

## **Family Law Handbook**

**Created by the Family Law Section of the Florida Bar**

**Congratulations!** You're getting married - hopefully, for the rest of your life. It may surprise you to learn that the State of Florida has an interest in your marriage. Not in the number of bridesmaids, or the flavor of the cake, or even the color of the flowers - but in whether the marriage is long lasting and happy. There are four main things you need to TAKE GOOD CARE OF in times ahead:

- Your COMMITMENT to each other
- YOURSELF
- Any CHILDREN you might have or adopt
- Your "STUFF" (money, property, stocks, etc.)

The Florida Legislature decided that a law was needed to recognize how important marriage is to families in the state. In 1998 lawmakers passed that law based on the knowledge that:

- The divorce rate has been accelerating
  - Just as the family is the foundation of society, the marital relationship is the foundation of the family. Consequently, strengthening marriages can only lead to stronger families, children, and communities, as well as a stronger economy.
  - An inability to cope with stress from both internal and external sources leads to significantly higher incidents of domestic violence, child abuse, absenteeism, medical costs, learning and social deficiencies, and divorce.
  - Relationship skills can be learned.
  - Once learned, relationship skills can facilitate communication between parties to a marriage and assist couples in avoiding conflict.
  - Once relationship skills are learned, they are generalized to parenting, the workplace, schools, neighborhoods, and civic relationships.
  - By reducing conflict and increasing communication, stressors can be diminished and coping can be furthered.
  - When effective coping exists, domestic violence, child abuse, and divorce and its effects on children, such as absenteeism, medical costs, and learning and social deficiencies, are diminished.
  - The state has a compelling interest in educating its citizens with regard to marriage and, if contemplated, the effects of divorce. [Chapter 98-403, Laws of Florida]
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What does all that mean? It means that staying happily married is hard and more and more couples are giving up and getting a divorce. The best marriages are not marriages where there is no conflict. The best marriages are marriages where couples know how to work through the rough spots. Just like learning how to drive, you can learn to handle problems in your marriage.

For you, the law means you have to read this handbook, you could save \$32.50 on your marriage license fee if you take a premarital education course, and under some circumstances you might have to wait three days for your marriage license to become effective if you don't take a course. If you decided not to take premarital education course before getting married - it's not too late. Education courses that teach relationship skills are known to be helpful at any time during a relationship.

Marriage and parenthood are two of the most important and most difficult jobs anyone can have. Oddly enough, you don't have to have any training or education, you don't have to take a test, and you don't have to have a license in order to do either of these jobs. If you just can't make it work and returning to single life is what you choose to do, you need to know that single life may not be as simple as it was before you were married. Divorce will affect many areas of your life - some that you might not even have thought about before you walk down the aisle.

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## **THINGS YOU NEED TO KNOW**

Getting married is more than just pledging to live together until death (or divorce). It is more than agreeing to live away from your parents with another person. It is more than legal permission to have consensual sexual relations with your partner. Getting married is entering into a serious legal relationship that has many diverse consequences on your ownership of your money and possessions; the way you will raise your children; and the way you will relate to your partner. Because this is a serious legal action, the Florida Legislature requires that all persons getting married receive information about what getting married means. When people talk about what it means to be married and how they will handle their finances, children's issues, religious issues, work decisions and the like BEFORE they get married, they have a far greater ability to remain happily married throughout their lives.

This pamphlet is not designed to give individualized legal advice, but it is meant to tell you generally about the marriage contract and the marital relationship in accordance with the laws in effect through the summer of 1998. The laws dealing with the marital relationship are constantly affected by changing statutes and by the entry of court decisions in the appellate courts of Florida. This area of the law has detail that changes on a weekly basis. If you have any questions, you are advised to see a lawyer who has an understanding of family law issues BEFORE you get married.

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## **MARRIAGE IS A LEGAL RELATIONSHIP**

When two people marry they form a social and an economic partnership. That partnership does not need to be renewed every year, as you would a car registration. Rather, it exists until either one party dies or the parties' marriage is dissolved (divorce). Because the State of Florida has an interest in protecting and maintaining its citizens and in protecting

and advancing families, many laws exist that control what will happen to a person's estate when a person dies and that control the process of divorce. In order to dispose of a person's property after death, and in order to end a marriage, court actions may be required. Those actions, in large part, define and are controlled by Florida Law.

Persons who are considering marriage may enter into a written agreement that will determine the economic issues between them should the marriage not survive or should one of them die. Generally, such "prenuptial agreements" may create a special contract between the parties that, if properly entered into after full disclosure of financial information by both parties and without undue pressure being applied by one party against the other, can structure the financial aspects of the parties' divorce. Although a party cannot agree not to receive child support, and cannot contract away temporary financial support during the pendency of an action, you and your spouse can agree, before you get married, to specific distribution plans for assets and liabilities and for specific spousal support (alimony) if the marriage does not work out. A lawyer who handles family law matters can discuss this with you and help you reach these types of agreements.

Even after a divorce, if things change, most types of alimony, child support, and parental responsibility issues may be modified by later court proceedings.

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## **ECONOMIC ISSUES**

(DURING THE MARRIAGE/UPON DISSOLUTION OF MARRIAGE)

### **ASSETS (THE THINGS YOU OWN)**

Unless there is a written agreement to the contrary, money earned by either you or your spouse during the marriage, assets purchased by either of you, and debts incurred by either of you are considered to be "marital assets and liabilities" which will be distributed to each of you if you divorce. This is true even if an asset is bought in one name alone with the money earned by that person. Title to property alone does not determine distribution.

Any asset owned by a person before he or she gets married that he or she keeps separately titled (e.g. a home) will generally be distributed to that person upon divorce. Such an asset is called nonmarital property. However, if that asset has increased in value due to the expenditure of marital funds, or funds of non-owner spouse during the marriage, or if that asset has increased in value due to the work efforts of either partner (even if it is only the work of the one that owned it before), then the increased value may be considered a marital asset that can be distributed to both husband and wife upon divorce.

If either spouse changes into joint names the title to an asset that he or she owned before

marriage; or, if the person mixes the asset with marital assets (for example, if the spouse puts his or her house into both names or puts the money that he or she earns into a stock account he or she had before the marriage) then the whole asset may be considered to be a marital asset and may be distributed to both husband and wife upon divorce.

Gifts given by one spouse to the other are marital assets and can and will generally be divided should you divorce. Gifts given by outside persons to one party or the other individually, and not thereafter mixed with marital assets, are not marital property and will generally be awarded to the recipient of the gift upon divorce.

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### **LIABILITIES (THE MONEY YOU OWE)**

If a person owes a debt prior to the marriage and that debt still exists at the time of the parties' divorce, the person who owed the debt still will be solely responsible for it unless the other party has legally agreed to pay the debt during the marriage. Debt incurred by either party during the marriage is generally "marital debt" and can be assigned for payment to either party upon divorce.

### **HOW THE COURT DIVIDES ASSETS AND LIABILITIES UPON DIVORCE**

Unless the husband and wife enter into an agreement that sets out who gets which assets and who gets which liabilities, the circuit court will have a trial after which it will decide who gets what and who pays what.

The current statutes require a court to begin the process of dividing assets and liabilities by setting aside those assets that are defined as "nonmarital," typically those assets which either were owned prior to the marriage or inherited during the marriage and not mixed with marital assets, or those properties specified in a written agreement between the parties as nonmarital.

Next, the court will divide marital assets and marital liabilities, starting with the presumption that such assets and liabilities will be distributed equally. The court may distribute unequally marital assets and marital liabilities based upon a series of factors including: the contributions of each party to the marriage, the contribution of one party to the career or educational opportunities of the other, the intentional depletion or destruction of marital assets by one party, and other equitable factors. The court may award a cash payment from one party to the other to balance out assets and liabilities. It is not necessary for a court to divide each and every asset between the parties. Instead, the court may award some assets to one party, some to the other, and balance the difference through a cash payment.

If proper pleadings are filed, a trial judge may order particular items of real or personal property sold and the proceeds awarded to one or both spouses.

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## **SPOUSAL SUPPORT (ALIMONY)**

Upon separation or divorce, in some cases a judge may order one party to pay spousal support (alimony or separate maintenance) to his or her spouse. If awarded, the type, duration, and amount of alimony will be determined primarily by the length of the marriage, the need of one party for support, the ability of the other party to pay the support, and the standard of living the parties have enjoyed together.

A trial judge may order temporary support from the time of the filing of a dissolution of marriage action (divorce case) or the time of the filing of a petition from support unconnected with dissolution of marriage. At the time of the final judgment, the trial judge may order permanent alimony (to continue until the death of either spouse or the remarriage of the receiving spouse), rehabilitative alimony (support for a specific purpose that is meant to fund a plan to allow the receiving spouse to become educated or otherwise qualified to work at a particular job), and/or lump sum alimony (a specific sum designated for support purposes). Typically, permanent alimony and rehabilitative alimony are paid on a monthly basis and may have substantial tax consequences.

The factors considered by a court when determining issues of alimony include: the age of the parties, the duration of the marriage, the health, education, and skills of each party, and other factors. Marital misconduct, such as adultery, is only considered when it has an economic consequence.

An Income Deduction Order may be entered that will require the employer of the person paying alimony to deduct the support from the paying spouse's paycheck and send it directly to the other spouse or to a central depository, which will keep track of the payments and forward the funds to the receiving spouse. Failure to pay spousal support when it has been ordered is enforceable by contempt, and willful failure to pay may result in a person being jailed. A party may be ordered to maintain life insurance or provide other security to ensure the continued payment of alimony.

As an additional component of support, a judge may order one party to pay the attorney's fees and costs incurred by his or her spouse. The primary factor to be considered in an award of fees is the need of one spouse and the ability of the other spouse to pay. More and more, however, the courts are considering the reasonableness of the positions of each party in determining the amount of fees and costs awarded.

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## **UPON THE DEATH OF A HUSBAND OR WIFE**

A husband or wife has certain rights to assets of his or her spouse upon death, unless the couple has a written agreement to the contrary. For example, a spouse may be entitled to a portion of the deceased spouse's property that is subject to probate administration, an allowance of a certain sum of money, and use of the family home.

Transfers of property from one spouse to another may receive beneficial tax treatment. Couples who have valuable assets may wish to consult an attorney who is familiar with estate planning for their particular situation.

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## **CHILD RELATED ISSUES (DIVORCE OR SEPARATION)**

### **PAYING FOR CHILDREN'S EXPENSES AFTER DIVORCE**

Both parents have a duty to support their children. On divorce, that duty ordinarily is enforced through an award of child support from one parent to the other. To calculate child support, the court will usually follow a process in the child support guidelines statute. That process requires the court to consider the gross earnings of each party, subject to certain specified deductions, and to apply those earnings to a chart. Child care expenses and child health insurance premiums ordinarily are added to that charted figure. Alimony paid is considered income to the receiving spouse and is a deduction from the income of the person who pays. Each parent's percentage of support is then calculated and a support figure is generated. The judge is then permitted to vary the support amount based upon a series of factors directed to circumstances existing within that particular family. Where it is reasonably available, payment of health insurance premiums will be required and the cost of uncovered medical, dental and prescription needs will be allocated.

Except in special circumstances, an Income Deduction Order will be entered that will require the employer of the parent paying child support to deduct the support from the paying parent's paycheck and send it directly to a central depositor, which will keep track of the payments and forward the funds to the receiving parent. Failure to pay child support when it has been ordered is enforceable by contempt, and willful failure to pay may result in a person being jailed. A party may be ordered to maintain life insurance or provide other security to ensure the continued payment of child support.

It is not acceptable or appropriate to fail to permit a parent to spend time with children because that parent has not paid child support. It is equally unacceptable to fail to pay child support because the other parent has not made the children available. Two wrongs don't make a right. Under either set of circumstances, the statutes provide methods for enforcement of court orders.

Assistance in obtaining a child support order may be available. The precise location of that assistance varies from county to county. For information related to the agency assisting in support enforcement and establishment in your county, contact your local Department of Revenue, Child Support Enforcement Program.

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## **MAKING DECISIONS FOR THE CHILDREN AFTER DIVORCE**

In most circumstances, a judge will order “shared parental responsibility” for minor children when the parents separate or divorce. This means that both parents have a right to have full information about the children and to share in making major decisions for the children. Just because a child lives primarily with one parent does not give that parent greater say in the child’s upbringing.

A judge may determine that one parent or the other should have the ultimate responsibility to make decisions in a particular area of the child’s life, if the judge finds that it would be in the best interest of the child to do so.

If the parents, after good faith efforts, are unable to agree about a major decision affecting the child, (e.g., the parents cannot agree which private school the children should attend) the court, upon motion, may decide the issue, or designate the parent who will make that decision.

Sole parental responsibility may be awarded to one parent when shared parental responsibility would be detrimental to the child. Evidence of child or spousal abuse is a consideration and, depending upon the degree of abuse, may be a presumptive factor in determining whether shared or sole parental responsibility will be awarded.

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## **WHERE THE CHILDREN WILL LIVE AFTER DIVORCE**

When parents separate or divorce it is important that both parents maintain contact with the children. Ordinarily, one parent will be designated the “primary residential parent” and the other parent will be designated the “secondary residential parent.” Alternate arrangements, including situations where one parent has sole custody or where neither parent is designated a primary residential parent (rotating custody), can be agreed to or ordered in specific circumstances.

Both parents are entitled to equal consideration as primary residential parents, notwithstanding the age or sex of the children.

After divorce, if a primary residential parent wants to move and the move would materially interfere with the other parent’s contact with and access to the children, there are a series of statutory factors that a court will be required to consider before issuing an order that permits a parent to move with the children. It is possible that a parent will be denied permission to move with the children. This may occur if the other parent has been an involved parent, the move is not in the best interest of the children, and a substituted schedule of contact with the children may not be sufficient to maintain the secondary residential parent’s relationship with the children.

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## **CONTACT WITH CHILDREN**

Unless contact would be detrimental to the children, both parents are entitled to spend time with the children. In most circumstances, a schedule will be established that will designate which days and nights will be spent with each parent. This schedule usually will include specific holiday planning, vacation planning, and a method for modifying the schedule when the need arises. Overnight visitation may not be denied based upon the age or sex of a child.

Ordinarily, each parent should have telephone contact with the children when they are with the other parent. Furthermore, many agreements provide that if a parent is going to be away from the children overnight the other parent will be given the opportunity to have the first right to take the child or children for that night before any other person is provided that opportunity.

If a primary residential parent wrongfully deprives the other parent of his or her time with the children, the court may enforce that other parent's right to time with the children and has a large variety of sanctions that can be imposed - ranging from make-up time to a full change of primary residential custody.

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## **WHAT IF ONE SPOUSE ALREADY HAS A CHILD?**

Unless a person has adopted the child of his or her spouse, the stepparent does not obtain either parental rights or responsibilities. Therefore, if the couple divorces, a stepparent will not have a right to contact with his or her stepchildren nor will a stepparent have an obligation to support stepchildren, even if he or she voluntarily has done so during the marriage. If a person has adopted a stepchild during the marriage, then that stepparent is the child's parent in all respects and will be given the same consideration for parental rights and responsibilities, as would any natural parent.

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## **DOMESTIC VIOLENCE AND CHILD ABUSE**

No person has a right to physically hit, push, shove, shake, or abuse another person even if that person is his or her spouse or child. Domestic violence and child abuse are crimes and will be prosecuted as such.

Florida Statutes provide an expedited process for obtaining an "injunction for protection against domestic violence." Forms have been established for seeking immediate injunctions when a person reasonably believes that he or she is in imminent danger or harm from a domestic partner. Available relief includes immediate exclusive use of the home, immediate temporary custody of the children (with or without temporary visitation) and where appropriate, financial relief. The petition must be submitted under oath and must factually lay out a basis for a reasonable fear that without this special order will be hurt. Generally, an evidentiary hearing will take place within 15 days to allow the



other party a chance to dispute the charges and to allow a judge to determine how the case will then progress. A person against whom a domestic violence injunction is issued, may not own or possess a firearm or ammunition. Domestic violence injunctions are enforceable nationwide.

Florida law provides that evidence of domestic abuse, or a false allegation of domestic abuse, may be considered as a factor in determining parental responsibility. Similarly, false statements under oath in domestic violence cases may result in criminal prosecution for perjury.

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## **THE PROCESS FOR ENDING A MARRIAGE (DIVORCE)**

In order to end a marriage, a person must obtain a final judgment from a circuit court dissolving the marriage. In that judgment, all property, support and child-related issues ordinarily will be determined. To obtain that judgment a person must file a petition to start a lawsuit, legally serve (notice) his or her spouse, provide and obtain financial information to and from his or her spouse, if children are involved, take a class, and either have an agreement prepared and brought to the court at an appropriately noticed final hearing or have a trial before a judicial officer at which evidence will be taken to allow the judicial officer to make decisions. A person is not required to have a lawyer to obtain a divorce. However, because this is a legal process with rules and procedures to be followed, it is advisable to obtain legal counsel.

To obtain a divorce, there must be a legally acceptable reason. There are two legally acceptable reasons in Florida. One is that one party has been declared legally incompetent for a period in excess of three years. The other is the more common basis - that the marriage is "irretrievably broken." That means that there is nothing that the court can do (such as sending the couple to counseling) to induce the couple to reconcile. If there are children, and a person answers a petition for dissolution of marriage by denying that the marriage is irretrievably broken, then the court may order the parties to counseling and may delay the proceedings for up to three months to encourage and/or permit the parties an opportunity to reconcile.

Once a petition for dissolution of marriage is filed, it must be legally served upon the other party. That party must then file a written answer with the court. Forms for dissolution of marriage proceedings are available, and many courts have self-help units to assist people without lawyers in finding those forms.

There are specialized rules for procedure dealing with family courts, which are available at public libraries and law schools. Those rules require each party to provide the other with financial information within a certain number of days of the beginning of a case. Except in cases involving domestic violence, most courts will also require all couples to attend mediation sessions - which are settlement conferences with the assistance of a

trained person who try to help couples achieve a settlement between themselves. If children are involved, all parties will be required to attend parenting classes, details of which are provided when the divorce action is filed. Some courts require the child to attend special classes as well.

Divorce proceedings are public proceedings, and the files are available at the courthouse for public review. Under certain limited circumstances, portions of the file may be sealed by order of the court.

While a divorce is pending, a trial judge may enter orders dealing with support, possession or maintenance of any individual asset, where the child or children will live, the time the child or children will spend with each parent, and attorney's fees and costs.

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## **COMMUNITY RESOURCES -**

### **WHERE TO GO FOR MORE INFORMATION OR HELP**

The laws dealing with marriage, dissolution of marriage, partition (forced sale) of property, enforcement of support, and injunctions for protection against domestic violence are primarily found in chapters 61, 64, and 741 of the Florida Statutes. Those statutes are available for review at all public libraries. Recent legislative changes can be accessed online at <http://www.leg.state.fl.us>.

Many courthouses have opened self-help clinics that provide access to forms required for dissolution of marriage proceedings. These forms may also be retrieved online as the "family law forms" contained within the rules maintained at <http://www.flcourts.org>. Couples undergoing marital strain are encouraged to seek the assistance of a mental health professional specializing in family counseling. The yellow pages in your local phone book contain a variety of such mental health professionals. Clergy are also available for assistance and/or referrals.

The statewide toll-free hotline to obtain assistance with protecting yourself or your children from domestic violence is 1-800-500-1119.

Couples who wish to attempt to settle their cases with the assistance of a professional mediator can contact their local family court services division, court administrator, or clerk of court for a list of certified family mediators in their area. Many mediators also advertise in the yellow pages. The Florida Supreme Court's Dispute Resolution Center can also provide the names of certified mediators in Florida. The number is 850-921-2910.

In most counties, The United Way maintains information on local agencies that provide a variety of services to children and families to prevent and reduce the incidents and effects

of child abuse and neglect, and spousal abuse.

Referrals to attorneys who can assist in family law matters can be obtained from local bar association, local legal aid organizations, and from the Florida Bar's referral Service at 1-800-342-8011.

Attorneys handling family law cases can also be found in the yellow pages of your local phone book. The hiring of an attorney is a serious matter, and attention should be given to the attorney's qualifications and background prior to engagement.

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END OF HANDBOOK

This handbook has been prepared as a public service by the Family Law Section of The Florida Bar and has been reviewed for accuracy by The Family Court Steering Committee established by the Florida Supreme Court.