

independent legal advice checklist

This sample checklist is formatted as a precedent for your file. (reproduced with permission of Philip Epstein, Q.C.)

Client's name			yr.	mo.	day	Start time	Finish time
Client's address						Telephone	
Client's spoken languages				Written languages			
Family status							Age
Referred by				Reason for independent legal advice			
Client's net worth \$	Spouse's net worth \$	Security requested by lending institution					
The client has limited facility with English, so I obtained an interpreter whose name was:				Also present during our meeting was:			
I reviewed the following documents:							

Part A – I explained the following to the client

- The nature and consequences of a mortgage
- The nature and consequences of a guarantee
- The effect of power and sale/judicial sale and foreclosure
- The effect of an action on the covenant and the liability for any insufficiency.
- The consequences of his or her spouse's default
- The possible consequences of failure to honour the financial obligations (loss of his or her house, business and all other property)
- The possibility of obtaining security for the financial obligations
- That an indemnity will be worthless if the spouse declares bankruptcy
- The risks to the client if there is a breakdown of the marriage

Part B – The Client

- I reviewed the current state of the client's marriage
- I reviewed the current state of the client's health
- I asked about domestic violence and was told _____
- The client said that the reason for his or her consent to this transaction or agreement was _____
- I satisfied myself that the client was not subject to duress or undue influence and that the client was signing relevant documents freely and voluntarily, without pressure from anyone
- I accepted payment from the client only, and not from anyone adverse in interest to the client

Part C – If the independent legal advice relates to a domestic contract

- I obtained complete financial disclosure from both my client and the other side.
- I determined that the document was sufficiently well-drafted to accomplish my client's objectives.
- I ensured that the terms of the agreement were both certain and enforceable.
- I ensured that, if the agreement is to be filed against property or as an order of the court, the statutory requirements for filing have been met
- I explained the final nature of the agreement
- I reviewed the risks and consequences of the agreement
- I discussed the effect of the agreement upon the client if his or her spouse dies first
- I carefully explained all the clauses of the agreement and the client indicated that he or she understood same.

Part D – When client signs contrary to advice

- I advised the client against signing the documents, but the client wished to proceed contrary to my advice, so I explained my advice in the presence of a witness, whose name was _____
- The client signed an acknowledgement, in the presence of this witness, that he or she was signing the documents against my advice

Part E – File management

- I opened a file
- I placed this form, a copy of the document and my notes in the general independent legal advice file
- I took notes of my meeting(s) with the client and retained these
- I docketed the time spent advising the client
- I sent a reporting letter outlining the terms of the agreement or obligation assumed, together with my account
- My advice was verbal only and I sent no reporting letter