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FINANCIAL ISSUES OF DIVORCE

Few things in life can change your financial outlook as much as a divorce proceeding. Being informed of the various issues that can affect your finances after a divorce can help you anticipate your future financial needs and resources. There are four major economic areas that are frequently made the subject of matrimonial litigation and negotiation.

Child Support is typically calculated pursuant to a mathematical formula, based upon the number of children and the income of each party.

Spousal Support is left to the discretion of the court, and can be awarded based on numerous factors, such as lifestyle, earning capacity, need for education or training, age, health, etc. The duration of the spousal support payments is also discretionary. Generally, the Court seeks to determine how much support and how much time a non-monied spouse will need to become self-supporting.

Asset Classification Assets held by the parties can be marital (typically acquired during the marriage using marital income or assets), or separate (typically acquired prior to the marriage, during the marriage with separate assets or income, by gift from third party or from a personal injury award).

Equitable Distribution Marital assets (and debts) are to be divided between the parties in an equitable (not necessarily equal) manner; Court considers numerous factors, including the contribution by each party toward the acquisition or maintenance of the assets, which contribution can be direct or indirect, monetary or non-monetary, Marital assets are not limited to bank accounts, real property, retirement savings and pensions, but can include such things as professional practices, licenses, educations, businesses, and even accumulated perks, such as frequent flyer miles, credit card membership points or rebate dollars. ∞

JOINT CUSTODY: HOW IT IS DEFINED BY THE LAW AND WHAT IT MEANS IN REALITY

"What is joint custody?" is one of the most frequently asked questions I hear as a family lawyer. Joint custody or "shared parenting", is a legal concept that may be easy to define, but in practice, and in the courtroom, it is interpreted in various ways. Complicating matters is the fact that joint custody is defined differently in most states.

In most states, custody of a child is defined in terms of *physical custody* (which parent the child lives with) and *legal custody* (also known as joint decision making, which dictates which parent(s) have authority to make decisions about the child). Custody can be awarded to one parent in the case of *sole* custody, or to both parents in the case of *joint/shared* custody.

Parents with *joint legal custody* typically agree to consult with each other and reach agreement on important issues affecting the child, including medical, legal, academic, religious, and safety issues. Joint legal custody ensures that both parents have an active role in guiding the child and making decisions that affect the child's welfare, not just one parent making unilateral decisions. Parents with joint physical and legal custody must cooperate in parenting decisions on a daily basis. They must communicate with each other with regard to all of the details necessary to facilitate the children moving from one household to another.

Most judges and parents would agree that it is better for children to be raised by both parents, with a shared parenting schedule that affords frequent and continuing contact with both parents. In many states, the divorce court can make an order of joint custody, even when one parent objects to the arrangement. In New York, however, joint custody is *only* available if *both* parents agree, i.e. reach an amicable settlement on custody. The rationale is that a court's decision of joint custody cannot transform two contentious litigants into caretakers who will equally share the responsibilities of parenting and mutually agree on decisions affecting their child. Further, New York judges generally do not favor split custody or joint physical custody. New York law has recognized that joint custody should be permitted on a case by case basis where it serves the *best interests of the child* or children involved. ∞

ABOUT OUR FIRM:

Wisselman, Harounian & Associates, P.C. is a full service Matrimonial and Family Law Firm, handling all legal matters that arise during the course of raising your family and growing your business.

How Do We Protect You? Established in 1976, we've grown to become one of the leading family law firms on Long Island.* Our attorneys have dealt with all aspects of matrimonial and family law, real estate, wills, trusts and estate planning, business law and litigation. We know how to stand up for your legal rights, particularly to protect your financial security and your right to be with your children.

No Matter How Complex or sensitive the issue, you'll find us to be determined on your behalf, compassionate and always mindful of your current and future needs.

Our Team of Attorneys Appear in All New York Courts, including Family and Supreme Courts of Long Island, five boroughs of New York, and Westchester County. We have over 100 years of collective experience in all matrimonial and family law matters.

Our firm believes that every client deserves an attorney ready and willing to give nothing less than their very best. Each client is made to feel comfortable, confidant and cared for during the difficult litigation process.

* Ranked as one of the top 3 Matrimonial Law Firms on Long Island, L.I. Business News, 2007.

WILLS, TRUSTS AND ESTATE PLANNING

It is extremely critical for individuals, married couples and business owners to prepare for the future, and for the unexpected, by preparing a will, trust, durable power of attorney, health care proxy and living will. Shareholder agreements for business owners can further protect your personal interests *and* your family, and may have important tax implications which are vital for the preservation of your assets.

Will: A document in which you direct how your estate will be distributed upon your death. You may also provide for whom you would like to care for your children, and any property you leave them. You may leave specific items to specific people or entities, and you can also set up trusts for infant children or disabled relatives. Without a will, the State will determine what happens with your estate.

Trust: A person (grantor) sets up a mechanism which contains directions for the application of income from trust property, as well as disposition of the property of the Trust, upon occurrence of an event. Most often, the event triggering disposition of the property is death, and as such, the Trust is a substitute for a Will. A Trust may be revocable or irrevocable, and the determination of what type of trust is appropriate is generally based upon tax considerations. Every Trust requires the appointment of a trustee to administer it.

Power of Attorney: You can give another person the right to act on your behalf with regard to business and financial transactions. The Power of Attorney may be given outright, or may be **springing** (becomes effective only upon the occurrence of an event). In most cases, the Power should be **durable**, in which case it remains effective even when the grantor of the Power becomes incapacitated.

Health Care Proxy: A person can give another (***A Health Care Agent***) the right to make health care decisions for them, in accord with the provisions they outline in the Health Care Proxy. The Health Care Provider is obligated to follow the directions of the Health Care Agent. Provisions for nutrition and hydration can be set forth in this document and in a separate Living Will.

Living Will A document in which an incapacitated person has previously expressed what the preferred course of action would be in the event that they have an incurable illness. The document outlines their wishes with regard to being kept alive by artificial means, and with regard to nutrition and hydration.

As a general rule, individuals should consider drafting (or revising) the above listed documents upon the occurrence of major events in their lives, including divorce or death of a loved one, and especially upon the addition of children in the family. ∞

SPOTLIGHT ON OUR ATTORNEYS: LLOYD C. ROSEN

The decision from a family Court case handled by Mr. Rosen was recently published in the **New York Law Journal**. The article, written by Judge Singer in the 7/13/07 issue, is entitled "Husband's Consent to Wife's Claims Designation New York as Home State Grants New York Jurisdiction".

Mr. Rosen recently represented the wife in a jurisdiction dispute related to a custody matter. She decided to leave her home in CT and return to NY with her infant daughter after discovering that her abusive husband had been using cocaine. She established residence in NY, living there for six months before commencing a custody proceeding in NY. The husband appeared in Court with counsel and alleged that his wife and child still lived in CT, and that the NY Court therefore did not have "subject matter" jurisdiction over the custody matter. Based on the husband's allegations, a hearing was scheduled to determine if NY or Connecticut was the child's "home state" for the purpose of establishing jurisdiction.

While waiting for the hearings to take place, the husband had supervised visitation with his infant child, since he had twice tested positively for cocaine during random drug testing.

After several months of delays, the husband finally consented to the jurisdiction of the Court, and withdrew his demand for a hearing on the issue of the child's home state. The parties entered into a settlement agreement, resolving the issues of custody and visitation.

Three months later, the husband, with newly retained counsel, filed a motion seeking to set aside the settlement and custody order, alleging the Court did not have subject matter jurisdiction, despite the parties' consent thereto. Mr. Rosen argued that by *withdrawing* his demand for a hearing and consenting to jurisdiction, the Court indeed had jurisdiction independent of the parties' consent. The Court agreed, dismissing the husband's petition to vacate the stipulation and custody order.

Lloyd's client has since gained a final order of custody of the child, and the father will continue to have supervised visitation.

Lloyd C. Rosen, an Associate of the firm, has substantial litigation and appellate experience and handles all aspects of matrimonial and family litigation. He manages complex cases of divorce, separation, custody, visitation, domestic violence, child support and spousal support issues, distribution of marital assets including business assets, and prenuptial and postnuptial agreements. Mr. Rosen regularly appears and litigates in the Family and Supreme Courts throughout Long Island and all of New York City. He has successfully presented, defended and argued numerous matters before the Appellate Division, Second Department. If you have questions about any family law issues, please call Lloyd at **516-773-8300** or email him at info@lawjaw.com. He will be glad to discuss your concerns.