

BowTieLawyer

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Modifying Your Divorce Without the Court, Think Again. (By request)

This is an all too common occurrence. Mom and Dad get divorced, rock along and a few years down the road they decide to change their deal. They are getting along, at least better than before the divorce, and both are burned from their past experiences with attorneys and attorney fees. So...they decide we can handle this like mature adults. Dad wants a custody tweak, Mom needs a support adjustment – *bam-shabang*- let's just do it.



Non-approved
“Modifications” are not
worth the paper they are
written on.

Mom and Dad agree that the Order will be “modified.” They switch to a week-on, week-off custody arrangement. The kids are older, it works. Dad starts paying support directly for the benefit of the kids. He pays for the child’s car and insurance, and picks up health insurance which was previously mom’s responsibility. Dad does not pay mom directly. It’s about the same money, probably. What could go wrong? A lot of things!

Court Orders may only be modified by other Court Orders. Once an Order is issued and in place the parties are bound to follow it. This is so ironclad that the Court has a mechanism in place to enforce its Orders that can result in the breaching party having to pay fines and/or go to jail. This process is called Contempt. If you are not following the Order in your case, you are subject to a contempt petition being filed by the other party.

But if we agreed what’s the big deal? The deal is that Agreement is not worth the paper its written on if it is not approved by the Judge. At some point in the future, and it never fails, Mom and Dad have a falling out, again. Mom goes to attorney and tells him that Dad has not paid child support in two years. Mom sues Dad for Contempt for all of the “back” support and then “un-agrees” to the custody change and goes back to an every other weekend schedule for visitation. Dad counter sues for a custody modification seeking custody now due to mom’s change and contempt over the health

insurance issue. The only sure thing now is that each has considerable contempt for the other and the Court is left to sort it out.**

Dad scrambles to get his “proof” that he paid the car and insurance, but that is not what was ordered. Mom tries to justify her position on the visitation retread because that is what the papers said, as if her hands are tied now and the “papers” know best. Had they done an Agreed Order and had it approved by the Court, they could have accomplished the same thing and not left the door open for future problems of having the old Order used against them. Both would have been protected and still had the same “teeth” in enforcing their Agreement it would have just been enforcement of their new Agreement. Now both have risk and have conducted, at least, actionable non-compliance with the Court order.

If you modify your Order/Agreement do it in writing, signed and approved by the Court. It’s the only way to guaranty that the Agreement is enforceable and for protection from being subject to Contempt for not doing what was in the prior Order.

In the interest of not being too wordy some details and nuances were not fully delved into, plus this is a blog for my amusement as much as anything else. Please speak to your attorney should you find yourself in circumstances described above. In the event that you do not have an attorney [click here!](#)

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