

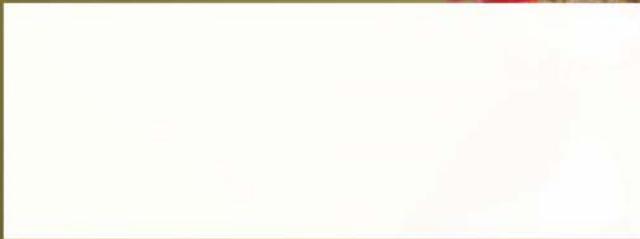
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# Desert Leaf

The Catalina Foothills Magazine



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## Brief Encounters

# What the Pandemic Has Taught Us About Settling Divorce and Parenting Disputes

by Kathleen McCarthy, JD

Novelist Margaret Atwood wrote, "A divorce is like an amputation; you survive, but there is less of you."

For many of you, this pandemic conflict with your parenting partner has escalated. You may have even filed for divorce or other court relief, but resolution is nowhere in sight. COVID-19 has slowed county courts and caused new legal complications for litigants. The following are some tips for creatively resolving divorce and parenting disputes in a timely and cost-effective way.

### Free up cash; file an amended income tax return.

If your business was profitable prior to 2018 but suffered losses after that, you and your spouse may both benefit by filing an amended return. The Coronavirus Aid, Relief, & Economic Security (CARES) Act lets you offset losses against past profits. This is significant, because prior to 2018, the business tax rate was much higher than it is now. Check with your accountant, and do make sure your divorce agreement covers this refund possibility.

### Modify support obligations.

The court can modify child support if you can prove a substantial change of circumstances. Your loss of employment or substantial reduction in income can qualify. The same applies to spousal maintenance (alimony), but only if your current court order is modifiable. If it is nonmodifiable, you are out of luck. To modify support, file a petition explaining why, and attach the required financial information. But act quickly. The earliest your modification can start is the date you serve your petition on your ex. A change cannot be based on a handshake (even a socially distanced one). It is not binding on the court.

### Exercise extreme caution before agreeing to nonmodifiable spousal maintenance.

Parties can agree to nonmodifiable spousal maintenance, that is, a specific amount for a specific duration. Otherwise, spousal maintenance can be modified if there is a significant change in your financial circumstances. Unless you feel particularly immune from financial catastrophe, you should not commit to this without some protective "get out of jail free" language. Also look into alimony disability insurance.

### Address the disposition of severance pay in your divorce agreement.

Owing to the pandemic, you may have received a severance package. If you were employed during the marriage, your spouse has an interest in your severance, even if you receive the payment after the divorce filing. **Address CARES Act and Paycheck Protection Program (PPP) loan payments in your divorce agreement.**

If you were awarded the family business in your divorce, your ex has no interest in these payments. Otherwise, your spouse may have an interest. The loan proceeds are for designated business expenses, which means there may not be any net value after these expenses are paid. However, the PPP allows potential forgiveness of the loan, which is tax free. Because the business expenses paid with it are already tax deductible, this tax benefit may amount to a bonus shareable by both spouses. But stay tuned for the final forgiveness rules.

### Consider a parenting coordinator.

Raising tiny humans (and not-so-tiny teenagers) is difficult in normal times. The pandemic has upped the challenge 10-fold. A parenting coordinator (PC) could help dial down the temperature, save you money, and give you quick results, all without court. A PC acts as a "third parent" or tie-breaker. PCs are qualified and impartial professionals and must meet specified standards. All it takes is a court order regarding parenting time or decision-making, and agreement by the two parents.

### Consider private arbitration.

Private arbitration is growing in popularity as a way to bypass court limitations induced by the pandemic. Arbitration differs from mediation in that an arbitrator's decision is binding. There are pros and cons to this option, so consider it carefully. The following are some benefits of private arbitration.

**Quick resolution.** Arbitrators must rule within 20 days of the hearing.

**Privacy.** Unlike court rulings, which are public, the arbitrator submits a final arbitration decision, sans all the (sometimes messy) details. The rest stays private.

**Choice and reduced costs.** You get to choose your arbitrator and what standards will be used. A professional

with expertise specific to your issues can help you save time and substantial fees. Even though an arbitrator charges a fee, the process can be cost-effective.

**Flexibility.** Arbitrators can offer more flexible and timely scheduling and typically a more informal atmosphere.

**Consider pandemic-induced economic uncertainty when valuing your business.**

The pandemic can dramatically affect business value, because value depends largely on accurate prediction of future earnings based on past earnings, which may now be meaningless. However, we have now lived with the novel coronavirus for almost a year, so make sure you ask for a valuation date that takes 2020 earnings into account. Additionally, there are more creative options—if you and your spouse can agree. These options require careful

consideration. Do not do it yourself.

- Pay a partial amount up front, and tie future payments to certain metrics of success.

- Defer the issue until after the divorce to let the markets settle down a bit.

- Opt for co-ownership. But be sure to treat this as a business transaction with airtight agreements as to compensation, division of distributions, breach, buy-sell terms, and more.

The pandemic has been devastating, but even in a divorce, some creative financial planning can help produce a more favorable outcome and prove Ms. Atwood wrong!

**DL**

*Kathleen McCarthy has been practicing family law for 44 years. She is a Certified Family Law Specialist with an emphasis on complex financial matters. Comments for publication should be addressed to letters@desertleaf.com.*

## UNCOMMON COLLECTIONS continued



Radford's Mister Lincoln and Queen Elizabeth commingle.

Rather than keeping a journal, Radford keeps mental tabs on which young new transplants may need to be moved to a better location. His love for plants has transferred to his 12-year-old son, and they spend time in the garden together.

One of the aspects Radford especially likes about growing roses in Southern Arizona is that they don't go fully dormant, as roses in colder climates do. Though most of the bushes bloom in the spring and fall, he can have some in December and even some that bloom for a shorter duration in the summer.

"My goals for raising roses [are] both spiritual and aesthetic," says Radford. "Each has its personality and beauty that endures for years. Even when most other plants and trees are changing with the seasons or weather, roses stand true and for the most part unchanged."

**DL**

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pruning, his roses thrive on consistent care. He feeds them rose food once a year and monitors them every day, checking for aphids and watching for new buds.

When friends express surprise that some of Radford's roses seem to thrive in partial shade, he points out that they get plenty of morning sun while avoiding the drying afternoon heat.

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