

(SAMPLE) AGREEMENT TO SEPARATE AS HUSBAND AND WIFE

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This agreement "Agreement" entered between *Bill Smith* "Husband" residing at *576 Bliss Lane*, city of *Charleston*, state of *West Virginia*, and *Anne Smith* "Wife" residing at *978 Valley Rd.*, city of *Huntington*, state of *West Virginia*, on the *26 day of June, 2004*.

WHEREAS, Husband and Wife were married in the county of *Monongalia*, city of *Morgantown*, state of *West Virginia* on the *1st day of March, 1999*;

WHEREAS, no children were born or adopted to the marriage, or all children have reached the age of majority;

WHEREAS, Husband and Wife resided at *576 Bliss Lane*, city of *Charleston*, state of *West Virginia*.

WHEREAS, Husband and Wife have determined that the bonds of matrimony are irretrievably broken due to irreconcilable differences and they have mutually decided to separate;

WHEREAS, Husband and Wife desire to settle their property, financial matters, and support issues;

WHEREAS, Husband and Wife acknowledges that they have entered this Agreement of their own will and without undue influence or harassment;

THEREFORE, in consideration of the mutual promises made in this Agreement Husband and Wife agree as follows:

I. SEPARATION

Husband and Wife acknowledge that they have separated and will continue to live separate and apart without cohabitation, and that each will refrain from interfering, molesting, or harassing the other while this Agreement is in effect.

II. SPOUSAL SUPPORT

Husband and Wife agree that spousal support will be handled in the following manner (Describe whether spousal support will be paid in a lump sum, weekly, monthly, etc. If no spousal support will be paid by either party, indicate this):

Neither Husband nor Wife will be required to pay spousal support to the other party.

Husband and Wife agree that health insurance for them will be handled in the following manner:

Husband and Wife both have adequate health insurance provided by their respective employers.

III. DIVISION OF ASSETS

A. Real Property

1. Marital Home

Husband and Wife resided at 576 Bliss Lane, Charleston, WV while living together as a married couple. Husband and Wife agree as follows regarding the marital home: *Husband will continue to reside in the marital home and will assume responsibility for all debts and obligations, as well as the maintenance and up keep of the home.*

2. Other Real Property

Husband and Wife have divided other real property acquired during the marriage in a manner that is acceptable to both parties. A description of this property and how it is divided is detailed in Exhibit B and Exhibit C of this Agreement. (If no other real property besides the marital home was acquired during the marriage indicate this on both Exhibit B and Exhibit C.)

B. Personal Property

Husband and Wife accumulated personal property during their marriage, and they have divided the personal property in a manner that is acceptable to both. The division of all personal property owned by Husband and Wife during the marriage is detailed in Exhibit B and Exhibit C of this Agreement.

C. Separate Property

Husband and Wife entered the marriage with property that each owned individually. It is their desire that this property remain classified as separate property or nonmarital assets. A description of all Separate Property is detailed in Exhibit B and Exhibit C of this Agreement.

D. Retirement and Pension Plans

Husband and Wife waive any claim or right he or she may have in any pension plan or retirement account of the other party.

E. Financial Assets

Husband and Wife currently hold the following joint accounts:

<u>Name of Institution</u>	<u>Type of Account</u>	<u>Value</u>
1. <i>First National Bank</i>	<i>Joint Checking Account</i>	<i>\$1,475.00</i>
2. <i>First Command Bank</i>	<i>Money Market Account</i>	<i>\$6345.00</i>
3.		
4.		

Husband and Wife agree that the monies in all joint accounts will be divided equally and all joint accounts will be closed. All other financial assets held by the parties have been divided in manner that is acceptable to both parties. A description of these financial assets and how they are divided is detailed in Exhibit B and Exhibit C of this Agreement.

IV. RESPONSIBILITY FOR DEBTS

Husband and Wife represent and warrant that, except as set forth in Exhibit B and Exhibit C of this Agreement, he or she has not incurred any debts or obligations for which the other may be liable. Husband and Wife agree that he or she hereafter will not incur any debts or obligations for which the other is liable. In addition, each party will indemnify and hold the other harmless against any costs and expenses, including reasonable attorneys' fees and disbursements, resulting from a breach by such party of any representation, warrant, or covenant contained in this Agreement.

V. INCOME TAXES

Husband and Wife represent that to the best of their knowledge and belief all tax liabilities due in previous years have been paid in full. Husband and Wife agree to file joint Federal, State and local income tax returns for the year of 2005. If there is any tax liability assessed on any jointly filed tax return, such tax liability will be paid by both parties in proportion to their incomes for the tax year, unless the deficiency is caused by the act or failure to act of either Husband or Wife. If there is an audit of any joint tax return, each party will furnish documents and other information as may be reasonably requested in connection with the audit. Any refund payable with respect to any joint tax return, now or hereafter filed will be paid to Husband and Wife in equal amounts. Both parties will endorse any refund checks and take any actions as may be necessary to facilitate such payment.

VI. WAIVER OF ESTATE CLAIMS

Husband and Wife will have the right to dispose of their property by last will and testament as each deems proper. It will be at their sole discretion with the same effect as if the other had predeceased them. Husband and Wife, individually and for his or her heirs, successors, and assigns, waive all claims or interests they may have as the surviving spouse to all property owned by the other. Husband and Wife both waive all rights that he or she may have pursuant to the laws of *West Virginia* to take action in contravention of the other's will. Further, both Husband and Wife waive any rights they may have to take an elective share should the other party die intestate.

VII. MEDIATION OR ARBITRATION

While this Agreement remains in effect, Husband and Wife agree to settle any disputes that arise under it through mediation before a professional mediator. Husband and Wife will each pay fifty percent of the costs, unless it is clear to the mediator that one of the parties is requesting mediation only to incur costs the other party cannot reasonably be expected to pay. If mediation fails, then any dispute may be settled by the court having jurisdiction over the parties and the legal issue(s).

VIII. AMENDMENTS

Husband and Wife agree that there may be a need to make modifications to this Agreement in the future, and as such, they agree that modifications will be made by written amendment that is notarized, witnessed, and signed by both Husband and Wife.

IX. TERMINATION

This Agreement can be terminated by Husband and Wife mutually deciding to resume their relationship and living together as a married couple, or by mutual decision of the parties that is reflected in a written document signed by the parties and notarized.

X. EFFECT OF DIVORCE

Husband and Wife agree the filing for divorce by either party will not terminate the obligations created by this Agreement, and this Agreement may only be terminated as indicated in Section IX of this Agreement. In the event a divorce is granted by the Court, Husband and Wife agree to *merge* this Agreement with the final Divorce Decree.

XI. MERGER CLAUSE

This Agreement is entire and complete and embodies all understandings and agreements between the parties. No representation, warranty, agreement or undertaking of any kind or nature has been made to either party to induce the making of this Agreement, except as is expressly set forth herein. The parties acknowledge that there is no other agreement, oral or written, existing between them. No oral statement or prior written matter outside of this Agreement shall have any force or effect.

XII. GOVERING LAW

This Agreement is governed by the laws of the state of *West Virginia* and will be construed according to those laws.

Date: _____

Date: _____

Husband's signature:

Wife's signature:

The above parties known to us personally or proved to us by presentation of valid identification signed and published the above as their AGREEMENT TO SEPARATE AS HUSBAND AND WIFE, in our presence. At their request, we have signed our names and written our addresses on this document as witness this _____ day of _____, 20__.

Witness

Address

Witness

Address

(FOR NOTARY PUBLIC)

STATE OF _____ COUNTY OF _____

On the _____ day of _____, 20____, before me, a
Notary Public in and for the above state and county, personally appeared
_____ and _____, known to me or proved to be the person(s)
named in and who executed the foregoing AGREEMENT TO SEPARATE AS HUSBAND
AND WIFE, and being first duly sworn, such person acknowledged that they executed said
Agreement for the purposes therein contained as his or her free and voluntary act and deed.

Subscribed and sworn to before me this _____, day of _____, 20____.

Officer _____ Title of Officer: _____

My Commission Expires: _____