

# FISHER'S LAW OFFICE, P.A.

18125 US HWY 41 N, Suite 109

Crystal Lakes Plaza

Lutz, Florida 33549 USA

Telephone: 1 (813) 949-2749/fax 813-464-7738

E-mail: ralphfisher@yahoo.com

www.fisherslawoffice.com



---

## Summer 2012

---

Welcome to the NEWSLETTER of Fisher's Law Office. In this issue we discuss certain common divorce and foreclosure issues. Please call us if you have questions about a divorce or foreclosure, or if you have other legal needs.

### **Who gets the engagement ring if the parties divorce?**

The issue of who gets the engagement ring in a divorce case was discussed in the case of Greenberg vs. Greenberg, 698 So2d 938 (Fla.4<sup>th</sup> DCA 1997). The court ruled for Mrs. Greenberg and said she could keep her engagement ring because it was a gift given to her *prior* to the marriage. In Florida, gifts exchanged by parties *prior* to a marriage are not considered marital property subject to division by the court.

**Example:** You give your fiancée' an engagement ring and later get married. The gift belongs to your wife and the court cannot later give it back to you.

**Example:** You buy a wedding ring or other gift for your spouse *after* the wedding. This gift *is* subject to equitable division between the parties at the time of divorce.

**Practice note:** Only property still in existence at the time of divorce is marital property. If you give you husband cash and he spends it, there is no property to divide later by the court.

### **Mediation is now required for many divorce and civil cases.**

Almost every case in Florida must have a "mediation" prior having a trial. Mediation is a negotiation session with a paid umpire who explores the idea of settlement for

the parties. Settlement is not required but encouraged by the court.

If you are involved in a divorce or civil case in Florida, you can expect to be required to attend mediation.

Florida's mediation Rule 1.720 requires all parties to give at least ten days notice before a mediation to identify all persons expected to attend a mediation conference as a *representative* of another party.

The rule also requires that the representative must come to the mediation with *full authority* to settle in the amount that was last demanded by the other party.

Lastly, if a party to a lawsuit fails to appear at mediation the court may award attorney fees and costs against the person who failed to appear.

### **Case of the month: Our client wins his foreclosure case!**

Our client was behind on his mortgage and was sued by US Bank National Association.

Under Florida's "legal standing" rule, a bank cannot sue a homeowner to foreclose on a mortgage unless the bank owns the loan *before* it files the lawsuit.

There was a recorded assignment of mortgage to US Bank NA, but we were suspicious. The notary stamp on the assignment of mortgage

was dated May 19, 2012 meaning the stamp was manufactured in May 2008.

Meanwhile, the assignment was dated December 2007, almost six months *prior* to the date the stamp came into existence!

We brought the fraudulent back dated assignment to the attention of the court.

As a result the court dismissed the case against the homeowner "with prejudice", meaning the bank can not sue our client again.

**Moral to the story?** Always see a lawyer if you are sued for foreclosure. The bank suing you may not have standing to sue because it does not own the loan or have authority to sue.

## WHAT TYPES OF ALIMONY EXIST IN FLORIDA?

Before a court may award alimony it must find that a party has the ability to pay alimony and a need by the other party.

Once the court determines need and ability it decides what type of alimony to award, including:

- **Bridge-the-gap** (short term-up to two years),
- **Rehabilitative** (to establish capacity for self-support),
- **Durational** (assistance for a marriage of less than 17 years), or
- **Permanent alimony** (long term marriage).

**Practice note:** Under F.S. section 61.09 alimony can even be awarded where the parties are *still married* but one spouse refuses to support the other spouse or their children.

## WHAT IF A MOTHER REFUSES TO USE CHILD SUPPORT FOR HER CHILDREN?

It is now a crime under Florida statute 827.08 to misuse child support money.

Specifically, a parent can be arrested and jailed for misapplying funds paid by another for the purpose of supporting a child.

A person is deemed to have misspent child support funds when such funds are spent for any purpose other than the necessary and proper home, food, clothing and the necessities of life and such expenditure results in depriving the child of the above named necessities.

## HOW DO GRANDPARENTS ENFORCE VISITATION RIGHTS?

Florida statute section 751.01 provides a cause of action for grandparents to sue for visitation rights.

However, the Florida Supreme Court in Saul v. Brunetti 783 So.2d 26 (Fla. 2000) ruled that this law was unconstitutional because it violates the Florida Constitutional right to privacy.

Unless a parent is harming a child, courts are reluctant to order parents to allow visitation rights. The best bet is to get along with your in-laws and children and convince them to let you visit your grandchildren.



## STRANGE LAWS YOU'VE NEVER HEARD OF....

**Florida statute 798.01** states that any one who lives in an open state of adultery is guilty of a crime.

**Florida statute 817.4821** makes it a crime to possess any instrument capable of intercepting a cellular phone identification number. The

same statute makes it a crime to sell a cloned cellular telephone.

**Florida statute 817.55** makes it is a crime to operate a tourist attraction and use the word "free admission" in a false or deceptive manner.



**Florida statute 817.565** makes it a crime to attempt to defraud the truthful result of a urine test designed to detect the presence of drugs. It is also illegal to distribute any substance which is intended to defraud or attempt to defraud any lawfully administered urine test used to detect drugs.

**Florida statute 817.567** makes it is a crime to claim orally or in writing to have been awarded an academic degree or the title associated therewith unless the person has been awarded the degree.

### **WHEN CAN YOUR FORMER-EMPLOYER USE "RESTRICTIVE COVENANTS" IN YOUR JOB CONTRACT TO KEEP YOU FROM WORKING AT A COMPETITOR?**

Normally employers cannot prevent a former employee from working for another employer that competes with the first employer.

However, F.S. section 542.335 specifically allows restrictive covenants in restraint of trade in certain special situations. To do this the former employer must do the following:

- 1) There must be a contract that allows the restrictive covenant.

- 2) The restriction must deal with genuine trade secrets, information or business goodwill of the former employer that represents a legitimate business interest.
- 3) The restriction must be kept to a certain geographic area and the restriction should not exceed two years.

**Practice Note:** The right to restrict a physician is often limited especially where delivering babies is concerned. For example, in Dunkin v. Barkus & Kronstadt, 533 S..2d 877 (3<sup>rd</sup> DCA 1988) in which the court said that delivering babies does not constitute competition with another ob-gyn doctor.

### **HOW DO YOU GET PERSONAL PROPERTY BACK THAT HAS BEEN STOLEN FROM YOU?**

If you know the name of the person who stole your personal property, Florida Statute section 772.11 provides for a civil cause of action for civil theft.

The minimum award under this statute is \$200.

Before suit is filed, you must send a letter to the person who took your property demanding return of your personal property within 30 days.

The same letter must state that you will sue the person for *three times* the value of the property taken if it isn't returned within 30 days.

The law also provides for attorney fees and costs of suit.

**Practice Note:** If a minor steals from you the law allows a demand to be made on the child's parents or guardian.

**Education:**

1977

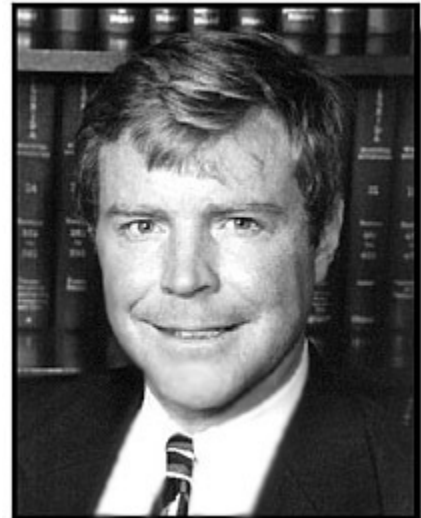
Degree in Accounting,  
University of Florida,  
Gainesville, Florida.

1978

License Issued  
Certified Public Accountant

1983

Juris Doctorate Degree in Law,  
University of Florida,  
Gainesville, Florida  
Attorney, State of Florida



**Memberships:**

- Florida Bar Association [www.flabar.org](http://www.flabar.org)
- BV rated by Martindale Hubbell
- Gaucho Association [www.gauchoassn.com](http://www.gauchoassn.com)
- Aircraft Owners and Pilots Association [www.aopa.org](http://www.aopa.org)

**Ralph B. Fisher, Esq.**  
Attorney at Law

**Fisher's Law Office, PA**  
18125 N. Us Hwy 41, Ste 109  
Lutz, FL 33549