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FAMILY BREAKDOWN: WHAT IS A LEGAL SEPARATION

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One of the first questions people have when a relationship breaks down is “how do I become legally separated?”. In Canada there is no official process to become separated. All that needs to happen is that you and your spouse decide to live “separate and apart” from each other. This doesn’t mean that you can’t live in the same house, only that you clearly intend that you will no longer be a couple. The date that you decide to live separate and apart is important for legal reasons. It is strongly recommended that you seek legal advice so you understand your rights, obligations and any possible consequences of separating.

When people use the term “legal separation”, they usually mean a separation agreement, which is an agreement between you and your spouse that sets out how to divide what you used to share, like:

- How you are going to parent your children now that you live apart
- Who owns what and who owes what
- Child and spousal support

You may be tempted to make oral agreements or informal, unsigned written agreements when you separate. These agreements are nearly impossible to enforce and aren’t recommended because they often lead to confusion or arguments later on about what they mean. If the Court has to interpret an informal agreement it can get expensive, time consuming, and you might be unhappy with the outcome.

If it is written down, signed, witnessed, and dated by both parties the agreement is binding. This is true even if you and your spouse write your own agreement. A Court will rarely interfere with a separation agreement, unless there was fraud or intimidation involved. A Judge will not change it later just because you decide you got a bad deal. You should be aware of your rights and the possible legal consequences before you sign any agreement with your spouse.

You may want to try mediation if you and your spouse have trouble coming to an agreement on your own. Mediators may help you reach an agreement, but they cannot give you legal advice and it is not their job to make sure you know your legal rights. Their role is only to listen and help you reach a compromise. Only a lawyer can give you legal advice. Please note that paralegals are not allowed to practice family law.

Separations can be complicated and emotional. You should seek legal advice before making any decisions that will impact your future life, your children, and your financial well-being. In many cases, the best and most economical way to approach separation is to ask a lawyer about your rights and obligations under the law. You should each have your own lawyer. You may be eligible for Legal Aid or you can contact the Law Society Referral Service (1-855-947-5255 for those without internet access) for a free legal consultation of up to 30 minutes.

This column is not intended to provide legal advice; it is just general legal information provided by volunteer local lawyers and the staff of community legal clinics and Legal Aid Ontario. The law can change. You must contact a lawyer to determine your legal rights and obligations. If you are living on a low income, you may be eligible for free legal help from Legal Aid Ontario (criminal, family or immigration) or your local community legal clinic (income security programs, employment law, tenants’ rights, or human rights). You can reach Legal Aid Ontario at 1-800-668-8258 or visit them online at www.legalaid.on.ca. Contact the Community Advocacy & Legal Centre at 1-877-966-8686 for more information or visit www.communitylegalcentre.ca.

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