

What is a Separation Agreement?

A separation agreement is a document that defines how separating couples will divide their joint assets and responsibilities.

Separation agreements are suitable in many different circumstances whether the parties are or have been married, have lived together and/or have children or assets together.

Even if you and your partner agree on how you will split your assets and responsibilities, it is still advisable to get advice from a solicitor.

Why Use a Separation Agreement?

If you live with your partner, whether you are married or not, there are likely to be many things that you share: financial outgoings, assets such as a car or your home, or even parental responsibilities. In addition to your current shared responsibilities, you and your partner may have agreed to share things that will come into effect in the future, such as the cost of schooling for your child, and, if you are married, income from pensions or payouts.

A separation agreement can formally address how these joint interests will be handled. It may also address any steps that will be taken – such as the sale of a car in order to split its value. A separation agreement, therefore, can help to avoid any confusion or misunderstandings about the responsibilities of each partner.

When Should I Use a Separation Agreement?

Separation agreements may be used if you have not yet been married for 12 months (England and Wales) and are unable to start divorce proceedings. The agreement may also be used if you would like to separate for some time before beginning proceedings or if you are unsure whether or not you and your partner would like to permanently separate or divorce, but would still like to set out who is responsible for what.

Is a Separation Agreement Legally Binding?

A separation agreement is not legally binding when you get a divorce or end your civil partnership. Consequently, you may not be able to make your ex-partner continue to agree with the terms that were previously agreed upon within your separation agreement. On the other hand, a Judge may give more weight to your separation agreement during the process of your divorce or ending your civil partnership if certain circumstances apply:

- The separation agreement is fair and it is clear that both you and your partner understood the terms you had agreed to – for example, if you had sought legal advice.
- The separation agreement was drafted up by a solicitor and the other party obtained legal advice regarding the contents.
- You and your ex-partner's financial circumstances have not changed significantly since the agreement was made.

Do I Need to Notify Anyone That I have Separated From my Partner?

The separation of you and your partner may be a sensitive subject and it is entirely up to you when you tell your friends and family. There are, however, certain people you will need to notify to ensure you are paying and receiving the correct payments.

If you pay council tax, receive Housing Benefit or get a council tax reduction, you will need to inform the local council that you and your partner have separated. If you live on your own following the separation, you may be required to pay less council tax.

It should be noted that if you receive tax credits, you will need to notify HMRC within 30 days.

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It is extremely important to enter a separation agreement following advice from a solicitor. Where advice is not sought, you may find the separation agreement difficult to enforce if you begin divorce proceedings or the process of dissolving your civil partnership.

Here at Butcher & Barlow LLP, we can help you reach an agreement with your former partner, or provide further advice on an agreement you have already reached to ensure the terms are fair.

The content of this article was accurate as at December 2021. The law may change over time following changes in legislation or new court cases. We do not actively update our articles once they are published.

As such, the content of this article is not intended as specific legal advice but as general guidance only.

For tailored legal advice, specific to your personal situation, please contact our Team.