Family Law Handbook[1]
Created by the Family Law Section of the Florida Bar (2020 Revision)

Part One – Florida Healthy Marriage Information

(The Family Law Section thanks the Florida Legislature, and especially Representative Clay Yarborough and Senator Dennis Baxley, for their authorship of this Part One)

Introduction

Congratulations on your decision to marry! This information is intended to help marriage license applicants have successful marriages. It includes topics such as learning to communicate effectively, building the team, solving problems collaboratively, and resolving conflicts. The information also provides general guidance on economic issues, raising a family, and the consequences that occur when marriages fail.

Building a Marriage

As you and your spouse begin your journey together, the first thing you will need to know is where you are going. Your shared destination is determined by your personal and shared values. By understanding your mutual values, you are on the same road, going the same direction, using the same mode of transportation. The marriage journey will require lots of decisions from both of you. Through mutual respect, trust, honesty, and love, you will have a rewarding trip.

Understanding Your Values

Your values are the foundation for all of your thinking and decision-making. Every decision you make is an effort to align your actions to your values. When you marry, you will be sharing your life with another person. It is so important that you know your own values and the values of your intended spouse. Your values and beliefs need to be compatible. Think about the values you consider sacred in your life and share this information with your partner. For example, if your faith and religion are important to you but are not important to your intended spouse, you may have a conflict of values.

[1] This Handbook is meant to be read in a digital format and has hyperlinks to relevant Florida Statutes and Florida Family Law Forms. If you have received a printed copy and wish to access the digital version, please go to https://www.familylawfla.org/resources/handbook.

Discuss these issues prior to making a marriage commitment. Build upon your mutual ideals. A harmonious, lasting marriage will be built upon a foundation of shared values and the effective communication of these values.

Building Your Team

Marriage is a team effort. One of the definitions of the word team is "a group of persons pulling together." Pulling together and sharing the same goals are crucial to an effective team. Team members usually have different roles and different tasks to perform, but they share the commitment to the team and the responsibility for the success of the team. Talking to each other and sharing in decisions that affect both team members is very important. Talking, listening, and valuing your partner's ideas and contributions will make your marriage team strong and healthy.

Learning Effective Communication

Learning to communicate effectively requires commitment from both you and your partner. It takes time and LOTS of energy, but it is worth the effort. To commune literally means "to put in common; to share." The goal of effective communication is to create a common understanding with your partner. This common understanding is the cement of a strong marriage. Honesty is an essential component of effective communication. However, honesty must be tempered with kindness. Good communication between both of you promotes mutual trust and respect.

There are two basic forms of communication, verbal and non-verbal. Verbal includes the spoken or written word and non-verbal refers to body language. Often HOW something is said, including one's tone of voice, facial expression, and gestures, is more important than WHAT is said. Even what is NOT said can have a dramatic effect. For example, walking out or refusing to communicate can be very damaging to a relationship. When couples gain confidence in communication, they are better able to avoid habits of withdrawal and succeed in tackling key issues.

Communication has two parts. One is speaking, the other is listening. Couples who learn how to do this calmly and effectively learn how to protect their love from the predictable problems that exist in every marriage. The goal is to learn to listen in a way that shows your partner you love them. This includes listening without interrupting, giving your partner your full attention, and listening so carefully that you can show them you understand their point of view. Speaking effectively takes just as much care as listening. Try to speak in a way that shows your partner that you love them, respect them, and that you want to work as a team. When you are discussing a heated topic, try to speak in short sentences and stick to the issue being discussed. Successful marriages depend on good communication between both partners. Learning to be a good communicator takes patience and practice.

Resolving Conflicts

Another step in building a lasting marriage is learning to examine and confront issues effectively. Couples in the healthiest marriages experience conflicts. Conflicts are normal because you and your partner have different beliefs and opinions. Conflict is simply a clash between these beliefs and opinions. The cause of conflict is that you and your partner see and approach situations and events differently. Conflict results when there are opposite points of view and each person believes that their viewpoint is right, and their partner's viewpoint is wrong. The result is two different interpretations.

People in conflict are seldom upset about what they think they are upset about. One event may trigger an emotional outburst. The outburst often is caused by a series of unresolved issues. A win/lose situation will not solve the problem. Resolving conflicts effectively strives to achieve a win/win solution for both of you. How can you find an answer that benefits you and your partner? The first step is for the two of you to step out of the battle and look beyond the event that created the conflict. The next step is to shift your focus to your common interests, mutual values, and positive qualities. Each of you might want to silently ask yourself: "How do I want to respond to this conflict?" And, "What kind of experience do I want this to be? Do I want a positive experience or a negative experience?"

Refocusing your own thinking helps to calm emotions. You can redirect your thinking -- and your partner's -- to what you both really want: an activity or mutual goal, something more satisfying than the conflict. Couples can change their conflict experiences by changing their thoughts about the situation.

Keeping the Marriage Vital

When you first get married, usually everything is new and exciting. But how do you keep your marriage new and exciting year after year? You have started a lifelong journey together. This journey will have many stops along the way. Each of your destinations will bring maturity to your relationship and to each of you. Your affection for each other increases through the lessons that you learn together and the laughter and the tears that you share. It is a good journey! The key to a successful marriage is having mutual values, goals, and interests; loving and living; and, living and loving together. Couples who can laugh together under challenging circumstances and gain the understanding of true friendship keep their marriage vital.

Addressing Economic Issues

As you prepare for your new journey as a couple, you have several financial issues to discuss. What financial resources and obligations do you bring into your marriage? Do you have business debts? Will you combine your finances and have joint checking and savings accounts or maintain separate accounts? Who will pay the bills? Will you develop a budget together? Talking to each other about how you plan to earn, spend, and save your money is easier when

you agree on priorities. Your marriage benefits from forming and sticking to a spending plan that includes discussion and agreement.

Sharing Financial Responsibilities

It is wise to make major financial decisions together. You both will be responsible for those decisions. If you are uncomfortable at the thought of sharing financial responsibilities with your intended spouse, you might want to seek premarital counseling to determine underlying issues and to decide if marriage is the right decision for you at this time.

One of you may be better at balancing a checkbook, paying the bills, and developing a budget. As you take this marital journey with your partner, talk with each other about which one of you is best suited to do specific financial tasks. Then, after you are married, try out your new system! Adjust it if it doesn't work well.

Here are some specific financial planning tips. Decide together:

If you will maintain one joint checking account or separate individual checking accounts. Who will pay the bills and maintain the checking account(s)? How often and how much personal allowance each of you should receive. What is an appropriate savings and investment plan? How you will pay for large purchases such as automobiles and major appliances.

Building a Budget

Building a budget helps you to know how much income you will have, how much money you will spend, and how much money will be left over. It helps you to control your spending. A budget helps you to save money!

What are some steps to assist you?

1. Identify your financial goals: short range (e.g., buying groceries and gasoline) and long term (e.g., buying a house, setting up a college fund for your children).
2. Look at your current financial position. What is your monthly household income? What are your debts?
3. Write out a monthly budget for 12 months. Write out monthly expenses in the different categories (e.g., $300 car payment, $600 rent). Estimate how much you will spend in each category.
4. Compare your budget to your financial goals. Is there money left over after meeting your monthly obligations? If so, how much of the leftover money can be used for your goals? If you follow the budget you set up, how long will it take you to reach your goals?
5. Compare your actual costs to the costs you budgeted. Was your budget realistic?
6. Review and revise your budget. Stay on track toward meeting your joint financial goals.

7. Decide who will work, who will provide childcare, and who will obtain further formal education.
8. How much insurance will be necessary?

It is important to make your budget realistic and flexible. Major categories of expenses are: rent or mortgage payment; utilities; food and household goods; clothing; healthcare; insurance premiums; tuition, charitable donations; transportation; household maintenance; credit card debt; hobbies and entertainment; vacation and holiday savings; and other expenses, such as cosmetics, hair care, veterinary fees (if you have pets), gifts, plants, and artwork.

Certain budget items are fundamental expenditures or "absolutes", such as housing, food, and transportation. Other budget items are less important. Hobbies, vacations, gifts, and artwork are a lower priority than shelter and food. These are "discretionary" expenditures. Prioritize your budget items, starting with "absolutes."

Involve your spouse in major budget decisions. Talk together about the mutual benefit and impact of your budget decisions. For example, what should you do if one of you wants a new computer while the other wants new carpet, and there is money for only one of the two items? Which of the purchases is most needed and beneficial to both of you? What is the impact on the quality of your life together if you buy the computer? The carpeting? Set your purchasing priorities together. Be a team working towards your shared financial goals.

Raising a Family

Deciding to start a family is a BIG decision! The change you experienced when your household became two, triples with the addition of a child! Children bring great joy, sleepless nights, and new roles and responsibilities for both of you.

Parenthood is a lifetime commitment. It requires emotional maturity from both partners. Raising children can be the most satisfying experience when both of you are ready to make this unselfish commitment.

Taking Responsibility for Raising Children

The decision to have children needs to be mutual. Children bring an enormous change to your relationship with each other. Some of the spontaneity that you once had as a couple may change. Fatigue from early childcare demands and feelings of uncertainty in your new roles can cause temporary marital stress. Career and childcare decisions, economic implications and new financial demands, and new housing requirements will need to be discussed. But the joys of parenthood outweigh the tensions of change.

Raising a child is a team effort and requires both partners to be active participants. You are bringing into the world a new human being who will require your full support physically, emotionally, socially, instructionally, and economically. Both of you are responsible for your

child's care. This mutual responsibility for the care of your child or children never ends. When you agreed to have a child, you signed on for life.
Your successful marriage is the crucial foundation on which to build a healthy home that will nurture your children. A married two-parent household generally provides a better standard of living (more money), more time to be with children, and stronger family bonds.

Coping with Family Challenges

Sometimes raising children can be very difficult. You may find that you need help. Some children have problems making friends, getting along in school, and staying out of trouble with the law. Family counseling can strengthen families by providing a safe place to explore issues and resolve problems.

Walking Rocky Roads

If sad times start to outweigh happy times with your spouse, you are walking a lonely, rocky road in your marriage. Examine your own life, your spouse's life, and your relationship with each other. If you and your spouse can renew your love and commitment to each other, together you can remove the obstructions in your marriage. Professional counselors and/or members of the clergy may help you remove some of the boulders in your marriage path. Depending on the type of problems you encounter, you may find specific support groups and counseling classes to help you. Also refer to the phone book or online directories for listings of counselors, support groups, religious organizations, and other community resources.

Conclusion

The provision of this information is one way the State of Florida is showing its support of your decision to marry. The information is intended to be a basic roadmap to guide you. The State of Florida hopes that you have a happy and healthy marriage! **Again, Congratulations!**

Part Two – Family Law Handbook

It may surprise you to learn that the State of Florida has an interest in your marriage. Not in the ceremony, but in whether the marriage is long lasting, happy and healthy.

Because the Florida Legislature finds marriage important to the well-being of Florida and its families, it passed a series of laws to protect marriage and the family's members when a marriage is dissolved. These laws have been passed based on the following facts and statistics:

- The divorce (called “dissolution of marriage” in Florida) rate has been steadily increasing over time.
- 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, communities, and a stronger economy.
- An inability to cope with stress from both internal and external sources leads to an increase in incidents of domestic violence, child abuse, absenteeism, medical costs, learning/social deficiencies, and dissolution of marriage.
- Relationship skills can be learned.
- Once learned, relationship skills can facilitate communication between parties to a marriage and assist couples in avoiding conflict.
- By reducing conflict and increasing communication, stressors can be diminished.
- The state has a compelling interest in educating its citizens with regard to marriage and, the effects of a dissolution of marriage on the family.

What does all that mean? It means that staying happily married is difficult, and requires hard work to maintain. The struggles that couples face during their marriage sometimes causes one or both of them to consider dissolution of their marriage. The best marriages have conflict; however, committed couples learn how to work through the rough times.

The laws of Florida require that your read this handbook. This handbook is not designed to give individualized legal advice. It is designed to generally inform you about marriage , legal aspects of the marital relationship, and the dissolution of the marital relationship.

This handbook has been based on, and some of it has been taken directly from, Florida laws in effect at the time it was written and represents general legal advice. Since the law is continually changing, some provisions in this handbook may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

Premarital Course and Information

Marriage and parenthood are two of the most important and most difficult jobs anyone can have. Oddly enough, parenting requires no training or education and you do not have to pass a test to get married or become a parent. Resources are available once you become a spouse or a parent to provide support when you weather difficult times. You are urged to seek out a counselor, a trusted clergy member or other resources in your area for assistance in how to manage and get through those difficult times. Such resources could include self-care, parenting education, handling communication difficulties and conflict resolution. Such resources may also be available for your children as well.

If, despite your and your spouse's best efforts, you are not able to make the marriage work and decide to proceed with a dissolution of marriage, your life will be affected in many ways you might never have considered. For that reason, before getting married there are four main items you need to consider:

- Your commitment to each other;
- Yourself;
- Any children you may have with your spouse, whether through birth or adoption; and
- Your assets and debts, which include such things as: cars, money, bank accounts, retirement accounts, stock, real property, loans, mortgages, and credit card debt.

The Florida Legislature requires that all persons getting married participate in a premarital course or have received and reviewed information about what it means to be married from a legal perspective. The Legislature instituted this requirement because marriage is a serious legal action that has many consequences regarding your ownership of property, responsibility for debts, and your rights and responsibilities regarding the children. When people talk about what it means to be married, how they will handle things like property and debts, raising children, religious beliefs, roles within their relationship, and other such issues before getting married, they have a greater ability to remain married throughout their lives.

You will save $32.50 on your marriage license fee if you take a premarital education course. In some circumstances, you might have to wait three days for your marriage license to become effective, if you do not take a course. If you decide not to take a premarital education course before getting married, it is not too late to take a course that teaches relationship skills. Those courses have been known to be helpful at any time during a relationship.

Child Neglect, Domestic Violence and Child Abuse

Child neglect is a crime and should be treated as such. If you believe a child is the victim of child neglect, you should contact your local law enforcement authorities or Department of Children and Families.

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 should be treated as such.

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, or if you believe that you are imminently at risk of becoming such a victim, you should call law enforcement at the first available opportunity when it is safe to do so. You also have the right to go to court and file a petition on

your own behalf and/or on behalf of your children requesting an injunction for protection from domestic violence which may include, but is not limited to: provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you time-sharing of your minor child or children; and, direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so. The court shall consider the effect of domestic violence on survivors/victims and children when determining time-sharing. You may also ask the state attorney to file a criminal complaint.

You may go to family court *pro se* (without an attorney) to petition for an injunction to protect yourself or your child against domestic violence or sexual violence. You may retain the services of a Florida family law attorney to represent you in the domestic violence family action if you so choose. You should contact the clerk of court in your local courthouse or a local domestic violence shelter for further information.

Domestic violence proceedings are public proceedings which anyone can attend. Domestic violence court files are public records which anyone can access. In certain circumstances portions of the court file can be sealed and kept private by a judge. Domestic violence hearings are automatically recorded free of charge. You can request a copy of the recording after the hearing from the clerk of court in the circuit in which the hearing was held. The court will charge a fee for a copy of the recording. You should contact the clerk of court for a current fee schedule.

Marital Agreements

When two people marry, not only do they unify themselves socially and emotionally, but economically as well. In light of the State of Florida's interest in protecting its citizens and families, laws exist which dictate what will happen to, among other things, a couple's assets and debts should one of them die or the marital relationship be dissolved.

Premarital Agreements

Persons who are considering marriage may enter into a written agreement that will pre-determine certain issues between them should the marriage end in death or be dissolved by a court. In Florida, these are called "premarital agreements." They are also known as prenuptial or antenuptial agreements. Prior to signing a premarital agreement, each party must provide full disclosure of his/her financial circumstances and condition to the other party and ensure that he/she is not applying any undue pressure on the other party to sign the agreement.

Parties to a premarital agreement may address any number of issues in the agreement such as the rights and obligations each party will have in any property either or both of them may have

or acquire, spousal support (called "alimony" in Florida) is to be paid, if at all, and a selection of which state's laws will govern the interpretation and enforcement of the agreement. This is by no means an exhaustive list of the topics. However, there are certain topics that cannot be included in the premarital agreement. For example, ongoing child support which cannot be waived in Florida. If you have any questions about premarital agreements, you should consult with a Florida family law attorney. There is even a statute specifically addressing premarital agreements in Chapter 61 of the Florida Statutes.

Post-marital Agreements

If spouses do not execute an agreement before their marriage (premarital agreement), but are still interested in pre-determining issues should their marriage end in death or dissolution, they can still enter into an agreement. Marital agreements that are signed after a marriage are called "post-marital agreements" or "post-nuptial agreements" in Florida. The terms are interchangeable. Post-marital agreements can address the same topics as a premarital agreement and have the same limitations. If you have questions about post-marital agreements, you should consult with a Florida family law attorney.

Child-Related Issues

Defining Children

Any child born to you and your spouse during your marriage is a child of the marriage. If you and your spouse have a child *together* before the marriage, your marriage makes them children *of* the marriage. Unless a person has adopted a child of his or her spouse, the stepparent does not have parental rights or responsibilities. Therefore, a stepparent will not have a right to contact with his or her stepchildren nor the responsibility of financially supporting the child before, during, or after a marriage.

If a person has adopted a stepchild then that parent is the child's parent in all respects and will be given the same consideration as if he/she was the child's natural born parent in the event of the death of the other parent or the dissolution of a marriage.

Parenting Plan

Florida law requires the creation of a Parenting Plan for all children subject to a dissolution of marriage action. It may help parents who are separating but not dissolving their marriage to prepare one as well. There are several different types of parenting plans available to address

the unique needs of each family. The court will only approve a parenting plan that is in the best interests of the children.

Parenting Plans are designed to reflect the modern day challenges and circumstances facing parents and minor children before, during, and after a dissolution of marriage. For example, Parenting Plans:

- Address the details of how the parents will share in the decision-making responsibilities for major decisions and for the day-to-day tasks in raising children.
- Articulate the regular, holiday, and break schedules for the time the children will spend with each parent.
- Encompass issues including the address to be used for school registration and boundary determination, and methods and technologies for communicating with the children.

In approving a Parenting Plan, a court must make a determination of what is in the best interest of the child. Among the many factors to be considered by the court in determining the child's best interests are the following:

- The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the Parenting Plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the Parenting Plan.
- The moral fitness of the parents.
- The mental and physical health of the parents.
- The child's home, school and community record.
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

Additionally, the court may consider other factors and considerations to be made by the court in approving a Parenting Plan. The more closely and cooperatively the two parents can work

through the issues and consider the primary goal of doing what is in the best interest of the children, the easier the dissolution of marriage process will be for the entire family.

The court gives both parties the same consideration in determining parental responsibility and time-sharing, regardless of the child's age or gender.

Making Decisions Regarding the Children after Separation or a Dissolution of Marriage

In most cases, parental responsibility for a minor child will be shared by both parents so that each retains full parental rights and responsibilities with respect to their child. Shared parental responsibility requires both parents discuss and collaborate on major decisions affecting the welfare of the child, so that such decisions are determined jointly. You and your spouse may agree, or the court may order, that one parent have the ultimate decision-making authority over specific aspects of the child's welfare, such as education, religion, or medical and dental needs. The court will determine any or all of these matters if the parties cannot agree.

In very rare cases, the court can order sole parental responsibility to one parent. To do so, the court must determine that shared parental responsibility would be detrimental to the child. For example, if one of the parents has committed egregious child abuse or spouse abuse, the other parent could be awarded sole parental responsibility. If a parent is incarcerated, the other parent could be awarded sole parental responsibility.

Parenting Time with the Children after Separation or a Dissolution of Marriage

Florida has a public policy that each minor child have frequent and continuing contact with both parents after the parents separate or their marriage dissolves. Florida encourages both parents to share the rights and responsibilities, and joys, of childrearing. Florida law has no presumption for or against either parent or for or against any specific time-sharing schedule when developing a time-sharing schedule in the child's best interest. Florida law requires that the time-sharing schedule be in the best interests of the children and not the parents. If parents cannot agree on a time-sharing schedule, the court will decide one for the family. There are many sample Parenting Plans available on the internet to help parents as they attempt to craft a Parenting Plan on their own. The Florida Supreme Court has published a Parenting Plan template parents can use when reducing their agreement to writing.

Can I move during or after a Dissolution of Marriage?

Florida has a very specific relocation statute requiring consent of both parties or court order allowing a relocation during or after a dissolution of marriage. A parent who fails to abide by Florida's relocation statute may face judicial sanctions or penalties, including the immediate return of the child. Persons with questions about the relocation statute should consult with a Florida family law attorney.

Parenting Class

Florida law requires both parties attend a parenting class prior to entering a final dissolution of marriage. Some courts require children of parents going through dissolution of marriage to attend a class specifically designed for them. Consult the clerk of the circuit court in the county in which you reside for information on classes offered.

Child Support

Both parents have a duty to financially support the children born to or adopted by them. Once the parents separate and a parent files a petition for support or for dissolution of marriage, that duty ordinarily is enforced though an award of child support from one parent to the other. The court will use the child support guidelines that are laid out in a statute to determine the amount of periodic payments one parent will make to the other.

Florida's child support guidelines consider a number of factors when determining the amount of support that should be paid. The factors include, but are not limited to, the gross income of each parent which includes alimony paid from one parent to the other, if any, the cost of health insurance premiums for each parent, the cost of other mandatory payments each parent must make, the cost of health insurance for the children that a parent is paying, and the cost of daycare so the parents can work outside the home. Each parent's percentage of support is then calculated and a support figure is generated. Florida's child support guidelines permit an adjustment if a child spends a "substantial" number of overnights with a parent. The term~~s~~ "substantial" is defined by Florida statutes. The court may vary the support amount based upon a series of factors directed to circumstances existing within that particular family.

Unless the parties agree otherwise or the court decides it is contrary to a child's best interest, an income withholding 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 depository, which will track the payment 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 the court sanctioning the parent which may include, among other things, suspension of his/her driver's license and incarceration.

A party may be ordered to maintain life insurance or provide other security to ensure the continued payment of child support.

If you have a problem receiving support payments from your spouse or former spouse, or the time-sharing plan is not being followed, in violation of court order, you can bring it to the

attention of the court. It is not legal to withhold time-sharing or child support payments because either parent fails to pay court ordered child support or violates the time-sharing schedule in the Parenting Plan.

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.

Economic Issues During and After the Marriage

There are two types of assets and liabilities in Florida: marital and non-marital.

Assets (The Property You Own)

Generally, income earned by either spouse during the marriage, assets purchased by either of you regardless of how the asset is titled, and gifts between parties during the marriage will be considered "marital assets." "Marital assets" will be equitably distributed between you and your spouse if you divorce. "Equitable" generally means equal, absent extraordinary factors. This is true even if an asset is bought or purchased in one party's name alone with money earned by that person during the marriage, and title remains in that party's name. Title to property is not the most important consideration in dividing marital property. If the asset in question is earned or purchased during the marriage with money earned during the marriage, that property or money will be determined to be a marital asset and will be subject to equitable division.

Generally, an asset owned by a person before the marriage, including premarital gifts between the parties, are considered "non-marital assets." Other non-marital assets may include inheritances and gifts to only one spouse from a third party during the marriage. Non-marital assets are set aside to the party to whom they belong and are not included in the calculation of what is the marital estate. There are certain circumstances when a non-marital asset can become a marital asset in whole or in part intentionally or unintentionally. If you have or acquire non-marital property – particularly money, such as an inheritance, – you should be careful ~~on~~ how it is handled. Many times depositing non-marital money into a bank account held jointly in both names may make the asset lose its non-marital character. The determination of whether a non-marital asset may become a marital asset can become a very fact-intensive issue and if you have specific questions on how to protect your non-marital assets during or after a marriage, you should consult with a Florida family law attorney.

Debts (The Money You Owe)

A debt incurred by either party during the marriage is generally deemed a "marital debt" and can be assigned for payment to either party upon divorce. Usually, each spouse will be responsible for half of all marital debts. If a person owes a debt incurred prior to the marriage and that debt still exists at the time of the parties' divorce, the debt will be considered "non-marital" and the person who incurred the debt will be responsible for that debt unless the other party has legally agreed to be responsible for payment of the debt.

Date of Valuation of Assets and Liabilities in a Dissolution of Marriage

The cut-off date for determining assets and liabilities to be identified or classified as marital assets and liabilities is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution of marriage. The date for determining value of assets and the amount of liabilities identified or classified as marital is the date or dates as the judge determines is just and equitable under the circumstances. Different assets may be valued as of different dates, as, in the judge's discretion, the circumstances require.

Spousal Support (Alimony or Separate Maintenance)

In the event a married couple separates, regardless of whether or not they are going to file for a dissolution of marriage, a judge may order one party to pay spousal support (called "alimony" in Florida) to the other. A spouse interested in receiving this support must file a petition for dissolution of marriage or a petition for support unconnected with dissolution in a court of competent jurisdiction. A court may grant alimony to either spouse; the alimony laws are gender-neutral.

For the court to award alimony, the requesting spouse must demonstrate that he/she has a need for alimony and that the other party has the ability to pay. Once the requesting party has established a need and an ability to pay, the court must determine all relevant factors to determine the proper type and amount of alimony to award. A party can request temporary alimony while a divorce is pending. An award of temporary alimony is usually granted towards the beginning of the case to ensure that the financial status quo of the recipient and family is maintained. Temporary alimony is modifiable while the case is pending. A temporary support award does not determine what the ultimate alimony award may or may not be from the court.

For purposes of determining alimony, the court will determine various factors including the length of the marriage and the financial circumstances of both parties. The length of a marriage

is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs. There are limits as to the length and conditions of a bridge-the-gap alimony award.

Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through:

- the redevelopment of previous skills or credentials; or
- the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

The court must articulate a specific rehabilitative plan to award alimony so both parties clearly understand the expectations the alimony recipient must meet to rehabilitate him/herself.

Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. There are limitations as to the length and modifiability of a durational alimony award.

Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. There are limitations as to when a court may award permanent periodic alimony, particularly for marriages of short or moderate duration.

You have the right to obtain information about your spouse's income and assets through the use of discovery procedures. Discovery includes exchange of documents and answers to written or oral questions.

Restoration of Former Name

Florida law permits the court to restore a former name of a spouse in a Final Judgment of Dissolution of Marriage. A spouse who desires restoration of his/her name must request it, normally within the original petition or a counter-petition for dissolution of marriage. The court can only restore the spouse to a former name. A spouse who wishes to change his/her name to anything other than his/her former name may have to file a petition for name change.

Attorney's Fees and Costs

The fees and costs for dissolution of marriage cases vary widely. The more complex and/or the more contested the issues, the more the dissolution will cost. At an initial meeting, your attorney may be able to provide an estimate of the total cost of a dissolution based on the information you provide; however, keep in mind that your attorney has no way to predict the future and estimates are precisely that – estimates. The final cost of your dissolution of marriage will depend on many variables that are unpredictable.

Your attorney will expect you to pay a fee and the costs of litigation in accordance with the agreement you make. Sometimes the court will order your spouse to pay part or all of your fee and costs, but such awards are unpredictable and cannot be relied upon. You are primarily responsible for the payment of your legal fees.

In a dissolution of marriage, it is prohibited for an attorney to work on a contingency fee basis; that is, where the attorney's fee is based upon a percentage of the amount awarded to the client or on a particular outcome.

Dissolution of Marriage Process

In order to dissolve a marriage, a court must enter a final judgment dissolving the marriage. Normally the judgement will address and resolve all issues between the parties including the dissolution of marriage, establishment of a Parenting Plan, the division of assets and debts, alimony, child support, and attorney's fees and costs. Spouses can obtain this final judgment of dissolution of marriage through contested and uncontested means.

Collaborative Law

Parties who wish to dissolve their marriage in an amicable manner with the assistance of trained professionals may wish to explore the collaborative dissolution process.

The collaborative practice of law is a voluntary dispute resolution process which the parties can begin at any time before or after a party files a petition for dissolution of marriage with a court. In the collaborative practice of law, both parties and their attorneys sign a collaborative participation agreement that describes the nature and scope of the matter; the parties voluntarily disclose all relevant and material information; the parties use good faith efforts to negotiate; and the parties may engage joint neutral mental health and financial professionals to assist with their negotiations.

The goal of the collaborative process is for the parties to enter into a written settlement agreement which addresses all issues which may include a Parenting Plan, division of their assets and debts, alimony, child support, and attorney's fees and costs. Should the collaborative process be unsuccessful in whole or in part, the parties must discharge the attorneys and other professionals and begin a contested dissolution proceeding through the court.

If you would like more information about the collaborative practice of family law, you should search for a collaboratively trained family law attorney near you.

Dissolution Proceedings through the Court

If the parties choose to seek a dissolution of marriage, at least one of the parties must file a petition for dissolution of marriage in the circuit court in the county where the spouses last lived together or in the county where either spouse resides. Either spouse may file for a dissolution of marriage. The petitioner must allege that the marriage is irretrievably broken. The petition sets out what the petitioner wants from the court. The petitioner must serve the petition on the other spouse by a process server or Sheriff's Department in the county where the other spouse resides. The other spouse must file an answer within 20 days of being served, that responds to the matters in the initial petition and, if he or she wishes, include a counter-petition for dissolution of marriage raising any additional issues the answering party requests the court to address.

There are rules governing a dissolution of marriage which require that each spouse automatically produce to the other spouse certain financial documents and information within a certain number of days of when the process server served the petition on the recipient spouse. Each party must complete and file a detailed financial affidavit and a certificate of compliance with mandatory disclosure.

Mediation

Mediation is a procedure to assist you and your spouse in reaching an agreement without a prolonged process or a trial. Its purpose is not to save a marriage, but to help divorcing spouses reach a solution and arrive at agreeable terms for handling the break-up of the marriage. Many counties have public or court-connected mediation services available at a reduced cost. Some counties require spouses to attempt mediation before a final hearing (also known as "trial") can be set.

Formalizing Agreements

Some spouses agree on some or all of the issues before or after the petition is filed. Issues may include the division of property, Parenting Plan issues, spousal support, child support, ~~or~~ attorney's fees and costs. Parties who have reached an understanding as to their desired outcome(s) enter into a written agreement signed by both parties that is presented to the court. Parties who do not yet have a written agreement but have reached an understanding may also appear for a final hearing with a suggested settlement which they ask the court to accept and incorporate into a final judgment. In such uncontested cases, a dissolution of marriage can become final in a short amount of time.

Reaching an agreement empowers parties to create terms with which they are more likely to comply rather than leaving decisions up to a judge.

Contested Final Hearings

Finally, some spouses cannot agree on all issues and a final hearing (or "trial") is required. Each party will present his/her evidence and testimony to the judge during the final hearing, and then the judge makes the final decision on the contested issues.

Where to Find Additional Information

There are specialized rules of procedure for family law cases called the "Florida Family Law Rules of Procedures," which can be found on the internet, at the public library, at law libraries, and at law schools.

The Florida Supreme Court and the clerks of courts in many circuits throughout Florida have standard family law forms that people can use if they would like to represent themselves in family law proceedings. Some local legal organizations offer free forms clinics to assist parties who are representing themselves in family law proceedings. If you would like to find out more about this, you should contact the clerk of the circuit court for your local circuit.

Privacy Considerations

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. Proceedings before magistrates and hearing officers are automatically recorded and copies of the recordings can be requested from the clerk of the court in which the hearing was held. There is a fee associated with requesting the copy and you should contact your local clerk of court for a current fee schedule.

Upon the Death of a Spouse

A spouse has certain rights to assets of his or her spouse upon death, unless the parties have 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 the use of the family home.

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

Community Resources 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 Statues. Those statues are available for review at all public libraries and online. 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. The 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 report child abuse is 1-800-96-ABUSE (1-800-962-2873).

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

Couples who wish 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 online or 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 1-800-921-2910.

Parents who are experiencing difficulty raising their children together, whether the parents intend to remain married, separate, or dissolve their marriage, may benefit from the assistance

of a parenting coordinator. Parenting coordinators are professionals trained to assist parents in establishing and maintaining a healthy co-parenting relationship. More information about parenting coordination and local parenting coordinators is available online and through most clerks of local circuit courts. You must pay a parenting coordinator for their services.

In most counties, the United Way maintains information on local agencies that provide services for 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 associations, local legal aid organizations, and from the Florida Bar's Lawyer 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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Part Two of 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 of the Florida Supreme Court.