

FAQ: Divorce Florida Style
By Michael H. Gora
Special to the News.

Q My son and his wife are involved in a dirty, knock down divorce case. They have been married for fifteen years and have a couple of children under ten. Custody is a big part of the fight, but so is alimony and property distribution.

We have reason to believe that his wife has been sleeping around, and we believe that once the divorce is final she will be bringing guys into the house when the children are there. We are trying to figure out ways to prove the case, and take the children away from her.

The wife is Catholic; we are Lutherans. The wife regularly sees her Priest, a psychologist, gynecologist, and other physicians.

My husband and I suggested to our divorce lawyer that we subpoena her Priest, psychologist and gynecologist to see what we can find out about her sexual activity. The lawyer did not think that we would be allowed to do that, even though the children's safety and custody is at stake. Is she right?

A. Before your questions are addressed, a question arises from you questions: Whose divorce is this anyway? You start by talking about your son's divorce and then describe the divorce as if it were your own. You talk about: "We have reason to believe"; "we believe"; "we are Lutherans"; "our divorce lawyer"; and "(T)he lawyer did not think that we will be able to do that."

While your interest in your son's life, marriage and children are understandable it is hard to understand your apparent belief that this is your divorce case as well as his. There is a difference between being supportive, and being involved and controlling. If you were similarly involved in your son's marriage, you may have contributed to the reasons for divorce.

Your son's lawyer appears to be on the right track in her belief that most of the records that you want your son to subpoena will not be allowed, or may be difficult to obtain under your description of you suspicions.

Unless your son and his attorney can prove that your grandchildren were exposed to sexual activity in their presence, it is not likely to play a big part in your son's divorce.

The Florida Constitution had a Right of Privacy, which does not, directly, exist in the United States Constitution. In addition, Florida statutes contain eight separate provisions describing confidential relationships that cannot be breached without some very strong evidence.

The relationship between a patient and mental health care provider is such a confidential relationship, as is the relationship between a clergyman and person seeking spiritual guidance.

In either case, there must be substantial reasons for a judge to allow discovery into these communications. The Florida appellate courts have ruled that the mere “custody” battle alone is not enough to get through the confidential protection.

There must be additional proof of recent events putting the mental health of the person whose records are sought at issue, such as a suicide attempt, or involuntary commitment to a mental health facility.

There is no statute making communications between a patient and physician, other than a psychiatrist, confidential. However, Florida appellate courts have ruled that seeking physician’s records, under the circumstances you describe can be prevented by invoking the Florida Constitution’s Right of Privacy described above.

Your son’s own physician can relieve any fears that your son might have of being infected by a sexually transmitted disease through a blood test and examination.

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Q I am happily married, but still read your column regularly. I have also followed the downfall of the United States economy, and have been directly and indirectly affected, like everyone else.

I was wondering how current economic conditions have affected your practice. Are there more, or less new cases being filed? Are the issues in your cases the same as before, or are they different? Are there any types of cases, which are more common now, than they were before? How does a personal bankruptcy change the rights to alimony and child support under marital settlement agreements?

A. The number of new divorce cases filed in Palm Beach, Broward, and Miami-Dade Counties has gone down about 20% over the last several months, but the numbers seem to be rebounding a little.

Many factors may have contributed to the slowdown, including the willingness to remain together in order not to spend money on legal fees, or people being distracted from some serious personal issues to take care of more pressing issues, such as job loss.

The bursting housing bubble seems to be a significant contributor to the divorce slowdown. When prices of homes were still high, a typical first discussion about divorce, especially among people who owned their homes for several years, might go like this:

“We can sell the home, and use the money we get to pay off the \$30,000 in credit card debt. Then, me and the Mrs. can divide the other \$500,000 we get, and each buy a smaller house, townhouse, or condo.”

There is no longer any home equity to cushion the reconfiguration of the family unit into two family units. Recent settlements have had clauses allowing one party or the other to remain in the marital home, with no mortgage payments until their foreclosure was started, concluded and the bank threw the remaining person out of the house.

Others, who wanted to maintain their credit ratings, cashed in portions of retirement accounts to pay the cash required to sell their homes, when their house value had fallen below their mortgage balances.

Many couples file personal bankruptcies as part of their divorce agreement to rid themselves of credit card debt, rather than dividing and paying the creditors. Our law firm has recently hired an experienced bankruptcy attorney to handle the requests we are receiving for that type of representation.

The obligations to pay either alimony or child support, however, are not dischargeable under the bankruptcy laws. In Florida, you can file for bankruptcy and

save all of your equity in your home, as long as your mortgage is current. Under federal and Florida law, your interest, in almost all retirement plans, is safe from creditors in bankruptcy.

There is an upturn in “Modification Petition” cases, where one former spouse or the other seeks to lower their alimony and/or child support payments because they have lost a large portion of their income, have been fired, or have had their companies go out of business all together.

Florida law provides both temporary and more lasting relief in these situations, depending on the facts of each case.

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Q Thanks to my wife's parents, we always were able to live beyond our means. My wife and I have been married for thirty-five years. We met in college, graduated together with degrees in physical education, and have been teaching in Broward county high schools ever since.

On our own, we would have done OK, but her father became quite wealthy during our marriage and her parents were very generous. They gave us the beautiful house, in which we live, and a few years ago, a second small, but expensive house on Duck Key, and a boat to go with it. There was never a mortgage on either house.

They gave us regular gifts of cash, much of which we have saved, and bought us nice cars, and vacations. They bought Florida pre-paid college plans for our two children. Because of their generosity, we have managed to save over \$2,000,000 in cash and corporate bonds, and own the two houses free and clear. All of the gifts, houses, money ETC. were always to both of us.

For our thirty-fifth anniversary, my wife announced she was gay and served me with divorce papers. She told me that she had gotten her elderly parents to change their wills, so that only she would inherit from them.

The papers that were served claimed that my wife was entitled to almost all of our savings, and property because they were base upon the gifts given to us by her parents. I have a few more days to hire an attorney, but my friends tell me that I am in deep trouble and may wind up with nothing. What do you think?

A. The first question that the judge will have to decide is whether or not all of the real estate, savings, and other property which you have accumulated are "marital", and subject to distribution.

The property would be marital if your in-laws gave you the real estate titled in both names, or the money to buy the real estate, and other cash gifts with checks made out to both of you.

Even if all property and checks were made out to your wife only, the property could still be marital if she put the real estate in joint names, or deposited all the funds into joint check or savings accounts, or accounts in her own name into which you either or both of you deposited your paychecks.

If the assets in question are marital, then there is a strong legal presumption under Florida Statute 61.075 that the property will be equally divided. To win an unequal distribution the court will have to consider the nine factors listed in the statute as grounds for an unequal distribution.

From your description of your long term marriage, in which you both worked, and raised children there appears to be little likelihood that the court could rely on the first eight of the factors in the statute to make an unequal distribution.

Your wife's attorney might take the position that because most of the largess that you describe came from gifts from your wife, an unequal distribution is necessary to "do equity and justice between the parties."

Based upon your description of your marriage, and the gifts to both of you by her parents, it does not appear that the gifts resulted, solely from her contribution to the marriage. It appears that you both made equivalent contributions to the marriage. You will each probably be awarded 50% of the net assets.

The fact that your wife has changed sides in the sexual revolution will have little bearing on the outcome of your case. Most judges know that, occasionally the dish runs away with a dish.

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Q My husband and I are both fifty years old. We have been married for twenty-five years. At the time we married, he had just finished law school. He worked for a personal injury defense law firm for a few years, and then opened his own firm doing Plaintiff's personal injury work.

I had just completed my masters in physical therapy when we married and worked in that field for about ten years. After our third child was born I left work to take care of the children and have not gone back to work.

My husband has built a successful law practice, but did not become one of those billionaire personal injury lawyers. He regularly makes between two and three hundred thousand a year and we have had nice homes, cars, vacations, and private schools for the children.

We are now going through a divorce. His attorney has demanded that I visit with a vocational rehabilitation person to be interviewed and tested. They want to see what kind of work I can do now, and find out what my job prospects are in physical therapy. Since I left work, I have neither kept my license nor stayed up with the new equipment and techniques.

My husband tells me that I could now earn \$50,000 an up by going back to work, and he does not want to be an alimony slave for the rest of his life. He says the judge will impute income to me and I will get little if any alimony. Is he right?

A. While your husband and his counsel have a right to have you evaluated by the vocational rehabilitative expert, it seems possible but not probable that they will be successful in having a judge impute income to you for alimony purposes. Even with some imputation, it is likely that you would receive substantial alimony.

To impute income the judge must consider: (1) recent work history; (2) current occupational qualifications, (3) the prevailing earnings in the community for such jobs, (4) and that jobs are available in your field.

The judge can consider only your present, actual occupational qualifications and not your potential occupational qualifications. Your work history is not recent. You are not currently licensed, and it is not clear that you could be re-licensed with out extensive re-training and more education.

The judge will have to make findings of fact on each of the elements described above. He or she must find that there is "competent and substantial" evidence to back up these findings. This level of evidence is greater than the usual quality of evidence required in non-criminal cases.

There are many appellate decisions describing the basis for imputing income, because many trial judges have tried to stretch the envelope in favor of imputation, due to their perception of unfairness. There is a risk that such a result may occur in your case, requiring an appeal.

The correctness of a judge's opinion on this issue may depend upon what the experts says about job availability, and pay scale for a person with you exciting skill level. The threat of the imputation of income is being made to soften you up as to the amount or term of your alimony for settlement purposes.

Even is a court were to impute some income to you an amount of rehabilitative alimony should precede any final award to give you enough time to try to re-enter your field, and up-date your education and skills.

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Q My husband lost his job about two years ago, and had no prospects. At the time, we lived in a small town in West Virginia. He joined the Army, and left for basic training in South Carolina, I stayed behind.

When he finished basic he was assigned to a base in Florida for training as a helicopter pilot, and we moved onto base housing where we lived for five months, before he was shipped to Iraq. I came to Boca Raton to live with my parents, until my husband completed his military service. With the war still going strong, it did not look like he will be done soon.

Last week he e-mailed me that, he had voluntarily signed up for another tour of duty, and was planning to make the military a career. He also indicated that our marriage was over and asked me to file for divorce over here. It should be rather simple; we have no children and little property. I have a job and can support myself.

We are both now Florida registered voters. We both have Florida driver's licenses. I am enrolled in night courses at the local community college. We bank here, and file tax returns from Florida.

I went to the clerk's office in Delray to file papers, and they refused to take the papers, saying that we would have to file in West Virginia; because that is the last place, we lived as husband and wife for more than six months. That made no sense to me, since neither of us lived there any more. Was the clerk correct?

A. Before a Florida court can obtain jurisdiction over your marriage and over both you and your husband, for divorce purposes, you have to meet several criteria. As a rule a Florida resident, before entering the military, who never established a residency anywhere else, remains a Florida resident.

In your case, however, your husband was in the military, at basic training, before either of you became a Florida resident, so you cannot rely on that rule.

On the other hand, the two of you lived on base in Florida for five months, before your husband was shipped overseas, and you moved in with your parents in south Florida. You have now lived in Florida for more than six months, and the last place that you lived together as husband and wife was in Florida.

Additionally neither you nor your husband now live in West Virginia, have not lived there for some time, and there is no indication in your question that you have any real estate in West Virginia or any significant contacts with that state.

One older Florida appellate opinion established that if a couple had multiple residences a Florida Court must find that “the chief seat of the party’s house hold affairs, or home interests, are now in Florida, for the Florida court to have jurisdiction over the marriage.”

Since this decision must be made by a judge it will be necessary for you to file a typical dissolution proceeding, and not try to apply for a summary proceeding through the clerk. Once you place the evidence of your current Florida contacts before the court, and include your husband’s agreement that the Florida court should have jurisdiction, you should have no problem.

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Q My husband and I divorced six years ago, a year after our son was born. For the first couple of years our shared parental responsibility and time-sharing of our son went well. He had a typical Palm Beach County schedule, every other weekend from Thursday evening, return to me, and later school on Mondays. He did all the pick up and delivery.

Nothing became an issue. We both continued to live in Boca Raton. Our son had the same pediatrician, and began school in a local Boca Raton Public school. He started Sunday school at a local Temple. I am Jewish and my husband, a lapsed Catholic, had converted to Judaism. We had agreed to raise our son in the Jewish faith, which was memorialized in our settlement agreement.

A year ago, my former husband married his former high school girl friend, who has a daughter the same age as my son. From there, pardon the expression, everything went to hell. There seems to be a struggle for my son, body and soul.

My Ex moved into the new wife's house, a virtual mansion in Manalapan. He started campaigning for more time with our son, saying he now had a sister he needed time to "bond." Visitation pick up and delivery became an issue, because of the distance.

My Ex reverted to his Catholic Religion and, without my agreement, brought our son to church on his Sundays, and wants to enroll him in some kind of children's program in his church. He attempted to change our son's grade school and pediatrician to ones closer to his home, again without telling me.

All this is very confusing and upsetting to our son. They insist he call her mommy. What can I do to stop this and restore some sanity to my home, his home and the situation?

A. There are two avenues you can use to try to gain some control over the situation, and both taken at the same time.

The shared parental responsibility that you mentioned requires you and your former husband to cooperate in the raising of your child. It requires cooperation on your selection of schools, physicians, and even agreed religious affiliation. Your former husband's attempts to unilaterally change your son's life can be considered a violation of the Marital Settlement Agreement, and final judgment.

You can bring these matters to the Court's attention through a Motion for Contempt and Enforcement. That is to ask the judge to threaten your husband with jail, if he does not comply with what you had agreed to, and refuses to live up to the requirements of shared parental responsibility.

You can also file a Petition for Modification, even though you would not be asking for a change in time-sharing. What you will ask for is the sole responsibility over making all decisions regarding the child's school selections, medical choices, and religious activities.

It appears that you can prove one of the possible threshold requirements of modification, an involuntary permanent change of circumstances. But there are some appellate cases in which changing some of the parental responsibilities, as suggested, does not require a significant change, only the proof that it would be in your child's best interests for his upbringing to be consistent with the plan that you and your former husband agreed to, without interference from his new wife.

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Q I'm a doctor in another part of Florida, and I am planning to divorce my wife of fifteen years. We have a son, eight years old. He is very important to me. I found your column on line, which mentioned the new parenting statute, so I looked it up, and have some questions.

The statute has done away with the designation of "primary residential parent", kept the status of "shared parental responsibility", and did away with the reference to "rotating custody, IE. 50/50 time split.

I am confused. Does this mean that rotating or 50/50 time-sharing is now the rule, or presumed to be the judge's first choice, or does it mean that it is less possible, as the statute no longer even mentions it?

Does the statute cause a change in the application of the child support guidelines statute in any way? How do we know whom pays child support to whom. Why was the statute changed?

A The changes in the statute were promoted by the Family Law Section of The Florida Bar, which drafted the proposed statute and recommended it to the Board of Governors of The Florida Bar and, after approval, to the legislature.

The purpose of removing the designation of primary residential parent was intended to reduce friction between divorced parents by requiring that both parents would be on equal footing regarding rights and responsibilities towards their children. Under the old statute, some judges made post divorce decisions based upon the designation, and other refused to do so.

Which parent pays child support, and the amount of the child support, is still based upon the child support guidelines statute, which considers the net, after tax income of each parent and the number of overnights that the child spends with each parent under the newly required "parenting plan".

The new statute specifically states what topics must be covered in the Parenting Plan, which may cover more than the required subjects, but not less than all of the requirements.

The new statute does not require rotating custody, nor does it ban rotating custody. The statute sets expands to twenty the factors, those that a judge must consider in determining the best interest of the child, in deciding time-sharing in any parenting plan that a judge includes in a final judgment of dissolution of marriage, if the parents, themselves, cannot agree upon a plan.

These factors will come into play during the negotiations of parenting plans between the parents, as part of every settlement agreement involving minor children. The new factors have codified past appellate decisions, which have identified the factors as important.

Once the parents have agreed on a parenting plan, which must contain a division of the overnights, the child support guidelines will be applied in the usual way. So far, as the statute only recently became law, there are no appellate decisions interpreting the statute. Only time, and appellate interpretation, will tell us what the statute really means, and to whether or not the statute is a benefit or detriment.

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Q Yesterday I went to court and was sandbagged by the judge. My Ex wife had filed a motion for contempt against me, because I was behind in alimony and child support by five months under our marital settlement agreement. When the contempt motion was filed it was only a month, but by the time it got to court, it was five months.

The judge first held me in contempt for non-payment, even though I had lost my job about six months ago, because my company went out of business. My unemployment of \$1,100 a month was hardly enough to keep a roof over the head of me and my new wife and her daughter.

The judge said that I should have tried to take out an equity line on the house, or borrowed or taken money from my 401K, or borrowed from my 401k, or rolled it over into an IRA and then withdrawn from it. I already gave my Ex-wife half the 401K in the divorce and lost half of that in the stock market.

The judge's order gave me a month to raise the entire amount of money from the equity in the house or the retirement accounts; about \$12,000.00. She ruled that I could use the equity in the house for no other purpose.

She ruled further that even if I paid up the arrearage with the retirement money, I was prevented from selling the house or using the house equity and retirement accounts for purpose in the future, other than as security for the support money.

My lawyer is doing some legal research to see if the judge could do all that to me. Now, even if I want to try to sell the home, and move for a job offer, currently a possibility, I cannot. What do you think?

A. The final contempt order may be appealed, as a matter of right. However, before you invest money for attorney's fees and costs you should carefully analyze your chances.

In order to determine whether or not you were in contempt it was necessary for the judge to find that you had the ability to pay the support when it was due, and the ability to pay, entirely or partially, the support at this time.

The judge could look toward your assets as well as your income in reaching her conclusions, even though your former wife had received her half of those very assets in the divorce case. However, considering your loss of your job was not your fault, and all of the surrounding circumstances an appellate court might reverse the judge for abusing her discretion.

The appellate court, on the other hand, seems to have a clear-cut path to reverse the judge's order to perpetually use your house equity and retirement equity as collateral for the support payments.

Such a remedy could only be engrafted onto your marital settlement agreement if your former wife had filed a "Petition to Modify" the original Marital Settlement Agreement, not in a case for contempt. Since there was no such Petition filed in your case, the judge had no right to modify the agreement in a contempt case.

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Q: My husband and I signed a prenuptial agreement over thirty years ago. About ten years ago, I mentioned it to him and he said not to worry about it, that he had torn it up. He lied. I filed a case for divorce against him and he and his lawyer filed papers attaching the old agreement. My brother, who is a real estate lawyer, is helping me.

He said that the agreement was so old and unfair that no judge would enforce it. In the agreement, I waived alimony. I also agreed that anything saved from my husband's earnings, during the marriage would be his non-marital property, and anything I earned, and saved, would be my separate property. At the time of the agreement, we were both working and making about the same amount of money. Since then "we" have become very wealthy as the result of the success of my husband's multi-state construction company.

I left my career to raise children. Is my brother right, do you think the judge will throw out the agreement?

A: Probably not, although, under a relatively new Florida statute, your chances have improved.

Historically, neither the unfairness of your agreement, nor its age would disqualify the agreement under Florida law. You did not say where the two of you lived and signed the agreement. If the agreement was signed in another state, that state's law might apply. In some states, a court can set aside an agreement if it has turned out unfairly because of changing circumstances.

Under Florida's recently revised statute absolute unfairness, called inconsolability, may provide you grounds to have the agreement set aside.

You did not describe the circumstances surrounding your signing the agreement. If you were coerced into the agreement, not given adequate time to sign it, or denied the right to have an attorney of your choice in negotiating the agreement, a Florida court might set it aside, if it were a Florida agreement, or if the law of the state where it was signed was similar to Florida's law.

If you and your husband did not fully disclose your assets, liabilities and income to one another at the time the agreement was signed, it might be fatal to the agreement. It is possible that the Florida court will disregard the law of another state, if it was fundamentally different from Florida law.

If the agreement were upheld, you would receive no alimony and no property distribution, unless your husband agreed to settle the matter. To create a negotiating

position you will need the advice of knowledgeable counsel. It appears to be a good time for your brother to go back to his real estate practice and help you find a very experienced matrimonial attorney you help you through this legal thicket. It appears as if you have a lot to lose if a court upholds the agreement.

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Q: My wife and I have been involved in a divorce case for over a year. All financial information has been exchanged. A month ago, with our lawyer's approval, we entered into a mediated settlement agreement, after a two-day mediation. We have been married for twenty years, and have two minor children. I have been a stay at home dad, although I make about \$35,000 as a freelance magazine writer. My wife is a successful businesswoman, who makes several hundred thousand dollars a year.

In the mediation agreement, we divided marital property. She agreed to pay permanent alimony and child support. She also agreed to pay private school fees, summer camp fees, and college education costs. A month after the agreement was signed she had second thoughts. She told the Judge she did not know if she could make the payments without increasing her workload to the point where she could spend little time with the children. She also claimed that she was coerced by the stress of the two-day mediation. She asked the court to reject the agreement, because was not in the best interests of the children.

The judge set a half a day hearing next week to hear evidence regarding whether or not the agreement was in the best interest of the children. He said that he had the right to reject the agreement if it was not in the children's best interests, or if my wife was coerced into signing it. Can he do that?

A: Florida law looks favorably on settlement agreements entered into voluntarily, between two adults, represented by counsel, after full disclosure. These agreements are, generally, endorsed and promoted. Statistics prove that voluntary agreements are more likely to be followed than court imposed agreements. On the other hand, the court's have the legitimate obligation to make sure that children's rights are protected. Agreements can be rejected by the court if they do not provide an appropriate level of child support, or in some other way ignore the children's best interests.

Court's can reject agreements on proven claims that they were entered into fraudulently, based upon misrepresentations financial information. Agreements can be set aside based on duress or coercion. An appellate court has set aside an agreement because the wife obtained it by threatening to expose the husband's business practices to the IRS. The stress of a mediation process is not likely to be grounds to set an agreement aside. Under the circumstances that you describe, it is unlikely that a judge in a circuit court has the discretion to set aside your agreement on the two grounds argued by your wife.

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Q Three years ago, at my husband's suggestion, we met with a paralegal at her office in West Palm Beach to work out a marital settlement agreement.

We wanted to save money, so we did not want to hire lawyers. We had no children, had only been married for seven years, and both had good jobs. The only property that we had was a nice large house in Jupiter, which we had bought for just over a million dollars in 2004. By 2006, we both agreed that the house was worth about a million five. We have an interest only mortgage of about \$600,000.00

We agreed to sell the house on the market, but that I could live in the house for two years before putting it on the market. We thought it was a good investment. We would share the mortgage and other house expenses.

My husband however retained an option to buy me out after the two years. The contract did not provide a price for that buyout, but my husband told me that I was guaranteed no less than my equity at the time of the marital settlement agreement.

A couple of months ago my now former husband sent me an e-mail telling me that he was going to exercise his option to buy me out., as the house had been on the market for a year and not sold. I asked, "At what price", and he said, "Current market."

I told him he was crazy, he had guaranteed me market value at the time we made the deal. He said that he did not remember, and the contract never said that. We had an appraisal done and the house is now worth \$650,000. My share is now \$25,000 instead of \$450,000.00. I want to sell to him at the old market value, because of what he told me. Do you think I can win? Is it worth hiring an attorney?

A. Marital settlement agreements are merely contracts, and the rules of interpreting contracts, generally, apply. As a rule, contracts regarding the sale of real estate must be in writing in order to be enforceable.

Another rule governing the interpretations of contracts is that all of the terms should be interpreted in a consistent manner that makes sense, if possible. In the contract that you describe, there is a missing element, the manner in which the price would be determined if your former husband exercised his option.

However, clearly your agreed attempts to sell the house to third parties by listing it with a real estate broker, calls for the house to be sold at the fair market value at the time of the sale. Your unexpected problem was caused by the bursting real estate bubble.

You and your former husband both assumed the risk of the market, on sales to third persons, but you want him to bear the full brunt of the market if he exercises his option, by trying to make him buy you out at an old and no longer fair price.

It appears very unlikely that a Judge would find in your favor, based on the contract and surrounding circumstances. There seems to be no reason that a judge would select a fair market value for the option, which would be different from present market value.

Michael H. Gora, Boca Raton divorce lawyer, has been certified by the Board of Specialization of The Florida Bar as a specialist in family and matrimonial law, and is a partner with Shapiro Blasi Wasserman & Gora P.A. Questions may be submitted to Mr. Gora at mhgora@sbwlawfirm.com.

FAQ: Divorce Florida Style
By Michael H. Gora
Special to Boca Raton News

Q: My former husband and I have been divorced for over seven years. Our daughter is now ten years old. When we were divorced, we both lived here. He has since moved to Los Angeles because another company bought out his company.

He does very well financially. I have re-married; have a five-year-old son, and a new husband who is getting tired of spending a small fortune every year for my legal fees that become necessary because my "Ex" is a jerk when it comes to these issues.

Since my re-marriage, which for some reason, seemed to re-energize my former husband's hatred for me, even though he ended the marriage by not understanding the meaning of the word monogamy, and "sleeping" with his secretary, who he later married.

He chooses to torture me by inventing issues over child issues and the visitation schedule, which we adopted in our settlement agreement. So far, we have had to go back to court on the average of twice a year, for emergency and non-emergency matters. He, unilaterally, twice kept our daughter longer than the visitation period as "make up time" for time he missed because of his own business commitments.

Another time he kept her over because he claimed that he her new best friend in California, was having a big birthday party that she did not want to miss. On two more occasions, he wanted to pick her up early to accommodate his work schedule. When I refused, he filed papers.

One another occasion he fought against my wish to have our daughter enrolled in a private school, instead of public school, to be paid for my new husband's generosity.

My Ex has never won any of the hearings that he caused over these shared parental responsibility issues, but seems to relish dragging me to court. The judges who have heard the case all seem disinterested, and blame both of us for a "lack of communication and cooperation."

After each of the hearings, my attorney has asked for fee awards. In each case, they were denied. Is there anything that I can do to stop the Ex from this costly nonsense?

A: Under Florida law, except in most unusual circumstances, divorced parents are directed by their settlement agreements or final judgment after a trial, to abide by the concept of shared parental responsibility.

The statute and case law makes it clear that shared parental responsibility means that the parents should cooperate with one another in the raising of the child, or children in every way. They share all decision-making responsibilities regard health, education,

welfare, religious decisions and every other decision in child raising other than day to day minutia.

Clearly, in order to accomplish these goals there must be continuing good faith communication between the parents, and a great deal of flexibility by both. Of course, if the parents could communicate effectively and be flexible with one another they might have never divorced.

The family court division of the Florida courts is overburdened, and, therefore resentful, of what is perceived as petty, expensive arguments. Judges frequently have a hard time focusing on the cause of the problems, and blame both parents. Thus, the judges are not helpful in ending these wars.

To change any “circular” failure to communicate new elements have to be injected. Perhaps some therapy, perhaps bringing both your new husband and his new wife into direct involvement in the communication would help.

Do not rely on the court system to solve these on going problems; it is not equipped to do so.

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