



# Family Law Issues

Things You Don't Think About & Things  
You Shouldn't Overlook

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Paddling the waters of family law can be done in a canoe across a smooth lake. It can also be done in a kayak through screaming rapids. This largely depends on you: on your planning, diligence and thoroughness. Of course, it also depends on facts and clients. We can't help with the latter. But this article is aimed at helping you with the former. Let's navigate, avoiding the rapids, planning for the chutes, and bring your vessel calmly to shore.

We all get busy. Too busy, in fact. As a result, there are issues that seem to get left out. Don't overlook them. Here's a few and here's how:

**a. *What is the valuation date? What about post-agreement gains/losses?***

When negotiating a division of marital assets, the valuation date of market-sensitive investments must be established. Nothing new there. However, don't specify a valuation date in the *Property Settlement Agreement* and – sometime later – watch the sparks fly! Whether the bulls run or the bears sit, someone is left claiming the gain, or lamenting the loss. This latent headache is easily avoided, though. Consider language such as:

The parties jointly own and hold interest in the ABC stock fund. Each shall be entitled to one-half of the investments contained therein, as valued on December 31, 2003, together with gains and/or losses since that time. The parties agree to transfer from account numbered 5F90-123-229, as soon as institutionally feasible, an amount equal to one-half of the balance on the date of transfer, into Wife's separate account. Thereafter, the resultant amount held in account numbered 5F90-123-229 shall remain Husband's sole and separate property.

The Husband owns a certain investment account held at ABC Brokerage, numbered as: JK50532-3C, which account is wholly composed of marital assets. Wife shall receive from this investment account the sum of \$59,313.00, as of March 15, 2003, exclusive of any interest, gains or losses.

Don't simply use general language now in hopes of avoiding a controversy now. The key is use clear language to precisely set out what the parties agree.

**b. *Who should prepare quitclaim deeds? Who should sign them? Who should file them?***

Admit it, by the time you get to the end of negotiations everyone is worn out. You've signed the agreement, entered the judgement and everybody is exhausted. But wait. Who will do the honors of transferring title to the home? To avoid a selfish "you do

it", and to keep from the maddening chase of trying to get the "other side" to do what is likely an unpaid afterthought piece of mindless legal work, put language in the *Property Settlement Agreement* such as:

Judy shall have exclusive use and possession of the marital home, and shall be solely responsible for all expenses associated with it, including mortgage debt service, utilities, taxes, insurance and maintenance. Within ten days of the entry of a Final Judgment of Divorce in this cause, Judy's counsel shall prepare and present to Bob (or his counsel) for his immediate execution a quitclaim deed transferring his interests in this property to Judy.

Next, consider the possibility of future chain of title problems, and do a bit of pre-emptive legal fix-it work. If both parties are title-holders, then designate both as grantors of the quitclaim deed, conveying title to the sole grantee.

Finally, the grantee's lawyer should be ultimately responsible for filing the deed of record to ensure his or her client's clear title in the property. Don't let this step slide, or you'll hear about it in a frantic rush once your now-furious client gets ready to refinance or sell.

**c. *Is the cost of summer camp part of "child support"?***

The simple answer to this question in a litigated setting is probably "no". Of course, this depends on the equities of the case and, not surprisingly, the terms of your client's property settlement agreement. When negotiating child support, don't stop with consideration of the statutory guidelines. Don't rest after allocating insurance premiums. What about soccer shoes? Who pays for the meal plans and uniforms at private school? If they are not listed and allocated, chances are a request for reimbursement will be met with a huffy "that's what child support is for!" And that would be the correct response.

Take time to talk with your client about what activities the children will expect and enjoy. A few quick questions will get you on your way: What have the children done in the past? What did they do last summer? What did the swim lessons cost? Is she a talented violinist? Will he need a tutor?

While we're at it, what about college? Review *Saliba v. Saliba*, 753 So.2d 1095 (Miss. 2000) and consider this: *Educations*.

The parties agree to share the reasonable expenses associated with each child's college and/or post graduate educations, including tuition, room and board, so long as the child is making reasonable progress toward an articulated degree. The parties acknowledge and agree that responsibility for such expenses will extend past each child's age

*Continued on next page*

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of majority, but in no case past the age of 23 for each child. Such expenses shall be shared on a two-thirds / one-third basis, with Sandra assuming the larger share of the educational expenses attributable to the children, and Bob assuming the smaller share. Such payments by each of the parties shall be made directly to the educational institution, when appropriate.

Have the parties considered who would pay for the wedding? Try this:

*Weddings.* The parties agree to share the reasonable and traditional expenses associated with each child's first wedding. The parties acknowledge and agree that responsibility for such expenses will extend past each child's age of majority, but in no case past the age of 30 for each child. Such expenses shall be shared on a two-thirds / one-third basis, with Daniel assuming the larger share of the wedding expenses attributable to the children, and Mary assuming the smaller share.

Similar treatment can be given to anticipated *bar mitzvahs* and *bat mitzvahs*.

*d. Do you need to ask delicately about remarriage? Should you be negotiating for Lump Sum Alimony instead?*

*"What do you think about getting remarried sometime in the future?"*

Is this a compliment to a divorcing woman? Will she be offended? Flattered? Overwhelmed? Depressed? What if the prospective support recipient is a man? Will *he* be offended?

If asked at the right time, under the right circumstances, and using delicately-chosen words, you may save the day for your client. We all are quick to mention alimony and the standard by which the courts decide availability and amounts. But are we clear on this point?: "If you remarry, periodic alimony goes away." So, while the topic may be uncomfortable now, and might evoke emotions ranging from anger to apathy, we need to ask: "what about remarriage?".

Explain to your client why you are asking. Tell her that lump sum alimony will continue even past her next wedding date. This would be particularly important for young clients who will likely remarry. If there is a particular reason why a client would not remarry, permanent, periodic and modifiable alimony might be the route for him or her to take.

Mention remarriage of the wife to your male clients, too. If nothing else, it's a source of discussion, a point of education and one more piece of information we can use when negotiating sound and tailored settlements.

*e. Deciding what is "reasonable" telephone contact between parents and children.*


With the virtual omnipresence of cellular telephones, this may be a battleground. Do you think there will be conflict over how many phone calls come to the custodial home? Does your client worry about being able to reach the child when she's visiting in the non-custodial home? If so, spell it out. Establish time durations, number-per-week frequencies, and set a particular time the child is to be available to talk. The details are endless, and reasonableness should reign. Ask your client what is appropriate and consider the age of the child.

The popularity and availability of e-mail may also pose a problem. Again, ask your client. If a potential problem lurks, it's better to spell it out now, than deal with a modification action later.

*f. Do you think everybody agrees on what a "holiday" is?*

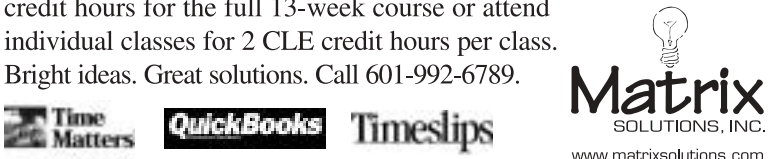
We don't. So we list them, depending on what our client desires and whether our client is going to be the custodial parent. A custodial parent might be able to tolerate a more vague treatment of "holidays", where a non-custodial parent, anxious for as much time as possible with the children, will want to be explicit. Consider these:

1. New Year's Day;
2. Dr. Martin Luther King, Jr.'s Birthday;
3. President's Day;
4. Mardi Gras (particularly on the Gulf Coast);
5. Spring Break;
6. Good Friday / Easter Sunday;
7. Memorial Day;
8. Independence Day;
9. Labor Day;
10. Rosh Hashanah;
11. Fall Break;
12. Thanksgiving;
13. Winter Break / other school holiday;
14. Christmas holidays;
15. Hanukkah; and/or
16. Kwanzaa.



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In addition, provision may be made for birthdays of parents and children as well as Mother's Day and Father's Day. Of course, we left some out! You should ask your client what is – and has been – important in his or her family.

What about funerals and weddings that fall outside custody periods? People do not usually marry or die at times convenient to divorced parents. Believe it or not, some people actually give their ex-spouses a lot of grief about taking their children to family weddings, funerals, baptisms and/or *bar mitzvahs*. Try this language:

Notwithstanding the other provisions of this *Agreement*, Steve and Molly shall cooperate so that either may have the children on a reasonable basis for family weddings, funerals and dates of celebration or commemoration, involving the parties' immediate family members.

**g. How do you deal with undisclosed assets?**

One of the most common fears of the non-monied spouse is that his or her spouse has failed to disclose all assets, either on the familiar Rule 8.05 Financial Statement, through discovery, or otherwise.

In some cases not even the FBI, CIA and IRS combined can locate marital assets hidden by a dishonest spouse. At some point, the lawyer and "deprived" spouse must simply make a decision to end the search and deal with the known assets.

But don't waive your client's claims. Every agreement should include representation by each spouse that all assets have been disclosed. Add the following language to deal with the prospect of undisclosed assets:

In the future, if any marital asset, or combination of marital assets, is discovered with a total value of at least \$1,000, which asset or assets were not disclosed in a par-

ties' Financial Disclosure Form submitted pursuant to Uniform Chancery Court Rule 8.05, or through other means prior to the execution of this *Agreement*, such asset or assets shall be divided equally between the parties in kind or otherwise depending on the nature of the asset or assets. The release provision of this *Agreement* shall not apply to such discovered assets.

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**h. Don't forget the tax exemption!**

For 2003, the Internal Revenue Code allows an exemption of \$3,050 for each dependent child. There is also a state exemption of \$1,500 per child. It is amaz-

ing, however, how many judges and lawyers neglect to allocate the exemption.

This needs to be negotiated. The exemption can be allocated all to one spouse, split, or alternated from year to year. Remember, however, the exemption begins to phase out for tax year 2003 and beyond, when a single taxpayer has an annual adjusted gross income of \$139,500 and is totally phased out when AGI exceeds \$262,000 for single filers.

Don't waste the exemption to a father who makes \$250,000 when the mother makes \$100,000 and can use it. The following language will help:

State and Federal tax exemptions for the minor children shall be allocated to Bud, but only to the extent all or any portion of such exemptions are available to Bud in light of his annual income. If state and/or Federal laws relating to a taxpayer's income render such exemption totally unavailable to Bud in a particular tax year, Ann shall be entitled to utilize the exemption for such tax year.

These are but a few things to keep in mind when negotiating a compromise your client can be comfortable with. Each is endlessly variable, and some may give rise to something else that needs to be addressed. Ultimately, however, your client will be glad he or she chose your canoe! ■



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