

Domestic Contract Review and Signing Checklist

File number: _____

Client name: _____

Date contract signed: _____

Date checklist completed: _____

With respect to my instructions and preparing to draft the domestic contract, I am satisfied that:

- The person I am dealing with and calling my client is the named party who is truly at risk and engaged in the legal issues dealt with in the domestic contract.
- Appropriate due diligence for the preparation of the domestic contract was completed (e.g., gathered relevant information; obtained disclosure of and reviewed relevant financial information; conducted necessary records and other searches; etc.). See next section.
- The document was cross-checked with notes in the file to ensure it reflects my client's instructions and desired outcomes.
- An appropriate amount of time was spent investigating and considering all relevant issues that had to be dealt with in the domestic contract.
- My client was not subject to duress or undue influence and is signing freely and voluntarily, without pressure from anyone.

With respect to gathering information, I required my client to provide to my office the following information and documents (and provided them with direction on obtaining this information where necessary):

- An original marriage certificate (If married)
- Copies of any prior Divorce Orders or Certificates
- A copy of the original mortgage documents and the most recent statement from the mortgage company or an authorization and direction signed by the client to communicate with the mortgage company
- Credit bureau disclosure to ascertain any asset or debt obligations not known to client
- A Ministry of Transportation Sale Package on any vehicles registered in their name
- The last three years of Income Tax Returns and Notices of Assessment (personal and corporate)
- A draft Financial Statement
- Supporting documents confirming the existence of a premarital deduction claim
- An original Authorization & Direction to speak with their accountants, doctors etc., if necessary
- Any pension statements applicable to client
- Banking statements from the date the relationship started to the date it ended
- I provided my client with an Assignment Sheet upon conclusion of the initial interview(s).

With respect explaining the nature and implications of a domestic contract, I am satisfied that I clearly explained the following to my client:

- The services available to assist individuals with relationship issues i.e. counsellors, mediators etc.
- The availability of any support entitlements either spousal or child support and any applicable guidelines
- How the equalization of net family property is determined versus the common misconception each asset is divided individually

- How the issue of constructive or resulting trust applies to the client, if applicable
- The implications of time limitations in seeking an equalization of the parties' net family property
- The implications of a domestic contract versus commencing a legal proceeding
- The implications of obligations addressed in a domestic contract versus the obligations with a third party creditor
- The implications of bankruptcy of either party
- What cannot be addressed in a marriage contract (e.g., future custody considerations)
- The necessity of proper and full financial disclosure
- Potential challenges to a domestic contract in the future
- Upon execution, I had my client initial each page
- I had the client acknowledge receipt of copy of the domestic contract and my final reporting letter and account.

With respect to communications between my client and me, I am satisfied that:

- My client has adequate language comprehension skills (written and oral) for us to communicate effectively in our chosen language.
- I explained how I would charge for my services, the billing procedures and gave an estimation of what the total fees for the matter would be.
- My client reviewed a draft of the domestic contract before signing it.
- The key provisions of the domestic contract were clearly explained to my client, including unusual and custom provisions.
- My client acknowledged and appeared to understand the key provisions of the domestic contract, as well as the overall nature and consequences of the domestic contract and the outcomes that are expected to flow from it.
- I explained the possible negative outcomes that could flow from the domestic contract, if any.
- My client understands the final and legally binding nature of the obligations being undertaken and that there are no (or limited) opportunities to withdraw after signing.
- I have told the client of areas where I am not able to give advice and the client should consider retaining another appropriate expert (e.g., accountant, pension or property valuator, etc.).
- I answered all questions that my client asked to my client's satisfaction.
- The client clearly confirmed that the domestic contract reflects and is consistent with his/her instructions.
- All required follow-up steps to be undertaken by my client are noted in the domestic contract and/or a reporting letter.

With respect to the drafting of the domestic contract and the use of precedents, I am satisfied that:

- The domestic contract is sufficiently well-drafted to accomplish my client's objectives.
- All required clauses are in the domestic contract, including all required standard boilerplate clauses.
- There are no ambiguities or inconsistencies as between the clauses in the domestic contract.
- The terms of the agreement are both certain and enforceable.

With respect to real and potential conflicts of interest, I am satisfied that:

- My work for this client will not impair the duties of performance that I and other lawyers at my firm have to our other clients.
- My work for this client will not affect the relationships that I and other lawyers at my firm have with our other clients.
- Neither my personal interests nor the interests of my firm will affect my handling of this matter.

- There is no risk of me having and disclosing the confidential information of one client to another, and if necessary, confidentiality screens have been put in place.
- IIA was not required on this matter or my client required and received appropriate IIA.
- There are no conflicts of interest as between my client and past clients I have had.
- Where there are real or potential conflicts, appropriate waivers have been obtained from the affected clients.

(If applicable) I took the following steps as the client wanted to sign a domestic contract which I believe is contrary to his/her interests:

- Prepared an opinion letter setting out my concerns in relation to the domestic contract that I believe to be contrary to his/her interests and mailed it out at least fourteen days before the scheduled appointment to sign.
- Had my client review the opinion letter in the lobby before meeting with me to sign it.
- Had my assistant attend the meeting with the client and asked in the presence of my assistant if my client reviewed the opinion letter.
- Had my client initial each page of the opinion letter.
- Offered the client the opportunity to meet with alternate legal counsel.
- Asked my client the following questions after having reviewed the opinion letter and in the presence of a third party
 - Do you want to sign this domestic contract after having reviewed my opinion letter?
 - Do you understand everything in the opinion letter?
- Had the client sign the domestic contract in the presence of another individual and asked the witness to make notes immediately after the meeting.

With respect to legal issues relating to matters dealt with in the domestic contract, I am satisfied that:

- I have sufficient knowledge of the relevant areas of substantive law necessary for the preparation of this domestic contract.
- All relevant substantive law issues have been considered and appropriately dealt with in the domestic contract.
- All appropriate tax issues have been properly considered and addressed, with, if necessary, the help of expert tax advice.

With respect to file management steps taken on this matter:

- I completed a conflicts check for all clients and others connected with the matter.
- A matter was created on the firm's systems and a physical file was created.
- Applicable limitation periods and other crucial deadlines were identified and entered into the firm's tickler system.
- I have a signed retainer in the file and it clearly states the scope of the retainer.
- I took notes of my meeting(s) with my client and retained these in the file.
- I docketed the time spent in the initial and subsequent meetings and phone calls with my client on this matter.
- I docketed the time spent drafting the domestic contract.
- I docketed the time spent reviewing the domestic contract with the client when it was signed.
- I placed this form, various draft versions of the domestic contract and a copy of the final version in the file.
- I sent a reporting letter outlining the terms of the domestic contract, resulting outcomes and obligations assumed by my client together with my final account.

Disclaimer: This checklist includes techniques which are designed to minimize the likelihood of being sued for professional liability. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.