

**LINDA ROBERSON'S CAPITOL TIMES COLUMN  
ARCHIVED COLUMNS – DIVORCE**

**June 3, 2004**

**Q: I need help fast. I am in the middle of a divorce. I have been a homemaker for the 26 years of our marriage. I thought I was entitled to permanent alimony but my lawyer is suggesting that I accept payments for ten years only. What does the law say my rights are?**

A: The idea of “permanent alimony” – or “permanent maintenance”, as we would call it in Wisconsin – is inaccurate. We have “indefinite maintenance” – meaning that your spousal support continues unless or until circumstances change and one or the other of you goes back to court to modify the original award. The court has the power to increase or decrease the award, or to terminate it entirely. Accordingly, “indefinite maintenance” is not altogether a good thing: you must live with considerable uncertainty about how long it will last and what the amount will be, and you face the prospect of considerable transaction costs with the expense and time involved in litigation down the road when someone wants to change the current order.

Because of this situation, many lawyers try to negotiate for their clients a nonmodifiable award that cannot be changed either in either duration or in amount. Many people in your situation – or in your estranged spouse’s situation, faced with the obligation to make these payments – are more comfortable with the certainty of a fixed payment. It sounds like your lawyer is suggesting this approach to you. Depending on your age and earning power, and your spouse’s age and earning power, a fixed payment for ten years might be reasonable. If you accept the limited term, you should be sure that the agreement is structured in such a way that the term and amount are binding on both of you.

**March 11, 2004**

**Q: I am currently married. I have very good credit. My husband will not work and pay bills that are in his name only. My signature is not on any of these bills. His purchases were obtained without my knowledge. I am contemplating divorce, but in the meantime, what are my obligations to pay his debts? I cannot pay his bills. I have good credit and would like to keep it that way. How will his inability to pay his bills affect me as his spouse?**

A: I’m afraid I have bad news for you. In Wisconsin, marriage is an economic partnership. This means that both spouses have an ownership interest in the assets acquired during the marriage, and by the same token both spouses have responsibility for debts incurred during the marriage. Obligations incurred by a spouse are presumed to be incurred for a “family purpose” and all marital property, as well as the nonmarital property of the incurring spouse, can be attached for payment of these obligations. Spousal responsibility attaches even if you were not aware of the debt or objected to your spouse’s decision to

incur the debt.

The fact that the debt is in his name does not relieve you from responsibility. And the fact that you hold assets in your name alone does not protect them from attachment by creditors. The bottom line is that your marriage partner is your economic partner, and the behavior that hurts his credit hurts yours too.

You need legal assistance to help you decide how to handle your situation. In the event that you choose to end the marriage, the divorce judgment must be carefully crafted to limit (though probably not eliminate) your post-divorce liability for debts incurred during the marriage.

**January 29, 2004**

**Q: I need to start a divorce action but all of the lawyers I have talked to charge \$150 to over \$300 an hour and they want several thousand dollars paid in advance. I don't have that kind of money. What can I do?**

**Q: I decided to start the new year right by making a will but the lawyer I talked to says that my wife and I each need a will and in addition we need some kind of agreement, and the cost will be over \$2000. I don't have thousands of dollars to spend on this now, so I would like to do my will myself. Can you point me in the right direction?**

**A:** Affording quality legal services is a challenge for middle-income people. The fees quoted in both of these questions are within the range of expected charges for the services desired, and on the low side for an experienced attorney. The reality is that an estate plan can cost as much as a nice vacation, and a relatively straight-forward divorce can cost as much as a new car, if not more. There are really only three choices here.

First, you can decide that legal services are a necessary expense and do what you have to do to acquire the money to purchase the help you need. You can plan ahead and save for the expense; you can borrow from family or from your bank; you can increase your charge card balance; you can talk to your attorney about a payment plan (though a bank loan is usually cheaper). If you have a complex problem, or if there is a lot at stake, this is really the best choice.

Second, you can adopt a "bargain basement" approach to legal services. Perhaps you can consult occasionally with an attorney, depending on the other party to prepare documents and just asking your lawyer to read them and make sure you understand them. At least you'll know what you're agreeing to, though you won't have someone to advocate for you, get information for you, and help you to arrive at a reasonable settlement. If you are preparing your own documents, you will probably use commercially sold forms, which you should approach with caution: in general, they are generic in nature and geared to the country as a whole instead of to Wisconsin's somewhat unique laws, and the "fill-in-the-blank" approach doesn't help you to determine what your special issues are or what other

problems you may have that you should address. The Dane County Clerk of Courts has a useful web site and information on where to get the best forms available. You can find it at <http://www.co.dane.wi.us/clrkcourt/clrkhome.htm>. If you're writing your will, you should be aware that the way you go about signing the document may be as important as what is in it. Because Wisconsin is a community property state, married people usually need a marital property agreement in addition to a will for each spouse.

For me, this seems a lot like trying to do my own car repairs. I could probably learn how to do simple mechanical adjustments, but instead I take my car to a reputable dealer for tune-ups and repairs. Of course it costs more to consult a professional than to do it myself. But I don't have to spend the time learning about auto mechanics, I don't have to deal with the frustrations of struggling to perform unfamiliar tasks, and I don't have to deal with big trouble if I find out down the road that I didn't do something right.

The third option is to do without legal services. Sometimes that's not an option; if you're the defendant in a lawsuit or the respondent in a divorce action, you can't avoid the legal system. And it's never a good option: if you don't plan your estate, issues like how your property will be distributed and who will care for your children may be resolved only after a bitter and expensive legal battle, and in a way you wouldn't have chosen. If you don't consult counsel when you buy a house, the offer to purchase may not say everything it should, or the deed may be incorrect. Paying a lawyer now may save you money, time and trouble in the long run.

**November 1, 2003**

**Q: If the ex-wife is awarded the home (and mortgage obligation) in the divorce judgment, and she lets the bank foreclose on the property, is the ex-husband still liable for the repayment? If not, how does he get it off his credit record?**

A: The issue of an ex-spouse's obligation to creditors for debts assigned to the other party by the divorce court remains a troublesome one and often becomes a trap for the unwary.

Since your mortgage lender was not a party to your divorce action, the lender is not bound by the judgment but may rely on the promissory note and mortgage executed at the time the home was purchased. In most cases, both the husband and wife sign these documents, and thus as far as the creditor is concerned they are jointly and severally liable for the debt. However, the debt is secured by the house, and in most cases the equity in the house is more than sufficient to cover the unpaid mortgage balance in the event of foreclosure.

If, after the foreclosure sale, some portion of the debt is still outstanding, the creditor can choose whether to go after the husband, wife, or both for the unpaid balance.

If the foreclosure sale yields enough proceeds to repay the debt in full, both spouses are off the hook – but the credit rating of both may be affected. In this case, I suggest that the

long-suffering ex-husband contact the three credit reporting services – Equifax, Experian, and Trans Union – and give them a letter of explanation, along with a copy of the relevant portion of his divorce judgment, to put in his file.

A well-crafted divorce agreement will provide that each spouse must hold the other harmless with respect to all obligations assigned to that spouse as part of the judgment of divorce. It may also provide penalties, in addition to requiring that the aggrieved spouse be made whole, in the event of failure to meet court-ordered obligations.

**August 14, 2003**

**Q: Several years ago you wrote an article on common law name change, which made sense to me. You warned that some people aren't going to be as willing to accept the new name. How do you suggest going about changing one's name on significant documents, such as a driver's license, passport, credit cards, utilities, apartment lease, etc.?**

A. When people marry and change their surnames they are doing a common law name change. They don't go to court; they don't have a paper that documents a change in their names. They just begin using the new name. Because in this culture it is common for people – especially women – to change surnames at marriage, newlyweds are generally congratulated when they go to motor vehicles or the passport agency to request a name change. It's not always so easy when you are changing your name for reasons other than marriage, however.

The best place to start is with a document that is widely accepted as identifying you, such as a driver's license or passport. The passport authorities have specific requirements for name changes. If you have a marriage license or divorce decree, you can download the name change forms from the internet and mail them in. However, if you don't have legal documentation of your new name, you must apply in person and bring a witness with you who can attest that the new-name you is the same person as the old-name you who originally obtained the passport. The people at the driver's license bureau may want written documentation that your name has changed. If you have already changed your passport, that will work. If you are changing your name because of a divorce, a copy of your divorce judgment may suffice. Many agencies will accept a notarized statement that Mary Smith has changed her name to Mary Doe.

The next thing to do is to change the name on your checks, because if your checks don't match your identification, you will have a hard time cashing a check. After that, it's time to deal with credit or debit cards and social security. Simply informing the credit or debit card company of your name change is generally sufficient, though it may take several weeks for you to get your new card. Your local social security office has a form for you to fill out to change your name on your social security card.

With respect to your utility bills and lease, all you need to do is to inform the company or

landlord of your new name when you send in your next payment. Telephone book listings generally need to be in by the first of October for the following year.

After dealing with all of this, I personally wouldn't bother to change the name on magazine subscriptions!

**July 3, 2003**

**Q: I hear that the child support laws are about to be changed. Will the changes make life easier or harder for single parents?**

A: Establishing a fair system for assessing child support is a daunting task that state policy makers have struggled with since the passage of the Divorce Reform Act in 1977. The system has been revised several times, but continues to come under severe criticism from payers. Unfortunately, the revisions currently under consideration by the Department of Workforce Development would generally reduce the support available to a parent who is responsible for the children for between 25% and 40% of the time. They thus create additional burdens for most primary custodial parents – an inappropriate result, in my view.

**May 22, 2003**

**Q: I have recently filed for divorce and am the primary caretaker of our two-year-old son. I thought I would receive 17% of my husband's income as child support for our child, but the court said that I can't get that much because he has children from a prior marriage. I don't think it is fair for the court to treat those children better than ours.**

A: The rules establishing a parent's responsibility for paying child support are promulgated by the Department of Workforce Development and set forth in the Wisconsin Administrative Code. These rules have the force of law even though they do not appear in the statute books. The court is simply applying the law as it is written.

The rule that affects your situation involves "serial-family payers" – parents like your husband, who already have a court ordered obligation to provide for children from a prior marriage or relationship at the time the court is asked to determine their responsibility to support the child he and you share. It provides that, in computing the base income upon which he is required to pay support to you, he can deduct the amount paid by court order to support his other children. This computation obviously results in reducing his income, for the purpose of determining his obligation to your child, by the percentage he pays to support his older children.

The rationale behind the rule is that the rights of children should not be adversely affected by subsequent behavior of their parent, including the decision to have another child. The ability of the parent to support the additional child is limited by preexisting obligations to

the earlier-born children. Look at it this way: if your husband has another child by another woman, your child's support rights will not change as a result.

**April 22, 2003**

**Q: Can I deduct my attorney's fees for my divorce?**

The general rule is that the fees you pay to your lawyer, accountant, appraiser, and other experts in connection with your divorce action are *not* deductible. However, under some circumstances you may be able to claim a deduction for a portion of these fees.

For example, fees incurred for the production or collection of income are deductible, as are fees incurred for the management, conservation, or maintenance of income-producing property. Thus, fees incurred to obtain or collect spousal support are deductible. Fees incurred in order to determine or collect taxes are also deductible.

You should ask your lawyer to keep careful records and to give you an opinion about how much if any of your fees can be deducted. You should share this information with your accountant and rely on your accountant's advice.

**October 24, 2002**

**Q: Can a person with a serious mental health problem get custody of a child?**

A: People with physical or mental health disabilities are like all of the rest of us: some are good parents and some are not. If at the time of divorce there is concern that one parent suffers from a mental health disorder that negatively affects his or her parenting ability, a psychological evaluation by an experienced mental health professional may suggest that some accommodations should be made in placement or decision-making for the child. The mere existence of a disease or disorder – whether physical or mental – is not a basis for limiting a parent's access to his or her child. The standard, as in any custody and placement evaluation, is the child's best interest.

**September 12, 2002**

**Q: I have been divorced for three months. My ex and I have a 6-year-old daughter, who sleeps overnight at his house every other weekend and one night during the week. I have just learned that he moved his girlfriend into his place – my daughter came home and told me! I am appalled that he would subject her to this sort of lifestyle with the person who broke up our marriage. Can I stop my daughter's visits to his home?**

A. No. You and your ex are both entitled to adult relationships of your choosing. He is entitled to a relationship with your daughter, and she is entitled to a relationship with him. You are entitled to interfere with her time with her dad only if she is in danger in his

household. While your concerns about his personal choices so soon after the divorce are understandable and no doubt shared by many, they do not rise to the level the law requires to restrict his time with her. Four nights out of fourteen constitutes relatively modest placement time for him to begin with, and unless your daughter is being harmed in his household you are very unlikely to be able to reduce his placement further.

### **March 28, 2002**

**Q: My wife and I have been married for more than thirty years. Frankly, the marriage has never been a good one and now that all of the kids are established on their own I would like to move on. I am worried that the “no fault” law means that I cannot afford to do this. What could I expect if I were to go ahead with a divorce?**

A: You need to consult an attorney who can advise you about your rights and responsibilities, which are determined by your specific situation. In general, in a long term marriage each partner would expect to receive half of the total assets, excluding assets given to or inherited by one party alone. The recipient of those gifted and inherited assets would generally keep them. The spouse with greater earnings may be required to pay maintenance payments for the continuing support of a lesser-earning spouse. The divorce process itself could be expected to take one to three years. Most reputable divorce attorneys charge by the hour; in Wisconsin, rates for an experienced attorney range from \$190 per hour to \$300 per hour. “No-fault” means simply that neither spouse has to prove the other’s misbehavior in order to justify the granting of a divorce. Courts in Wisconsin grant the divorce based on the “irretrievable breakdown” of the marriage.

### **Correction to March 28, 2002 column:**

In response to a recent column in which I said that the divorce process could be expected to taken from one to three years, I received a letter from Judge Sarah O’Brien, the Presiding Judge of the Dane County Family Court, in which she offered the following useful information:

“In Wisconsin each case type has a case processing benchmark set statewide. The benchmark sets a goal for courts to try to meet in terms of completing cases of that type. The case processing benchmark for divorces is 12 months. In Dane County we meet or exceed that benchmark in 75.5% of all cases.”

This impressive statistic demonstrates that courts attempt to avoid delay and process divorces efficiently, and that the majority of cases at least in Dane County can be resolved in a year or less. Approximately a quarter of the divorce cases in Dane County are more complicated and thus take longer to complete. Thanks to Judge O’Brien for her response.

### **March 2, 2002**

**Q: If you are paying alimony and it says in your divorce decree that if your ex gets**

**married you don't have to pay any more, and if you find out that she is married and has been for quite some time, what can you do about it?**

A: In Wisconsin, by statute the obligation to pay maintenance (the Wisconsin word for alimony) ends with your spouse's remarriage unless your divorce judgment provides otherwise. A well drafted stipulation for divorce will provide that the recipient spouse has an affirmative obligation to inform the paying spouse of his or her remarriage. Whether or not such a provision is in your judgment, you are entitled to reimbursement because you have been paying money you don't owe. Contact a lawyer in your area and collect! Also, call your accountant: you may have to refile your income tax returns for the years in question because you presumably have been deducting this payment from your income tax and the recovery of the money will have a tax impact.

**Q: Would assets acquired after the divorce was filed but before it was finalized be a part of the marital assets to be divided in the divorce settlement?**

A: Different states have different rules on this subject. In Wisconsin, marriage continues until the divorce is granted and property is divided as of the date of trial. Thus, assets acquired during the pendency of the divorce action are included in the divisible estate. However, some other states provide that the joint acquisition of assets ends when the divorce action is commenced. If you're not from Wisconsin, check with a lawyer in your jurisdiction about this.

**Q: This is a real estate question. My parents are divorced. According to the divorce decree, they own adjoining properties. The well is on my dad's property but the decree gives my mom rights to the water. She has moved out of the house and I am renting it from her. My dad is threatening to bulldoze the well since my mom doesn't live there any more. Do I have any rights?**

A: If water rights are not recorded in the deed, but are provided only in the divorce decree, the specific language of the decree determines whether your father can restrict or eliminate water access to the property as a result of your mom's moving out of the house. Your mom should call her divorce lawyer to get this straightened out. If her water rights end when she moves, her property is worth substantially less than your dad's property. The water access rights ideally would have been preserved in a way that would permit her to transfer the property without loss of the water rights.

**Q: In our divorce decree, each of us got a car and was required to keep up the payments on that car. I have done my share, but my ex has not and the creditor is coming after me for payment. Both of us are still on the title to the car. How do I get this off my credit history? I do not have possession of the car; can I repossess it?**

A: The issue isn't who has title to the car, but who signed on the loan documents. I assume that you both did, and the creditor thus has the right to come after you if your ex isn't paying. That may seem unfair, but remember that the creditor wasn't involved in

negotiating your divorce decree and both of you still have the same status with the creditor that you did when you took out the loan. Your recourse: your ex is in contempt of court for failing to do what he or she is responsible to do under your divorce decree (i.e., paying the car loan). You can ask the court to make your ex pay up and to compensate you for any costs you have incurred because of his or her negligence. You can ask to have a copy of the contempt order put in your credit file so potential lenders will see that the problem was not your fault.

**August 30, 2001**

**Q. Does a divorced father have the right to find out if the mother is receiving any outside benefits like Social Security for a child who has disabilities? Who can give him this information?**

A. Yes, a father has the right to know what benefits his child receives. If he knows the child's social security number (and he should), his local social security office can provide the information. (If he doesn't have access to the social security number, it should be set forth in the divorce pleadings on record at the county courthouse.) Alternatively, in the context of a family court post-divorce action, he can require the child's mother to provide full details and documentation about any assistance she receives for the child.

**June 6, 2001**

**Q: My ex-husband has custody of my son. I have been paying child support. My son is now 19 years old and graduating from high school, so my obligation to pay support is ending. How do I go about stopping the support payments? I can't afford to hire a lawyer.**

A. If your child support obligation is paid by income assignment, you will need a court order to end the assignment. The easiest way to do this is to have the lawyer who represented you during the divorce proceedings prepare the document. It is a simple process and should not be unduly expensive. Depending on what county you live in, you may be able to accomplish the same result by writing a letter to the court commissioner, giving your case number and your son's birth date, and explaining that your son has graduated from high school and therefore your obligation has ended. Both you and your son's father should sign the letter. If that doesn't work, see your lawyer and get the order. It's easier and cheaper and much less frustrating than trying to recover money that has been wrongly deducted from your paycheck, or getting inaccurate statements of arrearages removed from your payment record. And congratulations for meeting your child support obligation and providing for your son until he became of age. He is a lucky guy; a lot of kids don't have such responsible parents, and they suffer as a result.

**February 1, 2001**

**Q: I have decided to get out of a bad marriage after three kids and 22 years. My**

**spouse and I own a home, a boat, and two vans. I want the house, which is in both of our names, and the van I've made payments on, which is in his name. His drinking has made it difficult to live with him; however, he won't voluntarily leave. Our children are in grade school and middle school and he is not in any condition to take care of them, so the kids and I need to stay in the house. He is unemployed; he could work, but won't. Can I get him out of the house? Can I keep the house for the kids?**

A. Again, you raise questions that are determined by state law, and the answer will depend on where you live. Wisconsin, like most states, presumes equal division of the property you and your spouse have acquired during your marriage, so you may have to pay him his half of the equity in your home if you want to keep it. However, some states, including Wisconsin, permit a court to order that your payment to him be delayed until your minor children have finished high school, when it might be more reasonable to sell the house.

As for requiring him to leave the house, this is a very difficult issue. After all, it's his home, too. In most states, you are unlikely to be successful in forcing him to leave unless his presence poses a danger to you or the children. If there has been any family violence, or if his drinking creates either a physical or emotional danger to the children, you may be able to obtain a court order requiring him to leave the home. If not, the two of you may have to co-exist until the home is awarded to one of you in the final judgment. I know it is a terrible situation, but unfortunately many divorcing couples are stuck with it.

**Q: Can someone of legal age divorce his or her parents? I want all ties to my parents legally severed so that in the case of my death, they cannot have legal rights to my children. What can I do legally to see that my wishes are carried out?**

A: Divorce is a statutory legal process for terminating a marriage. Since you're not married to your parents, you can't divorce them. Parents can terminate their legal rights to minor children through a different statutory process. There is no procedure for a child – whether minor or adult – to terminate the parents' parental rights.

However, you are of legal age so your parents have no legal rights with respect to you, nor do they have legal rights over your children. If you were to die, the children's father, if living, would have the right to their custody and control. If the father is unknown, unavailable, or incapable of assuming the responsibility of caring for the children, a person of your choice can be appointed their guardian. You make this choice in your will. Unless there are very unusual circumstances that are detrimental to the children, your choice of guardian would be upheld even over your parents' objections.

You should make a will to protect your and your children's interests. You should also execute health care and financial powers of attorney, so that someone you choose will be able to make decisions for you if you are unable to do so yourself.

**September 28, 2000**

**Q: My husband abandoned me two years ago and I am now divorcing him. The judge says I have to have an Ad Litem for the sake of the children. Who appoints the Ad Litem and how long does it take?**

A: In Wisconsin and many other states, where custody is an issue in a divorce proceeding or the court has reason to be concerned about the welfare of minor children, the presiding judge must appoint a guardian *ad litem* to advocate for the children's best interest. A guardian *ad litem* is an attorney; most courts require that attorneys who serve in this capacity have some special training in the area. The guardian *ad litem* does not function as a personal guardian for the children, but rather acts as their lawyer in court proceedings. A good guardian *ad litem* can effectively reduce the amount of time it takes to conclude the divorce process. Generally, the parents pay the fees of the guardian *ad litem*.

**Q: My daughter will be 18 soon. Will she be legally able to have her mother's new husband adopt her without my consent?**

A: Parents must give consent or have their parental rights terminated before a minor child can be adopted. This rule does not apply to adults. If your daughter wants her step-father to adopt her and he wants to do so, you cannot prevent the adoption. Your legal responsibilities to your daughter end when she reaches age 18 and graduates from high school – and your ability to exercise control over her life ends as well.

**July 6, 2000**

**Q: I signed a quick claim deed in a divorce agreement. My ex got the house and was supposed to pay me money in exchange. He never did. He hasn't paid the bank either and they are foreclosing on the house. I asked the banker if I could pay the past-due loan amount and take the house myself. He said I couldn't. Why not? We bought the house together.**

A: There are two basic kinds of deeds to real estate: a warranty deed, in which you guarantee that you are transferring full and complete title, and a quit claim deed, in which you transfer whatever your interest is with no guarantee. In a divorce situation, where the husband and wife have a warranty deed guaranteeing their purchase from the people who sold them the house, the transfer from joint ownership to one party's ownership is generally accomplished through a quit claim deed. This is what happened in your case. After you signed that deed, you were no longer an owner of the house and your ex-husband became the sole owner. Now he hasn't met his obligations. Since you are not an owner of the house, you can't simply pay up on the past-due loan and move on. The house now belongs to someone else. You can attempt to purchase the house at the foreclosure sale, in which case you would owe the bank whatever is due on the mortgage and would also probably owe some money to your ex-husband. Since he still owes you

money from the divorce, whatever you owed him on the house sale could probably be applied against what he owes you. If the bank is willing to do business with you, this would be a way to get the house back. You can also go back to divorce court and have your ex-husband found in contempt of court for failing to pay the money he owes you. Assuming that he receives some proceeds from the foreclosure, this might be a good time to collect what he owes you.

**Q: I have a friend whose marriage is breaking up. He just found out that his ex never got a divorce from her first husband. (They were married in another state.) It seems like this marriage shouldn't be valid. Does he have to do anything besides just move out?**

A: Your friend is a bigamist. This is against the law. If he truly did not know about his wife's earlier marriage, he would likely not be prosecuted – but there are other thorny issues: did they file joint income tax returns, taking advantage of a filing status to which they weren't entitled? Did either of them use health insurance benefits or other fringe benefits to which spouses are entitled but others are not? Then there is the fact that your friend and his wife did go through a legal marriage ceremony in this state, which has to be undone somehow. At the least he needs an annulment of a marriage that could not be legally contracted. He may have other complications as well. Your friend needs to talk to a lawyer specializing in matrimonial matters. His wife's earlier marriage has unfortunately made it more difficult, not easier, to end their current marriage.

**January 20, 2000**

**Q: I am 35, have two small children, married for 12 years. My husband has been having an affair. He doesn't want a divorce. He told me he would end the relationship but his girlfriend called to tell me they are still seeing each other. I want a divorce; he won't leave. What can I do? Can I get a divorce because of adultery? What can I expect financially?**

A. An affair doesn't have to mean the end of your marriage. Affairs are the precipitating factor in about a third of divorces; however, surveys of spouses in continuing marriages indicate that about a third of the still married partners have had extramarital affairs. Thus, the mere fact that a spouse has participated in an extramarital relationship doesn't automatically mean there will be a divorce; it's up to you and your spouse to decide how to deal with this crisis in your marriage.

If you're certain that your husband hasn't and won't give up his girlfriend (and I would not take *her* word for it!) you may need to proceed with a divorce. You can expect that the children will spend time with both of you; that if they spend more time with you than with him and/or if your earnings are less than his, you will receive child support according to the percentage standards in use in your state; that your property acquired during your marriage will be divided equally between you; and, if your earnings are significantly less than his, you may be entitled to some short-term support for yourself to

enable you to get back into the job market. For more specific expectations, you will need to consult with a lawyer in your state, as the law differs from state to state.

**October 28, 1999**

**Q: My husband has recently asked for a divorce. I intend to write a will, when our divorce is final, leaving everything to my sister. However, because I face surgery for a serious condition in the near future, I am concerned that I may not survive to see my divorce finalized. Can I write a will now, even though I am not the sole owner of any assets?**

A: You can write a will now. The extent to which it will transfer assets to your sister depends on the assets in your probate estate. Property held in joint tenancy, as survivorship marital property, or in tenancy by the entirety will transfer by operation of law to the surviving owner at one owner's death. These forms of property co-ownership carry a "right of survivorship" giving the survivor the right to all of the property. However, a decedent may transfer his/her interest in property held by two or more owners as tenants in common by means of a will.

If you live in Wisconsin or another community property state, you may have an ownership interest in property titled solely to your spouse that you can transfer to others in the event of your death. Bottom line: a will makes good sense, and you would do well to discuss with your divorce attorney the specifics of your situation.

**September 9, 1999**

**Q: I would like to know if I can take my ex-husband back to court for failing to meet the terms of our divorce agreement.**

A: Like you and your ex-husband, most divorcing couples reach an agreement – often referred to as a "marital settlement agreement" or a "stipulation" – resolving all of the issues that have arisen between them in the divorce process, and eliminating the need for a contested trial before the judge. Lawyers encourage their clients to negotiate these agreements, because generally the parties to a divorce and their counsel can make better decisions regarding property, support, and care of the children than can a judge who is not as familiar with the situation as are the people who live with it.

The parties then take this agreement to court for the judge to review. When the judge is satisfied that the agreement is fair, he or she incorporates the agreement into the judgment of divorce – the legal document granting the divorce. From that point on, the agreement becomes an order of the court and is enforceable as such.

In other words, your divorce agreement – as long as it has been made part of your final judgment – is as enforceable as any other court order. You may bring a motion to have your former spouse held in contempt of court for failure to comply with the court's order.

He then may be subject to penalties imposed by the court, including paying a part or all of your attorney's fees, in addition to being ordered specifically to comply with the judgment.

**Q: I have been with a man for 14 years. We have lived as married; I have a wedding band that he bought me. If we go our own ways, what rights do I have? We have lived in several different states ... .**

A: The first question for you to answer is whether you have lived in a state that recognizes "common law marriage" for a long enough time for you to be considered married in that state. American states differ significantly in their willingness to recognize common law marriage. Wisconsin does not recognize common law marriage at all; some states, however, consider "a significant" (not defined in any state) period of cohabitation to be sufficient to establish a marriage at common law, provided that the couple holds itself out as married -- e.g., by filing joint tax returns, using the same last name, or referring to each other as "husband" and "wife."

States that recognize common law marriage are: Alabama, Colorado, District of Columbia, Iowa, Kansas, Montana, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah. New Hampshire recognizes common law marriage for inheritance purposes only.

If you and your partner had lived together for the requisite period of time in a state that considers common law marriage to be a valid form of marriage, you will be viewed as married, even if you are now residing in a state that does not, on its own, recognize common law marriage. Each state gives "full faith and credit" to the laws of the other states, so that people's rights and statuses do not change just because they moved across state lines.

In your particular situation, none of the states in which you have lived recognize common law marriage. Therefore, you are left with the alternative of filing what has been popularly referred to as a "palimony" suit, which first came to public prominence some years ago when Jennifer Triola sued actor Lee Marvin. A lawsuit of this kind requires that you prove that you have been unfairly treated because of your role in and contributions to the relationship. If you can establish that you have been unfairly disadvantaged and your partner has been unjustly enriched as a result of your relationship, you may be entitled to compensation. You are not entitled to spousal support (usually called "alimony" or "maintenance"), however.

Of course, if you and your partner own property jointly (in both of your names), you are entitled to your share of the property. You may have to bring an action for sale or partition of the property in order to recoup your interest.