

Post-Divorce Update

Insights and Developments in the Law

Fall 2011

Life After Divorce: Keeping Up with Changing Circumstances

When Jim and Jane divorced six years ago, they thought the agreements they made would serve them and their then one-year-old son, Jon, well for many years to come. They would maintain separate residences just a few miles apart, share custody of Jon equally, and—since they both had well-paying jobs—contribute equally to a fund for his college education.



Alan Plevy

Fast-forward to today: the bumpy economy has cost Jim his job. The jumpy stock market has decimated Jon's college fund. And Jane's live-in boyfriend has been pressing her to move with him to a city several hundred miles away that he believes offers more opportunities for him in his line of work.

These life changes—and their impact not only on our fictional couple's original arrangements but also on their now seven-year-old son—raise a host of issues. They also compel Jim and Jane to consult with their respective divorce attorneys to sort out some difficult decisions.

"A relationship is never really 'over' just because the divorce proceedings ended," observes Alan Plevy, co-founding principal and family law attorney at SMOLENPLEVY in

Vienna, VA. (www.smolenplevy.com). "Other circumstances over time affect the ongoing viability of the original agreement. Children grow older, which creates issues to which you have to adapt. On top of that, either or both of the parents might find their current lives to be significantly different than they were during the original proceedings." SMOLENPLEVY family law partner Kyung (Kathryn) Dickerson adds, "Economic issues, the need or desire for relocation, lesser or greater ability



Kathryn Dickerson

to contribute to child support—these are just some of the multiple factors that can precipitate a need to revisit the original agreement."

Maturing Children: Divorced parents need to anticipate potential changes that will result from a child's natural progression from elementary school to middle school to high school. Until the child turns 18 or graduates from high school, both parents need to maintain and provide for a life that meets the physical, emotional/psychological and educational needs of the child. Those needs will obviously evolve as the child gets older.

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In This Issue

SMOLENPLEVY attorneys provide insights into issues and concerns that many face after divorce or custody litigation.

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Post-Divorce Asset Protection



Jason Smolen

It happens too often. A couple divorces—but after establishing their respective new lives, part of their *old* life comes back to haunt them. Why? They forgot

to update their beneficiary designations, testamentary documents and business succession plan to reflect their post-divorce reality.

“It’s understandable,” says Jason Smolen, co-founding principal of SMOLENPLEVY. “By the time the Court enters a Final Decree of Divorce, many people have moved on in mind, body and spirit.”

Beneficiaries

Forgetting or failing to think about how the divorce affected their estate planning—assuming they had adopted a plan during the marriage—will leave those closest to each of the divorced parties an unwelcome legacy of confusion, conflict, and expenses.

“In order to ensure that each party’s assets go where they intend upon their passing, the former spouses must consult with counsel to have their wills, insurance policies, and other accounts updated with new beneficiary information and testamentary provisions,” explains Smolen.

Succession

The same applies when planning for business succession. If a plan existed prior to the divorce, it should be updated as soon as possible. If no plan had been developed, creating one is imperative. Having a succession plan will result in a hopefully seamless ownership and management transition—or liquidation of the business’s assets, if the plan stipulates it—upon the divorced owner’s death.

If one or both of the now-divorced spouses has an ownership stake in their family’s business, this can be even more challenging—yet all the more important. For example, when he began the

business, the husband might have assumed the entire business would pass to his wife upon his death, but the divorce very likely changes that.

“If the husband remarried after the divorce,” notes Smolen, “which wife gets the business? And what about other shareholders, members, or partners in the business?”

“A succession plan can include a buy-sell agreement, which sets a fair price for which one owner may purchase the company should it become necessary or appropriate, like the death or disability of the other owner(s),” explains Daniel Ruttenberg of SMOLENPLEVY. “A buy-sell agreement essentially provides buyers for the business: the other owners. It also can keep a divorcing couple out of Court by prearranging how one spouse may buy the other out.”

Ruttenberg adds that thinking through succession issues should be a

rational and practical process. “Examine the strengths and weaknesses of all possible successors before making a decision,” he says.

As both Smolen and Ruttenberg point out, the best first step after a divorce is seeking the advice of counsel about beneficiary and succession issues. Good planning can avoid additional heartache for both former spouses as well as for their future families and business associates.



Dan Ruttenberg

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Remarriage After Divorce

Second marriages can be more challenging than the first ones. According to the National Center for Health Statistics, up to 70% of second and third marriages end in divorce.

Alan Plevy and Kyung (Kathryn) Dickerson, family law attorneys at SMOLENPLEVY attribute the increase in divorce to a number of factors: complications from blending families, money management and unsettled or lingering emotional/psychological trauma from the first marriage.

To avoid a second or third divorce, Plevy suggests both you and your partner confront the difficult questions *before* you get married. If there are children involved, who will be the disciplinarian? How will the finances be handled? How will you deal with ex-spouses or biological parents? All of these issues need to be addressed before the big day. “Communication and

conflict resolution are keys to keeping a marriage intact,” says Plevy. “If the couple can’t handle these issues before they get married, the chances of their successfully negotiating them after they wed are low.”

Dickerson says that one of the first things to discuss is each person’s financial habits, liabilities and assets. Dickerson comments that “Often, the underlying cause of a divorce is not a lack of money—but rather couples struggling to understand and compromise their different ways of managing money.” Dickerson advises each partner to be upfront about debts, credit history, and their desire to safeguard some of their assets for the benefit of their children from a prior relationship. Couples should hire a financial advisor to help the couple put together a long-term fi-

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More Divorced Parents Seeking Changes in Child Support Payments

SMOLENPLEVY family law attorneys Alan Plevy and Kyung (Kathryn) Dickerson report a notable increase in the number of post-divorce clients seeking modifications of their child support payments. Lost jobs, reduced salaries and bonuses along with unexpected furloughs have all contributed to parents looking to modify support payments.

Plevy says the pinch is being felt on all sides, by parents who have custody and have lost their jobs, and by noncustodial parents who can no longer pay the court-ordered amount. Plevy says the issue doesn't break down along gender lines. "Both men and women have custody, or are paying child support—and now find themselves caught short by the economic downturn. We've had situations where both parents have lost their jobs," explains Plevy. As of July 2011, 14.1 million members of the U.S. labor force were unemployed.

Dickerson says communication is crucial during these difficult times. "You need to be proactive," she advises. One goal is to try to work together to lower your children's expenses—never an easy challenge. Further, while parents may agree on a modification to the previously ordered child support amount, the parties must also submit an Order reflecting the revised support amount. Child support continues to accrue under any existing Orders, unless there is a subsequent Order modifying it. Child support is the right of the child, not of the parent receiving the child support. It can take months for a court to have a hearing to determine whether a modification is appropriate, however simply doing nothing results in arrears owed.

From an attorney's standpoint, the first thing Alan Plevy seeks is information. "Why are they losing their job?

When? Are they getting severance that can help fill the gap for a time? Will they receive unemployment?" Plevy asks. "Can the parent get another job, even if it's part-time, to help with expenses? In the present economy, parents have to be creative about their job searches, looking beyond their field has become necessary and is something that clients need to explore."

The loss of income also affects what noncustodial parents do during their visitation. "Disney Parents" are now visiting local parks, museums and other free or less expensive activities. "Disney Parents" are parents who, in an effort to make up for no longer

sharing a home with their children, buy their kids anything and take them everywhere. The uncertain state of the economy and bleak job outlook have forced these "Disney Parents" to cut back on their usual overly generous behavior.

Parents should know that interest is added to child support payments that are not paid on time. A non-compliant parent could be found in contempt of court and in egregious situations, incarcerated, but Plevy says the court distinguishes between those who are unable to pay and those who are avoiding responsibility.

Remarriage

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nancial plan. Dickerson notes that, "Another consideration for couples remarrying is the issue of child support or alimony. Couples should begin their financial planning by identifying prior obligations to ex-spouses and children, such as an agreement to contribute to college or college savings plans, the maintenance of a life insurance policy, or an agreement to segregate a portion of their estate or retirement for the sole benefit of the former spouse or for the children. Then, create a budget that addresses these obligations." Dickerson advises the couple to maintain at least one separate bank and credit card account. If you are paying child and/or spousal support, do not pay it out of an account jointly titled with your new spouse. Paying that obligation out of a separate account makes it easier to keep track of that obligation and the timely payment of that obligation.

Then there's the issue of blending families. Plevy warns that combining two once-separate families into one is never easy—especially when children are part of the dynamic. Plevy says, "As a stepparent, you must support the fact that the non-custodial parent will remain part of the children's lives." If each partner is bringing in children from prior relationships, things are bound to become complicated. Plevy suggests that parents' expectations be realistic—the blending process won't occur overnight. It will take time for the children to get to know one another and their new family members. Plevy advises parents of a blended family to discuss their respective parenting styles, the dynamic with the other biological parent and the role that would be appropriate for the stepparent.

To avoid a failed remarriage, talk about the important issues before you commit—and recognize that blending a family will not be an easy task.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Life After Divorce

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Remarriage: A new marriage, for either or both divorced parents, can mean lots of changes—especially for their older children. Does the new marriage change a parent’s ability to pay child support? How does the child interact with the new spouse? Will the new marriage lead to relocation? Sometimes the children don’t get along with children of a new spouse, or they don’t like the new spouse and want to go live with the other parent. Older children might feel pushed out by infants or other children new to the household. A parent may find that it makes economic sense for them to become a stay-at-home parent in their new marriage, and their voluntary unemployment can affect child support and custody.

Economic Challenges: The economy drives changes, too. Some parents might say, “I lost my job and am not working, so I will provide child care so we can save money,” but they then seek an increase in child support from the employed parent. Maybe someone agreed to less spousal support before, but now they need more because of the increase in the cost of living due to inflation. After a certain threshold, the more time the parent has with a child, the less support he or she will be obligated to pay. So, the parent might say, “Why don’t I take the children for a few more days a week?” But then down the road, that parent files for custody or more support because he or she has more custodial time with the children.

Relocation: With the present state of the economy, a number of people are seeking employment in parts of the country in which they never thought to look before. Any move, no matter how close to or far from the parent who shares custody, requires notice to the court and to the other parent and may require a revised agreement and possibly, court approval. What seems like a

minor move to the relocating parent could actually result in a significant impact on the child. It could mean a change of school districts. Or, maybe the traffic and other logistics make mid-week, non-overnight visits to the other parent’s home no longer practical or appropriate for the children. The cost of exercising visitation could rise significantly if relocation takes a child to another state or to another country.

Relationship Changes: “The most frequent and emotional question I get asked in relocation cases is: ‘What do you mean he/she can tell me whether or not I can move?’” says Plevy. “The question misses the point. The issue is whether the move results in a change in the relationship with the child. The court can’t tell you where you can live, but it can stop the child from moving from the jurisdiction if the relocation would significantly interfere with the child’s relationship with the other parent.”

Allow Plenty of Time: Divorced parents need to think ahead and should notify one another in advance of changes that could affect the other’s visitation rights or custody responsibilities. The parent seeking modification of child support, custody, or visitation has to be the one to file the appropriate petition with the court. “We might file a motion but the court may not have time available on its docket to hear the matter for several months. Timing is extremely important—for example, if you want to relocate and expect that the other parent may object to the relocation, then you want to leave enough time before the commencement of the next school year to resolve the matter. Similarly, if you are forced to relocate to maintain your employment, you are going to have very little control over when you must report to your new office. If custody is not resolved before then, the other parent may be awarded temporary custody of the child pending the hearing,” comments Dickerson.

Plan Now for the Holidays and Vacations: “If you think you’ll have an issue with travel or other factors during the holidays, start addressing it now,” suggests Plevy. “If you wait until the actual holiday, it creates stress and uncertainty for yourself and your children, and you may find that you will not have enough time to change whatever agreement you currently have with the other parent. Traveling next summer? Think about it now and talk with your attorney at the beginning of next year. Think about summer changes in February or March, because it might take several months to get in front of a judge.”

Changes Not Usually Retroactive: Changes in child support or spousal support may be retroactively awarded by the court, but the retroactivity is limited to the date the parent filed the petition. Therefore, if a parent loses their job but waits six months to file a petition to modify child support, whatever arrears that accrued during those six months cannot be modified by the court even if the court rules that the support should be changed prospectively.

Consult Counsel: “Talk to an attorney and find out what your rights and obligations are before you start doing things,” suggests Dickerson. “Don’t be penny wise and pound foolish. When there is a change in your circumstances, like remarriage, relocation or unemployment, consult with your attorney, review the agreement or decree, and make sure you understand what your obligations are with regard to giving the other parent notice and the potential consequences of any change you seek.”

Alan Plevy and Kyung (Kathryn) Dickerson are available to discuss this and other family law issues. Contact SMOLENPLEVY at 703-790-1900, or email Mr. Plevy at ablevy@smolenplevy.com or Ms. Dickerson at kdickerson@smolenplevy.com.