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# Legal Matters®

## More divorced parents have 'visitation' over the Internet

The explosion of webcams, video e-mail, text-messaging and social media in the last few years has changed the way visitation with children after divorce occurs in many cases.

Of course, nothing will ever replace physically spending time with a child. But when that's not possible, there's no question that seeing a child live over a webcam and speaking in real time can provide a better experience than letters or phone calls.

As a result, some courts have begun requiring "virtual visitation" in divorce cases. This is especially true where the divorcing parents live far apart, where one parent moves out-of-state after the separation, or where a parent travels regularly on business.

Virtual visitation is not meant to replace "real" visitation, but it can be a good way to supplement physical visits in situations where regular visitation can't take place frequently. It's picked up steam in the last few years as more households have broadband Internet connections, webcams have become



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more common, and the technology has become simpler.

Several states even have specific laws that govern computer visits and other electronic communications between children and non-custodial parents.

Virtual visitation can include a variety of media, including instant messaging, video conferences, video e-mail, and regular e-mail and texting.

For many older children, webcams and text-

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**Virtual visitation  
can be a good  
idea when parents  
live far apart.**



# Valuing assets in divorce is harder in a recession

Some divorcing couples are adopting creative strategies for dividing assets that take into account market risks and uncertainties.

In the current economy, it's often very difficult to put a value on homes, businesses, real estate, investments and other assets. When these assets have to be valued so they can be split at divorce, it can lead to significant problems and disputes.

For example: A husband had \$900,000 in a pension plan, and the couple agreed to split it 50/50, so they would each get \$450,000. By the time the plan actually split the funds, however, the stock market had nosedived and the plan was worth only \$450,000. The husband argued that the wife should get only \$225,000, because of the 50/50 split, but the wife argued that she was entitled to the entire \$450,000 because that was the amount she had originally agreed to receive.

In another case, a divorcing couple owned a construction business. They agreed that one spouse would get the business and would buy the other out. But the question was how to value the business, which would determine the size of the buyout.

The spouse who was getting the business

argued that it was essentially worthless, because the recession and the real estate slump meant that there were no jobs at the moment. But the other spouse argued that the business was worth a lot because it had goodwill from past jobs, and once the economy improved it was positioned to do very well.

In general, accountants place a value on a business based on anticipation of future profits. They do this by looking at past profits – usually considering how the business has done over the last three to five years. But with business in general disrupted – and some whole industries, such as autos, barely functioning – it's not clear that the usual rules apply.

There are similar problems with valuing houses,

farmland, and rental real estate. These kinds of properties are usually valued by looking at comparable sales – but in many areas, almost no properties are selling, so there simply aren't any comparable sales. An appraiser could look at historical sales, but this is problematic too. In a “normal” market, knowing what a property sold for two or three years ago would tell you something about what it would sell for today, but after an epic real estate crash, it's likely that a property's value a few years ago has no relationship whatever to what it's worth right now.

As a result, some divorcing couples are adopting strategies for dividing assets that take into account market risks and uncertainties.

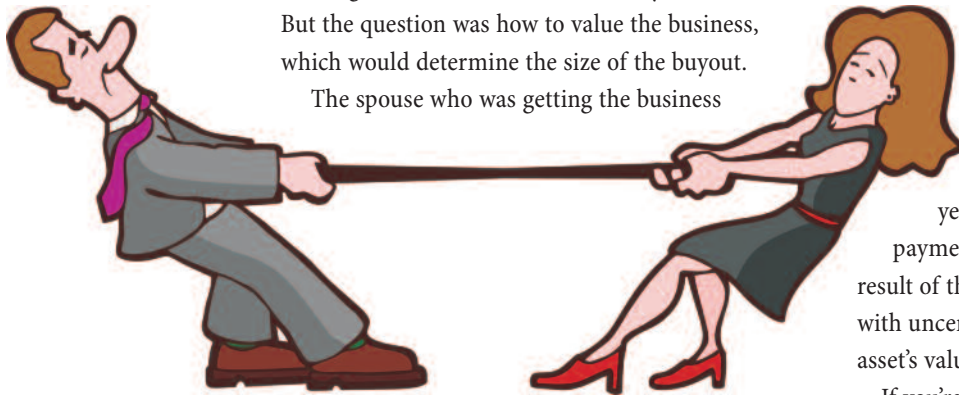
For instance, if spouses agree to split the assets in an IRA or 401(k) plan, but the actual split won't occur until sometime later, they might want to specify whether the split will be based on the plan's current value or on its value at the later date.

A couple who are splitting real estate or a business could provide that the asset will be appraised again in a few years, and some additional “adjustment” payment will be made at that time based on the result of the appraisal. This allows the couple to deal with uncertainty by sharing in any change in the asset's value in the near future.

If you're splitting a business that has a depressed value at the moment, and one spouse wants to buy the other out, you could also consider:

- Providing some profit-sharing option in the future based on how the business does.
- Allowing the other spouse to remain as a minority shareholder with the right to cash out his or her stake after a few years.
- Giving the business outright to one spouse, but requiring future alimony payments that are based on the business's performance.

Depending on the nature of the asset, there may be other creative options as well that can result in a fair division of something on which it's hard to put a current price tag.



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# More divorced parents have ‘visitation’ over the Internet

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messaging are an important part of the fabric of daily life, and allowing visitation through these channels can make a parent feel more “connected” to their child than they would if visitation were limited to an occasional stand-alone get-together.

Virtual visitation has also been used in some cases where a parent was incarcerated or where there were allegations of domestic violence.

Here are some things to think about when considering a plan for visitation online:

- What types of communication will work best: e-mails, texting, videochat? How about a website for shared pictures and information?
- If the arrangement requires a parent with custody to get a high-speed Internet connection or a

new laptop, who should pay?

- Is the custodial parent allowed to be in the room during a webchat? Can he or she access e-mails, websites, etc. involving the other parent?
- Is there any enforcement mechanism if the parent with custody interferes with the virtual visitation, as there would be if the parent interfered with physical visitation?

The specifics will vary based on the age of the children, the technological savvy of the parents (and the children), and the nature of the parents’ relationship.

Nevertheless, new forms of electronic communication are here to stay, and there’s no question that the rules of visitation will change to keep up with them.

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## It’s not always clear whether money you receive is ‘income’

It’s very common in a divorce for alimony or child support payments to be based on a spouse’s income. But while “income” seems simple to understand, that’s not always the case. Here are three examples of how it’s not always clear whether money someone receives is income:

**Stock options.** A Massachusetts couple divorced and the husband agreed to pay his wife one-third of his gross annual employment income. He then took a new job where his compensation package included a base salary, annual bonus, stock options and other benefits.

When he exercised his options, he claimed this wasn’t “income” because it was something other than his regular salary and bonus.

But a court sided with the wife. It said the option exercise resulted in income because it was part of the husband’s compensation package, was listed on his W-2 forms, and was subject to income tax.

The court also said that its decision would prevent spouses from trying to shirk their obligations by asking to be paid in options rather than salary.

**Second wife’s income.** In a California case, a mother asked a court to increase her ex-husband’s child support payments based on the fact that he was now receiving income from a brokerage account and a real estate development that he shared with his second wife.

The court agreed – but it said that only half the income from the assets could be considered in

determining how much the ex-husband had to pay.

The reason is that only the ex-husband had an obligation to pay child support – his second wife didn’t have any such obligation, and therefore her half of the income couldn’t be considered.

**Income from a business.** In another California case, a husband was a partner in a brokerage firm. His interest in the business was valued at \$5.6 million. His wife was awarded a share of his interest in the firm, plus \$20,000 per month in spousal support.

The husband argued that the spousal support amounted to “double dipping,” because the wife was getting a share of his income from the business, plus a share of the value of the business which was calculated based on its ability to provide him with income.

But a court said the divorce award was proper, and that looking at how the judge drew it up, the wife wasn’t collecting for the same asset twice.

The bottom line is that it’s not always clear what qualifies as “income.” If you have any questions about whether money that you or an ex-spouse has received is income, and whether it counts for alimony or child support purposes, we’d be happy to help you.

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A 'paramour clause' in a parenting plan creates a controversy.

## Can parents be prohibited from having lovers stay overnight?

Here's a touchy issue: Can a parenting plan for a divorced couple prohibit an ex-spouse from having a new boyfriend or girlfriend stay overnight, if a child is also in the house?

This issue came up in a recent case in Tennessee.

There, a parenting plan designated the father as the residential parent of the couple's son and the mother as the residential parent of the couple's daughter, and granted liberal visitation to both parents.

The plan included a "paramour clause" that prohibited the mother and father from having unmar-

ried partners stay overnight whenever any of their children were also present in the house.



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The mother, who was in a long-term relationship with another woman, argued that the clause violated her rights, and the court agreed.

It said the most important question in forming a parenting plan is the best interest of the children – which wasn't considered in this

case. Going forward, it said that judges should be able to change or eliminate a "paramour clause" whenever it didn't serve the children's best interest.



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