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Florida Family Law Practice Manual

Publication 80643 Release 81 September 2018

HIGHLIGHTS

2017 Federal Tax Cuts and Jobs Act (TCAJA)

2018 Florida Legislation

- Revising *Kaaa* Rule
- Repealing Statute That Addressed Timesharing Rights of Deployed and Nondeployed Parents and Replacing It with Uniform Deployed Parents Custody and Visitation Act (UDPCVA)
- Amending Statute That Governs Issuance of Marriage Licenses to Further Restrict Marriages by Minors

Florida Family Law Forms

- Two New Forms for Use in Proceedings Unconnected with Dissolution of Marriage: (1) Petition for Support and Parenting Plan, and (2) Final Judgment Determining Petition for Support and Parenting Plan
- Amended Forms Incorporating Gender-Neutral Language

2017 Federal Tax Cuts and Jobs Act (TCAJA)

Chapter 16, Tax Considerations

An article explaining the 2017 federal Tax Cuts and Jobs Act (TCAJA) with respect to its effect on dissolution of marriage cases has been added to Chapter 16 in this release. The article addresses in detail the TCAJA change that is most likely to impact dissolution of marriage proceedings—repeal of the alimony deduction. The article also discusses TCAJA sections that directly affect (1) individuals; or (2) pass-through entities through which income, deductions, and credits flow into the returns of individuals. Additionally, the article briefly discusses the widely publicized corporate tax-rate change made by TCAJA.

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practices as an attorney and CPA in Palmetto Bay, FL, and since 2002, has been peer-rated AV Preeminent® for the Highest Level of Professional Excellence by Martindale-Hubbell. His article was first published in the **Florida Family Law Reporter**, Volume 2018, Number 6 (Matthew Bender 2018).

2018 Florida Legislation

The entire text of a new act, the Uniform Deployed Parents Custody And Visitation Act (UDPCVA), has been incorporated into Volume 3 of this set. Additionally, various existing statutes in Volume 3 have been replaced with their 2018 amended versions.

Chapter 10B, Equitable Distribution of Marital Assets

Revision of Kaaa Rule

Effective July 1, 2018, amendments to the equitable distribution statute modified the law established by the Florida Supreme Court in *Kaaa v. Kaaa* [see 2018 Fla. Laws, ch. 2018-56, §§ 1–2]. In *Kaaa*, the Supreme Court ruled that paydown of a mortgage on nonmarital property using marital funds, together with proof of other marital contributions to the property, renders a portion of any passive, market-driven appreciation in the property’s value during the marriage a marital asset [see *Kaaa v. Kaaa*, 58 So. 3d 867, 871–872 (Fla. 2010)]. The legislative amendments change the law under *Kaaa* by providing that (1) the actual amount of the mortgage principal paydown is a marital asset, and (2) a portion of any passive appreciation in the encumbered real property is a marital asset based solely on the fact of the mortgage paydown; no proof of additional marital contributions is required. The legislation sets forth a formula for determining the marital portion of passive appreciation in real property on which mortgage payments have been made with marital funds. A trial court may decline to

apply the formula if a party shows that its application would be inequitable [see 2018 Fla. Laws, ch. 2018-56, § 1 (amending Fla. Stat. § 61.075(6)(a) by adding new subsection 1.c.)].

Chapters 8, Parental Responsibility or Timesharing, 12, Temporary Relief, 15, Modification

Deployed Military Parents: New Uniform Act

The Uniform Deployed Parents Custody And Visitation Act (UDPCVA) has been enacted in Florida and took effect on July 1, 2018. Florida’s UDPCVA establishes comprehensive procedures for temporary agreements and court orders concerning the rights and duties of deployed military parents and nondeployed parents [see 2018 Fla. Laws, ch. 2018-69, §§ 1, 3, creating Fla. Stat. §§ 61.703–61.773]. UDPCVA addresses both timesharing and decision-making rights of deployed and nondeployed parents, utilizing the term “custodial responsibility” to refer to such rights [see 2018 Fla. Laws, ch. 2018-69, § 1, creating Fla. Stat. § 61.703(6)]. The Act also provides for grants of temporary caretaking authority, temporary decisionmaking, and temporary visitation (called “limited contact”) by nonparents during military deployments of servicemember-parents [see 2018 Fla. Laws, ch. 2018-69, § 1, creating Fla. Stat. § 61.739(1) (caretaking authority), (3) (decisionmaking authority), 61.741 (limited contact)].

Also effective July 1, 2018, Florida Statutes Section 61.13002 was repealed [see 2018 Fla. Laws, ch. 2018-69, § 2]. Section 61.13002 addressed only the timesharing rights of deployed and nondeployed parents, and did so in a much more abbreviated manner than UDPCVA.

The most significant differences between now-repealed Section 61.13002 and Flori-

da's new UDPCVA are the Act's substantive provisions applicable to establishing timesharing rights while a deployed parent is deployed, and new or more formalized procedures for establishing such rights.

Child support under UDPCVA is governed by substantially similar provisions as orders concerning child support under Section 61.13002 [*compare* 2018 Fla. Laws, ch. 2018-69, § 1, creating Fla. Stat. § 61.747 *with* Fla. Stat. § 61.13002(6)].

Finally, UDPCVA does not apply to a permanent change-of-station move by a servicemember-parent. Such a move will continue to be governed by Florida's relocation statute, Florida Statutes Section 61.13001 [*see* 2018 Fla. Laws, ch. 2018-69, § 1, creating Fla. Stat. § 61.773(2)].

Chapter 1, Marriage

Increasing Restrictions on Marriages by Minors

Amendments to the statutes governing marriage have repealed the statute that formerly governed issuance of marriage licenses to persons less than 18 years of age [*see former* Fla. Stat. § 741.0405]. Issuance of licenses to minors is now addressed in the statute that governs issuance of marriage licenses generally [*see* Fla. Stat. § 741.04]. Pursuant to the amendments, most grounds on which minors were previously permitted to obtain marriage licenses have been omitted, including minors being the current or expectant parents of a child [*see former* Fla. Stat. § 741.0405(2)–(3)(a)]. The only ground that remains is marriage by minors with the written consent of their parents [*compare* Fla. Stat. § 741.04(1) *with former* Fla. Stat. § 741.0405(1)]. However, under the amendments, a minor who possesses parental consent to marry may nonetheless not be issued a license if the other party to the marriage is more than two years older than

the minor [*see* Fla. Stat. § 741.04(1)]. Further, there is now a minimum age of 17 for obtaining a marriage license with parental consent, instead of a minimum age of 16 as was previously permitted [*compare* Fla. Stat. § 741.04(1) *with former* Fla. Stat. § 741.0405(1)]. The effect of this age minimum, coupled with the elimination of statutory grounds that did not impose a minimum age for issuing marriage licenses to minors, is that no person younger than age 17 may currently be issued a marriage license in Florida [*see* 2018 Fla. Laws, ch. 2018-81, §§ 1–2, amending Fla. Stat. § 741.04 and repealing Fla. Stat. § 741.0405].

Eliminating Prohibition against Issuance of License unless One Party Is Male and One Party Is Female

The 2018 amendments to the general marriage licensing statute [*see* Fla. Stat. § 741.04] eliminated a provision that prohibited issuance of a license unless “one party is a male and the other party is a female” [*compare* Fla. Stat. § 741.04 *with former* Fla. Stat. § 741.04(1)]. Florida's Defense of Marriage Act, which states that same-sex marriages entered into in other jurisdictions are not recognized in Florida [*see* Fla. Stat. § 741.212], was not repealed. However, like the now-repealed licensing prohibition, the Defense of Marriage Act was rendered invalid as the result of the United States Supreme Court's decision in *Obergefell v. Hodges* [*see* — U.S. —, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)].

Chapter 1, Marriage

Waiver of Spousal Homestead Rights by Deed

Effective July 1, 2018, a party may waive his or her spousal homestead protection under Florida's constitution by joining in or executing a deed that contains language substantially similar to the following: “[b]y

executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me.” Such language in a deed does not constitute a waiver of protection against the owner’s creditor claims during the owner’s lifetime and after death. Further, such language does not constitute a waiver of restrictions against alienation by mortgage, sale, gift, or deed without joinder of the owner’s spouse [see Fla. Stat. § 732.7025; see also 2018 Fla. Laws, ch. 2018-22, §§ 1–2].

Florida Family Law Forms

Two new forms have been added to Volume 4 of this set, and various existing forms have been replaced with 2018 amended versions in Volume 4.

The two new forms were adopted by the Florida Supreme Court for use in proceedings unconnected with dissolution of marriage and involving minor, dependent children. The first is a new petition that requests a parenting plan in addition to support [see Fla. Sup. Ct. Approved Fam. L. Form 12.904(a)(2)]. The second is a final judgment for use by a court that has decided a petition for support and parenting plan unconnected with dissolution of marriage [see Fla. Sup. Ct. Approved Fam. L. Form 12.994(a)(2); see also In re: Amendments to the Fla. Supreme Court Approved Family Law Forms—Nomenclature, 235 So. 3d 357 (Fla. 2018) (adopting both new forms)].

The amended forms include forms as to which the Florida Supreme Court has adopted amendments to substitute gender-neutral terminology for gender-specific terminology, so they can more easily be used by parties to same-sex marriages [see also In re: Amendments to the Fla. Supreme Court Approved Family Law Forms—

Nomenclature, 235 So. 3d 357 (Fla. 2018)].

Other amended forms include the following:

- (1) A notice of hearing on motion for contempt, amended to reflect the United States Supreme Court’s decision in *Turner v. Rogers*, which addressed a child support obligor’s right to counsel in a civil contempt proceeding that may result in his or her incarceration and set forth procedural safeguards that may be employed in lieu of court-appointed counsel [see In re Amendments to the Fla. Supreme Court Approved Family Law Forms—Form 12.961, 232 So. 3d 285 (Fla. 2017)].
- (2) Several parenting plan forms revised to reflect a statutory amendment enacted in 2016 that requires a court-approved parenting plan to state that either parent may consent to mental health treatment of the parties’ child if the court has ordered shared parental responsibility over health care decisions [see Fla. Stat. § 61.13(2)(b)3.a.; 2016 Fla. Laws, ch. 2016-241, § 81; see also In re: Amendments to the Fla. Supreme Court Approved Family Law Forms—Nomenclature, 235 So. 3d 357 (Fla. 2018)].
- (3) A petition for simplified dissolution of marriage amended with regard to the caption and signature portions of the form [see In re: Amendments to the Fla. Family Law Rules of Procedure—Form 12.901(a), 235 So. 3d 800 (Fla. 2018) (also amending instructions accompanying form to clarify matters concerning (i) filing of cover sheet, and (ii) obtaining

- court hearing date)].
- (4) Several final judgment forms amended to separate factual findings from decretal, or directive, aspects of the forms [see In re: Amendments to the Fla. Supreme Court Approved Family Law Forms—Nomenclature, 235 So. 3d 357 (Fla. 2018)].
 - (5) Various forms revised to reflect its establishment of a “stand-alone” family law rules in 2017 [see In re Amendments to Florida Family Law Rules of Procedure, 214 So. 3d 400 (Fla. 2017); see also In re: Amendments to the Fla. Supreme Court Approved Family Law Forms—Nomenclature, 235 So. 3d 357 (Fla. 2018)].
 - (6) Several forms, and the General Instructions and Glossary accompanying the family law forms, amended to ensure clarity and consistency among them [see In re: Amendments to the Fla. Supreme Court Approved Family Law Forms—Nomenclature, 235 So. 3d 357 (Fla. 2018)].

The following is a complete list of the amended forms:

1. 12.901(a), *Petition for Simplified Dissolution of Marriage*
2. 12.901(b)(1) *Petition for Dissolution of Marriage with Dependent or Minor Child(ren)*
3. 12.901(b)(2) *Petition for Dissolution of Marriage with Property But No Dependent or Minor Child(ren)*
4. 12.901(b)(3) *Petition for Dissolution of Marriage with No Dependent or Minor Child(ren) or Property*
5. 12.902(d) *Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit*
6. 12.902(f)(1) *Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren)*
7. 12.902(f)(2) *Marital Settlement Agreement for Dissolution of Marriage with Property But No Dependent or Minor Child(ren)*
8. 12.902(i) *Affidavit of Corroborating Witness*
9. 12.903(a) *Answer, Waiver, and Request for Copy of Final Judgment of Dissolution of Marriage*
10. 12.903(b) *Answer to Petition for Dissolution of Marriage*
11. 12.903(c)(1) *Answer to Petition and Counterpetition for Dissolution of Marriage with Dependent or Minor Child(ren)*
12. 12.903(c)(2) *Answer to Petition and Counterpetition for Dissolution of Marriage with Property but No Dependent or Minor Child(ren)*
13. 12.903(c)(3) *Answer to Petition and Counterpetition for Dissolution of Marriage with No Dependent or Minor Child(ren) or Property*
14. 12.903(d) *Answer to Counterpetition*
15. 12.903(e) *Answer to Supplemental Petition*
16. 12.904(a)(1) *Petition for Support Unconnected with Dissolution of Marriage with Dependent or Minor Child(ren)*
17. 12.904(b) *Petition for Support Unconnected with Dissolution of Marriage with No Dependent or Minor Child(ren)*

18. 12.947(b) *Temporary Order of Support, Time-Sharing, and Other Relief with Dependent or Minor Child(ren)*
19. 12.947(d) *Order for Temporary Support and Other Relief with No Dependent or Minor Child(ren)*
20. 12.950(a) *Agreement for Relocation with Minor Child(ren)*
21. 12.950(b) *Motion for Order Permitting Relocation by Agreement*
22. 12.950(c) *Petition for Dissolution of Marriage with Dependent or Minor Child(ren) and Relocation*
23. 12.950(d) *Supplemental Petition to Permit Relocation with Minor or Dependent Child(ren)*
24. 12.961, *Notice of Hearing on Motion for Contempt/Enforcement*
25. 12.970(a) *Petition for Temporary Custody by Extended Family*
26. 12.970(b) *Petition for Concurrent Custody by Extended Family*
27. 12.970(c) *Waiver of Service of Process and Consent for Temporary Custody by Extended Family*
28. 12.970(d) *Waiver of Service of Process and Consent for Concurrent Custody by Extended Family*
29. 12.970(e) *Order Granting Petition for Temporary Custody by Extended Family*
30. 12.970(f) *Order Granting Petition for Concurrent Custody by Extended Family*
31. 12.981(c)(2) *Stepparent Adoption: Consent of Adult Adoptee's Spouse*
32. 12.982(a) *Petition for Change of Name (Adult)*
33. 12.982(b) *Final Judgment of Change of Name (Adult)*
34. 12.982(c) *Petition for Change of Name (Minor Child(ren))*
35. 12.982(d) *Consent for Change of Name (Minor Child(ren))*
36. 12.982(e) *Final Judgment of Change of Name (Minor Child(ren))*
37. 12.982(f) *Petition for Change of Name (Family)*
38. 12.982(g) *Final Judgment of Change of Name (Family)*
39. 12.990(b)(1) *Final Judgment of Dissolution of Marriage with Minor Child(ren) (Uncontested)*
40. 12.990(b)(2) *Final Judgment of Dissolution of Marriage with Property But No Dependent or Minor Child(ren) (Uncontested)*
41. 12.990(b)(3) *Final Judgment of Dissolution of Marriage with No Property or Dependent or Minor Child(ren) (Uncontested)*
42. 12.990(c)(1) *Final Judgment of Dissolution of Marriage with Dependent or Minor Child(ren)*
43. 12.990(c)(2) *Final Judgment of Dissolution of Marriage with Property But No Dependent or Minor Child(ren)*
44. 12.993(a) *Supplemental Final Judgment Modifying Parental Responsibility, Visitation, or Parenting Plan/Time-Sharing Schedule and Other Relief*
45. 12.993(b) *Supplemental Final Judgment Modifying Child Support*
46. 12.993(c) *Supplemental Final Judgment Modifying Alimony*
47. 12.993(d) *Supplemental Temporary Judgment Modifying Parental Issues for Child(ren) of a Par-*

- ent Activated, Deployed, or Temporarily Assigned to Military Service*
- 48.** 12.994(a)(1) *Final Judgment for Support Unconnected with Dissolution of Marriage with Dependent or Minor Child(ren)*
- 49.** 12.994(b) *Final Judgment for*
- Support Unconnected with Dissolution of Marriage with No Dependent or Minor Child(ren)*
- 50.** 12.995(a) *Parenting Plan*
- 51.** 12.995(b) *Supervised/Safety-Focused Parenting Plan*
- 52.** 12.995(c) *Relocation/Long Distance Parenting Plan*

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Publication 80643 Release 81

September 2018

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