

# Divorce in Florida

*DISCLAIMER: The information contained in this fact sheet is of a general nature and is provided for your assistance. It is not intended as legal advice and is not a substitute for legal counsel. If you have any questions as to how the law affects you or your legal rights, contact your civilian attorney or the Eglin AFB Legal Office at (850) 882-4611 for an appointment with a licensed attorney.*

## **RESOURCES:**

Deciding to end a marriage is a difficult and emotional process. However, Eglin Air Force Base and the local community provide resources to help you deal with the legal, emotional, and financial implications of ending a marriage.

## **LEGAL ASSISTANCE ATTORNEYS:**

If you are considering a divorce, attorneys at the Eglin AFB Legal Office can meet with you and discuss the options available to you and the possible legal consequences of those options. Legal assistance attorneys may discuss the types and processes for obtaining dissolution of marriage, and advise you about issues such as child support, alimony, division of property, and the effect of a divorce on your military benefits. However, attorneys from the legal office may not represent you in court, nor may they prepare divorce documents for you. If you desire legal representation in court, the legal office can discuss how to find a civilian attorney to represent you and advise you what qualities to look for when hiring a lawyer. However, legal assistance attorneys may not recommend a specific lawyer or law firm to you. Once you enter into an attorney-client relationship with a civilian attorney concerning your divorce, legal assistance attorneys will no longer be able to discuss issues related to your divorce with you.

## **COUNSELING SERVICES:**

- a. Base Chaplain: Base chaplains are usually trained in marriage and family counseling, and their professional services are available without charge. For more information, please call the chaplain's office at (850) 882-2111. Usually a Protestant or Catholic chaplain will be on staff. If you have your own religious counselor, you may wish to contact him or her first.
- b. Airman and Family Readiness Center: For many spouses, the starting point for obtaining information on counseling services provided by the military or civilian community is the Airman and Family Readiness Center. For convenience, the base financial counselor and Air Force Aid Society are also co-located in the same building and they work closely with the Airman and Family Readiness Center. If the military does not have the services you or your spouse may need, then you may be referred to a local civilian counselor. For more information, please call (850) 882-9060.
- c. Licensed Marriage Counselors: In addition to obtaining a referral from the Family Support Center, you can also find information on licensed marriage counselors in the Yellow Pages under "Family Counselors."

## **WAYS TO DISSOLVE A MARRIAGE IN FLORIDA:**

Florida does not recognize legal separation. While spouses may of course choose to reside in different locations, this is not a legal status. The couple's rights and obligations are the same as if they were married and living together, and there is no legal mechanism to force one spouse to support the other while the spouses are living separately.

In Florida, the only way to end a marriage is through a "dissolution of marriage" or annulment. A dissolution of marriage may be granted if the marriage is irretrievably broken (commonly referred to as "no-fault divorce") or if one of the parties has been held by a judge to have been mentally incompetent for a period of at least three years. Either the husband or wife may file for the dissolution of the marriage. Florida does not recognize divorces based on "fault," including those based on adultery, abandonment, or any other "fault" ground.

A marriage may also be annulled in Florida. Annulment of a marriage is different than dissolution of marriage because an annulment establishes that a valid marriage never existed. Annulments are generally granted in cases

where the legal requirements for a valid marriage were not met, for instance if one of the parties to the marriage is too young to legally marry. There are various other reasons a court might allow an annulment of marriage. Persons interested in an annulment should speak with a licensed Florida attorney to see if they might qualify.

### **A MEMBER'S OBLIGATION TO SUPPORT DEPENDENTS DURING MARRIAGE AND SEPARATION:**

If you and your spouse decide to live separately, but do not get a legal divorce, the military member will still be required to provide adequate support to his or her spouse.

AFI 36-2906 requires that military members provide adequate support for their legal spouse and children, as well as for any other relative for which the member receives additional allowances for support. This obligation continues throughout divorce proceedings until an actual decree of dissolution of marriage, or divorce, is entered. The amount of support is generally based on the dependents' actual need (for example, food, shelter, clothing, medical care, etc.) and the ability of the member to pay. There is no set amount or formula for how much the military member must pay for the support of his spouse and/or children. A dependent that believes that the member is not providing adequate support should contact the member's commander or first sergeant. If appropriate, the member will be counseled on the obligation to provide support and the procedures that the dependent may implement to obtain involuntary collection of support through garnishment or statutory allotments. Members may not receive Basic Allowance for Housing (BAH) at the with-dependent rate if they do not provide adequate support to their dependents. The commander cannot order the member to give money directly to the dependent, unless the member owes court-ordered support. However, the member will no longer receive BAH at the with-dependent rate, and the Air Force could recoup the with-dependent rate BAH received by the member during the periods of non-support. It is therefore important for the member to have proof that he or she is providing support.

### **A SPOUSE'S LIABILITY TO A THIRD PARTY FOR THE BAD DEBTS OF THE OTHER SPOUSE DURING MARRIAGE AND SEPARATION:**

Florida: Under Florida law, neither a husband nor a wife is liable for the debts of the other, if the debts were contracted before marriage (FS 708.05). Generally, neither a husband nor a wife is liable for the debts of the other, contracted during marriage, if the services extended to the other were based solely on the other's credit and financial status.

Other States: In community property states, spouses may be held liable for the debts contracted by the other during marriage. However, some exceptions exist. One must look to the laws of each particular state.

### **LEGAL REQUIREMENTS TO GET A DIVORCE IN FLORIDA:**

If you decide to have your marriage dissolved in Florida, you will have to meet several legal requirements before the Florida court system will hear your case.

Residency: Either of the parties must have resided in Florida for 6 months immediately preceding the filing of the petition for divorce. If a military member maintains his or her Florida domicile when stationed out of state, the member can still file for divorce in Florida.

However, even if no personal jurisdiction exists over the defendant spouse, an individual still can obtain an ex parte divorce. When an ex parte divorce is granted, the legal binds of marriage are broken and both spouses are free to remarry. However, because the court did not have jurisdiction over related issues such as child support and property division, either you or your ex-spouse must go to court at a later time to settle all of those obligations.

### **DEFENDING AN ACTION FOR DIVORCE OR PATERNITY:**

If you are sued for divorce, you should obtain a civilian attorney to represent your interests in court and to advise you concerning any documents you may be asked to sign by your spouse or your spouse's attorney. It is generally in your best interests to obtain a lawyer to represent you even if you expect your divorce to proceed in an amicable manner. First, an attorney will have more familiarity with your legal rights and with the judicial system than you will. Second, a divorce that seems amicable may become unfriendly as the proceedings progress.

If you do not have someone to protect your rights, you may end up agreeing to provisions or waiving legal rights or benefits that you never would have if you had obtained legal counsel. Although the cost of an attorney might seem substantial in the short term, the long term costs of not having one may be much higher if you end up agreeing to an unfavorable property settlement or support agreement because you were unaware of your legal rights and entitlements.

If you are active duty military, you can request a court to temporarily delay any legal action pending against you under the Servicemembers' Civil Relief Act. For example, if you receive a summons to appear in court but you presently cannot travel to that location to defend yourself, you can request a delay under this Act. However, you must be able to show that being in the military MATERIALLY affects your ability to appear in the court proceeding and thus prevents you from defending yourself.

If you want to avail yourself of the protection of this act, you should request your commander sign a sworn affidavit stating you cannot be granted leave until a specific date because of military necessity. You should also write a letter to the court detailing all the actions you have taken to appear in court (*e.g.*, requested leave, tried to obtain a loan to pay for a plane fare out of state, etc.). A judge is more likely to grant you an extension of time to respond if you request the continuance for a definite and reasonable period of time. If you are considered to have appeared, the judge can enter a default judgment against you, which will be difficult to later reverse.

If you are sued for divorce in Florida, but do not wish to be divorced from your spouse, you may request a reconciliation. In Florida, if there are minor children to the marriage or the defendant spouse denies by answer to the petition for divorce that the marriage is irretrievably broken, the court may: (1) order both parties to get counseling; (2) continue the proceeding up to 3 months; or (3) take any other appropriate action.

Request a blood test: Unless you are 100% positive the child is yours, you may wish to have a blood test accomplished. If you acknowledge paternity, you will be liable to support that child until he or she is at least 18 years of age. Under some conditions, you can even be liable past the age of 18 if the child has a handicap. However, if you absolutely know the child is yours, you should support your child. You have a legal and moral obligation to do so, and, if you don't, you may be liable in the future for back child support.

#### **SIMPLIFIED DISSOLUTION OF MARRIAGE:**

Certain Florida couples are eligible for a simplified procedure for filing for divorce in which the couples do not need to hire an attorney but can, instead, file the paperwork themselves. In this type of divorce, there can be no award for spousal support and, generally, the divorce cannot be appealed. You must satisfy all the following requirements. If you qualify, then see the handout on simplified dissolution of marriage.

- a. Both must agree the marriage is irretrievably broken.
- b. Both agree on this dissolution proceeding.
- c. Both must be able to appear before the circuit court clerk to sign the petition and later appear before the judge.
- d. You and your spouse must not have any minor children (under 18) born of your marriage, and the wife must not be pregnant.
- e. Both must agree on the distribution of property and debts.
- f. Neither party is seeking alimony.

#### **REGULAR DISSOLUTION OF MARRIAGE:**

This applies to individuals who do not qualify for the simplified process. Under this procedure, each spouse has the right to ask questions and obtain documents concerning the other spouse's income, expenses, assets, liabilities and other matters before having a trial or settlement of the case. If you cannot agree on matters with your spouse, a judge conducts a trial or hearing. After listening to all the evidence, the judge will make a decision concerning the division of property, alimony, child support, custody of children, visitation, and other matters. Either spouse can ask for a new trial or appeal the judge's decision, as appropriate.

Overview of General Steps: In this type of divorce, it is recommended that you retain an attorney to represent you. The spouse filing for divorce is called the plaintiff or petitioner, and the spouse being sued is called the defendant

or respondent. These steps apply to an action filed in Okaloosa County, Florida. The Court's website contains additional instructions and forms in an informational packet (217 pages) that can be viewed on-line.

Step 1: The plaintiff files the petition for dissolution of marriage with the clerk of the Okaloosa County Court. The plaintiff can include in the petition a request for child and spousal support, property and debt distribution, child custody and visitation, as well as any other request. In addition to this petition, the plaintiff must file the following documents:

- Family Law Financial Affidavit
- Uniform Child Custody Jurisdiction and Enforcement Act (if minor children are involved)
- Affidavit Certificate of Corroborating Witness (to state either you or your spouse resided in Florida for the preceding 6 months)
- Memorandum for Certificate of Military Service (if spouse is in the service, otherwise, you'd fill out the Non-Military Affidavit)
- Filing fee of \$408.00 must be paid to the clerk

Step 2: After filing the petition, the plaintiff (called the Petitioner in Florida) must also make an attempt to notify the spouse of the divorce action. If you know where your spouse is, fill out a Summons and file it with the court. After the court stamps the Summons, you can request the sheriff of the county in which the defendant (called the Respondent in Florida) is found or a special process server (appointed by the sheriff) to give a copy of the Summons and petition to your spouse. You must give the sheriff a good address where the defendant can be found. A fee is charged for the Sheriff's Office to serve the defendant with papers. If the defendant resides out of state, the defendant can be notified in any manner as can be done in Florida by an officer authorized to serve the process in that state. Once the defendant is served with the divorce papers, the sheriff or process server completes an affidavit informing the court the defendant has received the divorce papers and returns it to the plaintiff or the court. This entire process is called the service of process.

If you don't know where your spouse lives or your spouse lives outside the state of Florida and has never resided in Florida, then you can notify your spouse by posting or publishing the required notice, according to Florida law.

Step 3: The defendant has 20 days from the day he or she received the summons to respond to the court (FRCP 1.140a). Service by mail adds 5 days (FRCP 1.090e). If the defendant doesn't respond within this time, then the plaintiff can request the court to enter a default judgment. If the defendant is military, then the plaintiff must comply with the Servicemembers' Civil Relief Act.

Step 4: After you have obtained proper service of process over your spouse, you can obtain a temporary hearing to ask the court to give you one or all of the following: (1) temporary child support; (2) temporary alimony; (3) temporary determination of primary residence of children; (4) temporary injunctions; or (5) other matters requested.

Step 5: If the defendant responds within the 20 days either filing an answer admitting or denying each allegation in the petition or filing a counterpetition, then the Clerk of Court will notify both parties when the court hearing will be held. If both parties consent, you can request mediation. This means you and your spouse will meet with a court representative to see if you can settle your differences and avoid further litigation.

Other orders you can also request the court enter include the following:

- Restraining orders against other spouse if there is the threat of violence
- Order for spouse not to remove, sell, or transfer any marital property
- Order against spouse taking the children out of the state or country

#### **HOW DIFFERENT STATES DIVIDE MARITAL PROPERTY AND DEBTS:**

If you and your spouse can reach a reasonable agreement concerning the division of property and debts, generally the courts will allow you to divide these items as you agreed. If you cannot agree, or the court finds the

agreement you made unconscionable or subject to overreaching by one spouse, then a mediator or judge will have to be employed to help you reach a fair and reasonable agreement.

In Florida, you may employ a mediation process to assist you and your spouse in reaching an agreement concerning property distribution and other matters without a protracted legal process. The purpose of mediation is to help divorcing couples reach a solution to their problems and arrive at agreeable terms for handling the dissolution of their marriage without resort to an adversarial litigation process. Many counties have mediation procedures available. Some are mandatory. However, mediation is not effective in all cases. In those cases, the dissolution of marriage will proceed to court, and the judge will make the final decision on contested issues. The equitable dissolution process is designed to make the divorce as fair as possible to both husband and wife, which usually means negotiation--and compromise--by both partners. You can find a list of mediators with the clerk of the court.

Other state judicial systems generally divide property according to one of two systems of property distribution, community property or equitable distribution.

**Community Property:** There are 9 community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and in most respects, Wisconsin. In community property states, the spouse holds a community interest during marriage, which means that each has equal management and control of the community property. All property an individual acquired during marriage, except property acquired by gift or inheritance, is community property that is divided equally upon divorce unless both parties agree otherwise. If the parties commingle separate property and can't trace their portion, then it becomes community property. Because both spouses have an equal right to control the property, both spouses must agree to sell or transfer the property before it can be sold or transferred, even if it is titled in the name of only one spouse.

**Equitable Distribution:** Most states, including Florida, divide property by equitable distribution. A court will award property acquired during marriage, except property acquired by gift or inheritance, fairly and equitably between the parties regardless of who holds title to the property, but **ONLY AT THE TIME OF DIVORCE**. Thus, for example, a court is free to award one spouse 75% of the property and the other 25%, if the court feels it is fair to do so. Again, Florida law requires an equitable distribution of marital assets and marital liabilities. "Equitable" does not necessarily mean "equal." Many factors, including child support, time-sharing, and alimony awards, may lead the court to make an unequal (but still equitable) distribution of assets and liabilities. Nonmarital assets and nonmarital liabilities are those assets and liabilities which the parties agree or the court determines belong to, or are the responsibility of, only one of the parties. If the parties agree or the court finds an asset or liability to be nonmarital, the judge will not consider it when distributing marital assets and liabilities.

Division of property is used solely to divide the marital assets between the spouses at the time of the divorce. Generally, courts favor a one-time division of the property rather than an ongoing payment of benefits from one spouse to the other. Because the purpose is to divide assets, and not to provide support for either spouse, divisions of property are final and the decree generally cannot be modified once entered.

### **FLORIDA'S EQUITABLE DISTRIBUTION OF PROPERTY AND DEBTS:**

Courts look at a variety of factors when determining how to divide property equitably. These include:

- The contribution to the marriage by each spouse, including care and education of the children and services as a homemaker
- The economic circumstances of both parties
- The duration of the marriage
- Any interruptions of personal careers or educational opportunities, by either spouse
- The desirability of keeping any asset, including an interest in a business, corporation, or professional business, intact and free from claim or interference from the other spouse
- The contribution of each spouse to the acquisition, enhancement, and production of income, or improvement of or the incurring of liabilities, to both the marital and non-marital assets
- The desirability of maintaining the marital home as a residence for a minor child or other person, if it is in the best interest of the child or other person and financially feasible
- Any other factor necessary to do justice between the parties.

Marital assets subject to equitable distribution according to the above principles include:

- Money that you now have which either of you earned during the time you were living together as husband and wife
- Anything either of you bought with money earned during that period
- Vested and non-vested benefits, rights, and funds earned during the marriage in a retirement pension, profit sharing, annuity, deferred compensation, and/or insurance plan and program
- Enhancement in value and appreciation of non-marital assets resulting either from the efforts of either spouse or from the contribution of marital monies or other forms of marital assets
- Gifts from one spouse to the other during the marriage
- All real property (house, land) held as tenancy by entireties (held as husband and wife) whether obtained before or during the marriage
- Marital Obligations: The debts that a husband and wife owe together or that either one incurred during the marriage. This usually includes anything you still owe on any debts either of you took on during the time you were living together as husband and wife.

Non-marital assets and liabilities, also called “separate properties,” are those that are not subject to equitable distribution between the spouses. These assets and debts remain with the spouse who owns or incurred the asset or debt. Non-marital assets and liabilities include:

- Anything that you owned or were responsible for before marriage
- Anything that either of you received as a gift (not from your spouse) or by inheritance, at any time
- All income derived from non-marital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset
- Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties and anything you received after your separation

However, if you treated any type of this “separate property” as marital property, for example by placing money you inherited in a joint account with your spouse and using it to pay common household bills, it may lose its status as separate property and become marital property.

### **SPOUSAL SUPPORT:**

After making an equitable distribution of assets and liabilities, the court may grant spousal support, or alimony, to either spouse if it determines that such support is appropriate. Alimony may be rehabilitative (temporary payments to allow for education, retraining, etc.) or permanent in nature. Rehabilitative alimony is by far the more common type of alimony granted. Permanent alimony is disfavored and is generally granted only in cases where one spouse made substantial sacrifices for the benefit of a marriage of substantial duration, and who for that reason is unlikely to be able to successfully enter, or reenter, the workforce. The court may order support to be paid as periodic payments, payments in lump sum, or both. The "poorer" spouse may request temporary alimony during the pendency of the divorce until the final decree is issued.

The factors a court considers when determining whether, and how much, alimony is appropriate include:

- The assets and liabilities each party has been awarded in equitable distribution
- The standard of living that the parties enjoyed during the marriage
- The duration of the marriage
- The age and health of the parties
- The wealth of each of the parties
- The time necessary to enable a party to obtain education or training, or to find appropriate employment
- The contribution each party made to the marriage, whether by earning income or by taking care of the home and children

Lump sum alimony is generally not modifiable, although parties can provide otherwise. Periodic alimony, which is alimony that is paid over a period of time rather than as one lump sum, is always modifiable for "changed circumstances" (FS 61.14(1)). Examples include the paying spouse losing his or her job or incurring substantial medical expenses. Additionally, under certain circumstances, the recipient spouse may request the court to extend

rehabilitative alimony past the initial period awarded. Remember to ask the attorney representing you in the divorce action how you can request modification at a later time by yourself, in case you can't later afford to hire an attorney.

Periodic alimony, whether temporary or permanent, generally terminates when the divorce decree states, when the recipient spouse dies or remarries, or when the paying spouse dies. Remarriage in this context means that your ex-spouse has entered into a legal marriage with another person; it is not enough that your ex-spouse is in a relationship with, or even cohabitating with, a member of the opposite sex.

Under federal law, alimony cannot be discharged in bankruptcy unless the award was really a property settlement (11 U.S.C. 523(a)(5)). This issue usually comes up when the divorce judge assigns a marital debt to one of the parties and that party subsequently files for bankruptcy. If discharged, the ex-spouse would then be liable for the debt. Make sure you know what constitutes alimony and what constitutes property settlement.

Enforcement: In addition to other state remedies, if your ex-spouse fails to make your alimony payments, you can garnish your ex-spouse's wages, if the state you are in, such as Florida, authorizes garnishment. The Air Force will honor garnishment orders for alimony as long as the divorce decree clearly states the payments are meant for alimony and not property settlement. Service of process on the Air Force for active duty and retired must be made to: DFAS-CL/LG, P.O. Box 998002, Cleveland OH 44199-8002, (216) 522-5301.

### **EFFECT OF A DIVORCE ON OTHER BENEFITS AND ENTITLEMENTS:**

Survivor Benefit Plan (SBP): This is a voluntary program that provides a monthly income for the survivors of military retirees beginning when the retiree dies and retired pay stops. The member's retired pay is reduced by an amount, which buys a monthly annuity for a member's surviving beneficiary under the plan. Thus, if a former spouse was a beneficiary of the SBP before the divorce, that spouse may be reinstated as a former spouse if both parties agree in a statement signed by both and the statement is incorporated into the property settlement or divorce decree or the court orders that the former spouse be reinstated with the same coverage as before (P.L. 99- 661). The application for reinstatement of an ex-spouse as beneficiary must be made within one year of the date of divorce or one year from the date of retirement.

Health Care Coverage: If you have lost your military health care coverage or will lose it soon, the Continued Health Care Benefit Program (CHCBP) can protect you in the interim between military health benefits and civilian health care. CHCBP acts as a bridge between military health benefits and your new civilian health plan. CHCBP benefits are comparable to TRICARE Standard with the same benefits, providers and program rules. The main difference is that you pay premiums to participate. Additional information can be found on the TRICARE website at [www.tricare.mil](http://www.tricare.mil).

### **DOMESTIC VIOLENCE:**

You may go to court yourself for an injunction to protect yourself against assault, battery or sexual battery by your spouse (whether you are separated or not) or your former spouse. If you feel you are the victim of such domestic violence, you should contact the office of the clerk of the circuit court in your county for information and assistance.

### **CHILD CUSTODY:**

The court may award both spouses joint custody of the children of the marriage (also called shared parental responsibility), or it may award one spouse sole custody of those children (also called sole parental responsibility). When the court awards joint custody, both parents have full parental rights and responsibilities for their children, and parents normally jointly make major decisions affecting the welfare of the children. In this situation, one parent will be the primary residential parent, with whom the child regularly lives, but the other parent will still share in the parental role. This is the statutorily preferred method unless a court finds that this would be detrimental to the child. When the court awards sole custody to one parent, the responsibility for the minor children is given to that parent alone by the court. The other parent may be awarded visitation to the child. Generally, the court won't award sole custody to one parent unless it finds that joint custody would be detrimental to the children. A court can also award sole custody to a person who was physically abused by his or her former spouse.

Custody and residential decisions are made according to the “best interests of the child” standard. The factors a court considers when determining what is in the best interest of the child include:

- Which parent is likely to allow the children frequent and continuing contact with the other parent
- The love, affection, and other emotional ties existing between the children and each parent
- The devotion of each parent to the best interests of the children
- The ability and desire of each parent to provide financially for the child
- The stability of the proposed home
- The morals of each parent
- The health of each parent
- The reasonable preference of the children, if the court finds that they are mature enough to express such an opinion, and
- Any other relevant factor

The gender of either parent is not considered. Both the mother and the father are viewed as equally entitled to the physical and legal custody of their children.

If you are the non-custodial parent, meaning you have joint legal custody of your children but are not the primary residential parent, you should ensure that your divorce decree states the primary residential parent will provide you access to all medical, school, and religious records of your child. You can even stipulate you will get copies of all report cards. Remember, if you want something, put it in the divorce decree. You should also request to have the most current telephone number where you can contact your child at all times.

Additionally, a court may expressly permit or expressly prohibit or limit the right of a custodial parent to remove the child from the state. If the divorce decree is silent on this point, the custodian is free to take the child out of the state. If a parent takes a child out of the state to get another state court to issue a decree, the other state court generally will not hear the case. See the discussion below on jurisdiction.

### **JURISDICTION IN CHILD CUSTODY CASES:**

As have most states, Florida has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (FS 61.501-61.542). This means a Florida court will only hear a custody case if:

Florida is the home state of the child at the time of the suit or had been the child's home state within 6 months before this suit and the child is absent from Florida because another person claims custody and one parent still continues to live in Florida. This is designed to prevent parents from kidnapping their children to another state to avoid Florida making a custody determination;

It is in the best interest of the child that Florida assume jurisdiction because the child and at least one parent have significant connections with Florida, and substantial evidence concerning the child's present and future care and relationships is in Florida;

The child is physically present in Florida and the child has been abandoned or an emergency exists that concerns the child's welfare; or

No other state has or will assert jurisdiction and it is in the best interest of the child that Florida assumes jurisdiction.

Under the UCCJEA, a Florida court must not hear a case if, at the same time, a proceeding to determine the custody of the child is going on in a different state. An exception can be made if the other state stays its proceedings because it determines Florida is in the best position to hear the case (FS 61.514). Generally, this also applies to those other states which have adopted the UCCJEA.

For a Florida court to determine the custody rights of a minor child, the parent bringing suit must satisfy the requirements of the UCCJEA mentioned above. This generally means if you don't have custody of your child,

then to modify the award you may have to go to the state that has the contacts mentioned in the UCCJEA (*i.e.*, where the child lives).

Custody can be changed upon proving a substantial change in circumstances. Generally, remarriage of one or both of the parties is not, in itself, such a substantial change of conditions as will authorize a modification of a custody order. Also, the fact the non-custodial parent will have a higher standard of living is generally not enough to change custody.

### **VISITATION:**

This is an extremely important area which constantly causes a great deal of problems. Many individuals agree on "reasonable" visitation rights but later many problems come up which require the parties to go to court to resolve. We recommend you be as precise as possible and to consider all possible issues.

Unless both parties can agree to the visitation schedule, a judge will decide the issue. A common arrangement is to give the non-custodial parent visitation on every other weekend, alternate holidays, and six weeks in the summer.

You should agree on how travel expenses related to visitation will be arranged if one of you move out of the local area. These expenses can be considerable, especially if visitation will involve traveling on a commercial airline. It is best to resolve disputes related to who is responsible for these costs upfront, rather than having to go back to court to have the issue decided at a later time. To avoid any future legal problems, you should also request the right to take the children out of the state or country when they are to visit with you. You should also state you agree to return the children back to the custodial parent.

Another provision to consider placing in the divorce decree is that if you have the child for a certain period of time, you should not be required to pay child support to the other parent. In fact, you can ask a court that the other parent pay you child support during the period when you have physical custody of the child.

The custodial parent cannot deny the other parent visitation rights because that parent has failed to pay child support. Conversely, the non-custodial parent cannot stop paying child support because the custodial parent is denying him or her visitation rights. The only remedy available is for the parties to go to court. However, if a party has denied the other party the right of visitation or part-time custody, then the court, in its discretion, may refuse to require the other party to pay child support, and it may refuse to find the obligated party guilty of contempt for nonpayment of child support, providing that the children will not suffer thereby.

### **TAX CONSIDERATIONS:**

It is important to be aware of the various tax consequences that may arise due to a divorce. These issues include a change in filing status, the dependency deduction for children, the daycare deduction for children, the taxability and deductibility of child support and alimony, and the effects of property transfers. It is important to find out how these laws affect you before you get divorced and to include in your divorce decree any agreements regarding who will claim the children, what years the children will be claimed, etc. Afterwards, it may be too late to correct mistakes that have been made. This may require the services of an accountant in conjunction with your attorney.

### **POST DIVORCE CHECKLIST:**

Even after you and your spouse dissolve your marriage, certain rights and obligation persist. Please consult the attached post-divorce checklist to ensure you have taken the steps, and have the documentation you need, in order to protect your rights.

### **POST DIVORCE CHECKLIST:**

#### **a. Divorce Decree:**

- Do you have certified copies?
- Do you thoroughly understand what it says? Give it to a friend (or your attorney) and ask questions and see what they say.
- Do you know how and where you can modify child and spousal support and child custody? Do you know when and where you are to send payments?

**b. Transfer of Title:**

- Have you transferred car title? Title to land or home?
- Have you notified insurance companies? Mortgage companies? Tenants?

**c. Personal Property:**

- Do you know what property you are getting, how it will be delivered, who will bear the costs and liability for damage, and when it will be delivered to you?
- Have you transferred bank accounts, credit cards, securities, IRAs?

**d. Legal Documents**

- Have you updated the Will?
- Have you revoked, destroyed outstanding Powers of Attorney or Health Care Surrogates?
- Updated the beneficiaries on insurance policies? Eliminated former spouse or included former spouse and/or children per divorce decree?
- Notified proper authorities of change of name and status, e.g. driver's license, Social Security number, credit cards, bank accounts, etc.?
- Had IRS Form 8332 signed by spouse? Revised W-4? Collected the necessary documents for tax preparation? Seen an accountant before filing income tax? Do you have copies of joint returns to preceding year(s)?
- Notified creditors of change in obligation and tried to obtain releases of liability?
- Updated records; e.g. emergency notification cards, dependent I.D. cards and DEERS enrollment, and personnel records?

**e. Custody and Support:**

- Notified schools of custody arrangement?
- Requested school to provide noncustodial parent with school information concerning children?
- Maintained proof of child support payments made?