

Independent Legal Advice Checklist – Family Law Matter

Record the following information:

- Date, start time and finish time
- Client's name
- 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.
- 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.

(Continued)

- 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.

Source of document: This ILA Checklist was prepared by Philip Epstein, a specialist in family law practicing in Ontario, for the Lawyer's Professional Indemnity Company.

About the Toolkit

This precedent is a part of the CBA Conflicts of Interest Task Force's Conflicts Management Resources and Toolkit. An electronic version of this document is available at www.cba.org/conflicts. The Toolkit provides lawyers with practical checklists and precedents that are intended to help them recognize, avoid and, if necessary deal with and avoid conflicts of interest. The Toolkit documents compliment and supplement the in-depth legal discussion and analysis of conflicts issues that is in the full report and recommendations of the Task Force available at www.cba.org/conflicts

Disclaimer

The information, checklists, and model agreements and letters provided in this resource are for your consideration and use when you draft your own documents. They are NOT meant to be used "as is". Their suitability will depend upon a number of factors, such as the current state of the law and practice in each area of law, your writing style, your needs and the needs and preferences of your clients. The model documents may require modifications to correspond to current law and practice. The information and documents provided in this Toolkit are not intended to report, establish or create the standard of care for lawyers.

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