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Family life in the 21st century is in a state of transition.

Family life in the 21st century is in a state of transition. There are many more creative options for relationships than the nuclear family of the 1950s, where a man and a woman generally married young, stayed together a lifetime and had two children. The word "family" now includes multiple marriages, divorces, controlled and/or permanent separations, domestic partnerships, single parenthood and reconciliations. There are also more families with two mommies or two daddies.

More and more, the social and financial terms of these relationships are being defined in pre-nuptial, post-nuptial and/or parenting agreements. Such agreements cover a variety of circumstances from biological birth in a heterosexual marriage, to adoption, unmarried lovers, step-parents, artificial insemination, donors, surrogate parenting and the freezing of eggs and embryos. We can help with these issues as well as with guardian, custody and parental access agreements concerning grandchildren, foster children, extended family members and children of other people.

The modern family lawyer is a creative anthropologist as well as a legal, financial and psychological expert to guide,

Divorce in Hard Economic Times

Unemployment, loss of income and difficulties re-entering the workforce are some of the major issues causing economic and social change in American families today. The economic crisis has affected many aspects of family and matrimonial law. When considering a divorce, it is important to carefully consider your options and think about you and your spouse's financial situation in its entirety. Some of the issues to consider include support and maintenance, bankruptcy, the transfer of assets and salary bonuses.

Modification of Child and Spousal Support

Given the economic times, many people are seeking to modify their support obligations to their children, spouses and former partners. Downward modification applications have increased. Upward modification requests are also being made when support has not been modified for some time, or when there has been a loss of income for the recipient of support.

Modification is not automatic. The law makes it difficult to modify arrears in maintenance and almost impossible to modify child support arrears. It is therefore critical that if you lose your job or if your income is reduced, that you make an application for modification immediately. Documentation is necessary to show loss of income, unemployment, and good-faith attempts at replacing income.

To modify a court's order of maintenance, one must show that he or she is unable to be self-supporting, that there is a substantial change in circumstances, or that child support has ended, leaving the spouse with less income. For example, the courts have ruled that a spouse's forced retirement (due to a leveraged buy-out of his employer) constituted a substantial change in circumstances warranting a downward modification of maintenance.

In most cases where there is a separation agreement, maintenance may only be modified upon a showing of extreme hardship.

Bankruptcy

If your spouse files for bankruptcy, don't ignore it; you may need to file with the bankruptcy court to protect your rights to assets, maintenance, and child support. It is also important that you or your attorney review the petition for bankruptcy and all schedules included with the petition. Bankruptcy affects all debts, whether they are included in the petition or not.

In Bankruptcy Court, claims for child support are given the highest priority. Child support and maintenance are never dischargeable; these are obligations that the court will always require the debtor to pay. On the other hand, property division may or may not be dischargeable, depending on the type of bankruptcy action.

The filing of a petition in bankruptcy does not stop family law actions for paternity, domestic support, child custody,

protect and facilitate changing family units. You should not wait until there is a crisis before having a consultation. Our firm can help improve or make the transitions you need and want as smooth as possible.



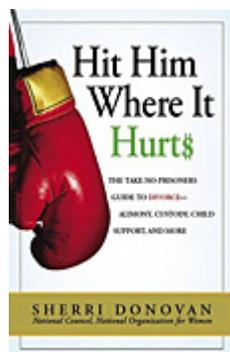
Upcoming Issues

We'll address important issues in the field of matrimonial and family law. In future newsletters, we'll cover such topics as Hopping Borders: International Custody and Divorce; Same Sex Legal Issues; and Domestic Violence - New Trends, Old Problems.

About Our Firm

Sherri Donovan & Associates, P.C. is a law firm with experience in all areas of matrimonial and family law. Founded in 1988, the firm has over 20 years of experience working with judges in the Manhattan, Brooklyn, Westchester, Queens, Bronx, Staten Island and Nassau County court systems. The firm works on matters involving complex litigation and valuations, as well as negotiating many amicable out-of-court agreements. For more information on the firm and important information that you should know when considering divorce, visit our website:

www.sherridonovan.com.



visitation or domestic violence. While it also does not interfere with an action for the dissolution of marriage, the division of property may be held off until the bankruptcy is settled.

Transferring Assets During Divorce

If you are thinking about getting divorced, you should know about a new requirement. The papers filed for divorce must now include an automatic order which prohibits both parties from transferring funds except for the usual course of business, for customary and usual household expenses, or for paying reasonable legal fees in connection with the divorce action. This order is binding on both parties until the divorce is finalized.

For example, under such an automatic order you would not be able to take funds out of a retirement account, take a further loan against the family residence or unreasonably use credit cards (including cash advances), unless you can show that it was done in the usual course of business, for typical household expenses or for reasonable attorney fees.

In addition, neither party can remove the other spouse or the children of the marriage from any existing medical, hospital or dental insurance coverage and this coverage must be maintained in full force and effect. The beneficiaries of any existing life insurance policy cannot be changed and each party must also maintain all existing life, automobile, homeowner's and renter's insurance in full force and effect.

Salary Bonuses & Capital Gains

Traditionally, bonuses and capital gains were included as income. However, since salary and bonus structures have changed dramatically since the financial crisis, there are a number of compensation issues to consider during divorce.

For instance, bonuses may now be considered as additional income or as an asset, depending on the circumstances. A bonus is considered income if there is a prior history of receiving bonuses; it is considered an asset if the bonus is non-recurring or fluctuates drastically. Once considered an asset, the money is subject to property division during the divorce. If the funds have been used, you are required to show it was spent on reasonable expenses for the family, and that there was no other income from which to pay the bills. If this is not the situation, the bonus may be counted as an asset and subject to property division.

A one-time cash-in of capital gains is also subject to property division in a divorce. If the capital gains have been recurring, they may be considered income. When investigating and disclosing assets and income in a divorce, remember in these economic times to look for and include severance packages and stock buy-outs.

About Sherri Donovan

Sherri Donovan, a top attorney, author and speaker, is the divorce clinic specialist for the Service Fund of the National Organization for Women (NOW), in New York City. She is the author of *Hit Him Where it Hurts*, the take-no-prisoners guide to divorce, alimony, custody and child support. A graduate of Bennington College and a cum laude graduate of New York Law School, she also spent a year abroad at the London School of Economics. Donovan frequently lectures about divorce for audiences as diverse as the United Nations, the New York County Lawyers Association, CBS News and MSNBC.

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