

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used in conjunction with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1), CLIENT FILE OPENING AND CLOSING (A-2), and FAMILY PRACTICE INTERVIEW (D-1) checklists. Lawyers should also refer to the SEPARATION AGREEMENT DRAFTING (D-3), MARRIAGE AGREEMENT DRAFTING (D-4), <i>CHILD, FAMILY AND COMMUNITY SERVICE ACT PROCEDURE</i> (D-6), POLYFAM AGREEMENT PROCEDURE (D-7) and/or POLYFAM AGREEMENT DRAFTING (D-8) checklists, as applicable. This checklist is not specifically designed to relate to cohabitation agreements, although many of the provisions will apply. This checklist is current to September 1, 2023.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Supreme Court Family Rules, B.C. Reg. 169/2009 (the “SCFR”).</b> Amendments to the SCFR came into effect on September 1, 2023 (B.C. Reg. 176/2023). The changes are primarily focussed on trial management conferences, case planning conferences, trial briefs, and trial certificates. See Supreme Court Family <a href="#">Practice Direction PD-63</a>—Trial Management Conferences, Trial Briefs and Trial Certificates – Transitional Guidance for transitional guidance on the changes. Note that if available, an email address for service is required of counsel and unrepresented parties alike.</li> <li>• <b>Family Law Act, S.B.C. 2011, c. 25 (“FLA”).</b> Amendments to the <i>FLA</i> received Royal Assent on May 1, 2023, including amendments to: rules applying to the presumption of advancement or presumption of resulting trust (s. 81.1); exclusions applying to excluded property (ss. 85(3) and 96); designations of limited members (s. 113(2)); disability benefits (s. 122); and calculation of a limited member’s proportionate share on death of a member prior to pension commencement (s. 124). The applicability of certain amendments may depend on whether the family law proceeding is a “pre-existing proceeding”, meaning a proceeding under the <i>FLA</i> respecting property division or to set aside or replace an agreement respecting property division, commenced before May 11, 2023. Amendments that will come into force at a later date by regulation pertain to: pets as “companion animals” (s. 97); commuted value transfer options (s. 113(2)(b)); Locked-in Retirement Accounts and Life Income Funds (s. 117.1); annuities (s. 118.1); survivor benefits payable under pension plans (s. 126.1); and administrative fees relating to pension division (s. 140).</li> <li>• <b>Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).</b> Amendments to the <i>Divorce Act</i> came into force on March 1, 2021. The amended provisions on care of children are similar to the regime under the <i>FLA</i>. Family law practitioners are advised to familiarize themselves with the amendments.</li> <li>• <b>Provincial Court Family Rules, B.C. Reg. 120/2020 (“PCFR”).</b> On May 16, 2022, new Rules 123.1 to 130 of the PCFR became effective and set out the procedure for an “informal trial” as part of a pilot project between the Ministry of Attorney General and Provincial Court of British Columbia. The “informal trial” pilot project takes place in Kamloops. More information is available at: <a href="http://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/divorce/family/options/court/informal-trial/informal-trial-explainer.pdf">www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/divorce/family/options/court/informal-trial/informal-trial-explainer.pdf</a>.</li> <li>• <b>Updated practice directions for sealing orders and applications to commence proceedings anonymously in Supreme Court.</b> Litigants seeking a sealing order in a civil or family law proceeding must follow the guidelines as set out in Supreme Court Family <a href="#">Practice Direction PD-58</a>—Sealing Orders in</li> </ul>					

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<p>Civil and Family Proceedings. For the procedure to commence proceedings using initials or a pseudonym in civil or family law proceedings, see Supreme Court Family <a href="#">Practice Direction PD-61</a>—Applications to Commence Proceedings Anonymously. Practice Directions 58 and 61 were updated on August 1, 2023.</p> <ul style="list-style-type: none"> <li>• <b>Retroactive adjustment of child support.</b> It is possible in certain situations to vary child support retroactively, even when the children are no longer “children” for the purposes of support (<i>Michel v. Graydon</i>, 2020 SCC 24; <i>Colucci v. Colucci</i>, 2021 SCC 24).</li> <li>• <b>Land Owner Transparency Act, S.B.C. 2019, c. 23.</b> The <i>Land Owner Transparency Act</i> may affect the implementation of the division of real property in family law matters.</li> <li>• <b>Transparency register.</b> The operative provisions of the <i>Business Corporations Amendment Act, 2019</i>, S.B.C. 2019, c. 15 came into force on October 1, 2020 (B.C. Reg. 77/2020), which may affect corporate matters in family law proceedings.</li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Aboriginal law.</b> If the client or the other party has ties to an Indigenous community, special considerations may apply (e.g., see items 1.13 and 2.18.6 in the FAMILY PRACTICE INTERVIEW (D-1) checklist). Note the requirements of Part 10, Division 3, of the <i>FLA</i>, which sets out standing and notice in cases concerning Nisga’a and treaty First Nations children and treaty lands. The <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>, S.C. 2013, c. 20, (the “<i>FHRMIRA</i>”) applies to married couples or common-law partners living on-reserve lands, where at least one spouse is a First Nation member. The <i>FHRMIRA</i> provides mechanisms for First Nations to create laws pertaining to matrimonial real property, and also sets out provisional federal rules for use until First Nations establish their own laws. Consider seeking the advice of a lawyer with experience in Aboriginal law. Further information on Aboriginal law issues is available on the “Aboriginal Law” page in the “Practice Areas” section of the CLEBC website (<a href="http://www.cle.bc.ca">www.cle.bc.ca</a>) and in other CLEBC publications.</li> <li>• <b>Additional resources.</b> For more information regarding the drafting of family law agreements, see <i>Family Law Agreements: Annotated Precedents</i>, 3rd. ed. (CLEBC, 1998–).</li> <li>• <b>Law Society of British Columbia.</b> For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).</li> </ul> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Preliminary Matters</li> <li>2. Drafting the Agreement (Summary)</li> <li>3. Concluding the Agreement</li> <li>4. Closing the File</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <ol style="list-style-type: none"> <li>1. <b>PRELIMINARY MATTERS</b> <ol style="list-style-type: none"> <li>1.1 Conduct a conflicts of interest check. Complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist, and refer to the FAMILY PRACTICE INTERVIEW (D-1) checklist.</li> </ol> </li> </ol>					

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<p>1.2 Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).</p> <p>1.3 Review the applicable provisions of the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (the “FLA”), starting with ss. 6 and 7, in drafting the terms of any family law agreement. Specific agreements are dealt with at s. 44 (parenting arrangements), s. 50 (guardianship), s. 58 (contact with children), s. 92 (property division), s. 127 (pension division), s. 148 (child support), and s. 163 (spousal support).</p> <p>1.4 Note that <i>FLA</i>, s. 6(5) allows a minor who is a parent or spouse to enter into and be bound by an agreement. (Sections 29 and 31 of the <i>Infants Act</i>, R.S.B.C. 1996, c. 223 on marriage contracts and settlements were repealed in 2011.)</p> <p>1.5 In the case of a separation agreement, consider whether the client might be best served by a separation agreement, by minutes of settlement embodied in a consent order, or by a consent order including a consent order in a joint family action. Review the court’s jurisdiction to set aside a property division agreement (<i>FLA</i>, s. 93), the court’s jurisdiction to set aside or replace a child support order (<i>FLA</i>, s. 148), and the court’s jurisdiction to set aside spousal support agreements (<i>FLA</i>, s. 164). If support reviews and variations or changes to parenting arrangements are contemplated, discuss with the client the differences between varying an agreement and varying an order, in terms of both law and process, and under both the <i>Divorce Act</i> and the <i>FLA</i>.</p> <p>1.6 Determine the client’s wishes with regard to specific terms of the agreement (see the SEPARATION AGREEMENT DRAFTING (D-3), the MARRIAGE AGREEMENT DRAFTING (D-4), the POLYFAM AGREEMENT PROCEDURE (D-7), and POLYFAM AGREEMENT DRAFTING (D-8) checklists).</p> <p>1.7 Advise the client that a spouse’s interest in “family property” arises on separation (under <i>FLA</i>, s. 84).</p> <p>1.8 Consider filing a Form P1 (Division of Pensions Regulation, B.C. Reg. 348/2012, under the <i>FLA</i>) to notify pension administrators of a party’s interest in the other party’s pension, pending a completed agreement.</p> <p>1.9 If the client or the other party has ties to an Indigenous community, special considerations may apply (e.g., see items 1.13 and 2.18.6 in the FAMILY PRACTICE INTERVIEW (D-1) checklist); consider whether a lawyer with experience in Aboriginal law should be consulted.</p> <p>1.10 Request schedules of assets and liabilities from your client as well as supporting documents, if available.</p>					
<p><b>2. DRAFTING THE AGREEMENT (SUMMARY)</b></p>					
<p>2.1 Prepare an outline of the agreement indicating the clauses from your precedent file that will be included (see the SEPARATION AGREEMENT DRAFTING (D-3) checklist, the MARRIAGE AGREEMENT DRAFTING (D-4) checklist, or the POLYFAM AGREEMENT PROCEDURE (D-7) and POLYFAM AGREEMENT DRAFTING (D-8) checklists; see also <i>Family Law Agreements: Annotated Precedents</i>, 3rd. ed. (CLEBC, 1998–) for precedents and discussion).</p>					

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<p>2.2 Consider any tax implications for the disposition or transfer of assets. If uncertain, refer questions to a tax specialist. If there are any Indigenous parties, consider the tax implications if a party is exempt from federal or provincial taxation.</p> <p>2.3 Consider and specify the principal facts and assumptions underlying the agreement. This will assist the parties and any reviewing lawyer or court to understand the basis of the agreement.</p> <p>2.4 Include statements of assets and awareness of each other’s assets:</p> <ul style="list-style-type: none"> <li>.1 Ensure that the agreement contains a specific assurance of the completeness and accuracy of each spouse’s asset disclosure, and indicates that each is relying on the other’s truthfulness.</li> <li>.2 Provide a method for resolving disputes if the statements later prove to be inaccurate (e.g., provide that undisclosed assets are deemed to be owned by the parties as tenants-in-common or that there is a rebuttable presumption that they will be divided 50/50).</li> <li>.3 Consider either recommending that the parties exchange sworn financial statements (particularly if the parties’ assets and debts are significant or complex) or providing the client in writing a disclaimer of any responsibility for checking the accuracy of their spouse’s statement of assets. Alternatively, insert a “whereas” clause confirming that no independent investigation of the value of property or liabilities has been made by the lawyers, and that the parties desire to make the agreement without such further investigation. Sworn financial statements are highly recommended and are the best practice.</li> <li>.4 Where the client has insufficient knowledge of the accuracy of their spouse’s statement of assets, consider and discuss retaining experts (e.g., valuator, appraiser, accountant). Document a client’s decision not to obtain valuations of significant assets and your recommendation that further investigations should be undertaken, to reduce the vulnerability of the agreement to court intervention later and to reduce the risk of a professional complaint or liability insurance claim.</li> </ul> <p>2.5 Prepare the first draft of the agreement.</p> <p>2.6 Review the first draft, checking each clause to ensure that it achieves the client’s objectives, and checking the document as a whole to ensure that it is internally consistent. Make necessary corrections and prepare a second draft.</p> <p>2.7 Send the second draft to the client with a request that the client review it in its entirety and note any changes or questions the client may have. (If sending the document electronically, remove metadata to prevent the reader from viewing draft changes in the document’s history.) Caution the client not to share the draft with the other party until you and the client have agreed that the draft is in order.</p> <p>2.8 Review the entire agreement with the client and discuss any proposed changes or questions. Make any changes required to the second draft. Send a copy of the revised draft to the client’s spouse or the spouse’s lawyer. (If sending the document electronically, remove metadata to prevent the reader from viewing draft changes in the document’s history. Consider whether to send the agreement in a format in which changes can be made by the other</p>					

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<p>lawyer/party.) Decide whether to send the draft to opposing counsel on a “without prejudice” basis. If appropriate, confirm with the other party’s lawyer the other party’s contribution to the cost of preparing the agreement. Review any alterations with the client.</p> <p>2.9 If the client’s spouse does not have counsel, have the client’s spouse fully execute the agreement first and give the executed copy to your client for their signature to ensure that the agreement is returned. Consider providing a sufficient number of copies for execution to allow each spouse and their counsel to have an original copy.</p> <p>2.10 Satisfy yourself that there are no problems with regard to:</p> <ul style="list-style-type: none"> <li>.1 Lack of certainty of terms.</li> <li>.2 Failure to disclose, fraud, or misrepresentation.</li> <li>.3 Undue influence and pressure.</li> <li>.4 Unconscionability.</li> </ul> <p>2.11 Consider who will draw all required forms: e.g., irrevocable designation of beneficiary, authorization to insurer to give notice of default, authorizations to pension plan administrators, RSP rollover forms, and releases to and from any corporations in which the parties were involved and confirm with the client in writing. Consult experts as appropriate. Where third parties are involved (e.g., pension plan administrators or insurers) consider having them review the proposed wording to ensure effectiveness.</p> <p>2.12 Consider whether to draft non-expiring travel letters for minor children. Consider specific protocols for travel with children, including restrictions to countries that are signatories to the <i>Hague Convention</i>.</p> <p>2.13 Consider including a dispute resolution mechanism such as mediation or arbitration in the event of disputes. See <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), rule 3.2-4 on a lawyer’s obligation to advise and encourage settlement of disputes.</p>					
<p><b>3. CONCLUDING THE AGREEMENT</b></p>					
<p>3.1 Where the other spouse has chosen not to obtain independent legal advice, ensure that they acknowledge (preferably in writing) that you have advised seeking legal advice, that they have refused, and that you have advised that you are not protecting their interests (see rule 7.2-9 of the <i>BC Code</i>).</p>					
<p>3.2 Where the client insists on signing an agreement against your advice, put your opinion in writing and confirm with the client that, notwithstanding your advice, the client has instructed you that they still wish to sign the agreement. Consider declining to take the client’s signature on an agreement you consider to be against their best interests (you might be called as a witness in the future).</p>					
<p>3.3 Ensure compliance with relevant formalities:</p> <ul style="list-style-type: none"> <li>.1 Under the <i>FLA</i>, an agreement may be verbal or written, unless specified. A “written agreement” is defined in <i>FLA</i>, s. 1(1) as an agreement in writing signed by all parties. Ideally, the signatures to the written agreement would also be witnessed (<i>FLA</i>, s. 93).</li> </ul>					

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<p>.2 <i>FLA</i>, ss. 44(3), 58(3), 148(2), and 163(3) permit the specified agreements to be filed with the court (either Provincial or Supreme) for enforcement as a court order. Note <i>FLA</i>, s. 194 regarding the overlapping jurisdiction of the Supreme and Provincial Courts under the Act. If an agreement is to be filed in Provincial Court, do not put in a clause giving the Supreme Court exclusive jurisdiction over the agreement.</p> <p>.3 Formalities required by any other jurisdiction where property is located (e.g., recording of agreement, witnesses, statement/certificate as to independent counsel).</p> <p>.4 Description of real or personal property for filings under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250, or <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359.</p> <p>3.4 Consider obtaining an extra original signed separation agreement for filing under <i>FLA</i>, ss. 44(3), 58(3), 148(2), or 163(3). Note: under <i>FLA</i>, s. 99, notice of a property agreement may be filed in the land title office and, under <i>FLA</i>, s. 100 a financing statement in relation to a manufactured (mobile) home may be filed in the personal property registry.</p>					
<p><b>4. CLOSING THE FILE</b></p>					
<p>4.1 Send a copy of the agreement to other party or their counsel, if they are represented.</p>					
<p>4.2 File with the Supreme Court or the Provincial Court, if so instructed (<i>FLA</i>, ss. 44(3), 58(3), 148(2), and 163(3)).</p>					
<p>4.3 File notice in the land title office, if so instructed (<i>FLA</i>, s. 99).</p>					
<p>4.4 Send notice of irrevocable designation of beneficiary to the insurance company or confirm the designation with the insurer, and request that written acknowledgment be sent to the policy holder.</p>					
<p>4.5 Send notice of any agreement regarding pensions to the employer or pension trustee, requesting that acknowledgment be sent to your client.</p>					
<p>4.6 Complete or confirm any transfers of property.</p>					
<p>4.7 Complete or confirm filing of Canada Revenue Agency Form T2220 for transfer of RRSPs.</p>					
<p>4.8 Prepare a reporting letter and account as soon as practicable after closing. Remind the client to review and update any existing will, power of attorney, or representation agreement.</p>					
<p>4.9 Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					