Listing and Sale:
Husband and Wife [immediately] [by a certain date] shall list the family residence located at _____ for sale at a reasonable market price. The listing shall be with a jointly selected licensed real estate broker doing business in the neighborhood of the family residence and able to list the home on any available multiple listing service. In the event that the parties cannot promptly agree on the price or on any other terms for listing or on terms of any subsequent modification of those terms or on acceptance or counteroffer to any offer received, either party may apply to the court for a resolution of the dispute.
[NOTE: Parties may specify a designated appraiser or realtor to determine the fair and market value. In addition, the agreement may call for mandatory step-down in listing price, if the home is not sold by a certain date (or dates). Cautionary note: If an agreement pertaining to a step-down in price is filed with the court, realtors and prospective buyers may have access to the agreement. The parties, therefore, may wish to place such an agreement in writing, but not file it with the court.] Upon completion of any escrow for sale of the family residence, the net proceeds from escrow shall be divided [equally] between the parties (as follows):
A. _____;
B. _____.
[NOTE: The party responsible for residence payments could be given an extra share to reflect those payments.]

Major Repairs:
If the family residence requires major repairs prior to sale, Husband and Wife each shall be obligated to pay one-half of the costs of the repairs. Major repairs are defined as those in excess of $300. Except in case of emergency, major repairs shall be made by agreement of the parties or court order. The court shall retain jurisdiction to make all orders reasonably necessary to give effect to the provisions of this agreement regarding the sale of the family residence, and to effect [equal] division of the net proceeds from escrow.

Payments Pending Sale – One Party:
After this date and until the close of escrow of sale, _____ shall be obligated to pay promptly when due all installments on mortgages, trust deed notes, and other carrying charges together with all taxes, assessments, costs of ordinary maintenance, and insurance on the family residence.

Payments Pending Sale – Shared Responsibility:
Until the marital home is sold, _____ shall pay __ percent and _____ shall pay __ percent of the monthly mortgage, principal and interest, and real property taxes and insurance on the premises. _____

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shall pay his/her share of the monthly payments to _____ on or before the first day of each month, and _____ shall then remit the entire monthly payment to the bank. The payments shall not be deemed to be alimony taxable to or deductible by either party. Each party shall be entitled to any available tax deduction applicable to his or her respective share of the interest and real property tax payments.

Allocation of Securities and Brokerage Accounts:
The parties have accumulated a number of securities and investment accounts presently held in the name of ____ (Husband/Wife). _____ (Husband/Wife) shall transfer to _____ (Husband/Wife) cash or securities at his/her option having a total present cash value of $____. Said transfers shall be made within 60 days from the date of the signing of this agreement. _____ (Husband/Wife) shall retain the remainder of said securities and accounts free and clear of any claim by _____ (Husband/Wife).
[NOTE: Or alternatively, lump sum maintenance is payable in installments or as part of the property settlement and not taxable to or deductible by either party.]

Already Divided:
As of this date, Husband and Wife possess their property as set forth and listed in Exhibit ____ attached.

Equally Divided:
Husband and Wife agree that it is their intention to divide equally between them the net value of all marital property and that such equally or substantially equal division is accomplished through the provisions of this agreement.

Bank Account Closing:
Husband and Wife each represents to the other that from this date each party shall not charge or incur or cause to be incurred any liability or obligations based on the credit or name of the other. Each of the parties shall do whatever is necessary to close immediately all joint accounts in the name of the Husband and Wife or either of them under which one may make purchases on the credit of the other.

Division – of Aggregate Balances in Multiple Accounts:
The parties, individually and jointly, hold a number of bank accounts, which are listed on Schedule __ attached. It is the intention of the parties to divide the funds in said accounts equally (____% to the Husband and ___% to the Wife). In computing the total funds available for division, the respective account balances as of _____ shall be used.

Division – of Identified Account:
_____ (Husband/Wife) shall transfer to _____ (Husband/Wife) one-half (___%) of the balance in the _____ Bank savings account #_____, as of _____. It is contemplated that the total balance will be in the approximate amount of $_____.

Division – via Short Form:
Husband and Wife already have divided all personal property accumulated during their marriage to their mutual satisfaction. Each acknowledges that he or she is now sole owner of any personal property he or she possesses and that neither has any further claim against the other for any item of property or any cash equivalent.

Each Spouse to Retain His/Her Own Accounts:
_____ (Husband/Wife) shall retain any and all bank accounts, stocks, bonds, and other assets presently in his/her name, free and clear of any claim by _____ (Husband/Wife). _____ (Husband/Wife) shall retain any and all bank accounts, stocks, bonds, and other assets presently in his/her name, free and clear of any claim by _____ (Husband/Wife).

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Family Photos and the Like:
Husband and Wife are entitled to an equal share of the family photographs (home movies/videotapes/DVDs). Husband and Wife shall each make his or her share of such items available to the other spouse for copying or duplication. The party desiring copies or duplicates shall pay any costs involved.

Separate Property:
As of this date, _____ (Husband/Wife) possesses his/her separate property, including appreciation of separate property, as set forth in exhibit ____ attached [or specified in this paragraph].

Separate Property – None:
As of this date, _____ (Husband/Wife) possesses no property or interest in separate property.

Subsequently Discovered – Equal Division:
In addition to the items listed in this agreement, if any undisclosed property or interest in property is discovered subsequently, and a court of competent jurisdiction determines it to be marital/community property of the parties, such discovery and determination shall not invalidate this agreement. The property or the interest in it shall, at the election of this discovering party, (i) be divided equally in kind or (ii) be accounted for by the party in possession who may pay to the discovering party a sum equal to one-half of the present value of the property or one-half of the value of the property at the date of discovery (at the date of court determination), whichever sum is greater.

Subsequently Discovered – Penalty:
Should the parties subsequently discovery the existence of any property interest not provided for in this judgment, that property shall be divided equally. However, if the existence of that property was knowingly concealed or misrepresented by one of the parties, that property shall become the sole property of the other, and the concealing party shall pay all costs, fees, and attorney's fees occasioned by the failure to disclose.

Vehicle – Transfer of Jointly Owned and Liability for Auto Loan:
During the marriage, the parties were joint owners of a _____ (make, model, year of vehicle) and were joint obligators on a loan to finance the automobile. That vehicle shall become the sole property of the _____ (Husband/Wife). He/She shall refinance the loan obligation on said vehicle, so as to become the sole obligor for payment of the car loan. He/she shall similarly be solely liable for all taxes, insurance and other expenses relating to the vehicle. The above-referenced transfer of title and refinancing shall be at no cost or obligation to the _____ (Husband/Wife). _____ (Husband/Wife) shall execute any documents necessary to transfer title to the vehicle solely to _____ (Husband/Wife).

Warranty – Against Gifts:
_____ hereby represents and warrants to _____ that within the __ past years, _____ has not made any gift or other disposition of property or interests in property in excess of the aggregate of $_____ to any person or entity (except for transfers in the ordinary course of business and for full consideration). In the event it is subsequently discovered that _____ has made a disposition of property or interests in property contrary to this warranty, (such discovery shall not invalidate this agreement but) _____ shall pay to _____ a sum of money equal to one-half of the present value of the disposed property or one-half of the value of that property at the date of discovery (at the date of court determination) whichever sum is greater.

Warranty – Full Disclosure:
_____ hereby represents and warrants to _____ that as of this date, he/she does not possess any property or interest in property other than the items listed in this agreement; and that the items set

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forth and listed in this agreement constitute full and complete disclosure by _____ of all property and interests in property held by or for the benefit of _____.

RETIREMENT BENEFITS

QDRO – Retention of Jurisdiction to Approve or Amend:
The Court shall retain jurisdiction over this matter to review, approve, and enter as an order of the court the Qualified Domestic Relations Order to be prepared pursuant to Section ____. The court shall further retain jurisdiction to amend any such order if necessary to establish or maintain its qualification as a QDRO as defined in Section 414(p) of the Internal Revenue Code of 1986, as amended, and the Retirement Equity Act of 1984.

Retirement Interests of Each Party:
Each party shall retain his/her respective pension and retirement plans free and clear of any claim by the other.

Transfer – of IRA Funds Between Spouses:
_____ (Husband/Wife) present has an IRA with an approximate balance of $____. Within ___ days of the execution of this Agreement, _____ (Husband/Wife) shall cause the sum of $_____ to be transferred from said IRA into an IRA in the name of the _____ (Husband/Wife).

*These clauses relate to "**VII. Debts**" in the author's outline.*

DEBTS

Credit History:
The parties acknowledge and agree that the credit history established by them during their marriage shall be deemed to have been the credit history of both parties, notwithstanding ordinary practices of creditors and credit reporting agencies that may have reported such credit history in the name of _____ (husband/wife) only. _____ (husband/wife) agrees that he/she shall cooperate and execute any documents as may be required to enable _____ (husband/wife) to provide his/her prospective creditors the full credit history of the parties during the marriage. Nothing in this agreement is intended or shall be deemed to create any liability for _____ (husband/wife) of debts or obligations incurred by _____ (husband/wife) arising out of the credit information provided to him/her.

Hold Harmless:
In the event that any outstanding debt or obligation of any kind has been incurred by Husband or Wife (and is hereinafter asserts against the other) (other than debts and obligations set forth and listed above), the party actually incurring the debt or obligation shall assume and be solely responsible for paying it and shall indemnify, defend and hold the other party harmless from all claims related to the debts, obligations, and expenses with respect to those debts.

Release from Guarantees:
_____ (husband/wife) shall use his/her best efforts to obtain from the following oblige(s) a release of _____ (husband/wife) from liability on any continuing guaranty of the following obligations:
A. _____:
B. _____:
If "release" referenced in this paragraph does not occur prior to ____ days from the date of this agreement, then said debt shall be immediately paid by _____ (husband/wife).

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Separate Liability:
_____ (husband/wife) hereby acknowledges that as of this date, the following debts and obligations are the separate obligations of _____ [husband/wife] and were incurred solely by _____ [husband/wife] for the sole benefit of _____ [husband/wife]. _____ [husband/wife] agrees to assume sole liability for and to pay [or otherwise discharge] each outstanding separate debt and obligation without any contribution from _____ [husband/wife]. [NOTE: A parallel paragraph may be added to specify separate debts assumed by the other party.]

Warranty Against Outstanding Debts:
_____ [husband/wife] hereby represents and warrants to _____ [husband/wife] that except for the debts and obligations set forth and listed above, _____ [husband/wife] has not incurred any other outstanding debts or obligations on which _____ [husband/wife] is or may become liable, nor has _____ [husband/wife] incurred any obligation that could henceforth be enforced against any asset held or received pursuant to this agreement by _____ [husband/wife].

*These clauses relate to "**VIII. Tax Issues**" in the author's outline.*

TAXATION

Cooperation Regarding Claims and Defenses:
Husband and Wife each agree to notify promptly the other in the event the Internal Revenue Service or any state or local taxing authority provides notice of an audit, deficiency, refund or other adjustment regarding a tax return that was jointly filed or that should have been jointly filed. The party receiving such notice from a taxing authority shall provide a copy of the notice to the other party. Husband and Wife further agree to cooperate fully with each other in any claims for refunds or in defending against any deficiencies that may be determined with respect to joint income tax returns filed (or to be filed) for the calendar year 20___ and years prior. This includes, without limitation, the making, executing, and filing of amended income tax returns; applications for refunds, protests, and other instruments; and documents as may be required. _____ shall pay all costs and expenses.

Prior Years:
With respect to federal and state (and city) income taxes for each calendar year during the marriage, including 20__, for which the parties have filed (will file) joint federal and state (and city) income tax returns, _____ shall be solely responsible for payment of, and shall pay promptly when due, all taxes and (deficiencies in taxes, together with all) interest and penalties (assessed as deficiencies) and _____ hereby indemnifies and agrees to hold _____ harmless from all liabilities, assessments, deficiencies, and other costs, including but not limited to, attorneys' and accountants' fees arising by reason of _____'s failure to pay taxes when due, including penalties and interest. Any refunds shall be divided equally between _____ and _____.

Responsibility for Tax Returns:
Husband and Wife shall file joint federal and state income tax returns for the year 20__. _____ (Husband/Wife) shall be solely responsible for the preparation and timely filing of returns and shall pay all resulting costs and expenses together with all taxes, interest, and penalties. Tax refunds, if any, shall be divided [equally] [or all to one].

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*These clauses relate to "**IX. Attorney's Fees**" in the author's outline.*

ATTORNEY'S FEES

Each Party Pays:
Each of the parties shall be solely responsible for paying his and her respective attorney's fees and costs incurred in connection with the negotiation and preparation of this agreement and through entry of a final judgment of dissolution of the marriage. Neither Husband nor Wife shall have any obligation whatsoever for any attorney's fees or costs incurred by the other party.

Spouse to Pay Fixed Amount:
_____ (Husband/Wife) agrees to pay to _____, the attorney for (Husband/Wife), upon the execution of this agreement, the sum of $_____ for services rendered to (Husband/Wife) in connection with the separation of the parties and in the negotiation of this agreement. _____ (Husband/Wife) acknowledges that he/she will be responsible for any additional legal fees incurred in connection with this agreement or in connection with any dissolution action presently pending between the parties.

Violations:
The parties agree that no additional requests for counsel fees shall be addressed to any court should divorce or other legal proceedings affecting the marriage between the parties or custody or support or parenting time subsequently result. The parties specifically agree that no request for counsel fees shall be addressed to any court unless there is a violation of the terms of this agreement, in which case counsel fees can be sought in connection with enforcement proceedings.

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