

Our Questions and Answers page is designed to respond to some of your basic questions about Florida divorce law. These questions and answers are provided as general information only. They are not intended to be relied upon for legal advice. You should always consult an attorney directly for definitive legal advice based upon the unique facts of your case.

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### **What can I do to get ready for my divorce under Florida divorce law?**

Gather documents about what you own (assets), what you owe (liabilities), and about your and your spouse's income, preferably the last three years tax returns. You might obtain a credit report to determine which obligors view you as an obligee in case your spouse signed your name on a credit card without your knowledge. Obtain copies of a full year's worth of bank statements and canceled checks, investment account statements, credit card statements, applications for loans, and other important papers documenting assets, expenses and the flow of income over the last year. Prepare a "draft" financial statement that lists your and your spouse's incomes, and all assets and liabilities. The more accurate financial information and back-up documentation you are able to provide to your attorney, the more likely you are to keep the cost of the divorce down and the faster your divorce can be brought to a conclusion.

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### **What will happen to my children under Florida divorce law?**

Either "shared parental responsibility" or "sole parental responsibility" will be determined in all divorces where minor children are involved. In most cases this is by agreement of the parties

but in others, the Court may make this decision after hearing each parent's testimony and more often than not, after hearing the recommendation of a well qualified child psychologist. Shared parental responsibility is appropriate when both parents are fit and proper to share decision-making and appropriate care for the children. Sole parental responsibility is rare but may be appropriate when one of the parents is unfit.

Under shared parental responsibility, both parents have a right to share in the rights and responsibilities of parenting. Each has the right to participate in major decisions affecting the children. The children should not be used as instruments of vengeance or placed in the middle, either during or after the divorce. Parental conflict over and around the children can be exceptionally damaging to your children and to your post-divorce parenting relationship.

At the very beginning of the divorce, decisions need to be made about how your children's time is divided between mom's home and dad's home. If you and your spouse cannot agree, the Judge will decide these matters at a hearing, but this is only a last resort after attempts to arrive at a compromise have failed.

Under Florida divorce law the Court has the power to appoint a highly qualified, highly professional custody evaluator to evaluate the entire family to determine a parenting plan in the best interests of your children. In many instances, we will request this action to assist in fashioning a timesharing schedule, given the unique facts of your case, to make sure you are heard and to reduce the "he said vs she said" acrimony.

In order to prevent psychological harm to the children of divorcing parents, no minor child's deposition can be taken nor can the child be brought to a deposition. Further, without an order of the court based upon very compelling reasons, no minor child can be subpoenaed to appear at a hearing as a witness or brought to a court hearing.

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### **How will bills be paid?**

During the marriage, the income of both spouses is frequently used to support the family home and lifestyle if that has been the case historically. When divorce commences, you and your

spouse typically separate and two households must be maintained on the same income. It is crucial that you speak to your attorney early after this occurs to make sure you are not paying too much or receiving too little based on your circumstances since the early months after separation can set a precedent for the rest of the case and thereafter.

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### **How is Child Support Calculated?**

Under Florida divorce law, the court may order either or both parents to pay an amount necessary for the support of the minor children of the marriage. Florida has established child support guidelines to calculate child support. The guidelines are determined by the income of the parents, and other factors. Other elements of child support include:

1. The cost of health insurance for the children;
2. The cost of day care or after school care expenses, where appropriate; and
3. Under certain circumstances, the cost of private school.

We will help you calculate how much will be paid or received in child support based upon these Guidelines.

Under Florida law, child support normally terminates when your child graduates from high school even if your child is 18 years old before he or she graduates, as long as graduation occurs before age 19. If a child is physically or mentally dependent, child support can be required to continue after the age of majority. Child support does not include the expenses of a college education. The parties may agree to contribute to these expenses, but the Court cannot require financial responsibilities for your children after they graduate from high school. The court also cannot order automatic cost of living increases in child support unless the parties agree to such terms.

Child support is always modifiable upon proof of a substantial change in financial circumstances that meet certain requirements under Florida law.

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## **Will I Pay or Receive Alimony under Florida Law?**

Temporary Support (alimony): During the divorce, the higher income-earning spouse may be required to contribute to the temporary and on-going support of the other spouse. This may or may not have an impact on the final resolution of this issue, but it is important that you not pay too much or receive too little during the early stages of your divorce.

Alimony - Florida law allows for several different types of alimony: permanent; rehabilitative; transitional; bridge-the-gap; and lump sum alimony. Alimony for support is designed to provide the recipient spouse with funds sufficient to continue living a lifestyle consistent with that of the marriage. The length of the marriage and the disparity between the incomes of the Husband and Wife are two of the several factors that will determine the type of alimony, if any, in each case. Rehabilitative alimony is designed to provide support to a spouse for the period of time necessary to complete education or training sufficient for that spouse to earn income similar to that enjoyed prior to his or her termination of employment for various reasons, such as raising children. Your attorney will discuss with you the various forms of alimony, your rights and risks regarding alimony.

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## **What is Equitable Distribution?**

"Marital property" will be equitably divided between you and your spouse when your marriage is dissolved. While there is a legal presumption that "equitable" means "equal", there are instances when a disproportionate distribution favoring one party or the other, may be more fair. Under equitable distribution, you will end up with a post-divorce estate of similar value to your spouse's rather than a joint owner of each asset.

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## **What is "marital property?"**

Marital property is any asset acquired during your marriage from marital labor or marital income, usually up to the date of the filing of the divorce. This includes, but is not limited to: houses,

land, businesses, retirement accounts, stocks and stock options, bonds, notes receivable, assets held in trusts or partnerships, airplanes, boats, cars, investments, the contents of your home, gifts from or to your spouse, jewelry, collections, etc.

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### **Does it matter whose name is on the title?**

Whether your name is on the title of the property is not the measure of whether an asset is marital but it may be relevant in determining whether a non-marital asset has become marital in nature.

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### **What is non-marital property under Florida divorce law?**

Non-marital property generally falls into three categories. It includes anything that you or your spouse:

1. Owned prior to the marriage and has been maintained as separate property during the marriage;
2. Received at any time during your marriage as a gift from a third party or by inheritance and has been maintained as separate property;
3. Earned by or received from marital labor after the divorce papers are filed.

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### **What is the role of a forensic accountant (CPA) in Florida divorce cases?**

A forensic accountant, usually a Certified Public Accountant (CPA), is one of the team members you or your attorney may retain to value assets, to locate missing assets or income. An accountant may also calculate your historical standard of living for the alimony amount or determine your or your spouse's ability to meet (or restrictions upon your ability to provide)

alimony requested; or to determine the tax consequences of various alimony and equitable distribution scenarios. A CPA who is also a valuation expert may assist in valuing your or your spouse's interest in a closely held business. We only retain independent, highly credible, qualified experts as they are a reflection on you as well as on our Firm.

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