

PROVISIONS TO BE CONSIDERED	NOTES
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed for use with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) checklist, the FAMILY PRACTICE INTERVIEW (D1) checklist, and the FAMILY LAW AGREEMENT PROCEDURE (D2) checklist. This checklist does not include provisions regarding separation, although they are common in marriage agreements. For the drafting of separation provisions, refer to the SEPARATION AGREEMENT DRAFTING (D3) checklist. Also, this checklist is not specifically designed to relate to cohabitation agreements, although many of the provisions will apply. The provisions suggested in this checklist must be considered in relation to the particular facts in the matter at hand, and augmented and revised as appropriate. This checklist is current to February 1, 2009.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Client Identification and Verification.</b> In November 2008, the Benchers adopted 12 new rules, Rules 3-91 to 3-102, based on the Federation of Law Societies of Canada’s Model Rule regarding the identification and verification of clients. The Benchers revised Rules 3-91 to 3-92 and Rules 3-94 in December 2008 at the Federation’s request. The rules took effect on December 31, 2008. In January 2009, the Benchers revised the definition of “reporting issuer” in Rule 3-91 at the Federation’s request, effective January 30, 2009. These rules require lawyers to take reasonable steps to identify their clients and, where “financial transactions” are involved, to verify their clients’ identities. Lawyers must comply with the rules in all new matters commenced on or after December 31, 2008, regardless of whether the client is an existing client or a new client.</li> <li>• <b>Spousal Support Advisory Guidelines.</b> The final revised version of the Spousal Support Advisory Guidelines was released in July 2008 (the “Final Version”). The Final Version has replaced the “Spousal Support Advisory Guidelines: A Draft Proposal” (the “Draft Proposal”), released in January 2005. The guidelines remain advisory and are not legislated. The basic structure and intent of the guidelines remain the same in the Final Version; however, areas of confusion have been clarified, and the categories of exceptions have been expanded.</li> </ul> <p><b>Cash transactions.</b> Law Society Rule 3-51.1 places restrictions on all cash transactions and regulates the circumstances in which a lawyer can accept \$7,500 or more in respect of any one client matter or transaction.</p> <p><b>Provincial sales tax on legal services.</b> On May 25, 2007, the Supreme Court of Canada released its judgment in <i>British Columbia (Attorney General) v. Christie</i>, 2007 SCC 21, and overturned the British Columbia Court of Appeal decision. Accordingly, lawyers remain obliged to collect Provincial Sales Tax (“PST”) on legal services in accordance with the <i>Social Service Tax Act</i>, R.S.B.C. 1996, c. 431, even in cases where the services are provided to low-income persons. Ministry of Small Business and Revenue Bulletin SST 061, available at <a href="http://www.sbr.gov.bc.ca/documents_library/bulletins/sst_061.pdf">www.sbr.gov.bc.ca/documents_library/bulletins/sst_061.pdf</a>, provides basic information regarding taxable and non-taxable legal services.</p> <p><b>Unmarried spouses.</b> Section 120.1 of the <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128 (the “<i>FRA</i>”) raises important concerns as to whether unmarried persons should make agreements relating to property. A property agreement may automatically trigger the application of Parts 5 and 6 of the <i>Family Relations Act</i>. For more information about common-law relationships, see the introduction to the FAMILY PRACTICE INTERVIEW (D1) checklist.</p> <p><b>Aboriginal law.</b> If the client or the other party has ties to an Aboriginal community, special considerations may apply (e.g., see item 1.5 and item 2.18.6 in the FAMILY PRACTICE INTERVIEW (D1) checklist); consider whether a lawyer with Aboriginal</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>law experience should be consulted. Further information on Aboriginal law issues is available on the “Aboriginal Practice Points” page of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.</p> <p><b>Additional resources.</b> For more information on drafting of family agreements, see <i>Family Law Agreements: Annotated Precedents</i>, looseleaf and online (CLEBC, 1998).</p> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Date of Agreement</li> <li>2. Names and Addresses of Parties</li> <li>3. Recitals</li> <li>4. Introductory Clauses</li> <li>5. Names, Religion, Education</li> <li>6. Maintenance of Spouses and Children</li> <li>7. Ownership of Property</li> <li>8. Responsibility for Debts</li> <li>9. Management of Affairs</li> <li>10. Personal Decisions</li> <li>11. Provision for Death</li> <li>12. General Clauses</li> <li>13. Schedules</li> <li>14. Appendices</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <ol style="list-style-type: none"> <li><b>1. DATE OF AGREEMENT</b> <ol style="list-style-type: none"> <li>1.1 Depending on the use to which the document is put, it may be a fraud on either the court or the Canada Revenue Agency to indicate that an agreement was executed on an earlier date than the one on which it was actually signed.</li> </ol> </li> <li><b>2. NAMES AND ADDRESSES OF PARTIES</b> <ol style="list-style-type: none"> <li>2.1 Consider Law Society of British Columbia Rules on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A1) checklist.</li> <li>2.2 Wife/prospective wife/spouse in marriage-like relationship.</li> <li>2.3 Husband/prospective husband/spouse in marriage-like relationship.</li> <li>2.4 Others.</li> </ol> </li> <li><b>3. RECITALS</b> <ol style="list-style-type: none"> <li>3.1 Particulars of marriage/marriage-like relationship.               <ol style="list-style-type: none"> <li>.1 Parties are about to marry or enter into a marriage-like relationship.</li> <li>.2 If married, date of marriage.</li> <li>.3 If married, place of marriage.</li> </ol> </li> </ol> </li> </ol>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>3.2 Parties.</p> <p>.1 Ages or birth dates.</p> <p>3.3 Children.</p> <p>.1 Names, ages and birth dates.</p> <p>.2 Whether children are of a previous marriage/marriage-like relationship.</p> <p>.3 If no children, are any expected?</p> <p>3.4 Purpose for agreement (marriage agreement, etc.).</p> <p>3.5 Issues to be settled by the agreement.</p> <p>.1 Management of, ownership in, or division of family assets or other property during marriage/marriage-like relationship.</p> <p>.2 Management of, ownership in, or division of family assets or other property after separation (refer to the SEPARATION AGREEMENT DRAFTING (D3) checklist for specific provisions).</p> <p>.3 Management of affairs during marriage/marriage-like relationship or upon death of one of the parties (consider the effect of wills made after the marriage agreement).</p> <p>.4 Maintenance of spouses during marriage/marriage-like relationship or after separation.</p> <p>.5 Maintenance of children during marriage/marriage-like relationship or after separation.</p> <p>.6 Guardianship, custody, and access of children, both during marriage/marriage-like relationship and after separation.</p> <p>3.6 Previous agreements, including marriage agreements.</p> <p>3.7 Previous and current court orders.</p> <p>3.8 Previous and current legal proceedings.</p> <p>3.9 Legal and municipal description of family residence.</p> <p>3.10 Schedule of property (assets and liabilities). Ensure full disclosure of all assets, including pensions, accounts receivable, intellectual property, interests in trusts, cash surrender value of life insurance or other life insurance.</p> <p>.1 Wife/prospective wife/spouse in marriage-like relationship.</p> <p>.2 Husband/prospective husband/spouse in marriage-like relationship.</p> <p>3.11 Statement of awareness of assets or liabilities or both of other party; consider provision to ensure full disclosure or attach sworn statements of property.</p> <p>3.12 Statement of what the parties acknowledge to be family assets (within the meaning of Part 5 of the <i>FRA</i>, if applicable); release of claim to, or statement of assets that are not to be treated as, family assets.</p> <p>3.13 Statement of occupations and incomes of parties.</p> <p>.1 Wife/prospective wife/spouse in marriage-like relationship.</p> <p>.2 Husband/prospective husband/spouse in marriage-like relationship.</p> <p>.3 Dependent children.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>3.14 Statement relating the recitals to the rest of the agreement.</p> <p>.1 Consider recitals as minimum standards of material representations.</p> <p>.2 Consider warranty of accuracy of respective representations.</p> <p><b>4. INTRODUCTORY CLAUSES</b></p> <p>(Placement of general clauses is a matter of drafting style. They are variously placed at the beginning and the end of the agreement. See also item 12.)</p> <p>4.1 Statement that recitals are correct and form part of the agreement.</p> <p>4.2 Statement that any schedules to the agreement form a part of the agreement.</p> <p>4.3 Statement of governing law.</p> <p>4.4 Statement that each party has been advised of his or her rights and has obtained independent legal advice, or has been advised of his or her rights and has chosen not to obtain independent legal advice.</p> <p>4.5 Statement that each party signs the agreement voluntarily, without undue influence or coercion, and that the agreement adequately provides for his or her present and future needs.</p> <p>4.6 Definitions.</p> <p>4.7 Statement that the agreement constitutes the full and final settlement of all issues, except that it may be amended by written agreement of the parties (witnessed independently in the same manner as this agreement).</p> <p>4.8 Statement that the parties intend to review the agreement in a certain period of time or in the event they have children together, although failure to do so will have no effect.</p> <p>4.9 Release by both spouses of all claims, including claims in trust, arising out of the marriage, marriage-like relationship, or joint ownership of property, except as set out in the agreement.</p> <p><b>5. NAMES, RELIGION, EDUCATION</b></p> <p>5.1 Statement regarding use of surnames by spouses.</p> <p>5.2 Statement regarding use of wife’s surname in children’s names.</p> <p>5.3 Statement regarding religion governing the marriage/marriage-like relationship, or religious freedom of each spouse.</p> <p>5.4 Statement regarding religious education of children.</p> <p><b>6. MAINTENANCE OF SPOUSES AND CHILDREN</b></p> <p>6.1 Maintenance of spouses.</p> <p>.1 Responsibility for maintenance of each spouse or waiver (note s. 15.2 of the <i>Divorce Act</i>: a waiver of spousal support in an agreement is only one factor considered in an application for spousal support). Consider whether a waiver of support is made in exchange for other consideration in the agreement (e.g., property rights) and consider whether to state this. Consider the Spousal Support Advisory Guidelines and whether to make a statement of the parties’ awareness of the Guidelines and differences between the parties’ agreement and the Guidelines.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>.2 How responsibility is to be met (e.g., providing home, making monthly payments, setting up trust with life income).</p> <p>.3 Effect of particular circumstances (e.g., young children at home, whether caregiver spouse is working, compensation for foregoing earned income).</p> <p>.4 Statement as to circumstances under which responsibility for maintenance is suspended or terminates (e.g., on separation, upon completion of a university degree, when disposable incomes become equal).</p> <p>.5 Consider whether a spouse may acquire an increasing level of maintenance over time.</p> <p>.6 Consider whether to leave maintenance to the ability of one or either party to apply to court (and address only property issues, e.g., to possibly increase the likelihood of agreement being upheld if challenged).</p> <p>6.2 Maintenance of children.</p> <p>.1 Provisions regarding children of one spouse from previous marriage, such as: residence, maintenance, education, adoption, role to be played by stepparent.</p> <p>.2 Provisions regarding maintenance of children of the marriage cannot be “pre-agreed upon” in advance in a marriage agreement. If a separation occurs, child maintenance will be governed by the Child Support Guidelines. Parties may wish to confirm this in a marriage agreement, although it is not necessary.</p>	
<p><b>7. OWNERSHIP OF PROPERTY</b></p> <p>7.1 General provisions.</p> <p>.1 Whether all or some property owned by either spouse before marriage/marriage-like relationship is to remain as separate property.</p> <p>.2 Whether all or some property owned by either spouse is to be held as joint property.</p> <p>.3 Whether all or some property acquired by either spouse after marriage/marriage-like relationship is to be held as joint property and how that intention is to be shown (e.g., registration in joint names; held as tenants-in-common in proportion to contributions).</p> <p>.4 For common-law partners in marriage-like relationship, note Parts 5 and 6 of the <i>FRA</i> apply to their agreement (<i>FRA</i>, s. 120.1). Consider whether it is possible to “opt out”.</p> <p>.5 All property and liabilities of both parties are set out in schedules to the agreement.</p> <p>7.2 Family residence.</p> <p>.1 Whether there is currently a family residence; if so, who is the owner.</p> <p>.2 Whether it is to be owned by one spouse or by both spouses as joint tenants or as tenants-in-common; if tenants-in-common, in what proportion. Consider tax implications (e.g., property transfer tax and effect on the death of spouse).</p> <p>.3 Whether it is to be transferred from one spouse to the other, or to a joint tenancy or tenancy in common; if tenancy in common, in what proportion. Consider tax implications.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>.4 Whether a non-owner spouse may acquire an increasing interest (e.g., 5% every two years).</p> <p>.5 Responsibility for paying or discharging any associated encumbrances and obligations; indemnification of other spouse.</p> <p>.6 Responsibility for paying for repairs and maintenance, insurance (and beneficiary(ies) of insurance), property taxes, utilities.</p> <p>.7 Spouses will not sever the joint tenancy, encumber the title, or pledge their interests in it as security. Consequences if this occurs.</p> <p>.8 Whether one or the other spouse (or both) wish to buy out the other's interest. If so, include a buy-out clause and set out what triggers a buy-out. Consider who has right to occupy in the meantime.</p> <p>7.3 Other real property.</p> <p>.1 Whether to be owned by one spouse or by both spouses as joint tenants or tenants-in-common; if tenants-in-common, in what proportion. Consider tax implications and effect on death of a spouse.</p> <p>.2 Whether to be transferred from one spouse to the other or to a joint tenancy or tenancy in common; if tenancy in common, in what proportion.</p> <p>.3 Responsibility for paying or discharging any associated encumbrances and obligations; indemnification of other spouse.</p> <p>.4 Responsibility for paying for repairs and maintenance.</p> <p>.5 Spouses will not sever the joint tenancy, encumber the title, or pledge their interests in it as security. Consequences if this is done.</p> <p>.6 Net value of items owned separately by each spouse; difference in net values; whether difference to be made up by cash payments or whether claim to be waived and released.</p> <p>.7 Who has the right to use or occupy the property or both?</p> <p>7.4 Automobiles.</p> <p>.1 Whether each spouse is entitled to have his or her own automobile and to be entitled to use it as he or she wishes, dispose of it, or encumber it.</p> <p>.2 Whether an automobile is to be designated as a family automobile with each spouse being entitled to equal shares and equal use.</p> <p>.3 Transfer of title. Consider any tax implications or effect on death of a spouse.</p> <p>.4 Obligations to make payments, contribute to insurance and maintenance, and pay operating costs.</p> <p>.5 Whether there is an obligation not to dispose of or encumber the automobile without the consent of the other spouse.</p> <p>7.5 Other chattels.</p> <p>.1 Specific chattels or types of chattels that are to be owned by one spouse and, where appropriate, circumstances, terms, and conditions. May include release of any claim under the <i>FRA</i>.</p> <p>.2 Specific chattels or types of chattels that are to be owned jointly.</p> <p>(a) Payment obligations.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>(b) Entitlement to use.</p> <p>(c) Obligation not to dispose of or encumber without the consent of the other spouse.</p> <p>.3 Entitlement to use chattels that are owned by one spouse or owned jointly.</p> <p>.4 Designation of chattels acquired during marriage as family assets under the <i>FRA</i>.</p> <p>.5 Obligation to maintain and contribute to insurance on joint property; beneficiaries of insurance.</p> <p>7.6 Gifts and windfalls.</p> <p>.1 Gifts from a spouse or third party are to be separate property of the donee.</p> <p>.2 Wedding gifts and property purchased from the proceeds of wedding gifts are to be owned jointly.</p> <p>.3 Inheritances are to be separate property of the donee.</p> <p>.4 Windfalls, damages from personal injury actions, etc., are to be separate property (or are to be divided equally between the spouses and thereafter to be the separate property of each).</p> <p>7.7 Animals and pets.</p> <p>.1 Right to have animals and pets.</p> <p>.2 Responsibility for animals and pets.</p> <p>.3 Who gets pets on separation.</p> <p>7.8 Life insurance.</p> <p>.1 Each spouse (or one spouse) is required to maintain policies as specified until a specified time (e.g., until there is no longer a child dependent on the spouses).</p> <p>.2 Each spouse is required to designate solely the other (or the spouse or another or both in trust for the children) as sole beneficiary(ies) under the policy until a specified time (e.g., until there are no longer dependent children).</p> <p>.3 If the spouse defaults in payment, the other may make payment and recover it from the defaulting party, together with expenses necessarily incurred.</p> <p>.4 Neither spouse may borrow money from the insurer on the security of the policy.</p> <p>.5 Each spouse is required to provide the other with evidence that the policy is being maintained as required, or to provide the insurer with authorization to provide to the other spouse, on a written demand, information on the status of the policy.</p> <p>.6 When the event occurs that terminates the obligation to maintain the policies, each party may deal with his or her policies as he or she wishes, free from any claim of the other.</p> <p>.7 Consider any cash surrender value of life insurance policies, who will retain, whether the policies will be cashed and divided.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>7.9 RRSPs.</p> <ul style="list-style-type: none"> <li>.1 To be the separate property of the spouse in whose name each is registered, unless they are registered in the names of both spouses.</li> <li>.2 Consider requirements for equal or spousal contributions or both.</li> <li>.3 Consider beneficiary.</li> </ul> <p>7.10 Pension plans.</p> <ul style="list-style-type: none"> <li>.1 Whether pension plans are to be the separate property of the spouse in whose name each is registered. Consider provisions concerning division of pension entitlement in <i>FRA</i> (ss. 70–86). Consider any supplemental plans. Consider pre- and post-survivor benefits. Have pension plan administrator approve wording of agreement and consider any further documentation required by the plan.</li> <li>.2 Whether each spouse releases any interest he or she may have or acquire in the other’s Canada Pension Plan benefits and agrees not to apply for a division of the pensionable earnings credits in the event of a divorce (see <i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8, s. 55.2, and the special wording required to waive interests).</li> </ul> <p>7.11 Bank accounts.</p> <ul style="list-style-type: none"> <li>.1 Each spouse is entitled to have his or her personal accounts.</li> <li>.2 Whether contributions are to be made to a joint account, to be used for joint expenses (e.g., food, car, household expenses).</li> </ul> <p>7.12 Other provisions regarding specific items or types of property (e.g., consider whether other types of property listed in item 11 of the SEPARATION AGREEMENT DRAFTING (D3) checklist are relevant).</p> <p>7.13 General provisions regarding property not specifically provided for (e.g., to be the separate property of the party in whose name it is registered or who acquired it, or, if the parties are to have a joint interest, property to be registered in joint names). If property not capable of registration, consider clause to include a list of such property on an appendix or schedule to the agreement.</p> <p>7.14 Release of any claims against the other spouse’s separate property other than those arising under this agreement.</p> <p>7.15 Each spouse has full power over and separate control of his or her separate property and is entitled to income from its lease or disposition.</p> <p>7.16 Neither spouse has a right to compensation for any contribution in respect of any property in which the other has an interest, unless otherwise agreed in writing.</p>	
<p><b>8. RESPONSIBILITY FOR DEBTS</b></p> <p>8.1 Between the parties.</p> <ul style="list-style-type: none"> <li>.1 Acknowledgement of existence.</li> <li>.2 Provision for payment (set out details in a schedule).</li> <li>.3 Non-existence or negation of non-scheduled debts.</li> </ul> <p>8.2 Due to third parties (individually incurred).</p> <ul style="list-style-type: none"> <li>.1 Existing debts and responsibility for payment.</li> </ul>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>.2 Indemnity of each against third-party claims resulting from failure to pay.</p> <p>.3 Undisclosed debts to be assumed by the party who incurred them.</p> <p>.4 Neither spouse to contract in the name of the other or bind the other for any debts or obligations without consent; otherwise, will indemnify other spouse from any claims arising from those debts or obligations.</p> <p>8.3 Recovery of specific property loaned.</p> <p>8.4 Property pledged by one spouse to secure debts of other.</p> <p>8.5 Joint obligations to third parties.</p> <p>.1 Existing joint obligations and responsibility for payment. (Note: where one party assumes responsibility, this will not be sufficient to release the other from liability for the debt unless renegotiated with third party. Can include indemnification from one spouse to another.)</p> <p>.2 To be incurred in future only by agreement.</p> <p>8.6 Credit cards.</p> <p>.1 Whether to be used by both spouses, or whether the spouses are to have separate cards.</p> <p>.2 Responsibility for payments.</p>	
<p><b>9. MANAGEMENT OF AFFAIRS</b></p> <p>9.1 Whether all earnings and income from all sources are to be the separate property of the spouse so earning the income or are to be divided equally or in a specific proportion.</p> <p>9.2 Whether each spouse is to deposit a certain sum each month into a joint account (e.g., entire income, half of estimated monthly expenses, share of monthly expenses proportionate to spouse's income), with any surplus at the end of the month to be divided and to become separate property. Consider how specific or general to be, considering parties' expenses now and in future and the predictability of same or lack thereof.</p> <p>9.3 Payment of usual household and family expenses (e.g., out of the joint account).</p> <p>9.4 Payment for household acquisitions (e.g., out of the joint account); ownership (e.g., to be held as joint tenants).</p> <p>9.5 Responsibility for household duties.</p> <p>9.6 Responsibility for child care; use of day care (subject to 6.2.2).</p>	
<p><b>10. PERSONAL DECISIONS</b></p> <p>10.1 Whether each spouse wishes to sign a document such as an enduring power of attorney or representation agreement authorizing each other to make health care decisions on behalf of or act on behalf of the spouse where the spouse is incapable of making the decision or acting personally (see <i>Representation Agreement Act</i>, R.S.B.C. 1996, c. 405; <i>Health Care (Consent) and Care Facility (Admission) Act</i>, R.S.B.C. 1996, c. 181; and Continuing Legal Education Society of British Columbia's <i>Family Law Agreements: Annotated Precedents</i>, Chapter 17, Part 13). Consider the effects of such documents upon death or separation.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p><b>11. PROVISION FOR DEATH</b></p> <p>11.1 Whether each spouse to maintain a will making the other spouse (or the children) sole beneficiary(ies). If several beneficiaries, what proportion of estate to each. Consider a clause regarding the executors, executrixes, administrators, etc., being trustees on behalf of the surviving spouse in the event of the deceased spouse not maintaining his or her will as agreed.</p> <p>11.2 Whether each spouse renounces acquisition by virtue of marriage of any right to the other's estate upon death; estate to descend in the manner prescribed by will and in default thereof as though no marriage had taken place.</p> <p>11.3 Whether there is renunciation of rights under the <i>Land (Spouse Protection) Act</i>, R.S.B.C. 1996, c. 246, and the <i>Partition of Property Act</i>, R.S.B.C. 1996, c. 347.</p> <p>11.4 Release of claims against the estate that are not included in the agreement:</p> <ol style="list-style-type: none"> <li>.1 On an intestacy under s. 83, 84, 85, 85.1, or 96 of the <i>Estate Administration Act</i>, R.S.B.C. 1996, c. 122.</li> <li>.2 Under the <i>Wills Variation Act</i>, R.S.B.C. 1996, c. 490.</li> <li>.3 Under any law of like nature of any jurisdiction that may apply at date of death.</li> <li>.4 Survivor's benefits under any pension or annuity.</li> </ol> <p>11.5 Consider the effect of Canada Pension Plan death benefits for spouse and children.</p> <p>11.6 Consider whether occupation of property clauses ought to be different on death (e.g. life tenancy or more notice to vacate).</p> <p><b>12. GENERAL CLAUSES</b></p> <p>12.1 Effect of failure of prospective spouses to marry.</p> <p>12.2 Effect of separation (see SEPARATION AGREEMENT DRAFTING (D3) checklist for specific provisions regarding separation). Include a definition of separation.</p> <p>12.3 Releases with respect to separate property.</p> <p>12.4 Waivers (general and specific) regarding neither party to make claims to the other's property based on trust law or unjust enrichment.</p> <p>12.5 Severability.</p> <ol style="list-style-type: none"> <li>.1 Void or voidable clauses. Consider whether these clauses should be severed or if there are specific clauses that, if severed, may make the entire agreement unfair.</li> <li>.2 Clauses incorporated or confirmed by court order.</li> </ol> <p>12.6 Provision as to resolution of disagreements between spouses as to the interpretation or application of this agreement; for example:</p> <ol style="list-style-type: none"> <li>.1 The dispute shall be submitted to an arbitrator, to be appointed as provided in the agreement.</li> <li>.2 The dispute shall be submitted to a family law mediator, to be appointed as provided in the agreement. Consider specifying the mediator's name, the number of sessions prior to a court application, and how the mediator is to be paid.</li> </ol>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>.3 In determining any matter in dispute, an arbitrator, court, or other tribunal may have regard to the course of conduct of a party in relation to the standards and expectations of the parties set out in a schedule to this agreement, to which the parties commit themselves.</p> <p>.4 Consider the parties having liberty to apply to court to bring into effect or ask for directions on clauses, such as pension division, sale or buy-out of family residence, etc.</p> <p>12.7 Continuing disclosure of income and financial position, to be kept confidential by the other spouse. Consider definition of confidential; e.g., exception for professional advisors.</p> <p>12.8 Further assurances.</p> <p>12.9 No variations or amendment except by signed writing and witnessed in the same manner as the agreement.</p> <p>12.10 Cost and expense of marriage agreement (or cohabitation agreement), and who will pay.</p> <p>12.11 Binding on estates.</p> <p>12.12 Provision for filing with the Supreme Court or with the Provincial Court (<i>FRA</i>, ss. 121 and 122).</p> <p>12.13 Provision for filing notice of the agreement in the land title office (<i>FRA</i>, s. 63) (if permitted; see 7.2.7 and 7.3.5).</p>	
<p><b>13. SCHEDULES</b></p> <p>13.1 Statement of property of wife/prospective wife/spouse.</p> <p>13.2 Statement of property of husband/prospective husband/spouse.</p> <p>13.3 Statement of wife/prospective wife/spouse's liabilities.</p> <p>13.4 Statement of husband/prospective husband/spouse's liabilities.</p> <p>13.5 Any other property schedules (e.g., life insurance policies of each spouse).</p> <p>13.6 Schedules relating to personal decisions such as wills, enduring powers of attorney, representation agreements.</p> <p>13.7 Terms regarding payment of debts between spouses.</p> <p>13.8 Standards and expectations setting out basic philosophy of marriage/marriage-like relationship (e.g., employment, household duties, decisions regarding children).</p>	
<p><b>14. APPENDICES</b></p> <p>(e.g., certificates of independent legal advice)</p>	

