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SEPARATION AGREEMENT CHECKLIST

I. IDENTIFYING DATA

- A. Names of parties
- B. Date/Place of marriage
- C. Last lived together (date, place)
- D. Name(s)/Date(s) of birth of children of the marriage
- E. Names of parties' attorneys

II. PARENTING PLAN

- A. Legal custody
- B. Physical custody
- C. Living arrangements/Parenting plan (including weekdays, weekends, holidays, vacations, birthdays)
 - 1. Current
 - 2. Future modification/Periodic review
 - 3. Each parent's access to kids, e.g., phone call, email, etc.
- D. Relocation (e.g. significant distance apart within the state or out of state)
- E. Travel outside Massachusetts
- F. Notification of illness
- G. Access to children's records (medical and school)
- H. Access of grandparents and/or other relatives to children
- I. Emergency decisions
- J. Parental cooperation; non-disparagement
- K. Religion and religious training

III. MARITAL HOME

- A. Property address/county/state/owners/form of ownership
- B. Use and possession
- C. If joint ownership
 - 1. Type (tenants in common; joint tenants)
 - 2. Responsibility/liability for expenses
 - a. Present/future mortgages (including equity lines)
 - b. Real estate taxes
 - c. Homeowner's insurance
 - d. Maintenance
 - e. Capital improvements

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- f. Repairs (major and minor)
 - g. Condo fees (if relevant)
 - 3. Division of rental income (if any)
 - 4. Duration (including circumstances such as remarriage or change of custody that would trigger change in ownership)
 - 5. Indemnification
 - 6. Tax consequences (e.g. who gets the deductions, etc.)
- D. If transfer to third party
 - 1. Timing of transfer or sale
 - 2. Allocation of costs of preparation for sale (including repairs)
 - 3. Appraisal and setting asking/selling price
 - 4. Definition of proceeds
 - 5. Division of proceeds (including whether payor of mortgage gets credit for payment of principal)
 - 6. Capital gains tax consequences
- E. If transfer to spouse
 - 1. Determining price (including any deductions from equity -- e.g. equivalent of realtor's fee, capital gains taxes)
 - 2. Time of transfer
 - 3. Method of payment
 - 4. Responsibility of sole owner for expenses after transfer
 - 5. Does non-owner stay on mortgage? If so, indemnification provision
 - 6. Tax consequences (e.g. transferee liable for capital gains taxes)

IV. ADDITIONAL PROPERTY

- A. Pension/Retirement
 - 1. Description of plan(s)
 - (a) Contributory plan
 - (b) Defined benefit plan
 - 2. Valuation of plan
 - 3. Transfer provisions
 - 4. Division
 - 5. QDRO requirements
- B. Securities (stocks, bonds, stock options)
 - 1. Identification
 - 2. Balance of account(s)
 - 3. Ownership
 - 4. Division, buy-out, or other disposition
 - 5. Restrictions on voting, sale

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- C. Bank accounts (savings/checking accounts; money market funds; certificates of deposit)
 - 1. Balance of account(s)
 - 2. Ownership
 - 3. Division or other disposition
- D. Family business/Closely-held corporation
 - 1. Identification
 - 2. Description
 - 3. Form of ownership (if less than 100%, amount of ownership)
 - 4. Value
 - 5. Division, buy-out, or other disposition
- E. Real estate (Other than marital home)
 - 1. Usable property
 - a. Ownership form
 - b. Usage
 - c. Rental
 - (1) Right to income
 - (2) Obligation for expenses
 - (3) Tax consequences
 - 2. Partnerships and limited partnerships
 - a. Identification
 - b. Value
 - c. Division, buy-out or other disposition
- F. Cash value of life insurance
- G. Pending legal actions
- H. Tangible personal property
 - 1. Possession and storage
 - 2. Division; provision for removal
- I. Trusts
 - 1. Identification
 - 2. Value
 - 3. Division, buy-out or other disposition
- J. Vehicles
 - 1. Make/Model/Year
 - 2. Who holds title
 - 3. Ownership upon divorce
 - 4. Responsibility for loan/hold harmless
 - 5. Cooperation regarding applicable transfers
- K. Other property, including royalties, copyrights, trademarks, etc.

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- L. Pending inheritance(s)
- M. Cemetery plots
- N. Frequent flier miles
- O. Machines, equipment
- P. Pets
- Q. Photo albums, family videotapes
- R. Waiver of rights to any property purchased by spouse after agreement is executed but before the judgment of divorce becomes final

V. DEBTS AND LIABILITIES

- A. Type of Debt
 - 1. Educational loans
 - 2. Automobile loans
 - 3. Real property leases
 - 4. Contracts to buy
 - 5. Guarantees
 - 6. Any installment purchase loans
 - 7. Judgments against you
 - 8. Counsel fees
 - 9. Medical fees
 - 10. Charge account debt
 - 11. Credit card debt (if not joint, specify in whose name)
- B. Amount of debt
- C. Allocation of responsibility for debts
- D. Indemnification

VI. CHILD SUPPORT

- A. Support Amount
 - 1. Initial amount
 - 2. Method of establishing payment
 - 3. Additional expenses (e.g. camp, lessons)
 - 4. Health insurance for children
 - a. Policy in effect
 - b. Obligation of coverage
 - c. Duration of obligation
 - d. Notification of change in policy
 - e. Responsibility for payments
 - f. Uninsured medical expenses

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- B. Duration (including definition of emancipation); effect of death of payor
- C. Time of Payment
- D. Adjustments
 - 1. If more than one child: effect of emancipation of older child(ren) on child support
 - 2. Reduction when child attends college
 - 3. Periodic changes in amount: COLA, Guidelines, percentage method
 - 4. Renegotiation (without specific method for adjustment)
- E. Tax Effect
 - 1. Not taxable to recipient
 - 2. Not deductible by payor
- F. Dependency exemption(s)
- G. Children's accounts/investments
- H. Extra-curricular activities tutoring, camp, etc. - allocation of expenses.
- I. Cost of babysitters, day care
- J. Cost of vacations
- K. Cost of wedding (if any)

VII. EDUCATION

- A. Definition of education (college/private elementary or secondary school) expenses (e.g. tuition, room, board, fees, travel and other expenses)
- B. Custodial account or children's trust (creation; contribution; control)
- C. Apportionment of expenses (children's funds; scholarships; parental contribution; parental borrowing; summer work; student loans)
- D. Involvement of parties in process of choosing college to which applications will be made
- E. Involvement of parties in financial aid applications

VIII. ALIMONY

- A. Amount
- B. Duration; effect of remarriage or cohabitation
- C. Time of payment
- D. Adjustments
 - 1. Calculation method
 - 2. COLA
 - 3. Renegotiation (without specific method for adjustment)
- E. Tax effect
 - 1. Tax deductibility
 - 2. Tax reporting for inclusion of income

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- F. Waiver of future alimony?
- G. Effect of alimony termination on child support obligation

IX. HEALTH INSURANCE FOR SPOUSE

- A. Policy in effect
- B. Obligation of coverage (specify individual or shared obligation to provide coverage)
- C. Allocation of uninsured expenses
 - 1. Catastrophic coverage
 - 2. Orthodontia
 - 3. Cosmetic surgery
 - 4. Psychotherapy
 - 5. Eyeglasses and contact lenses
- D. Duration of obligation
- E. Notification of change in policy
- F. Responsibility for payments
 - 1. COBRA cost, if relevant
 - 2. Upon remarriage of employee spouse

X. LIFE INSURANCE

- A. Identification
- B. Allocation of cash value (if whole life)
- C. Amount, including reduction options and event triggers, if any.
- D. Future obligations
 - 1. Ownership of policy
 - 2. Responsibility for payment of premium
 - 3. Beneficiary
 - 4. Duration
 - 5. Documentation/option to review policy
 - 6. Default provision (claim on estate)
 - 7. Reduction of death benefit (method of calculation)

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XI. TAXES

- A. How to file for last year of marriage
- B. Cooperation if joint filing
- C. Use and reporting of available deductions
- D. Division of refund or liability
- E. Contribution (if joint)
- F. Indemnification
- G. Cooperation for audit/investigation of prior year's tax returns
- H. Capital gains tax consequences for all assets and/or capital loss
- I. Adjustment if change in tax laws

XII. ADDITIONAL PROVISIONS TO BE INCLUDED IN DOCUMENTS

- A. Space for signature of the parties
- B. Name of mediator
- C. Warranties about full disclosure of finances
- D. Mediator recommends separate and independent legal advice
- E. Procedure for future disputes (negotiation; mediation; arbitration)
- F. Responsibility for payment of mediation fee/legal fees/filing fees
- G. Privacy clause
- H. Merger/Survival of Agreement
- I. Debt payment designated as support and maintenance
- J. Promise of no past and future contraction of debt in the other's name
- K. Waiver of right to take against will
- L. Waiver of right to after-acquired property
- M. Right to dispose of property by will
- N. Mutual release of all claims
- O. Entire agreement (no oral or extrinsic agreements)
- P. Acknowledgment of fairness and reasonableness of provisions
- Q. Massachusetts contract.
- R. Severability - unenforceability of a provision shall not affect validity of other provisions
- S. Waiver of provision not waiver of subsequent breach/default of provision
- T. Modification, amendment or waiver in writing to be valid
- U. Forever binding and conclusive on heirs, executors, assigns
- V. Indemnification for breach by breaching party or his/her estate survives death
- W. Notarization