

RMA / ADR ACADEMY

Florida Postmarital Agreements

Drafting, Disclosure, Mediation & Enforcement

STUDENT COURSE BOOK

For Florida lawyers, family mediators, and advanced practitioners
Law and authorities reviewed through August 22, 2026

PROFESSIONAL EDUCATION — NOT LEGAL ADVICE

Course purpose and learning outcomes

This approximately two-hour, self-paced program helps practitioners classify, negotiate, mediate, draft, implement, enforce, and challenge Florida postmarital agreements. It combines current doctrine with process design and ethics.

Approval notice: No Florida Bar CLE, Florida mediator CME, IACET, or other regulatory approval is claimed. A completion certificate records course completion only.

By the end of the course, you should be able to

- Map an agreement to Casto, Macar, O'Hair, Martin, or rule 12.540 based on chronology.
- Design and evaluate financial disclosure for businesses, trusts, real estate, retirement, and support.
- Identify coercion, overreaching, confidentiality, impartiality, and UPL risks.
- Draft coordinated property, support, estate-rights, execution, and implementation provisions.
- Use a defensible pre-signing and post-judgment checklist.

Course map

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1. Classify the Agreement Before You Analyze It

Estimated time: 12 minutes

Learning objectives

- Distinguish premarital, postmarital, separation, and litigation settlement agreements.
- Select the correct Florida framework based on timing, purpose, discovery, and judgment status.

Why classification controls

A postmarital or postnuptial agreement is executed after marriage and may allocate property, debt, support, estate rights, business interests, or duties during an intact marriage. It is not automatically governed by Florida's Uniform Premarital Agreement Act. Section 61.079 expressly concerns premarital agreements. A marital settlement agreement negotiated in or immediately around dissolution may implicate different rules, especially after discovery or entry of judgment.

The four-question intake

Ask: When was the agreement signed? Was dissolution contemplated or filed? What disclosure or discovery had occurred? Has a final judgment ratified or incorporated the agreement? Those facts locate the problem on the Casto-Macar-O'Hair-Martin continuum.

2026 update

Martin v. Sater is a Fifth District en banc decision holding that a post-judgment effort to undo an incorporated agreement must proceed under Family Law Rule 12.540. The court receded from Suppa and certified a question. The Florida Supreme Court declined review on June 18, 2026, so *Martin* remains operative Fifth District authority; the Supreme Court did not answer the certified question on the merits.

Practice move

Labeling is not decisive. Build a chronology exhibit showing marriage, negotiations, disclosure, filing, discovery, mediation, execution, judgment, and challenge. Analyze the legal effect at each point.

Practice scenario: The spouses sign a detailed agreement two days before an uncontested petition, intending incorporation. No formal discovery occurs. Nine months after judgment, one spouse seeks relief based on unfairness. Which threshold issue comes first?

Knowledge check

1. Which statute principally governs an ordinary agreement signed after the parties are already married?

- A. Section 61.079 in every case
- B. The governing framework depends on common-law cases and the agreement's procedural setting
- C. Chapter 44 exclusively
- D. The UCC

2. After a final judgment incorporates the agreement, Martin v. Sater directs the court first to examine:

- A. Whether the bargain was unequal
- B. Rule 12.540 as the path to relief from the judgment
- C. Whether either spouse remarried
- D. Only mediator conduct

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

2. The Casto Framework

Estimated time: 16 minutes

Learning objectives

- Apply both Casto routes to challenge.
- Separate substantive disparity from disclosure and knowledge.

Route one: misconduct

A challenger may establish fraud, deceit, duress, coercion, misrepresentation, or overreaching. The inquiry is fact intensive: threats, timing, isolation, dependence, misinformation, health, language access, pressure, and interference with counsel can matter. Independent counsel is powerful evidence, but Casto rejected incompetence of counsel as a freestanding basis to vacate.

Route two: unfairness plus inadequate financial knowledge

If the provision is unfair or unreasonable in the parties' circumstances, the burden shifts to the defending spouse to show full and frank disclosure or the challenging spouse's general and approximate knowledge of the character and extent of the property. Gross disparity is a gateway, not automatic invalidity.

What general knowledge means

Knowing that the family is wealthy, recognizing business names, or knowing that an asset exists may not establish approximate knowledge of values, liabilities, income, ownership percentages, or restrictions. Casto itself illustrates the difference between a list of assets and meaningful knowledge of their economic extent.

A bad bargain can still be enforceable

The Florida Supreme Court emphasized that an unreasonable-looking bargain can be knowingly and freely made for nonfinancial reasons. Do not turn the fairness screen into judicial rewriting of an informed contract.

Practice scenario: One spouse receives a home plus \$750,000 and waives alimony and claims to businesses said to be worth tens of millions. She knows the company names but not values, debt, cash flow, or ownership percentages.

Knowledge check

1. Under Casto, an apparently unfair provision is:

- A. Automatically void
- B. Irrelevant
- C. A trigger for the disclosure/knowledge inquiry, not automatic invalidity
- D. Valid if notarized

2. Which fact most directly supports approximate knowledge?

- A. The spouse knew the family was comfortable
- B. The spouse received current valuations, liabilities, ownership percentages, and income data
- C. The spouse signed quickly

- D. The document says disclosure was adequate

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

3. Disclosure, Valuation & Informed Consent

Estimated time: 18 minutes

Learning objectives

- Design a defensible disclosure process.
- Identify valuation and verification needs for complex assets.

Build the disclosure record

Use dated schedules identifying assets, debts, titled owner, acquisition date, marital/nonmarital position, estimated value, valuation date, source, encumbrances, income, tax basis when relevant, and supporting documents. Obtain written acknowledgments of what was and was not valued. Keep delivery and revision history.

Businesses and professional practices

Request tax returns, K-1s, financial statements, cap tables, governing agreements, debt, compensation, distributions, related-party transactions, and prior appraisals. Clarify whether value includes enterprise or personal goodwill, and whether discounts, contingent liabilities, buy-sell restrictions, or tax effects are assumed.

Trusts and deferred interests

Inventory revocable and irrevocable trusts, powers, beneficial interests, distribution standards, withdrawal rights, trust protectors, decanting or modification powers, and divorce-triggered provisions. Do not equate a beneficiary label with present ownership or ignore a trust merely because it is offshore or discretionary.

Kearney's warning

Kearney involved a complex, high-value company and a trust. The First District upheld findings that disclosure was inadequate and consent was not genuinely informed even though the wife consulted lawyers. The lesson is process substance: counsel cannot cure missing economic information or manipulation automatically.

Informed waiver architecture

For each waived right, describe the right, disclose a reasonable baseline or range, explain the agreed substitute, identify assumptions, and permit questions and independent advice. Avoid blanket representations that contradict the file.

Practice scenario: A six-page net-worth statement lists a closely held company at book value, but annual distributions exceed that figure and no operating agreement or appraisal is supplied.

Knowledge check

1. For a closely held business, the strongest disclosure file includes:

- A. Only the company name
- B. Only a tax return
- C. Ownership, financials, debt, distributions, governing restrictions, and valuation basis

- D. A spouse's estimate without documents

2. Independent counsel:

- A. Automatically validates any agreement
- B. Is irrelevant
- C. Is important evidence but does not automatically cure nondisclosure or coercion
- D. Eliminates the need for valuation

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

4. Voluntariness, Duress, Coercion & Overreaching

Estimated time: 14 minutes

Learning objectives

- Spot process facts that threaten voluntariness.
- Use safeguards that create meaningful choice.

Pressure is contextual

Marital negotiations are emotionally charged. The legal question is not whether pressure existed, but whether the combination of threats, leverage, dependency, misinformation, time, capacity, and alternatives undermined meaningful assent or constituted a Casto ground.

Red flags

Watch for threats of financial cutoff, eviction, exposure, immigration consequences, loss of contact with children, business collapse, self-harm, or immediate filing; surprise presentation; monitoring communications; refusing access to records; selecting the other spouse's lawyer; or demanding signature despite advice not to sign.

Process safeguards

Separate counsel, adequate time, staged disclosure, a written issues list, private consultation, interpreter or accommodation, capacity screening, cooling-off period, version control, and a confirmation meeting can improve decision quality and proof.

Do not manufacture a record

A video or recital is not a substitute for fair process. Scripted yes/no questions may be weak when surrounding evidence shows pressure or misunderstanding. The goal is actual informed choice, not litigation theater.

Practice scenario: A business owner tells a spouse the company will collapse unless an agreement is signed that day and that any independent lawyer who objects simply does not understand the business.

Knowledge check

1. Which safeguard most directly responds to rushed assent?

- A. A larger font
- B. A meaningful cooling-off period with independent advice
- C. A notary alone
- D. A merger clause

2. A voluntariness recital is best viewed as:

- A. Conclusive proof
- B. One item of evidence within the totality of circumstances
- C. Always inadmissible
- D. A substitute for disclosure

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

5. Property, Support, Estate Rights & Drafting Architecture

Estimated time: 18 minutes

Learning objectives

- Draft around classification, valuation, tracing, and implementation.
- Coordinate support and death-rights provisions with controlling law.

Property architecture

Define separate and marital categories; address appreciation, income, reinvestment, commingling, improvements, labor contributions, debts, titling, entireties property, future acquisitions, retirement interests, digital assets, tax refunds, and valuation dates. Specify tracing and recordkeeping rules rather than relying on labels.

Support

Florida's current section 61.08 authorizes temporary, bridge-the-gap, rehabilitative, and durational alimony; permanent alimony is no longer listed. A waiver or cap should address enforceability risk, need and ability assumptions, modification, security, death, remarriage, tax treatment, and whether a substitute transfer is property or support.

Estate and homestead rights

Section 732.702 permits written waivers of specified spousal rights before or after marriage and imposes execution requirements, including two subscribing witnesses for relevant Florida-resident postmarital waivers. Homestead is unusually technical. Mendia held that a postnuptial agreement and deed did not waive homestead rights where the language was limited to a future dissolution and did not specifically waive homestead.

Implementation

List every deed, beneficiary designation, QDRO, entity consent, note, security instrument, trust amendment, insurance change, or account retitling required. Assign deadlines, responsibility, cost, cooperation duties, default remedies, and document custody. An agreement that promises a transfer without completing it may produce separate litigation.

Draft for two futures

Read every clause once for dissolution and once for death during an intact marriage. Add a reconciliation analysis if the agreement is linked to marital repair. Coordinate with estate-planning, tax, employee-benefits, and business counsel as needed.

Practice scenario: An agreement says one spouse 'waives all rights in the home if the parties divorce.' The marriage continues until the titled spouse dies. The instrument never mentions homestead or death rights.

Knowledge check

1. Mendia's core drafting lesson is:

- A. A general divorce waiver necessarily waives homestead at death
- B. Homestead and death-rights waivers require precise, compliant drafting
- C. A quitclaim deed always solves homestead
- D. Postmarital agreements cannot address death

2. A complete implementation schedule should include:

- A. Only the signing date
- B. Documents, responsible party, deadlines, costs, and remedies
- C. Only mediation fees
- D. Only a severability clause

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

6. Mediation Ethics, Confidentiality & UPL Boundaries

Estimated time: 17 minutes

Learning objectives

- Apply mediator self-determination, impartiality, confidentiality, and advice rules.
- Separate neutral information from legal representation or document drafting.

Self-determination and impartiality

Rules 10.310 and 10.330 require respect for party decision-making and impartiality. A mediator may reality-test fairness, durability, and feasibility without favoring a side or prescribing an outcome. Coercive deadlines, threats, or pressure by the mediator compromise the parties' right to agree or not agree.

Advice, opinions, and information

Rule 10.370 allows a mediator to provide information the mediator is qualified to provide, but a mediator must not offer a personal or professional opinion intended to coerce agreement and must not predict how a court will decide. If a party may not understand how an agreement affects legal rights, the mediator should advise of the right to independent counsel.

Confidentiality

Section 44.405 makes mediation communications confidential and creates a privilege, subject to defined exceptions. A signed written agreement reached during mediation is not confidential unless the parties agree otherwise. Otherwise-discoverable information does not become protected merely because it was used in mediation.

UPL and role clarity

A nonlawyer mediator must not give individualized legal advice or draft custom legal instruments in a manner constituting the unlicensed practice of law. A lawyer-mediator must distinguish the neutral role from representation. Drafting for two disputing parties raises professional-responsibility and conflict issues; use party counsel or clearly bounded memorialization consistent with governing rules.

Ethical pause points

Adjourn or terminate when a party cannot participate meaningfully, the mediator cannot remain impartial, necessary decision-makers or information are absent, safety is compromised, or the process is being used to facilitate illegality. Document only what applicable reporting rules permit.

Practice scenario: An unrepresented spouse asks the mediator, 'If I waive alimony, will a judge enforce it, and what exact clause should I sign?'

Knowledge check

1. The best mediator response is to:

- A. Predict the judge's ruling
- B. Draft the clause for both parties

- C. Provide neutral process information and advise the party of the right to independent legal advice
- D. Tell the party to accept the offer

2. Under section 44.405, a signed written mediated agreement is:

- A. Always privileged
- B. Generally not confidential unless the parties agree otherwise
- C. Never enforceable
- D. Protected only if notarized

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

7. Litigation, Discovery, Judgment & Challenges

Estimated time: 14 minutes

Learning objectives

- Distinguish Casto from Macar and rule 12.540.
- Preserve issues before and after judgment.

Macar's procedural boundary

Macar held that rule 12.540, not Casto, supplied the framework for a post-judgment attack on an agreement reached after contested litigation began and the parties had the opportunity for extensive discovery. Macar limited its holding to that procedural posture.

Petracca and Crupi

These cases emphasize why the unfairness/knowledge route is less suited to counseled, arm's-length settlements after meaningful discovery. Fraud, discovery misconduct, misrepresentation, or coercion remain relevant, but the vehicle and burdens matter.

O'Hair and Martin

O'Hair treated rule 12.540 as governing a challenge to an incorporated judgment. Martin adopted a bright post-judgment route in the Fifth District, receded from Suppa, and held that rule 12.540 controlled even though the agreement preceded filing and formal discovery. The Florida Supreme Court declined review in 2026, leaving district precedent and potential inter-district nuance to be analyzed carefully.

Preservation checklist

Before judgment, identify objections, request an evidentiary hearing when supported, develop valuation and disclosure proof, and obtain findings. After judgment, plead the specific rule 12.540 ground and timing basis; do not assume Casto alone supplies jurisdiction to undo a judgment.

Practice scenario: Counseled parties exchange discovery for eight months, settle at mediation, and the agreement is incorporated. Six months later one spouse argues the bargain was simply unfair.

Knowledge check

1. Macar is most directly associated with:

- A. A pre-marriage agreement
- B. Post-litigation settlement after discovery and the rule governing relief from judgment
- C. A criminal plea
- D. Homestead devise

2. After Martin, practitioners in the Fifth District should first analyze a post-judgment attack under:

- A. Section 61.079
- B. Rule 12.540
- C. Only contract rescission

- D. Chapter 607

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

8. Integrated Practice Lab & Risk-Control Checklist

Estimated time: 11 minutes

Learning objectives

- Integrate doctrine, drafting, ethics, and procedure.
- Use a repeatable pre-signing quality-control protocol.

The integrated file

A durable agreement is the product of substance and process: correct classification, tailored disclosure, valuation discipline, meaningful counsel, voluntary timing, role clarity, technical drafting, execution formalities, and completed implementation.

Pre-signing protocol

Confirm parties and capacity; conflicts; goals and non-goals; chronology; governing law and venue; complete disclosure inventory; valuation exceptions; independent counsel; translation/accommodation; term sheet; drafts and redlines; cooling-off period; execution formalities; implementation documents; secure retention; and a post-signing review.

Mediator protocol

At opening, define the neutral role and confidentiality. Throughout, monitor self-determination, impartiality, understanding, missing information, safety, nonparty interests, and the line between neutral information and advice. At closing, clarify what is signed, what remains tentative, and how formalization will occur.

Lawyer protocol

Advise one client, quantify plausible baseline outcomes without guarantees, stress-test disclosure, identify collateral disciplines, memorialize informed instructions, negotiate without deception, and avoid treating recitals as a substitute for the file.

Quality-control question

Could a later judge reconstruct who knew what, when they knew it, what choices were available, what pressure existed, what rights were traded, and whether the promised transfers were completed? If not, improve the process before signature.

Practice scenario: A long marriage, a family business, an offshore trust, unequal access to finances, an uncounseled spouse, and an immediate-signature demand converge in private mediation.

Knowledge check

1. The strongest immediate action is to:

- A. Push for signature while everyone is present
- B. Pause for disclosure, valuation, independent advice, and meaningful time
- C. Add a broad waiver

- D. Rely on confidentiality

2. Which file most strongly supports durability?

- A. A signed signature page only
- B. A complete chronology, disclosure set, advice record, drafts, formalities, and implementation proof
- C. A mediator's prediction
- D. An unsigned term sheet

Practice notes

Use the space below to identify missing facts, legal issues, and the next process safeguard.

Final practice checklist

- Classify the instrument by timing, purpose, litigation, discovery, and judgment status.
- Map every material asset, liability, income stream, waiver, and implementation step.
- Document current values, sources, assumptions, exclusions, and delivery dates.
- Provide meaningful time, separate counsel, accommodations, and a noncoercive process.
- Coordinate property, alimony, estate, homestead, tax, business, trust, and benefits consequences.
- Use role-appropriate mediation information; do not coerce, predict, or cross UPL boundaries.
- Satisfy signatures, witnesses, notarization, entity consents, deeds, beneficiary forms, and other formalities.
- Before and after judgment, use the correct procedural vehicle and timing rule.

Authorities and verification links

The sources below were checked during production. Practitioners must confirm later amendments, rehearing, superseding authority, local requirements, and case-specific facts.

1. **Casto v. Casto, 508 So. 2d 330 (Fla. 1987)** — <https://law.justia.com/cases/florida/supreme-court/1987/66325-0.html>
2. **Macar v. Macar, 803 So. 2d 707 (Fla. 2001)** — <https://law.justia.com/cases/florida/supreme-court/2001/sc00-2542.html>
3. **Kearney v. Kearney, 129 So. 3d 381 (Fla. 1st DCA 2013)** — <https://law.justia.com/cases/florida/first-district-court-of-appeal/2013/1d12-0754.html>
4. **Crupi v. Crupi, 784 So. 2d 611 (Fla. 5th DCA 2001)** — <https://law.justia.com/cases/florida/fifth-district-court-of-appeal/2001/784-so-2d-611-fla-dist-ct-app-2001.html>
5. **Petracca v. Petracca, 706 So. 2d 904 (Fla. 4th DCA 1998)** — <https://caselaw.findlaw.com/court/fl-district-court-of-appeal/1375516.html>
6. **O'Hair v. O'Hair, 396 So. 3d 630 (Fla. 6th DCA 2024)** — <https://law.justia.com/cases/florida/sixth-district-court-of-appeal/2024/6d23-2424.html>
7. **Martin v. Sater, No. 5D2024-1301 (Fla. 5th DCA Dec. 10, 2025) (en banc)** — <https://law.justia.com/cases/florida/fifth-district-court-of-appeal/2025/5d24-1301.html>
8. **Martin v. Sater, SC2026-0122 docket (review denied June 18, 2026)** — <https://acis.flcourts.gov/portal/court/68f021c4-6a44-4735-9a76-5360b2e8af13/case/801668A2-3DA8-4273-AB19-B9E398F6B76C>
9. **Mendia v. Figueroa Galvez, 418 So. 3d 838 (Fla. 3d DCA 2025)** — <https://caselaw.findlaw.com/court/fl-district-court-of-appeal/117651123.html>
10. **Fla. Stat. section 44.405 - mediation confidentiality and privilege** — https://www.leg.state.fl.us/statutes/index.cfm/index.cfm?App_mode=Display_Statute&URL=0000-0099%2F0044%2FSections%2F0044.405.html
11. **Fla. Stat. section 61.075 - equitable distribution** — https://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099%2F0061%2FSections%2F0061.075.html
12. **Fla. Stat. section 61.08 - alimony** — https://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099%2F0061%2FSections%2F0061.08.html
13. **Fla. Stat. section 61.079 - premarital agreements** — https://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099%2F0061%2FSections%2F0061.079.html
14. **Fla. Stat. section 732.702 - waiver of spousal rights** — https://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799%2F0732%2FSections%2F0732.702.html

15. **Florida Rules for Certified and Court-Appointed Mediators (Jan. 2025)** — https://flcourts-media.flcourts.gov/content/download/1998036/file/FRC%26CAM_01.2025.pdf
16. **Florida Family Law Rules of Procedure, including rule 12.540** — <https://flcourts-media.flcourts.gov/content/download/217912/file/Family-Law-Rules-of-Procedure.pdf>
17. **Rules Regulating The Florida Bar (Feb. 16, 2026)** — https://www-media.floridabar.org/uploads/2026/04/2026_08-FEB-RRTFB-2-16-2026.pdf