

Palm Beach County Divorce Handbook

What YOU Need to Know When Divorcing in Palm Beach County

COVERING THE FUNDAMENTALS OF:

- Parental Responsibility (Parental Decision-Making)
- Timesharing (formerly known as custody and visitation)
- Equitable Distribution (Property and Debt Distribution)
- Alimony
- Child Support
- Parental Relocation
- Attorneys Fees and Costs
- The Divorce Process from Start to Finish – including Mediation
- The Value of an Attorney Consultation

Forward by Damian J. Turco, Esq.
TURCO LEGAL - A Private Law Firm
Founder & Principal Attorney
(561)472-0919
TurcoLegal.com

Forward

Going through a divorce is almost never easy. And why would it be? The cards are stacked against you before you sit down with an attorney and learn about your rights and obligations. First, divorce is unavoidably a legal proceeding. It is a litigation which must be filed in circuit court and then somehow resolved. Even with the most cooperative of divorcing couples, there is the possibility something will go amiss prior to your final hearing.

As you are probably feeling, there are generally conflicting interests at play in a divorce. You want what you deserve, but you also want it over with. You want the kids (if you have any) to be minimally impacted by the process, but you don't want your spouse to get away with lies and deception. You don't want to spend a fortune on your attorney, but you don't want to make a costly mistake.

Parties generally consult with others to gain some assurance that they are doing the right thing. It is fair to say that some sounding boards are more helpful than others. Almost all are biased to you and will tend to take your side to strengthen your confidence during this challenging time. Even those who doubt your position are unlikely to voice their minds. And, of course, you have the friends and friends of friends, and hairdressers of friends of friends who have gone through a divorce in Florida and, accordingly, consider themselves experts of sorts on the topic.

We aren't talking about small issues here either. Even if there are no children, you are dealing with the issues of alimony, dividing up assets and debt, and attorneys fees. If you have minor children with your spouse, you have the added issues of where the children will reside, how decisions will be made, child support, and child relocation. I am admittedly a bit biased on this point, but my feeling is that when these are the issues and there are competent attorneys willing to provide you with a free consultation, you would be making a mistake to turn down the offer.

I have put this guide together for you, the Palm Beach County resident considering divorce. It is a clear and concise organization of the basics of divorce in the Palm Beaches. We cover the basics which will be applied to your case. **NOTHING** in this guide should be considered legal advice and no Attorney-Client relationship is created. There are simply too many variables which could make the basic rules not apply to your case in one way or another. If you would like to meet with me or one of our family law attorneys for **FREE**, just call the office at **(561)472-0919** and we will schedule a convenient time for you to meet in person or by phone.

Thank you for reading and best of luck.

Damian J Turco, Esq.

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1. Parental Responsibility (Decision-Making)

If you have minor children, you will need to deal with the issue of Parental Responsibility. That's what we call *decision-making* for the kids here in Florida. There are two types of decision-making covered under Parental Responsibility: Major Decision-Making and Day-to-Day Decision-Making.

Major decision-making deals with those decisions which a reasonable person would classify as of significant importance. There is no exhaustive list because there may be an issue in one case that is not major in another. Most commonly we are talking about medical, education, and religious decisions.

There are two main options to choose from, either by the parties or the judge. The first is Shared Parental Responsibility and the second is Sole Parental Responsibility. In cases with Shared Parental Responsibility the parties must confer with each other and make major decisions jointly. That is, by agreement. If you have a contentious relationship with your spouse, you may feel this isn't going to be possible and understandably so. After all, how are you to come to agreement over the most important things in your life when you can't stand hearing your spouse's voice? It is admittedly quite a predicament. There must be an alternative! There is, but it is unlikely to be ordered in your case without there being extraordinary circumstances. In fact, your Judge would have to find that ordering Shared Parental Responsibility would be a detriment to the child before ordering Sole Parental Responsibility. So, with an overwhelming majority, most cases end up with shared parental responsibility.

Day-to-Day Decisions are generally made by the parent physically with the child at the time of making the decision. 'What's for lunch,' 'bed times,' and 'what movie to watch' are all good examples. Emergency decisions would also be made by the parent physically with the child, but the parent making the decision would need to inform the other parent within a reasonable time.

2. Timesharing (Custody) including Relocation

In fashioning a timesharing order, the Judge must consider the factors under the timesharing statute. They are of the kind you would logically expect to apply in your case and include the age and developmental needs of the child, the parenting roles each parent has historically played, and the practicality of one timesharing plan over another.

Although there is no statutory guidance on weighing one factor more heavily than another, Courts tend to highly value the importance of meaningful contact between both parents and the children. In Palm Beach County, there are Model Plans which the Judges tend to rely upon. It's true that every case is different, but the fact is that recreating a parenting plan from scratch for each case would be cumbersome on the Court. Unless there is something really outside the norm, Judges can order a Model Plan without having to worry about being reversed by the 4th District Court of Appeal.

Here are links to the three Palm Beach County Model Plans. Most commonly, parents reside within 45 miles of each other, so that plan is the one used. The basic rotation is the parent with the lesser amount of time has overnights with the kids every Thursday and every other Friday, Saturday, and Sunday. Parenting plans are required in each case and generally cover all the basics of timesharing, including the schedule, how communication will work, how extracurricular activities are selected, and who does the driving.

Relocation with a child more than 50 miles from the other parent is a big deal in Florida - so much so that we have a dedicated statute on point. Under the statute, the only permissible means of relocating with the child is by written agreement or by court order. The request to relocate must be properly plead which means making mistakes in your petition may mean you are barred from relocating. When pursuing a court order, the court will consider a second set of factors in addition to those stated above.

3. Equitable Distribution (Dividing Assets & Debts)

Equitable distribution is Florida's methodology of dividing up assets and liabilities in a divorce. The thrust behind it is that it allows the court some discretion in determining a fair result, remembering that "equitable" and not necessarily mean there will be an "equal" division.

The court's first step is to determine what is marital and what is non-marital. Marital assets and debts are divisible by the court, non-marital assets are not. Generally, assets and debts of one party before the marriage are non-marital. Non-interspousal gifts, which are gifts from someone other than your spouse are non-marital as well. Assets or debts accumulated during the marriage are generally marital. That includes everything you earn from your employment during the marriage and anything purchased with those earnings. It also includes any retirement accrued during the marriage.

Certain actions can make non-marital assets and debt marital. This is generally done by mistake. The problem is that when it comes time for the divorce, only one spouse takes the position that it was a mistake. The typical scenario is that the a spouse deeds the other onto a non-marital piece of real estate. The result? A legal presumption that it was an inter spousal gift and marital.

Once we determine the marital property, we divide it up. Courts usually go right down the middle, but certain factors may justify an unequal distribution, such as dissipation of assets or the commission of marital waste. These are often more complex legal arguments and may require the assistance of a financial expert, such as a forensic accountant.

There is a plethora of case law on equitable distribution, defining what is to happen to almost any type of asset. Speaking with a competent attorney is highly recommended.

4. Alimony

There are six types of alimony available in Florida and judge has relatively broad discretion to determine the most appropriate type. Whether you have an alimony entitle net or liability is a question which requires discussion and further analysis. If, after reviewing the further explanation below, feel alimony is an issue in your case, please call our office to speak with an attorney.

Permanent Periodic - This is the type of alimony that goes, essentially, forever. That is, it is paid until one of the parties dies, the recipient remarries or cohabitates, or there is a substantial, unanticipated, permanent change of circumstances which would support a termination of alimony. Although there are several factors considered by the court, the main factors are the length of the marriage, the Payor spouse's ability to pay and the Payee spouse's need.

Durational Alimony - This type of alimony is alimony for a period of years not to exceed the length of the marriage. It is appropriate when permanent periodic alimony is not and is most commonly ordered in moderate term marriages, those 7 to 17 years.

Rehabilitative Alimony - This type of alimony is to fund a plan formulated to give a spouse the earning potential he or she had prior to getting married. The rehabilitative plan generally consists of additional schooling or training.

Bridge-the-Gap Alimony - This type is also referred to as "move out money" and is typically for a short duration, no longer than two years by statute, aimed at getting on back on their feet.

Nominal Alimony - This is alimony of a dollar a year or a dollar a month to simply keep the door open for future modification potential.

Lump Sum Alimony - This is a, generally large, payment in lieu of periodic payments.

5. Child Support

Child support in Florida is based on rates established by the legislature based on a calculation including several key factors. Those factors are:

1. The number of minor children;
2. The timesharing schedule, particularly the number of overnights each parent has;
3. The income and allowable deductions each party has;
4. The cost of the child(ren)'s health insurance and who pays it; and
5. The cost of employment related child care and who pays it.

These factors are included in the calculation and a basic obligation is calculated. The parties may agree or the court may order support within 5% of the guidelines figure without making any additional findings. Deviation further than that requires findings of fact supporting a legal basis for the deviation. This is important because parties sometimes agree to less than the guidelines figure, which is generally not allowed. The policy behind it is that the support is that of the child, not the other party. So, Meijer party has grounds to agree to less.

There are extraordinary circumstances which sometimes support a deviation outside the guidelines and sometimes beyond the age of emancipation of the child. These cases require additional analysis and include those with children with special needs, income from other sources, and those where the parties agree to spend money outside of support which still benefits the child.

6. Attorney's Fees (How Much and Who Pays Them)

With the many important issues presented in a divorce case, proceeding without a competent attorney can be a costly mistake. You are either dealing with issues regarding your children's welfare, major financial issues which could cost you a fortune if gotten wrong, or both. Although some attorneys provide free initial consultations like our office, attorneys generally require reasonable compensation. Most family law attorneys in Palm Beach County bill require an initial retainer deposit and the bill on an hourly basis between \$175 and \$600 an hour.

So who pays the fees? Either you or the other party or both. Florida Statute 61.16 provides that a party with a need may be entitled to an award of attorneys fees when the other party has the ability to pay. It is important to note that the analysis is done AFTER the issues of equitable distribution and support have been determined. However, it is also notable that attorneys fees can be awarded on a temporary basis before the case is over, with the court reserving the right to adjust the figure at trial.

Except in cases where there is an extreme disparity of financial resources between the parties and the other spouse has tremendous income or assets, you should plan on having to pay an initial retainer of between \$2,500 and \$10,000 depending on case complexity. Many firms, including ours, accept credit cards amongst other forms of payment.

If you have researched attorneys fees, you may have come across the issue of "Rosen." Rosen was a case which established that vexatious litigation, meaning litigation aimed at making the process needlessly costly, can result in the award of fees as a sanction. You may also have stumbled upon 57.105 fees, fees ordered as a sanction for making frivolous claims or defenses.

7. The Process

I can't tell you that the process of divorce is enjoyable, but I can tell you it is a process. There is a beginning and an end. We start with a petition and end with a final judgment. The process begins for you before walking in our office. First, you really need to have come to the conclusion that your marriage is over. You should consider the issue long and hard, envisioning life with and without your family unit as it now stands. Seek the counsel of a qualified family therapist, either separately, together, or both. I realize all this requires cooperation with someone who has likely not shown much of this trait lately. All I can say is it is worth a shot if you feel the relationship is salvageable. It is a different story if there have been chronic fidelity issues, substance abuse issues, or your spouse is simply unwilling to work on the relationship. It is definitely a different story if you are in and abusive relationship; physical, mental, or verbal.

If you are ready to proceed, the first step is a consultation with the attorney to answer your questions and to gather the information necessary to draft your pleadings. From there, you receive a homework assignment of gathering your financial disclosure documents and we get to work on drafting your petition and supporting documents. We then review the petition, you sign, and we file and serve it on your spouse. Your spouse then has 20 days to file a response and you each have 45 days to exchange basic financial disclosure. We facilitate the exchange, answer a counter petition (if your spouse files one), and determine if any additional discovery is needed before we go to mediation. When we have the information we need, we coordinate and represent you at mediation.

Most cases settle and most of those settle at mediation. If, by chance, you don't settle at mediation, we will push on to trial, perhaps setting a hearing for temporary relief in the meantime. If you settle the case, you will enter into a formal, written marital settlement agreement. If not, the case will be resolved at trial. Some cases are resolved in a few weeks and some take years. Most take six months to a year, but the duration rides on several factors, including the complexity of your case.

8. Attorney Consultation

If you are contemplating divorce, do yourself a favor and schedule an attorney consultation. There are many competent attorneys (including me) who offer free consultations with no obligation whatsoever. Whether with our office or another attorney actively practicing family law, not getting educated is like going to a gun fight with a knife. You simply don't have the legal education and experience to know your way through this process. You don't know the rules of evidence and you don't know the statutes, family law rules, administrative orders or local rules. Because you don't know this crucial information, you would be left to speculate as to what to argue to the court. Because when the parties are unrepresented, the last place they tend to want to go is a courtroom, the spouse with the majority of the money typically makes a ridiculous settlement proposal to the other spouse. The other spouse then has no idea whether the offer made is good or awful.

Although you can research the basics of divorce, there are many factors involved in these cases, and likely in your case, which throw off the typical result. Mistakes can be costly, even when you don't feel there is much at stake. A child support amount, for example, off by just \$200 a month, results in an overpayment or underpayment of \$43,200 over 18 years. Take the time. Treat your divorce with the seriousness it merits. Understand the implications of a mistake, not just for you but for your children. Make the time to speak with an attorney. You will be happy you did.

Schedule a consultation with our office by calling (561)472-0919.

OR

[CLICK TO REQUEST A FREE CONSULTATION](#)