

FORMALIZING A MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding (MOU) describes the negotiated plan that the two of you have agreed to in the mediation session(s). It is useful because it allows you try out your plan without having it formally set down by the court as an order, and, with mutual consent, the MOU can be changed or adjusted. It is also a useful tool to take to your lawyer to get legal advice on the agreements that you have reached through mediation.

The MOU is not a court order and it is not a written agreement as defined by the Family Relations Act. It cannot take the place of one of those documents and it cannot be enforced as if it were an agreement or a court order.

Sometimes people who have settled their dispute in mediation wish to take steps to formalize a MOU. Here are some of your options:

1. You can take your MOU to a Family Justice Counsellor and ask for their help to write up the children's issues and support issues in a Written Agreement . A Written Agreement can be filed in the Provincial Court Registry and, subject to family law, can be enforced by the court.
2. You can ask a lawyer to write up a Separation Agreement. A Separation Agreement can include both the children's issues and support issues as well as the detailed agreements concerning your Property Division. It can be filed in either Provincial or Supreme Court and, subject to family law, can be enforced by the court.
3. You can apply to court to formalize the terms of your MOU in a Consent Order. You can do your own paperwork for the Consent Order, or a lawyer or Family Justice Counsellor can prepare the paperwork for a Consent Order.

If you are married and want to file for a divorce, you will need to complete and file other paperwork in order to obtain a desk order Divorce Order from Supreme Court. Lawyers can prepare these documents for you.

Legal Counsel

It is recommended that you seek legal advice on the terms of your MOU before formalizing it. If the cost of legal counsel is a concern for you, there are some community legal resources you may wish to explore:

- Canadian Bar Association BC Lawyer Referral Service: offers a half hour of legal advice for \$25.00. The service will provide you with the name and phone number of a family lawyer. In the Lower Mainland call 604-687-3221; in other parts of the province call toll free: 1-800-663-1919.
- Legal Services Society LawLINE 604-408-2172 or 1-866-577-2525: If you qualify for assistance by meeting their financial guidelines for legal advice, lawyers will give you legal advice about your situation.
- Pro Bono Law of BC: community law clinics provide legal information and advice. Check their website: www.probononet.bc.ca/ for a clinic in a community center near you.
- The BC Supreme Court Self-Help Information Centre can help you get the information and forms you need to prepare a Consent Order for Supreme Court: 604-660-1305.

- Family Duty Counsel: located at many Provincial and Supreme Court houses; call the courthouse closest to you to see if and when a lawyer is available.

Once each of you have obtained Independent Legal Advice from your lawyers either of you may approach the lawyer you used to see if they are willing to draft a Consent Order or a Separation Agreement that can be filed in court. The cost of this can be shared between the two of you.

Family Justice Centres

You can make an appointment to meet or speak with a Family Justice Counsellor (FJC) about your situation. The FJC can assist you with options around which type of formalized agreement -- a written agreement or a consent order -- you need. They can also help the two of you “tweak” the terms of your agreement, through mediation. They then will either take your MOU and write it up as a formal written agreement or they will complete all the paperwork you will need to send a desk order consent order through the court system to get a judge’s signature on the documents. The Family Justice Branch website gives you information and the location for all of the Family Justice Centers:

<http://www.ag.gov.bc.ca/family-justice/>

Do it Yourself

There are “how to” booklets and forms and other information available to people who are not represented by legal counsel. Some options include:

1. Self Counsel Press: Produces self-help kits, called “Separation Agreement” and “Divorce Forms...sole or joint filing”. These

packages are available at bookstores and some office/stationary stores.

2. The Legal Services Society's Family Law website has self-help kits to cover basic family law applications in both Provincial and Supreme Court. The site includes sample court forms with instructions and blank court forms:

<http://www.familylaw.lss.bc.ca/selfhelpmaterials.asp>

IMPORTANT NOTE

This document is intended to provide information about steps you may take to formalize your MOU. It is not intended to be, and should not be taken as, legal advice. For a thorough review of the kind of document your case requires it is recommended that you seek legal advice.