

After the Agreement is Reached: What to Expect from Your Lawyer

You now have the agreement reached between you and your spouse set out in a memo or a resolution plan. All of the hard work is done; or is it? The agreement must be set out in a contract, and both you and your spouse need independent legal advice on the agreement. Set out below are the steps that you will likely go through when you take the agreement and finish it by way of a contract.

1. Initial contact with the lawyer. Your lawyer is going to review the agreement reached between you and your spouse. Why? Because the lawyer is under legal and ethical obligation to ensure that contract was fairly negotiated, that you understand what the agreement obligates you to do, and that the agreement is within the objectives of the law of separation and divorce. You can expect to discuss with your lawyer the following issues:

- What amount of disclosure or financial documents you reviewed,
- Whether you felt coerced or pressured into the agreement,
- How the agreement is different from what the law says,
- Clarifying any part of the agreement as needed,
- The practicality and reasonableness of the agreement,
- Anything that the agreement may not have addressed,
- Anything that may cause a Judge to question the agreement, should it be challenged in a Court, and
- Discussing if anything in the agreement needs to be changed.

Once you and your lawyer both have an understanding of the agreement, you should ask your lawyer what it will cost to finish the process. Some lawyers will provide you a flat fee quote (I do for most agreements); others will insist on you paying them their hourly rate. This is an important legal document; it is going to cost you money. Remember, the more complicated the agreement, the more expensive the contract.

Once you and your lawyer have agreed upon the cost of the contract, your lawyer will then proceed to draft the contract.

2. Lawyer will draft the contract. This takes time. I can usually draft a contract in about a week; sometimes it takes longer. If you have not heard from your lawyer in two weeks, however, you should inquire and see what progress has been made. Remember, the more complicated the agreement, the longer it will take to draft (and the more expensive it will be, too).
3. Review and revisions. Once the first draft is ready, you will receive a copy to review and to suggest revisions. You will need to focus on the substance parts of the agreement – does the contract say the same thing as the agreement? Sometimes the wording may be different, but the meaning is the same. Make notes on all questions you have and revisions you would like to be made, and then contact your lawyer. I like email – a

written record is easiest in making the requested changes. Or, make a telephone appointment with your lawyer, so there is a set time for you to speak with him or her. Or better yet, make an appointment and see your lawyer in person.

Ask all questions you have about the contract at this point, and make sure that you understand and agree with the contract. Once you and your lawyer are happy with the draft, a copy of the draft will be sent to your spouse's lawyer.

4. Sending the contract to your spouse's lawyer. The document will be reviewed by your spouse's lawyer – on their schedule, not yours. Your lawyer can only do so much to encourage the other lawyer to complete this step. I usually allow for one week to pass before inquiring with the other lawyer about the draft. I then follow up every other day.

Your spouse's lawyer will then either suggest changes to the draft contract, or say that it is ready to be signed. If there are changes suggested, your lawyer will check with you for confirmation that the changes are okay. If they are not, the lawyers will try and find a way to make both perspectives work in the contract.

This step can take a couple of days, or a couple of months. Again, it depends on how complicated the contract is, how willing to compromise the parties are, and the personalities of the lawyers.

5. Independent legal advice and signing the contract. Once both lawyers agree that the contract is ready to be signed, you will make an appointment to see your lawyer and sign the contract. The appointment will be for at least 1 hour.

At the appointment, you will review the contract again. Do not simply turn to the signing page; read it again. Your lawyer will take you through the contract, and provide you with legal advice on all of the terms. At this point, you will probably have heard it all already, but you should review it again before you sign.

If everything is as it should be, you and your lawyer sign the contract. Once your spouse signs the contract, the contract is finished and enforceable.

6. Final steps and trust conditions. Often times, your contract will require a home to be transferred, a payment to be made, or some other step to be taken. This is typically done by lawyers imposing trust conditions. Think of them as rules that lawyers must follow. Typical trust conditions are:

- The settlement funds cannot be released until the contract is signed and returned, and
- The Transfer of Land and Release of Dower Rights cannot be used until the settlement funds are received.

Trust conditions may require you to obtain additional legal help, such as employing a real estate lawyer to complete the home transfer, your financing, and the settlement payment. You should anticipate this step and its cost.

Your lawyer will tell you more about what trust conditions are required for your contract.

7. Divorce application. This is separate from your contract – do not get the two mixed up. A divorce application is sent down to Court for a judge to review. There are more documents to be generated and signed. Often this can be done at the same time as your contract; I offer my clients a flat rate if they do both at the same time.

Finally, a bit of advice when working with your lawyer. It is true that lawyers are busy, but so are you. Your lawyer, or the assistant, should return your inquiries within a reasonable amount of time. See my blog about ways to contact your lawyer; if you are having trouble contacting your lawyer, however, try making a telephone appointment or an in-office appointment. There is a difference in returning a voicemail message and attending a scheduled meeting; the message takes second place to a scheduled meeting. One last thing – email. Use it, but do not expect an instantaneous response.

I hope this helps you finish your agreement and successfully work with your lawyer. Remember, choosing a lawyer is like choosing a doctor; it is a personal matter, so choose a lawyer with whom you are comfortable.

- Warren S. Jennings
Barrister and Solicitor

Warren is a family law lawyer who practices in Victoria, British Columbia, Calgary, Alberta, and points in between. Warren's approach to family law emphasizes effective and dignified problem solving, and empowering his clients to deal with their legal issues at separation. Read Warren's bio at <http://www.islandfamilylawyers.com/WarrenJennings.aspx>.

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