

# FLORIDA DIVORCE SURVIVAL GUIDE

Info That May Be Helpful In Your Case



By Robert L. Bogen

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# TESTIMONIALS

*"I hired Mr. Bogen on the recommendation of a family member to help me settle things with my ex-boyfriend. It was a very stressful time for me and he was very caring. He spent all the time he needed with me gathering information and then he began working on my case right away. He was respectful and courteous and always phoned or e-mailed me, many times after normal work hours, to explain what he was doing and why. He was detail oriented and it was clear to me that he knew what he was doing. I felt very comfortable with him. In the end, he was able to work things out and I was very happy with the results. He also followed through after the agreement to make sure my ex-boyfriend did what he was supposed to do. I was very pleased with his services and I would call him again if I ever needed a lawyer. I would recommend him highly to anyone who needs legal help."*

**- Irene**

\*\*\*\*\*

*"I highly recommend Attorney Robert Bogen for legal services. He creates a calming environment, which immediately reduces one's anxiety and stress level. Robert is very knowledgeable with family law and will explain every question or concern you have. He is never too busy to answer a phone call or email. You know without a doubt he is always working for your benefit. It was comforting to know that I was in good hands with a very smart, dedicated and confident lawyer. Thanks Robert for all your hard work."*

**- VW Touareg**

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*"I found Mr. Bogen on AVVO after he answered one of my questions pertaining to a paternity matter. Hiring a family lawyer isn't an easy task, but I almost immediately trusted him. He is very giving of his time as well as sensitive to my needs. It's almost like having a therapist and an attorney in one. I find Mr. Bogen to be caring, diligent and committed to getting me what I need. I feel confident that he is handling my matter in the best way and have faith in his judgment, opinion and direction with my case. He always follows through on what he says he is going to do, which makes this process a whole lot easier. His communication style is direct and prompt. He does not make promises he cannot keep. I would honestly recommend him to anyone."*

**- Rochelle**

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*"I have used Mr. Bogen on several occasions over the years on a very complicated divorce case for both trial and appellate work. I have had many attorneys over the years and Mr. Bogen is the standout. He has an exceptional ability to distill the critical facts from any case, apply the law, and articulate the argument in the most persuasive and eloquent fashion possible. He is a master draftsman for trial or appellate briefs, and proposed orders. Very much a lawyer's lawyer in this regard."*

**- A Satisfied Client**

\*\*\*\*\*

*“I cannot speak highly enough of Mr. Robert Bogen. He helped me tremendously at a time that was extremely stressful for me with regard to the child custody of my son. Never once did I have to wait for a response when I needed his help. He is very kind, understanding, honest and extremely smart and logical. He understood me always and guided me through my process to the end. Even through times when there were emergencies he was there for me. When he was on a family vacation out of the country, he responded and instructed me what I needed to get done. I admire him greatly and have the utmost respect for him. I would recommend Mr. Bogen without a second thought to anyone who has a similar situation in life.”*

**- Saad A.**

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*“Mr. Bogen was recommended to me by a friend who I trust. He was excellent! I found him to be honest, ethical, and very knowledgeable. He put me at ease right away. I frequently received phone calls from him explaining what he was doing and why this was the best course to take. He got good results for me in court, and was then able to work out a settlement in the end. I would use Mr. Bogen again, and without question would have no hesitation in recommending him to anyone who needs a lawyer.”*

**- A Satisfied Client**

\*\*\*\*\*

*“We have known Robert Bogen as our family’s attorney and friend for 30 years. Whenever the need has arisen concerning legal matters, we have always called on him. He is an excellent listener and advisor and really cares about people. He has always served us well. Robert Bogen is a serious thinker who can get to the root of any matter by thoughtful questioning and looking at all angles. You can always put your trust and confidence in Robert Bogen.”*

**- Ilene K.**

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*“I hired Mr. Bogen to represent me in a divorce and child custody case. He is very trustworthy, always kept me informed of what was happening with my case, and most of all, he was always on top of things. He is very fair, he listens well, and he really looks out for the best interest of his clients. I would recommend Mr. Bogen to anyone who is looking for an excellent attorney.”*

**- A Happy Client**

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*“I engaged Mr. Bogen to advise me for my divorce case and he did an excellent job. I contacted three lawyers for consultation and he showed genuine interest in my case, deep knowledge in this field, he has offered very practical legal advice. I highly recommend Robert Bogen and I am sure he will do an excellent job for you! Thank You so Much!!!”*

**- Kelly G.**

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## INTRODUCTION TO AUTHOR

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Robert L. Bogen maintains a family law practice that is distinguished by total service and total commitment. He has earned the prestigious Client Distinction Award annually since its inception, as well as numerous other public recognitions. In more than 35 years of practice, he has earned an impeccable reputation with his colleagues and the judiciary.



No one seeks out an attorney under pleasant circumstances, but rather during times of trouble, anxiety and distress. Clients want personalized “hands-on” service. Robert L. Bogen provides the level of personalized care and determined representation that clients expect and deserve. Persistent effort and personal care lead to positive results.

Whether you are seeking a divorce, annulment, separation agreement, or enforcement of an existing decree, Robert L. Bogen manages all the ancillary issues, including but not limited to child custody and timesharing issues, equitable distribution of assets and liabilities, child support and alimony needs, and protective injunctive relief. It is hoped

that this booklet will shed some insight and provide a basic understanding of some of the legal complexities involved when facing a family or matrimonial crisis, and how an experienced and dedicated lawyer fighting for your best interest can assist you in achieving your objectives so you can move on with your life.

# **SO, YOU'RE THINKING ABOUT A DIVORCE?**

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## **What Are The Most Common Reasons People Give For Divorcing?**

It can be for any number of reasons: finances, affairs, alcohol or drug abuse; spouses grow apart, and there is a lack of respect or trust; attitudes change and they simply fall out of love. Every couple has their own reasons, and sometimes they do not express their reasons. In Florida, you do not need to have any particular ground for divorce other than that the marriage is irretrievably broken. Of course if one spouse does not want to stay married to the other for any reason, the marriage is irretrievably broken. You do not even need to state the reason why it is broken. So it runs the full gamut.



## **Do Men and Women Tend To View Divorce Differently?**

In the 1940s, 1950s, or 1960s, the genders usually had clearly delineated roles in the family unit. The male was the breadwinner, providing financial security for the family; and the female was the homemaker, raising the children. It is not surprising that each of them might have a different view of their relative position in the divorce

process. Those gender-based roles don't hold water anymore. In this day and age, it is quite common to see both spouses in the workforce, and both spouses involved in the day to day affairs of running the household and raising the children. Thus, while the parties to a divorce proceeding today may view their relationship or relative bargaining positions differently, those views usually don't correlate to gender.

### **Is There a “Typical” Divorce Client?**

The short answer is no. Every marriage is different. Every person is an individual. Every client has their own needs, fears, and desired goals. Every divorce is very fact-specific. It will be men or women, with or without children (or with grown children), in varying financial positions. They will each have their own unique personalities, strengths and weaknesses. It might be their first, second, or third marriage; and of short, mid-range, or long term duration. These days, it is very easy to run to divorce court over a minor argument or disagreement. There is nothing “typical” about a divorce, or a divorce client.

### **Am I Better Off If I Have Grounds For a Divorce?**

Generally, you do not have an advantage just because your spouse was the cause of the marital break-up. Florida is a no fault divorce state, which means that, as long as the



marriage is irretrievably broken, no other ground is needed to seek a divorce. Issues of mental cruelty, adultery, physical abuse, or the like, are largely of no particular concern to the judge unless they can be directly tied to the family finances. Thus, for example, your spouse may have been involved in an ongoing affair during the marriage. Standing alone, that will not give you an advantage on your request for alimony from your errant spouse, nor will it insulate you from having to pay alimony to your errant spouse. But if your errant spouse bought a Rolex watch for the paramour with marital monies, or is socking marital monies away in the paramour's bank account, he or she will likely have to account for those monies by having the missing amount placed on his or her side of the ledger in the ultimate equitable distribution of marital assets and liabilities.

### **Is There An Advantage In Filing For Divorce Before My Spouse?**

Usually, a divorce petition is answered with a counter-petition. Thus, there generally is no advantage to winning the race to the courthouse. But sometimes the spouse who filed first may have been thinking about it longer and made preparations, catching the other spouse by surprise. That may provide a temporary tactical advantage. Otherwise, there is no particular legal advantage to being the first one to file.

## **What Are Some Major Financial Stakes To Consider When Divorcing?**

There are three areas to be concerned about when it comes to finances during a divorce. First, marital assets and liabilities have to be divided. Florida is an “equitable distribution” state, which means



that marital assets and liabilities will be divided based on various equitable factors, regardless of whose name the asset or liability



is in. Second, support issues need to be addressed. If there are minor children, there will be child support based upon income and the amount of timesharing each parent has with the children. There also may or may not be an alimony issue depending on all the circumstances, primarily based on one party’s needs and the other party’s abilities. Finally, there is the issue of attorney’s fees and costs. The more financially able spouse may be required to pay for or contribute to the other’s fees and costs in order to “level the playing field.”

## **What Should I Do In Preparation For a Divorce?**

While every case is different, pre-divorce planning typically involves “getting your ducks lined up.” You will want to educate yourself on sources and amounts of income that have been generated during the marriage, determine what

assets and liabilities exist, and accumulate copies of financial records and account statements. You will want to begin the process of determining your and your children's financial needs, separating out your financial affairs, and protecting against your spouse invading marital bank accounts or secreting marital monies. You will want to change your online passwords, and possibly open a new bank and credit card account. If your physical or emotional well-being is at risk, you may need to take protective measures, arrange for alternate living arrangements, and take steps to safeguard your personal security.

## **WHAT IS THE PROCESS?**

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### **What Is An Uncontested Divorce?**

An uncontested divorce is one where there are no remaining issues to be resolved. You do not go into a process saying, “Let’s file an uncontested divorce.” The facts, circumstances, and issues to be resolved at any given point during the process determine whether the proceeding is uncontested or not. There is no unique or separate type of proceeding called an “uncontested divorce proceeding” as opposed to a contested divorce proceeding. Usually, at the beginning, there are always issues to be resolved, unless there is no property or no children and both spouses are working and there is no issue of support. However, even if there are issues at the beginning, once those issues are resolved, whether before or during the litigation or at mediation or at any other time before the final hearing, and once an agreement is signed, then the divorce evolve into one that is no longer being contested and it goes into the final hearing as an uncontested divorce.

### **What Is The Process For a Contested Divorce?**

In reality, there is no typical contested divorce. A lot depends on the litigiousness of either or both of the spouses, or either or both of the attorneys. Sometimes, an easy divorce case can turn into a long drawn out affair.

Family lawsuits, like divorce and custody cases, are not like other civil lawsuits. The family law litigants frequently are not guided by the use of good judgment and common sense because their emotions and animosities are running the show. It can get ugly. In those cases, the lawyers have to take control of the clients and keep things from becoming unreasonably lengthy or out of hand.

Looking at it procedurally, the process starts with a petition filed by one spouse and an answer to the petition (sometimes with a counter-petition) filed by the other spouse. This is followed by “discovery,” where financial and other documents are exchanged, inventoried, and valued, and witnesses are deposed. Then there is mediation, and ultimately there is the final hearing. Of course, many other side or collateral issues can and do arise throughout the course of the proceeding that complicate things and throw the process off course.

### **What Is Better When Going Through a Divorce: Mediation or Litigation?**

The divorce process is a grueling, long and potentially costly process, both financially and emotionally. If the case ends up going to trial with the spouses putting their fates in the hands of the judge, chances are that neither party is going to be satisfied with the ruling and the

bitterness will continue after the divorce is over. This can be especially damaging if there are children involved.

On the other hand, if the case can settle without a trial, whether or not through mediation, and whether before or during the litigation process, at least the spouses know that they control their own fate. The courts will always require



the spouses to attempt to mediate with a mediator before a temporary or a final hearing in a divorce case. A good settlement at mediation is one where neither spouse is satisfied, but both spouses can live with it. Probably eighty to ninety percent of the filed family law cases end up settling before final hearing. It certainly is better emotionally, financially, and going forward, to have the divorce case concluded with a settlement agreement as opposed to a contested trial.

### **How Long Does a Divorce Take To Be Finalized?**

That also depends on the facts, circumstances, and issues in the case. If the spouses are reasonable and cooperative and there are minimal or no issues, it can be done within a couple of months. On the other hand, if either spouse is unreasonable or uncooperative, or there are numerous issues to resolve, it could take up to six months or a year to

complete the discovery and conclude the case. Sometimes, but not frequently, it might take even longer than a year.

### **How Is A Successful Outcome Defined In A Divorce Case?**

There are no winners or losers in a divorce case. If neither spouse is satisfied with the outcome, but they can both live with it and be civil with one another, especially if there are children involved, then that would be a successful outcome.

## **DO I NEED AN ATTORNEY?**

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### **Why Hire An Attorney Instead Of Handling The Divorce Myself?**

You may be tempted to file for divorce using court-provided forms, or information learned from the internet. In some cases, such a do-it-yourself divorce may be acceptable (for example, when a young couple are both working and starting out in life, have not been married long, have no children, and have no substantial property or debts to divide). Beyond that, most people should consider hiring an attorney to represent their interests.



Most people do not realize what their rights are under Florida law, what they are entitled to, or how to obtain their entitlements. An experienced attorney well-versed in the law can help you identify and obtain everything you're entitled to. If you fail to address an issue (such as medical or credit card debt, health insurance, or child care costs), or if you underestimate or overestimate the value of an asset, or if you simply are not aware of the existence of a marital asset or your marital entitlements, you can make a significant mistake in a divorce proceeding. Such a mistake may cause



financial harm to you or your children, or may require future legal proceedings to correct. By hiring an attorney, you can rest assured that your case is being properly handled the first time and that you are avoiding costly mistakes that you might regret for the rest of your life.

If there are child custody and support issues, substantial income, debts, assets or future assets (retirement investments, inheritances, etc.), then you should hire an attorney to protect your interests in a divorce. The substantive law and procedural rules of court can be complex and tricky, and no breaks are given for litigants who appear without attorneys.

Many people do not realize how emotionally taxing the process can be. After all, marriage was supposed to be for life, and you made an emotional investment. When the marriage fails, your emotional investment fails with it. The legal system is complicated and the stress of the divorce makes it difficult to think clearly. This is no time to try to navigate the waters without professional guidance. Hiring an attorney to complete a divorce will reduce your stress and anxiety. While the attorney will need to gather information from you, he or she will take care of almost everything else, allowing you more time to take care of yourself and your family. You have enough things to worry about when you are getting divorced.

## **How Else Can An Attorney Help Me During This Time Period?**

Everybody has questions that they seek answers to regarding their particular situation, for example, whether they should even get a divorce, what's the process all about, How do their facts and circumstances help or hurt them, and so forth. They seek an attorney many times not just for litigation in court, but also as a financial advisor, a counselor, or for emotional support as they go through the process. Attorneys wear all of those hats to some extent. Sometimes, people are not sure if they want to get a divorce. They just want to know what their rights may be. Sometimes, they want an annulment or simply a separation. Sometimes, they are not sure if they can afford to live in two separate households, or how to work out custody and timesharing issues, or how to resolve the issue of what school the children will attend if they live in different school districts, and things of that nature.

## **Why Do I Need An Attorney To Represent Me In a Custody Case If It Is Not Contentious?**

A custody case that is not contentious at the beginning can easily turn contentious with the first disagreement. But besides that, timesharing, custody, and support matters must be carefully spelled out in a comprehensive agreement and parenting plan that covers, not only aspects of parental rights and responsibilities that you likely haven't thought

about, but also covers a time span until the child reaches age 18. It's like a constitution – a living breathing, flexible document that can be adapted to guide and accommodate any situation or disagreement that may arise.

For example, shared or sole parental rights or responsibilities? What if there is disagreement on academics, education, or schools? medical care? discipline? extra-curricular activities? day-to-day care? 3 day weekends or summer holidays and vacations? foreign travel? social media use? cars and car insurance? child care providers? paramours staying over? relocations? Not to mention proper child support calculations under the law. To name a few areas that should be covered.

The court will require a parenting plan that governs the relationship between the parents relating to decisions that must be made regarding the child, one that includes a time-sharing schedule, and that addresses issues concerning the child's education, health care, and physical, social, and emotional well-being.

An attorney can assist in drafting documents that appropriately cover present and potential issues that may arise in the future. Your children's well-being is not something to be addressed lightly. If it's not done right the first time, in all likelihood you'll be consulting with a

lawyer a year or so down the road, when disagreements and misunderstandings start arising with the other parent over matters not initially or correctly addressed the first time. It is not uncommon to try to undo or modify an agreement that was made in haste just to get the divorce over with, or with a lack of full understanding of what needed to be covered.

### **At What Point Should I Seek Counsel For Divorce?**

Just as marriage is a major commitment in life, so is divorce. Most people will struggle and agonize over such a course of action. It is not a decision that is usually taken lightly. At

some point, when it appears that the “bad” aspects of the marriage are outweighing the “good,” one of the spouses will



typically consult with an attorney to learn of their rights and obligations, what planning they should do, what is involved in the divorce process, and what they can expect the outcome to be. Most people are not ready to take the plunge until at least the second consultation.

### **Why Should Divorcing Couples Hire Separate Attorneys?**

A divorce is a lawsuit like any other lawsuit, only it's more personal. Regardless of how amicable or civil the spouses

are to each other, they have their own separate interests they want to protect when they are getting divorced. There is an inherent conflict of interest for one attorney to be advising both spouses on the rights and entitlements each may have against the other. For example, spouses have competing interests on issues of support, parental rights, and the distribution of property. The power structure between spouses may be unequal, which gives rise to one spouse taking advantage of the other. In fact the ethical rules in every state would prevent the same attorney from undertaking to represent both sides in a divorce action. If one attorney is hired, that attorney can only represent one spouse, while the other spouse goes unrepresented.

### **What If I Don't Have The Money To Pay For An Attorney?**

The court may require that one party contribute some or all of the other party's reasonable attorney's fees and costs so that both parties will have similar abilities to hire competent legal counsel. The court will consider each party's financial circumstances to determine if there is a legitimate need by one party and an ability to contribute by the other party.

## WHAT ABOUT THE CHILDREN?

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### **Do Courts Favor The Mother Over The Father In a Custody Battle?**

That used to be the case, but not anymore. There used to be what we called the “tender years” doctrine, where a mother was given preference over the father for younger children. That’s been done away with. In addition, Florida law has done away with any gender-based preferential treatment in custody proceedings, and has even outlawed use of the terms “custody” and “visitation, in favor of simply “parental timesharing.”



In fact, it’s the expressed public policy of this state, written into Florida law, that the child is to have frequent and continuing contact with both parents after they separate; with no presumption for or against either the father or the mother for or against any specific time-sharing schedule. Absent any particular skeletons in the closet, the court’s lean heavily to a 50/50 timesharing arrangement if either parent requests it, unless it’s actually detrimental to the child’s best interests. It’s healthy for both the parents and the child if both parents are willing and able to share the rights, responsibilities, and joys of child-rearing.

## **What Are The Different Types Of Custody In Florida?**

The actual use of the terms “custody” and “visitation” is outdated, and you won’t find them written in Florida law or used by the courts. Those terms imply that the one parent is a “primary” parent and the other parent is a “secondary” parent. You’re not going to see those terms used in Florida either, because we give no preference to either parent and both parents are equally important in the child’s life.

Instead, there’s one concept, one nomenclature (if you will), that describes all the different arrangements – and the term is “timesharing.” Both parents have timesharing rights; it may be to different degrees, and in different amounts, depending on the particular situation, but that’s the all-encompassing term, in whatever shape or form, that has replaced the concept of “custody,” visitation,” “primary parent,” and “secondary parent.”

We do have “shared parental responsibility” and “sole parental responsibility.” Shared parental is when, regardless of the timesharing arrangement, both parents retain full parental rights and responsibilities and must confer with each other so that major decisions affecting the welfare of the child will be determined jointly. Neither parent has final say, except possibly for limited issues.

Shared parental responsibility is mandated, unless the court makes an express finding that it would be detrimental or harmful to the child. In that case, sole parental responsibility will be ordered, with or without timesharing for the other parent. That's where one parent makes decisions regarding the child – there is no joint decision-making. A court finding of detriment to the child sufficient to award sole parental responsibility is very infrequent.

### **What If We Cannot Agree On a Custody Arrangement?**

Then an evidentiary hearing takes place before the judge, where testimony and evidence is presented, and the judge decides the timesharing arrangements and parental rights of the parents. It is usually very ugly litigation, and the parents are presenting the issue of the best interests of the child to a relative stranger for a decision following a trial. It's much better to try to agree.

### **At What Point Will Child Custody Be Decided?**

Absent agreement of the parents on the issue, the court will hold an evidentiary hearing near the beginning of the proceedings in order to determine temporary timesharing and parental rights pending a final determination at a final evidentiary hearing at the end of the proceedings - which could be months later, if not longer.



## **What Factors Are Used In Florida To Determine The Best Interest Of The Child?**

The door is wide open. Any factor that is relevant to the best interests of the child is proper to present to the court for consideration. But there is a laundry list of statutory factors to give some guidance to the parties, which includes considerations such as:

- The developmental stages and needs of the child and each parent's ability to accommodate those needs; and to provide a consistent and stable routine regarding discipline, daily schedules, homework, meals, and bedtime.
- What has been the customary division of parental responsibilities in the past, and what is it expected to be going forward.
- How each parent has interacted with the child; is knowledgeable of the child's favorite things, friends, teachers, doctors, and child care providers; and been an involved participant in the child's life and daily activities.
- Whether the parent can be expected to act on the child's needs as opposed to their own needs, desires, and self-interest.

- The moral fitness, and mental and physical health of the parents; alcohol or drug abuse by the parents; domestic violence by the parents on one another or on the child, as well as false allegations of domestic violence by one parent against the other.
- The ability of each parent to get along with the other parent; to refrain from bad-mouthing the other parent to the child; to keep the other parent informed of matters pertaining to the child and to adopt a united front on issues affecting the child; and to protect and encourage the parent-child relationship with the other parent.
- The child's reasonable preference, if he has sufficient maturity, intelligence, and understanding.

### **What Other Factors Does The Court Consider In Awarding Custody?**

There could be situations where the parents are not going to live nearby one another to make a frequent timesharing arrangement practical - either for the parents or the child.

There could be situations where the child thrives in a particular school, and one of the parents doesn't live in that school district.

There could be situations where one of the parents has a work schedule that is not practical or consistent with the child's schedule.

There could be situations where one parent is going to be keeping the marital home where the child has lived a lengthy portion of his life, and which provides stability for the child after a family break-up.

There could be situations where the child is an infant who is being breast-fed.

There could be situations where the child has medical issues that one parent over the other is better suited, or has more time, to handle.

The sky is the limit. The court can and will consider any factor that is relevant to the child's best interest and well-being – the “polestar” consideration is what's in the best interest of the child.

### **What If My Spouse Makes False Accusations Of Child Abuse Against Me?**

Allegations of abuse have to be aggressively defended and they have to be knocked out. What steps to take depends on the particular facts and circumstances in the case. If the accusing spouse is caught in a lie, things certainly are not going to go well for that spouse at all. If such

allegations are made, attorneys will look for evidence in support of or to contradict the allegation; for example, physical evidence, medical records, witnesses and their credibility, arrest reports or call-outs to law enforcement, alibis, inconsistencies, motives, the existence of emotional or behavioral issues. It can be most beneficial to hire a Guardian ad Litem or to request a social investigation so a report can be made to the court.

### **Will My Child Ever Need To Appear In Court?**

It's possible, but unlikely. The Rules of Procedure state that a child shall not be brought to court to appear as a witness or to attend a hearing without prior order of the court based on good cause shown unless in an emergency situation. Most practitioners will try to avoid having to ask the court for permission, as it's usually not a healthy thing to involve a child in the litigation between his or her parents.

### **When Can a Child Decide Which Parent To Live With?**

Never, except when the child turns 18. It's always by agreement of the parties as ratified by the court, or by court order if the parties cannot agree. That being said, the court may consider the reasonable preference of the child, if the court is satisfied that the child is of sufficient intelligence, understanding, and experience to express a preference - usually around the teenage years. The older

the child is, both in age and maturity, the greater weight his expressed preference will be given.

## **Do Grandparents Have Custody And Visitation Rights?**

In Florida, with our explicit constitutional right of privacy, it has been held by the Florida Supreme Court that parents have a fundamental right to raise their children as they see fit, and to determine who the child associates with, including limiting grandparents' visitation.

However, there has been very recent legislation allowing a grandparent to petition for visitation if the parents are deceased, missing, or in a persistent vegetative state; or if one parent is deceased, missing, or in a persistent vegetative state, and the other parent has been convicted of an offense of violence which displays behavior posing a substantial threat of harm to the child. It's not easy; there are many restrictions before proceeding forward, and a very heavy burden of proof once you're allowed to proceed forward. You have to show that the parents are unfit or that there is significant harm to the child, and that the visitation will not materially harm the parent-child relationship – and even then, it's still within the discretion of the court.



The legislation is relatively new, and it's constitutionality hasn't been tested in the courts yet against parental privacy rights – but right now, its valid law, and grandparents can secure rights over the objections of the parents under very limited and narrow circumstances.

## WHO GETS THE PROPERTY?

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### **Does Florida Follow The Community Property Or Equitable Distribution Law?**

Florida is an “equitable distribution” state, which means that the court begins with the premise that marital assets and liabilities should be distributed equally, but then the court can diverge from that premise by considering all the equities involved.

### **How Is Property And Debt Divided In A Divorce?**

Generally, all the assets and liabilities accumulated by either party during the marriage, or by use of marital efforts or labor of either party, are considered marital assets regardless of whose name the asset or liability is titled in, and are thrown into the marital net worth pool to be divided. Pre-marital assets and liabilities, or inheritances by one



party during the marriage, are generally not part of the marital net worth pool, and are set apart to the individual spouse as a non-marital asset or liability, unless they have been commingled with marital assets. There are many rules and criteria for determining what assets and liabilities, or portions of assets and liabilities (which may include, for example appreciation or enhancements of non-marital items), qualify as marital or non-marital.

## **What Assets Can Be Protected In a Divorce?**

In a divorce case, any and all assets are potentially on the table, regardless of whose name they are in or how they are titled. However, generally speaking, assets are either marital or non-marital. Non-marital assets will normally be set apart to the spouse who owns the particular asset, and will not be thrown into the marital asset pool for equitable distribution. Although there are exceptions, non-marital assets can include assets that were acquired prior to the marriage, assets acquired during the marriage separately by gift or inheritance, income generated from non-marital assets, and assets excluded from the marital asset pool by a pre- or post-nuptial agreement or other written agreement.

## **Are There Any Assets That Can't Be Protected?**

All marital assets are subject to being equitably divided in a divorce, regardless of whose name the asset is in or how the asset is titled. Marital assets will generally include any asset acquired during the marriage, appreciation or enhancement in value of non-marital assets during the marriage resulting from the efforts of either party or from the contribution or expenditure of marital funds, gifts by either spouse to the other during the marriage, any portion of the retirement or pension plans of either spouse to the extent that they were accumulated during the marriage, and any assets jointly owned.



## **Do People Try To Hide Assets During a Divorce?**

It is not necessarily common, but it happens. A lifestyle analysis of income and expenses is one way to determine if there may be hidden assets. Older financial records can also “flesh out” assets that once existed but are no longer visible. In most cases, a forensic accountant can root out the possibility that hidden assets exist. If a spouse is caught hiding assets, that spouse’s credibility before the judge is severely damaged, and the eventual financial awards (equitable distribution, alimony, attorney’s fees, etc.) will reflect it.

## **How Can I Prepare To Protect My Assets Prior To a Divorce?**

Everyone has heard that adage, “possession is 9/10’s of the law.” So, know what assets exist, and try to get at least half of joint assets (for example, bank accounts) into your own name. The purpose of this is to prevent your spouse from “beating you to the punch” by taking or spending more than his or her share of the liquid assets and leaving you with no liquidity. Open new bank accounts for direct deposits, such as your pay checks, disability, or social security, because you don’t want to commingle your post-filing earnings with other monies in marital bank accounts.

If you have assets that predate the marriage, or family inheritances accumulated during the marriage, create the paper trail to trace the source of those assets so you can establish that they should not be placed in the “marital pool.” Close out any joint credit cards, so your spouse doesn’t run up big charges before the filing. Every case is fact-specific, but these are some of the areas to be watchful for.

### **When Do The Courts Get Involved In Division Of Property And Debt In a Divorce?**

During the divorce proceeding, the court may enter orders to preserve or maintain the status quo of assets and debts. But the court generally will not divvy up the marital assets and liabilities between the spouses until the final hearing when all the facts and circumstances are presented. In limited circumstances, when there is good cause to do so, the court may make an interim or partial distribution of some of the marital assets and liabilities during the proceedings.

### **Can The Court Require The Primary Residence To Be Sold In a Divorce Case?**

If there are children involved, the court usually will make provisions for the children to be able to remain in the home until their majority. The reason is to provide some degree of stability in their lives after the divorce. The court does have the discretion to require the sale of the jointly

owned home upon divorce or once the children reach majority, with the proceeds to be divided as the court determines to be equitable, but only if one of the spouses expressly requests a “partition.” If neither spouse requests a partition, or if only one spouse owns the marital home, the court will usually include the home as part of the equitable distribution scheme if it is a marital asset.

### **How Are Businesses Divided If They Are Owned Jointly In These Cases?**

A business created or that appreciated during the marriage is a marital asset subject to equitable distribution like any other asset. In dividing up the marital net worth, the court may consider the desirability of one party retaining the business intact and free from any claim or interference by the other party. Of course, the other party would be awarded just and equitable compensation in return. It is unusual for both parties to be left as co-owners of a business post-divorce, especially if only one party was primarily responsible for the operation of the business.

# CAN I GET (OR WILL I HAVE TO PAY) ALIMONY?

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## What Is Alimony?

At common law, or old English law, a husband had a natural and legal duty to support his wife, whether living together or separated. This was alimony. Over the centuries, the concept evolved. The duty to support extended to post-divorce. Gender became neutral. Restrictions and criteria were engrafted into the law. Today, the purpose of alimony is essentially to allow separated or divorced spouses the opportunity to maintain, as much as reasonable under all the circumstances, the marital standard of living.



## What Are The Different Types Of Alimony

Florida has different types of alimony, with different purposes and considerations. There is temporary alimony which is during the course of the divorce proceedings. Bridge the gap alimony is to assist in the transition from married to single life. Rehabilitative alimony is to assist in establishing the capacity for self-support. Durational alimony is to provide economic assistance for a limited period of time. Permanent alimony is considered in long

term marriages to provide for the needs and necessities of life as they were established during the marriage, and when no other form of alimony would be fair and reasonable under the circumstances.

### **How Is Alimony Determined?**

Essentially, to begin with, before any alimony may be awarded, there must be a need for financial support by one spouse, and a financial ability by the other spouse to pay support. Once those fundamental determinations are made, the structure, length, and amount of alimony is determined by a consideration of all equitable factors necessary to do justice between the parties.

### **What Factors Influence Whether Or Not a Spouse Will Receive Alimony?**

Alimony is certainly not mandatory; and many states, including Florida, are proposing legislation to limit or eliminate alimony under many circumstances. At present, however, and after the initial determinations of financial need and ability, Florida law directs a judge to consider things such as the length and standard of living during the marriage, the physical or emotional health of the parties, the contributions each party made to the marriage (including services rendered in homemaking, childcare, and career building of the other spouse), and the responsibilities each

party will be assuming with regard to any minor children of the marriage.

### **At What Point Should Alimony Be Arranged?**

The matter of alimony can be discussed as early as even before the marriage, in the context of a pre-nuptial agreement. This is most common in second marriages, or in marriages where one spouse is in substantially better financial circumstances than the other spouse. But more likely than not, the issue first comes up when the marriage is undergoing a break-down. It is important to consult with an attorney as soon as possible to learn of your rights and options. Preferably, this consultation would take place before the divorce process begins. In that way, especially if both spouses are cooperative, stress and costs can be minimized.

### **Can Someone File For Alimony Months After a Divorce Is Settled?**

Alimony must be determined before or at the time of entry of the final judgment, whether by agreement of the parties or by ruling of the judge after appropriate hearings. Otherwise, it is forever waived and you cannot come back later and request alimony. The only exception is if the alimony agreement or the final judgment expressly indicates that the issue of alimony may be considered at a later time.

## **Do Most People Going Through An Uncontested Divorce Easily Agree To Alimony Terms?**

Most of the time there is some disagreement or resistance. The financially able spouse rarely wants to pay alimony, and if alimony is a foregone conclusion, then the financially able spouse wants to limit his or her exposure to the length or amount of alimony.

## **What Should I Do If My Ex-Spouse Stops Making Alimony Payments?**

Alimony is a vested right of the receiving spouse. When a spouse stops paying alimony, an arrearage builds up. The court will enforce the payment of arrearages and the ongoing payment of alimony upon request which is usually in the form of a motion for contempt followed by a contempt hearing. There are many tools at the court's disposal, including potentially incarcerating the non-paying spouse until he or she resumes payments of ongoing alimony or arrearages. For the most part, it must be shown that the non-paying spouse is refusing to pay despite having the financial ability.

## **Can A Pre-Nuptial Agreement Limiting Alimony Be Voided Or Circumvented Based On Current Circumstances?**

While it is sometimes possible to circumvent a pre-nuptial agreement on grounds of fraud, voluntary, lack of financial

disclosure, or other such grounds that existed at the time, it generally cannot be circumvented based solely on current circumstances. Each spouse is free to make a bargain in a pre-nuptial agreement, even a bad bargain. However, there is one exception in Florida: if a provision in a pre-nuptial agreement pertaining to spousal support causes one party to be eligible for public assistance at the time of divorce, a court may require the other party to provide support to the extent necessary to avoid that eligibility, despite what the pre-nuptial agreement says. Generally speaking, provisions purporting to eliminate spousal support during the course of the divorce proceedings themselves are not enforceable.



## HOW MUCH CHILD SUPPORT WILL I PAY (OR GET)?

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### **If I Have Custody, Will I Automatically Receive Child Support?**

No, not necessarily. In Florida, child support is based primarily on 2 considerations:

The number of overnights the child spends with each parent, and the income and financial resources of each parent. The more overnights with one



parent, the more likely that parent will receive child support. But if that parent, who has the majority of overnights, also has the greater income and financial resources, then that parent may not necessarily receive child support because of his or her greater income or financial resources.

For example, it is doubtful that a \$500,000 a year businessman, who marries and has children with his \$50,000 a year secretary, will receive child support from her, even if he has the children 4 or 5 overnights a week. In fact, he may be paying child support to her for the 2 or 3 overnights the children stay with her. And it doesn't have to be that wide an income gap, as in the example, for that type of situation to arise.

## **If Both Parents Share Custody Does Anyone Pay Child Support?**

Both parents have an obligation to provide support for their children, but not necessarily in the same amount. The amount of support that each parent contributes is not based solely on which household the child spends most of his nights. The financial abilities of each parent come into play also. So, even in a 50/50 timesharing arrangement, if one parent has greater income or financial resources than the other parent, that parent will likely be paying child support to the other parent.

## **Can I File For Child Support If I Am Separated From My Spouse Or My Child's Other Parent?**

Yes. In an initial determination of child support, whether in a paternity action, dissolution of marriage action, or petition for support while separated during the marriage, the court has discretion to award child support, and to make it retroactive to when the parents no longer lived together in the same household with the child, up to 24 months. It works the same way whether it's a divorce, a paternity, or a separation.

## **How Are Child Support Amounts Determined?**

Child support in Florida is based primarily on two factors: the number of overnights each parent has, and the income

and financial resources each parent has. Of course the number of children also comes into play.

Basically, it's a formula, based on a grid. Along the top of the grid is the number of children. Along the side of the grid is the combined income of the two parents. Where the number of children and the combined income intersect on the grid, shows you the basic joint child support obligation that the 2 parents have to their children. Then, that amount is divided between the two parents in accordance with their relative incomes. So if one parent earns 75% of the total combined income between the two of them, then that parent will pay 75% of the joint child support obligation.

But, then the formula continues with additional factors coming into play, such as the number of overnights each parent has. There are percentages and multipliers for that, too. The children's health insurance, or child care, is also factored in, and which parent is paying for it. After all is said and done, the formula spits out a guidelines amount for each parent, and the difference between the two parents' guidelines amounts is usually the child support obligation that the one parent will have to pay the other.

But then, again, it's only a guideline amount; the judge has some discretion to raise or lower the guidelines amount based on various factors that might justify it in any

particular case. It's a complicated formula, with a lot of discretionary elements to it; and many times a parent's income will be in dispute. But the fundamental underpinnings are the number of children, the number of overnights, and the income earning capacities of the parents.

### **What Should I Do If My Child's Other Parent Refuses To Make Required Child Support Payments?**

You can go to court to enforce the child support. If the other parent continues to have the ability to pay, whether through income or assets, but obstinately refuses, the court can issue a contempt order and have the delinquent parent jailed until payment is made.

The court can also enter an Income Deduction Order to garnish the delinquent parent's wages. If he or she is unemployed, the court can require him or her to enroll with an employment agency.

You could make application to the Department of Drivers Licenses and Motor Vehicles to have the delinquent parent's drivers license and car registration suspended.

You can obtain free services from the child support enforcement division of the court, or the Department of Revenue, and have a tax refund intercepted.

## **Can a Parent Refuse To Allow Visitation If Child Support Is Not Paid?**

That's a big no-no, and it will not be countenanced by the courts. When a parent fails to pay child support, the other parent may not refuse to honor the time-sharing schedule; and when a parent fails to honor a timesharing schedule, the other parent may not refuse to pay child support. Timesharing and child support are two separate and unrelated issues, each with their own remedies.

# **WHAT CAN I DO IF MY SPOUSE IS PHYSICALLY ABUSIVE TO ME?**

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## **What Is Domestic Violence?**

In Florida, domestic violence includes any assault and battery, and also includes stalking and cyber-stalking. If law enforcement is called to the scene of a domestic dispute, and there is any evidence of violence having taken place, someone WILL be arrested. Even if there was no actual violence, but you have a reasonable fear that your spouse is likely to commit violence on you in the very near future, that qualifies as domestic violence. In other words, you don't have to wait to be hit by your spouse if you have a reasonable fear that you are in imminent danger.



## **What Can I Do If I Am A Victim Of Domestic Violence?**

Certainly, in the initial instance, law enforcement should be called to quiet any actual violence. If someone is arrested, he or she will spend at least one night in jail and, upon bonding out, will generally be subject to a “no contact” order pending resolution of the criminal case. This means he or she would not be allowed to go back to

the house where the other spouse lives, and would have to find other sleeping arrangements. The matter will then be prosecuted as a crime by the State Attorney's Office.

### **What If I Didn't Call Out Law Enforcement?**

Whether you called law enforcement or not, you can always file a petition at the courthouse for a protective injunction if you were physically abused, or even if you have a reasonable fear that you are in imminent danger of being physically abused by your spouse.

### **What Can I Expect From The Court?**

If it appears to the court based on your sworn statement that an immediate and present danger of domestic violence exists, the court will likely grant a temporary protective injunction on the spot. The temporary protective injunction usually will require the offender to immediately vacate the house and stay away from your workplace, school, and other places you frequently visit. Law enforcement will immediately serve the injunction on your spouse and escort the offender off the premises. Then a hearing will be held in approximately two weeks for you to give your testimony and for your spouse to present any defense. Any violation of a protective injunction is itself a criminal offense.

# WHAT IF I WANT AN ANNULMENT INSTEAD OF A DIVORCE?

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## What Is An Annulment?

An annulment is the process by which the court may terminate a legally void or voidable marriage as if it never took place at all, because the marriage was illegal or invalid from the beginning.

## How Is An Annulment Different From A Divorce?

Basically, an annulment relates back to the date of the marriage, and determines that you were never legally married in the first place; while a divorce terminates a legally



valid marriage from the date of the divorce decree and going forward. If your marriage is annulled, you were never married. If you are divorced, you were married up to the date of the divorce decree.

## Will An Annulment Be Granted In Florida?

An annulment is an old-fashioned “escape hatch” remedy adopted by state legislatures many years ago as a result of lobbying by certain religious groups that publicly opposed divorce, but privately recognized that certain marriages were simply not meant to be. Most marriages do not



qualify for an annulment. Unlike a divorce, an annulment will not usually be granted in Florida.

### **What Are The Valid Reasons An Annulment Might Be Granted In Florida?**

Having a marriage declared null and void from its inception, as if it never existed, is not a walk in the park. Most marriages do not qualify for an annulment. The grounds needed for seeking such a declaration are limited (irreconcilable differences is not one of them) and difficult to prove. Generally, any cause that has prevented the parties from contracting a valid marriage may be grounds for annulment. The invalidity of a marriage might arise from lack of actual consent or mental capacity (for example, a drunken marriage in Las Vegas); lack of legal capacity to marry (for example, a party is underage, or a prior marriage has not yet been legally terminated); consent to marry that is based on fraud or deceit, force or duress, or concealment of a material fact; or inability to consummate the marriage.

### **What Are The Benefits Of An Annulment Over a Typical Divorce?**

An annulment and a divorce are similar in that they both terminate the marriage, one by declaring that the marriage never validly existed in the first place, and the other by declaring that the prior valid marriage has now been dissolved. In both situations, issues like property

division and custody of children must be dealt with. If you are at risk for the payment of alimony, and you have grounds for an annulment, it could be beneficial to have the marriage declared void from the beginning, because alimony generally may not be awarded if the parties were never legally married.



Sometimes, if you otherwise qualify for an annulment, it might streamline property issues because without a valid marriage there is no “marital” property or debt to be equitably distributed. If you lost certain benefits when you married, like alimony from a prior marriage, or your ability to collect Social Security on a prior spouse’s work record, you might be able to revive such benefits if your current marriage is annulled and determined to have never legally happened.

If you have grounds for an annulment, it could be beneficial to go that route if a divorce would violate the tenets of your religion or preclude you from remarrying. Some benefits of an annulment are just psychological. If you meet someone new and they ask if you were ever married before, you can say no without lying. It has been reported that, in the Kris Humphries-Kim Kardashian

divorce that ended several years ago, he sought an annulment claiming she married him only as a publicity stunt. She objected to an annulment and sought a divorce, denying that she married him under false pretenses and solely for publicity. They resolved the litigation, reportedly as a divorce and not an annulment.

### **If An Annulment Is Granted Will That Affect The Paternity Or Custody Of The Children?**

An annulment does not affect paternity or custody any more than does a divorce. Whether your marriage is annulled or results in a divorce, it is still between the parties, and not between the parties and the children. Issues relating to paternity, parenting, custody, child support, and other matters directly related to the wellbeing of children, are decided by the court on the same basis and considerations whether or not the parties have ever been married, and regardless of whether they were divorced or had their marriage annulled.

### **What Should I Consider When Applying For An Annulment As Opposed To a Divorce**

In a no-fault divorce state like Florida, you don't need to prove grounds to have your marriage dissolved beyond asserting that you don't want to remain married to your spouse and nothing can save the marriage. An annulment,

on the other hand, which says that there was no valid marriage to begin with, is available only in very limited circumstances which must be proven to exist.

Because of the extra proof required to qualify for an annulment, it can many times be more difficult to obtain than a divorce; and because there is usually an element of “fault” required to be proven for an annulment (for example, fraud, duress, coercion), such a proceeding is oftentimes more heated than a dissolution proceeding.

On the other hand, there are valid reasons for seeking an annulment if you meet the criteria; for example, religious tenets, financial purposes if you are the more well-off spouse, or any other reason for which you need to claim the status of “never been married” (or “this marriage doesn’t count”). If you end up focusing on a divorce or an annulment, you need to weigh and balance the pros and cons of both proceedings with professional counsel.

### **How Long Do I Have To Be Married To Qualify For An Annulment In Florida?**

An annulment can be granted at any time after a marriage ceremony. There is no requirement or qualification based on the length of the marriage, whether it is a 20 minute marriage or a 20 year marriage.

## **What Steps Do I Need To Go Through During The Annulment Process In Florida?**

The steps and the process are not much different from a divorce proceeding. The court in both cases still needs to deal with issues like division of property, and custody and support of children. To get an annulment, however, you must also prove the existence of a valid ground for an annulment. In a divorce action, you only need to prove that the marriage is irretrievably broken, a burden that can be satisfied with the assertion that you don't want to stay married to your spouse anymore and nothing can repair the relationship.

### **Does An Annulment Require a Court Proceeding?**

An annulment, like a divorce, still requires a court proceeding and a final decree entered by a judge. The purpose of a divorce is to terminate a valid marriage, while the purpose of an annulment is to have the marriage declared invalid as if never existed in the first place.

### **How Long Does The Annulment Process Generally Take?**

It depends on many factors, including the nature of the issues to be resolved, the nature of the proofs to be presented, whether or not it is contested, etc. The more complicated or heavily defended the issues are, the longer the proceedings will take (and vice versa). It could take

anywhere from 4 to 6 weeks on the short end, to several months or more on the long end.

### **Why Is It Important To Hire An Attorney When Seeking An Annulment?**

An annulment is not a simple matter. Unlike a no-fault divorce, an annulment often requires that one party prove an element of fault (for example, fraud which induced a party to enter into the marriage), and as a result, is often more hotly-contested than a divorce proceeding. In addition, a party seeking support and division of property in an annulment proceeding must show that they qualify as a “putative” spouse. The type, manner, and degree of proof that must be marshaled is very exacting, and requires expert analysis and presentation. In most cases, the relevant issues are fact-intensive and require extensive investigation. You may need certain witnesses or expert testimony to help prove the grounds for an annulment. In order to maximize the benefits and minimize the disadvantages of either a divorce or annulment, retaining legal representation typically is a wise course.

## **WE'RE DIVORCED – NOW WHAT?**

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### **What Are Some Things People Forget To Do After Completion Of Their Divorce?**

If your name is changed in the divorce decree, you will want to update government documents and records such as your social security records, driver's license, passport, IRS records, and voter's registration. You will also want to update your bank and credit card records, employment benefit records, insurances (health, life, car, homeowner's, etc.), and professional licenses. All joint bank and credit card accounts should be closed, and credit reporting agencies notified.



Change your passwords for online accounts if it is possible your ex-spouse may have them. Change your beneficiary preferences in your will and for life insurance and retirement accounts. If property is to be transferred, update deeds, titles, utility accounts. If you have children, their school and medical records will need to be updated with both parents' names and addresses.

## **Is It Recommended To Update An Estate Plan After Or During a Divorce?**

It is typical and usual to update your estate plan after the entry of the divorce decree. This may include revising your will, durable power of attorney, living will, healthcare surrogate, and beneficiary provisions for IRA's, 401(K)'s, life insurance, and pensions. It is impractical to do it before the divorce is final because statutory marital rights continue to exist up to entry of the divorce decree, and you don't know what the final financial outcome will be in the divorce decree.



# **DOES IT EVER END? HOW DO I ENFORCE OR CHANGE THE TERMS?**

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## **How Often Do You See Post Judgment Actions Following a Divorce?**

Post judgment actions following divorce are rather common. They might involve enforcement of support or timesharing provisions, or provisions that require one spouse to do or not do something. They might also involve a request to modify support or timesharing provisions.

## **How Often Are Post Judgment Actions Granted Following a Divorce?**

Every case is fact-specific, and much depends upon the equities involved and the applicable legal provisions to be applied. The divorce decree is considered to be “final,” and the divorce issues will not be re-litigated. But if the divorce rulings are not being complied with, or the circumstances pertaining to support or timesharing with the children have materially changed, then relief is available.

## **How Often Are Modifications Seen After a Divorce?**

When alimony or child support has been awarded, or when there are children involved, you are likely to see a modification proceeding at some point, especially if the alimony is long term or the children are young. Things change, financial needs and abilities change, jobs change,

children get older, parents relocate to other geographical areas. If there is a significant and material change of circumstances since the entry of the divorce decree that is involuntary and permanent in nature, and that could not have been anticipated when the divorce judgment was entered, then a modification petition could be in order.

### **Why Might I Seek a Modification After My Divorce Has Been Finalized?**

To change support upwards or downwards based on increased or loss of income or financial assets; to change parental rights and obligations, or timesharing, as children grow up; when parents relocate, affecting the ability of either parent to maintain a satisfactory relationship with their children. For example, it is not unusual in this day and age, with the ever-changing world economy, that employment opportunities could be anywhere; and people do not want to go off to Timbuktu for their job without taking their children, or alternatively having to leave their children behind. In such cases, a modification of timesharing is needed, and if parents can't agree on alternative arrangements, then contested modification proceedings are needed.

### **When Can I Modify Custody?**

Timesharing and parental rights can be modified at any time, but you have to show that there has been an

unforeseeable, substantial and material change of circumstances since entry of the last custody decree, and that a modification is in the best interests of the child. As a practical matter, you're not going to be able to show that until a reasonable period of time has passed.

### **Under What Circumstances Can An Alimony Agreement Be Modified?**

When either the financial need or the financial ability has substantially and materially changed, alimony may be modified either by length or amount of alimony. But the changed circumstances must have been unforeseeable, substantial, involuntary, and permanent. For example, the receiving spouse hitting the lottery or gets a big pay raise or the paying spouse losing his or her job and ability to earn the same amount of income upon which the alimony was based.

### **Will The Same Judge Who Handled My Divorce Oversee My Modification?**

Usually, yes; if that judge is still in the division that handled the divorce, and hasn't retired or rotated out.

### **Why Is It A Good Idea To Retain An Attorney For a Divorce Modification?**

There is no requirement that you must have an attorney. But the legal principles involved, methods of working up

and presenting testimony and evidence, and rules of court and procedure are complex and unforgiving. Courtroom pleadings and proceedings are not simple matters. They require knowledge, expertise, and skill. The stakes are usually high, and any misstep or mistake can have drastic consequences, and often be fatal to obtaining the relief being requested. Even experienced lawyers typically do not represent themselves in court. A solid case can quickly unravel without the help of a trained and emotionally detached attorney.

# **CAN I MOVE TO ANOTHER STATE WITH MY CHILDREN?**

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## **Do I Have To Go To Court If I Want To Relocate With My Child?**

“Relocation” under Florida law means a change of at least 50 miles and for at least 60 days from the principal residence. Being a state which encourages



shared parenting, there is a very detailed statutory procedure which must be followed in order to protect the relationship between the child and the non-relocating parent, and failure to comply with the procedural and substantive requirements can result in a court order for the return of the child.

## **What Factors Must A Court Consider In Determining Whether A Proposed Move To Another State Is In The Best Interests Of The Child?**

As with most matters concerning children, the “pole-star” concern of the courts is the best interest of the child, and the court will consider any factor relating to how the proposed relocation might affect the child’s best interest, including but not limited to:

- a) The nature of the child’s relationship with his or her parents, siblings, half-siblings, and other significant others.

- b) The age, maturity, and developmental needs of the child, and how the proposed relocation might affect the child's well-being.
- c) The availability and cost of alternate meaningful timesharing arrangements to preserve the relationship between the child and the non-relocating parent.
- d) The likelihood that the relocating parent will comply with the substitute timesharing arrangements once he or she is outside the court's jurisdiction.
- e) Whether and how the relocation will enhance the lives of the relocating parent and the child.
- f) The reasons for the relocation, and whether it is sought in good faith.
- g) The reasons for objecting to the relocation, and whether the objecting parent is current on his or her support obligations.
- h) The economic circumstances of each parent and whether the proposed relocation is necessary to improve the relocating parent's economic circumstances.
- i) The employment opportunities that might be available to the objecting parent in the new location if the relocation were to occur.

j) Any history of substance abuse or domestic violence between the parents or between parent and child.

### **May I Take My Child Out Of Florida Temporarily, Such As For Vacation?**

Yes. A temporary absence for purposes of vacation, education, or health care for the child is not considered a “relocation” of the principal place of residence.

### **May I Move With My Child To Another Part Of The State?**

Yes. But only if the relocation is within 50 miles. The state boundary is not the determining factor, but the number of miles away the relocation is from the principal place of residence.

### **How Far Away Can I Move With My Child Before I Must Provide Notice To The Other Parent?**

Fifty miles, as the crow flies, is the distance allowed before the relocation laws come into play. However, even moving within 50 miles could present a problem to the non-moving parent’s ability to exercise timesharing, especially if it involves a change in the child’s school or school district. If timesharing would be impeded by a move, it is certainly prudent to consult with the non-moving parent about rearranging the timesharing schedule. Otherwise, the non-moving parent may petition the court for alternate timesharing or majority parenting time.

## **How Far In Advance Should I Provide Written Notice?**

As soon and as early as possible. If the proposed relocation is going to be agreed upon, alternative timesharing arrangements will need to be discussed, a formal agreement will need to be written, and the agreement must be filed and ratified by the court. If the proposed relocation is going to be contested, it can take as long as four or more months after the petition is filed to wind its way through the court process. There is no advantage to waiting to the last minute with the thought that the other parent will then be under pressure to agree.



## **What Is The Process To Be Followed If I Am Seeking To Move With My Child?**

If the parents agree to the relocation, there must be a written agreement ratified by the court that reflects consent to the relocation, what the new timesharing arrangement will be, and what the transportation arrangements will be needed to exercise the timesharing.

If the parents do not agree on the proposed relocation, a sworn petition must be filed with the court that includes all the details and reasons for the proposed relocation and a proposed revised timesharing and transportation plan for the non-relocating parent. The objecting parent must then file a sworn response stating the reasons for the



objection and the amount of involvement he or she has had in the child's life. The court will then hold appropriate hearings on the matter at which time the parents can present witnesses, testimony, and evidence supporting or opposing the relocation request.

### **Do I Have To Have a Valid Reason, Such As Employment, To Request Relocation?**

Yes. There must be a valid good faith purpose supporting the relocation request. The issue to be decided by the court is whether or not the proposed relocation is in the best interest of the child, not necessarily the parent, under all the circumstances. There certainly could be situations where it is in the best interest of the parent to relocate (such as remarriage or employment opportunities), but not necessarily in the best interest of the child. Sometimes the court may change the majority timesharing from the relocating parent to the non-relocating parent if it is in the child's best interest to do so. Each case and family dynamic is unique.

### **Will I Have To Go To Court?**

If the proposed relocation is agreed upon by the non-relocating parent, a court appearance is likely not necessary. The court can ratify the written agreement without the necessity of an evidentiary hearing. However, if the proposed relocation is objected to, one or more

hearings may be necessary at which witnesses will need to testify and other evidence presented.

### **How Long Does It Take For The Court To Make a Decision?**

Sometimes, the need to relocate arises quickly or the proposed relocation is imminent. The court is sensitive to these concerns and, upon request, will hold a preliminary hearing to determine if a temporary order should be entered permitting the proposed relocation on a temporary basis pending the final hearing. The preliminary hearing will usually take place within 30 days of the request. Based on the evidence presented at the preliminary hearing, the court will determine if there is a likelihood that the requested relocation will be permitted on final hearing. The final hearing will usually take place within 90 days of a request for final hearing. The whole process, from the filing of the initial petition to the final decision of the court can take as long as four or more months.

### **What If The Judge Denies My Request To Move?**

That is a very difficult situation for the parent requesting relocation. The parent is placed in a situation of moving without the child, or abandoning the relocation plans. If there is any solace to be taken, it is in the fact that the court has done its best to make a fair decision that is in the best interest of the child.

## **What Can I Do In Advance In Support of My Request to Relocate?**

Be respectful of the child's relationship with the non-relocating parent, and work with the other parent to try to come to an agreement for alternative and satisfactory timesharing. Do your research about the new location, the schools, parks, neighborhoods, cultural opportunities, crime rate, and other such matters. Have specific and detailed plans about where and how you will be living, what your employment and income will be, the resources that will be available to you and your child. Put together a revised timesharing plan for the non-relocating parent that will be adequate to continue a meaningful relationship, and affordable to implement. Make sure that the proposed relocation is for a specific purpose (for example, to accept a job, not just to look for a job), that it is made in good faith, and that it will improve your child's general quality of life. Keep in mind that the pole-star consideration is the best interest of your child.

## **What Can I Do To Stop My Spouse From Relocating With My Child?**

Be actively involved in your child's life on a daily basis. Develop and cultivate your child's local relationships with extended family and friends. Make sure your child has optimum developmental, educational and extra-curricular opportunities available to him or her. Maintain a living

environment for your child that is free of substance abuse and which enhances his or her physical and emotional growth. Be current in your support obligations to your child and the other parent.

### **As My Attorney, What Assistance Can You Provide If I Need To Relocate My Child, Or If I Want To Oppose My Child's Relocation?**

This is a very fact-intensive issue that requires guidance in developing a case plan, marshaling the most effective evidence, negotiating a satisfactory resolution if possible, and properly presenting the matter to the court in a timely fashion if necessary. The stakes are high, the relevant legal principles can be tricky, and the procedural hurdles are strictly enforced. An attorney who is familiar with these types of cases is not a luxury, but a necessity. Our law firm has successfully handled many relocation cases, both requesting and opposing relocations. We provide hands-on personal service, roll up our sleeves, and get the job done with as minimal distress and aggravation as possible to our clients. If you have a relocation issue, or relocation questions, come see us. We're here to help and assist -- The Law Offices of Robert L. Bogen, P.A.

## **DISCLAIMER**

This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

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# Florida Divorce Survival Guide

## Info That May Be Helpful In Your Case

*"I have used Mr. Bogen on several occasions over the years on a very complicated divorce case for both trial and appellate work. I have had many attorneys over the years and Mr. Bogen is the standout. He has an exceptional ability to distill the critical facts from any case, apply the law, and articulate the argument in the most persuasive and eloquent fashion possible. He is a master draftsman for trial or appellate briefs, and proposed orders. Very much a lawyer's lawyer in this regard."*

- A Satisfied Client

*"We have known Robert Bogen as our family's attorney and friend for 30 years. Whenever the need has arisen concerning legal matters, we have always called on him. He is an excellent listener and advisor and really cares about people. He has always served us well. Robert Bogen is a serious thinker who can get to the root of any matter by thoughtful questioning and looking at all angles. You can always put your trust and confidence in Robert Bogen."*

- Ilene K.

### Robert L. Bogen

Robert L. Bogen maintains a family law practice that is distinguished by total service and total commitment. He has earned the prestigious Client Distinction Award annually since its inception, as well as numerous other public recognitions. In more than 35 years of practice, he has earned an impeccable reputation with his colleagues and the judiciary.

No one seeks out an attorney under pleasant circumstances, but rather during times of trouble, anxiety and distress. Clients want personalized "hands-on" service. Robert L. Bogen provides the level of personalized care and determined representation that clients expect and deserve. Persistent effort and personal care lead to positive results.

Whether you are seeking a divorce, annulment, separation agreement, or enforcement of an existing decree, Robert L. Bogen manages all the ancillary issues, including but not limited to child custody and timesharing issues, equitable distribution of assets and liabilities, child support and alimony needs, and protective injunctive relief. It is hoped that this booklet will shed some insight and provide a basic understanding of some of the legal complexities involved when facing a family or matrimonial crisis, and how an experienced and dedicated lawyer fighting for your best interest can assist you in achieving your objectives so you can move on with your life.



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