

Family Focus

DIVORCE: FIGHT OR FLIGHT?

Posted by **Stuart Scott** | Jan 11, 2019

Divorce is a very stressful time. The issues that need to be addressed involve some of the most important things in people's lives: their children, their finances, their retirement plans and sometimes even their identity as a person.

It is natural during a divorce for someone to do one of two things: fight or flight. The fight mode instinctively makes a person want to do everything they can against the other person. It is an expensive prospect that usually doesn't change the ultimate outcome. There is also the flight mode. The flight mode is where a person just gives up. The attitude is one of "I don't care. I want to sign whatever the paperwork is and get out of this relationship."

The flight mode is just as hazardous, if not more so, than the fight mode. This is because the emotions of the moment overwhelm reason and logic. These emotions can make an individual want to simply sign on the dotted line and move forward with the rest of their lives, no matter the cost or what they stand to lose in the division of assets.

In Tennessee, Marital Dissolution Agreements (MDA) must be signed in order to have an agreed divorce, which is one done by consent of both parties. MDAs are contractual in nature. Once they are approved by the trial court, they become legally binding obligations on the parties.

Buyer's remorse is not an option. Someone who out of emotion signs an MDA and later regrets it usually has no recourse to change the agreed upon terms.

As a general rule, the only two elements of a divorce agreement that *may* be modifiable involve child support and alimony. Both have limitations on whether a party can ask the court to modify the

support. In Tennessee, if there is a 15% change in the amount of child support that is owed pursuant to the Child Support Worksheet, then either parent may request that the court change the child support amount. The change becomes effective from the point in time that the request to change the child support is filed. This means it is prospective, not retroactive.

Whether alimony is modifiable depends on the type of alimony that is included in the MDA.

There are four different kinds of alimony in Tennessee. Some of them *may* be modifiable. Others are not. It is important to discuss the circumstances when alimony can be modified with your lawyer.

Moreover, if a person has signed an MDA and then wants changes, such changes may be hard to obtain. Any court looking at a dispute concerning an MDA will simply read the usual, natural and ordinary meaning of the contract language. The court will ignore feelings, or the reasons why the MDA was executed. The court will also ignore changes in circumstances that may be reasonably anticipated, such as a person retiring or losing a job that happened after the divorce.

Divorce agreements do not just affect something in the moment. They affect the future.

Thus, it is unwise to adopt the flight mode and simply sign on the dotted line and agree to something today that you may regret tomorrow. Think of yourself five years from now looking back at yourself today. If what you are agreeing to today is something you might regret in the future, it is not wise to enter into that agreement regardless of how quickly you would like to end the divorce process.

Lawyers can always help with advice concerning what may happen in the future and today's application to tomorrow's realities.

About the Author:

Stuart Scott is a litigation attorney with over 25 years of experience. He has tried hundreds of cases in both state and federal court. Some of his noteworthy victories have been featured in local, state and national publications. Stuart is also listed as a Tennessee Supreme Court Rule 31 Family Law Mediator. Stuart focuses his primary area of practice on family law. He represents people going through divorce and focuses his efforts on providing his legal services and advice to his clients in this area. Mr. Scott may be reached in our Nashville office at 615-620-1710.



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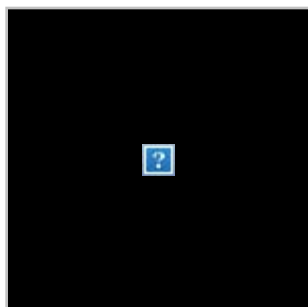


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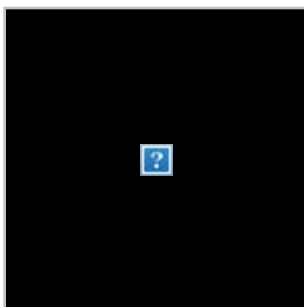
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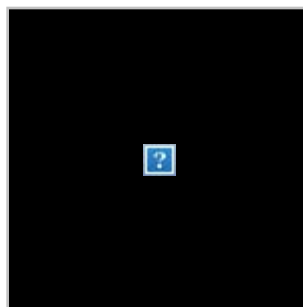
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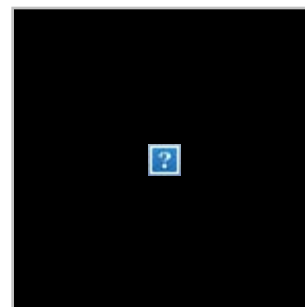
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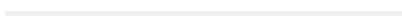
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