

Route to:     \_\_\_\_\_     \_\_\_\_\_     \_\_\_\_\_     \_\_\_\_\_  
                   \_\_\_\_\_     \_\_\_\_\_     \_\_\_\_\_     \_\_\_\_\_

# Florida Family Law Practice Manual

Publication 80643    Release 61    December 2008

## HIGHLIGHTS

### 2008 Legislation

- Shared Parental Responsibility
- Equitable Distribution

### Florida Family Law Rule and Forms Revised

- Equitable Distribution
- Military Parent on Active Duty—Temporary Modification of Parental Timesharing

### Recent Cases

- **Florida Supreme Court:** Client cannot validly waive his or her homestead exemption in retainer contract [*Chames v. Demayo*].
- **Florida District Courts of Appeal:** Fourth District disagrees with Second District regarding whether economic support is essential to finding “supportive relationship” between alimony-obligee and his or her cohabitant under Florida Statutes Section 61.14(1)(b) [*Linstroth v. Dorgan*].

## 2008 Legislation

**Shared Parental Responsibility.** This release contains a “*Special Alert*” concerning important parenting legislation that took effect October 1, 2008 [*see* 2008 Fla. Laws, ch. 2008-61, § 40 (effective date); *see also* Vol. 1, ch. 8, *Custody of Minor Children*]. In addition, this release contains the full text of the numerous statutory amendments that constitute the 2008 legislation [*see* Vol. 3, *Statutes*]. Pursuant to the most significant amendments, the rights and duties of parents who share parental responsibility must be governed by a written parenting plan that sets forth statutorily prescribed information regarding (1) jurisdiction; (2) time-sharing; (3) daily tasks associated with raising the child; (4) decisionmaking about health, school, and other matters; and (5) methods and technologies for communicating with the child [*see* 2008 Fla. Laws, ch. 2008-61, § 8 (amending § 61.13(2), Fla. Stat.)]. In establishing or modifying a parenting plan, a trial court

will be required to consider factors that are set forth by the 2008 legislation. Those factors will largely replace the factors that are currently applied in determining shared parental responsibility arrangements [see 2008 Fla. Laws, ch. 2008-61, § 8, amending § 61.13(3), Fla. Stat.]. In addition to mandating written parenting plans, the 2008 legislation effectively eliminates the presumption against rotating custody by providing that trial courts must approve time-sharing agreements developed by parents [see 2008 Fla. Laws, ch. 2008-61, § 2, creating § 61.046(22), Fla. Stat.]. Finally, the 2008 legislation contains notable deletions of, and changes in, statutory terminology. First, the terms “custodial parent,” “primary residential parent,” and “noncustodial parent” have been eliminated. Second, the term “timesharing” has been substituted for the terms “custody,” “primary residential custody,” and “visitation” [see 2008 Fla. Laws, ch. 2008-61 (changes made throughout Florida Statutes Chapter 61 and related statutes)].

**Equitable Distribution.** Effective July 1, 2008, Florida’s equitable distribution statute was amended in four significant respects. First, interim partial equitable distribution is allowed in some circumstances. Second, special equity is abolished. Third, a statutory presumption has been enacted under which personal property held by spouses as tenants by the entireties is a marital asset. Fourth, the burden of proof to overcome the gift presumption as to real or personal property is clear and convincing evidence [see 2008 Fla. Laws, ch. 2008-46, § 1, amending § 61.075, Fla. Stat.; see also 2008 Fla. Laws, ch. 2008-46, § 3 (effective date)]. This release discusses the 2008 equitable distribution amendments in Chapter 10B, *Equitable Distribution of Marital Assets*. In addition, the discussion about special equity in Chapter 10A has

been transferred to Chapter 10B for reference until the impact of the new statute is more fully developed in case law. The title of Chapter 10A has been changed from “Awards of Specific Property Interests and Special Equities” to “Awards of Specific Property Interests.” Finally, the full text of the 2008 equitable distribution amendments is set forth in Volume 3, *Statutes*.

## **Florida Family Law Rule and Forms Revised**

**I. Equitable Distribution.** The Florida Supreme Court has approved amendments to a family law rule and two family law forms to reflect the 2008 legislation that eliminates special equity claims [see 2008 Fla. Laws, ch. 2008-46, §§ 1, 3]. The new law requires, and the rule and forms now reflect, that all such claims be asserted as claims for unequal distribution of marital property, claims of enhancement in the value of nonmarital property, or claims of appreciation in the value of nonmarital property [see 2008 Fla. Laws, ch. 2008-46, § 1, adding new § 61.075(11), Fla. Stat.].

**Florida Family Law Rule of Procedure 12.285(d).** Florida Family Law Rule of Procedure 12.285 requires a party to serve certain documents as part of any initial or supplemental request for permanent financial relief. Previously, among the documents required to be served by Rule 12.285(d) were “[all documents and tangible evidence supporting the producing party’s claim of special equity or nonmarital status of an asset or debt . . .]” [see former Fla. Fam. L. R. P. 12.285(d)(15)]. As revised, Rule 12.285(d) does not refer to documenting special equity claims. Instead, it requires service of “[all documents and tangible evidence supporting the producing party’s claim that an asset or liability is nonmarital, for enhancement or appreciation of nonmarital property, or for an unequal distribution of marital prop-

erty . . .” [see In re: Amendments to the Fla. Family Rules of Procedure, 2008 Fla. LEXIS 1233, 33 Fla. L. Weekly S559, \_\_\_ So. 2d \_\_\_ (Fla. Jul. 10, 2008) (citing Fla. Fam. L. R. P. 12.285(d)(15)); see also Vol. 3, *Florida Family Law Rules Of Procedure*].

**Standard Family Law Interrogatories for Original or Enforcement Proceedings [Fla. Fam. L. R. P. Form 12.930(b)] & Certificate of Compliance With Mandatory Disclosure [Fla. Fam. L. R. P. Form 12.932].** The Florida Supreme Court also approved revisions to two family law forms to reflect the 2008 special equity legislation. Specifically, the Court approved amendments to (1) Florida Family Law Rules of Procedure Form 12.930(b), “Standard Family Law Interrogatories for Original or Enforcement Proceedings”; and (2) Florida Family Law Rules of Procedure Form 12.932, “Certificate of Compliance with Mandatory Disclosure.” In both forms, references to special equity claims are deleted and in their places are references to claims of enhancement or appreciation of nonmarital property, and claims for unequal distribution of marital property [see In re: Amendments to the Fla. Family Rules of Procedure, 2008 Fla. LEXIS 1233, 33 Fla. L. Weekly S559, \_\_\_ So. 2d \_\_\_ (Fla. Jul. 10, 2008); see also Vol. 4, *Family Law Forms*].

**II. Military Parent on Active Duty—Temporary Modification of Parental Timesharing.** The Florida Supreme Court has withdrawn Florida Supreme Court Approved Family Law Form 12.905(d), which it had earlier adopted to reflect a statute that allows only temporary modification of timesharing if a military parent is activated, deployed, or temporarily assigned to military service [see Fla. Stat. § 61.13002]. In place of the withdrawn form, the Supreme Court has ap-

proved revisions to Florida Supreme Court Approved Family Law Form 12.905(a), “Supplemental Petition to Modify Custody or Visitation and Other Relief,” which is the standard petition for modification of timesharing [see 2008 Fla. Laws, ch. 2008-61 (changing term “custody” to “timesharing” throughout Florida Statutes Chapter 61)]. As revised, Form 12.905(a) contains a certified statement by the petitioner regarding whether the respondent-parent is or is not currently activated, deployed, or temporarily assigned to military service [see In re Amendments to the Fla. Family Law Rules of Procedure, 981 So. 2d 1189 (Fla. 2008); see also Vol. 4, *Family Law Forms*].

### **Other Amendments to Rules of Procedure**

Under a new provision approved by the Supreme Court for addition to the Rules Regulating the Florida Bar, an agreement between an attorney and his or her client that mandates arbitration of fee disputes is improper unless (1) the attorney advises the client to consider obtaining independent legal advice concerning whether a mandatory arbitration agreement is advisable, and (2) the agreement contains boldfaced language prescribed by rule [see R. Reg. Fla. Bar 4-1.5(i); see also ch. 17, *Attorney’s Fees*].

### **Recent Cases**

#### ***Florida Supreme Court***

Client Cannot Validly Waive Homestead Exemption in Retainer Contract [see *Chames v. Demayo*, 972 So. 2d 850 (Fla. 2007); see also ch. 17, *Attorney’s Fees*].

#### ***District Courts of Appeal***

• **Modification of Alimony Based on Cohabitation**—This release covers a 2008 Fourth District case, *Linstroth v. Dorgan* [2008 Fla. App. LEXIS 8434, 33 Fla. L.

Weekly D1520, \_\_\_ So. 2d \_\_\_ (Fla. 4th DCA June 11, 2008)], in which the Court disagreed with the Second District regarding whether economic support is essential to finding a “supportive relationship” that will allow alimony to be reduced or terminated under Florida Statutes Section 61.14(1)(b). The Fourth District held that a relationship between an alimony-obligee and his or her cohabitant must be the economic equivalent of a marriage to qualify as a statutory “supportive relationship” that will allow a reduction in, or termination of, alimony [see *Linstroth v. Dorgan*, 2008 Fla. App. LEXIS 8434, 33 Fla. L. Weekly D1520, \_\_\_ So. 2d \_\_\_ (Fla. 4th DCA June 11, 2008); see also § 61.14(1)(b)1., Fla. Stat.]. In so holding, the court disagreed with the Second District, which has held that economic impact is only one factor to consider in determining whether a supportive relationship exists as contemplated by the statute [see *Buxton v. Buxton*, 963 So. 2d 950 (Fla. 2d DCA 2005); see also ch. 15, *Modification*].

- **Modification of Child Support**—A petition for child support may be brought after the child attains his or her majority pursuant to Florida Statutes Section 61.30(17), which allows an award of child support retroactive to the date when the parents did not reside together in the same household with the child, not to exceed a period of 24 months preceding the filing of the petition [see *Campagna v. Cope*, 971 So. 2d 243 (Fla. 2d DCA 2008); see also ch. 9, *Child Support*].

- **Party Requesting Alimony Has Burden to Show Lack of Income**—In a decision that may conflict with decisions by the Fifth District Court of Appeal on the same issue, the Second District Court of Appeal has held that a spouse who is requesting alimony has the burden to prove that he or she is unable to work and is not voluntarily

unemployed if the other spouse requests that income be imputed to the requesting spouse on the basis he or she could be employed [see *Esaw v. Esaw*, 965 So. 2d 1261, 1267 (Fla. 2d DCA 2007) (noting possible conflict with, e.g., *Andrews v. Andrews* [867 So. 2d 476, 478 n.2 (Fla. 5th DCA 2004) (party asserting that spouse is voluntarily unemployed or underemployed has burden of proof); see also ch. 10, *Spousal Support*].

- **Reversal Based on Lack of Statutory Findings**—The discussion about lack of findings in Chapter 13, *Dissolution Trial/Final Judgment*, has been expanded in several respects. Included in the expansion is coverage concerning a conflict among the district courts of appeal as to whether a lack of findings required by the alimony or equitable distribution statutes is automatically fatal to a trial court’s order. In the First and Second Districts, a lack of findings required by Florida Statutes Sections 61.08 (alimony) and 61.075 (equitable distribution) is subject to a harmless-error analysis. Further, if there is no transcript or suitable substitute, harmless error cannot be determined and reversal is therefore generally not warranted [see *Esaw v. Esaw*, 965 So. 2d 1261 (Fla. 2d DCA 2007); *Klette v. Klette*, 785 So. 2d 562, 563 (Fla. 1st DCA 2001)]. In contrast, the Fourth District has held that a lack of findings pursuant to the equitable distribution statute mandates reversal without further inquiry. If no trial transcript is provided, the failure to make sufficient findings constitutes reversible error on the face of the judgment and reversal must be ordered [see *Dorsett v. Dorsett*, 902 So. 2d 947 (Fla. 4th DCA 2005)].

- **Findings re: Shared Parental Responsibility**—In an apparent departure from prior case law under which no findings were required to support an award of

shared parental responsibility, the First District Court of Appeal held that specific factual findings were required to justify an award of shared parental responsibility to a father who was incarcerated, was a convicted felon, had threatened bodily harm to himself and to his wife, and had a history of substance abuse, depression, anger-control problems, and criminal conduct with a deadly weapon [see *Smith v. Smith*, 971 So. 2d 191 (Fla. 1st DCA 2007)].

• **Trial Court May Consider Marketability Discount in Valuing Close Corporation**—The Second District has held that trial courts may apply marketability discounts in valuing the shares of closely held corporations or corporate stock. If the evidence is sufficient to sup-

port application of such a discount, the court does not abuse its discretion in doing [see *Erp v. Erp*, 976 So. 2d 1234, 1239 (Fla. 2d DCA 2008); see also ch. 10B, *Equitable Distribution of Marital Assets*].

---

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).
- Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;
- Toll-free ordering (1-800-223-1940).



[www.lexis.com](http://www.lexis.com)

---

---

Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 80643, Release 61, December 2008

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.



# **Florida Family Law Practice Manual**

---

Publication 80643    Release 61

December 2008

---

**Check  
As  
Done**

- 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 60. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 60, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- 2. Separate this Release Number 61 into the following groups of material:
  - Blue Special Alert pages
  - White Revision pages
- 3. Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.
- 4. Circulate the "Publication Update" among those individuals interested in the contents of this release.

Check *Remove Old*  
As *Pages Numbered*  
Done

*Insert New*  
*Pages Numbered*

*For faster and easier filing, all references are to right-hand pages only.*

## VOLUME 1

### Revision

Title page. . . . . Title page

### Blue Special Alert for Chapter 8

No Material Removed . . . . . 8SA-1 thru 8SA-11 (file preceding page 1 of Chapter 8)

### Chapter 8

95 . . . . . 95 thru 96.1

### Blue Special Alert for Chapter 9

No Material Removed . . . . . 9SA-1 (file preceding page 1 of Chapter 9)

### Chapter 9

1 thru 5 . . . . . 1 thru 5

### Chapter 10

17 thru 18.3 . . . . . 17 thru 18.3

27 thru 29 . . . . . 27 thru 30.1

## VOLUME 2

### Revision

Title page. . . . . Title page

### Chapter 10A

1 . . . . . 1

15 thru 25 . . . . . 15

### Chapter 10B

1 thru 7 . . . . . 1 thru 7

21 thru 45 . . . . . 21 thru 45

57 thru 69 . . . . . 57 thru 79

### Chapter 13

21 thru 23 . . . . . 21 thru 23



<b>Check As Done</b>	<i>Remove Old Pages Numbered</i>	<i>Insert New Pages Numbered</i>
------------------------------	--------------------------------------	--------------------------------------

**Blue Special Alert for Chapter 14**

No Material Removed . . . . . 14SA-1 (file preceding page 1 of Chapter 14)

**Blue Special Alert for Chapter 15**

No Material Removed . . . . . 15SA-1 (file preceding page 1 of Chapter 15)

**Chapter 15**

44.1 thru 47 . . . . . 45 thru 48.1

**Chapter 17**

1. . . . . 1 thru 2.1  
 43 thru 47 . . . . . 43 thru 47

**VOLUME 3**

**Revision**

Title page. . . . . Title page

**Statutes**

3 thru 4.15 . . . . . 3 thru 4.17  
 33 thru 61 . . . . . 33 thru 62.15  
 85 thru 116.24(23) . . . . . 85 thru 116.24(21)  
 163 thru 165 . . . . . 163 thru 166.3  
 177 thru 189 . . . . . 177 thru 190.15  
 210.1 thru 211 . . . . . 211 thru 215

**Rules**

25 . . . . . 25

**Index**

I-1 thru I-17 . . . . . I-1 thru I-17

**VOLUME 4**

**Revision**

Title page. . . . . Title page

**Forms**

199 thru 205 . . . . . 199 thru 205  
 219 thru 220.5 . . . . . 219

<b>Check As Done</b>	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
<input type="checkbox"/>	275 thru 285 . . . . .	275 thru 286.1
<input type="checkbox"/>	299 thru 304.1 . . . . .	299 thru 304.1

FILE IN THE FRONT OF THE FIRST VOLUME  
OF YOUR SET

To order missing pages log on to our self service center, [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc) or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?  
FIND THEM AT [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc)

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!



[www.lexis.com](http://www.lexis.com)

---

---

Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 80643, Release 61, December 2008

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

