

Why the Cut-Off Date Matters in Florida Divorces

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During an initial divorce consultation, I'm often asked, "What if I'm unsure of whether to file?" Of course, the decision of whether to file for divorce is a deeply personal one, and one that is both complex and difficult. No one should be rushed into such a decision, and often, time does provide greater clarity. However, there is a critical factor that must be given consideration.

According to Florida law, the "cut-off date" for determining whether an asset is marital (and, therefore, subject to equitable distribution between the spouses) "is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution of marriage."

The significance of this "cut-off date" cannot be overlooked. To you, the marriage may essentially be "over." You and your spouse may even choose to separate. However, these facts alone, without an agreement or filing to establish a "cut-off date," may nonetheless still result in newly acquired income and assets, as well as appreciation of assets, being deemed marital.

If you believe divorce may be imminent or even likely, you may wish to protect your interests, such as your future earned income or a new business venture you anticipate establishing. One option for protecting yourself is entering into an agreement, such as a postnuptial agreement or simply an agreement that establishes a "cut-off" date. If an agreement is not possible (for example, your spouse would not be agreeable), your other option is to file for divorce to establish a "cut-off date." This will result in applicable income/assets earned after the date of filing to be classified as separate to you.

It's always important to remember that filing does not necessarily mean the divorce must proceed full steam ahead either. If you and your spouse are trying to determine whether reconciliation is possible, or you want to attend marriage counseling, you may enter into an agreement to "stay" (or pause) the divorce proceeding for a set period of time. The date of filing (or "cut-off date") will remain in place, while you and your spouse get the

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breathing room necessary to work toward reconciliation of the marriage.

Again, the decision of whether to file for divorce is certainly emotionally challenging, but it may also have significant financial consequences as well. It's important to talk with an attorney who can help protect your best interests.