

Life After Divorce: Six Common Post-Divorce Life Changes

By Alan Plevy and Kyung (Kathryn) Dickerson • First Published in *The Huffington Post*

Ben and Julie divorced six years ago. They thought the agreements they made would serve them and their then one-year-old son, Eric, for many years to come. They would maintain separate residences just a few miles apart, share custody of Eric equally, and — since they both had well-paying jobs — contribute equally to a fund for his college education. Fast-forward to today: a company reorganization resulted in Ben losing his job; being out of work, he has had to live on his savings and has not been able to contribute to Eric's college savings fund. Meanwhile, Julie's live-in boyfriend is pressuring her to move with him hundreds of miles away.



Alan Plevy

These life changes raise a host of issues which will affect the parties' original arrangement and their relationship with their now seven-year-old son. Ben and Julie must figure out what is best for their son now, given the changes that will make the prior arrangements impossible. A parenting relationship does not end when the divorce proceedings do. Circumstances change over time, which affect the continued workability of the original arrangements and create issues to which you have to adapt. Children grow older and their needs change. Either or both of the parents often find their lives becoming significantly different than they were during the original proceedings.

Here are some of the most common post-divorce life changes and how you can prepare for them:

- **Remarriage:** A new marriage, for either or both divorced parents, can mean lots of changes — especially for their children. Will the new marriage lead to relocation? How well does the child interact with the new spouse? Older children might feel displaced by infants or other children new to the household. Planning the introductions, staggering the combining of families and working with the other parent to help the children adapt to the changes can make the transition from a single-parent household to a blended family easier for the children.



Kyung (Kathryn) Dickerson

- **Economic Challenges:** Changes in the economy may create changes in a family's life. A parent may say, "I lost my job and I am not working, so I will watch the children so we can save money on after-school care," but they may then seek an increase in child support from the employed parent. Or a former spouse may request an increase in spousal support because he or she was downsized. It is important to know what rights you have under the divorce decree, but also to evaluate whether being a little generous now will serve you and the children well into the future.

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Accolades

SmolenPlevy is pleased to announce that Co-Founding Principal Jason Smolen was honored as Best Lawyers® 2017 Business Organizations "Lawyer of the Year" for Washington, D.C. It recognizes attorneys in 128 practice areas from all 50 states and the District of Columbia.



Jason Smolen

For each location and specialty, the individual attorneys with the highest peer reviews are recognized as "Lawyer of the Year."

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Wills — Why Have One and What to Include

It may be hard to think about how your family would deal with your affairs and finances after you pass away, but this is an essential undertaking. A will allows you to influence the future by directing how you would like your property and assets distributed upon your death. Without proper planning, a portion of your estate could go to the government through additional taxation or the additional cost of administration. Further, state laws may determine to whom your estate will go, including unspecified beneficiaries. While this article focuses on wills, many of these principles also apply to using trusts.

One cannot underestimate the importance of a will. In addition to legally protecting your spouse, children, and assets, a will also specifies how you would like your affairs to be handled after your passing. A will also helps minimize or eliminate the uncertainty of what your express wishes are, any potential family disagreements about your estate, and also determine the “who, what, and when” of your estate.

In the absence of a will, states have intestacy laws, which act as a guide to how your estate will be distributed upon your passing. These laws vary from state to state, but generally, if you die and leave behind a spouse and children, a percentage of your assets will be split among them. If you are single and have no children, then the state is likely to decide among your blood relatives who will inherit your estate. A will ensures that those closest to you — the people you choose — are the ones who can act for you. Without it, the court may appoint a personal representative for you, an expensive procedure which may result in a stranger taking over your affairs.

Creating a will is especially important for those with young children because wills are the best way to transfer guardianship of minors. Though the state will be concerned about what is in the children's best interests, your wishes will carry great weight in the event of a controversy.

It is very important to understand that you can amend your will at any time. Until death, it is merely an expression of your intention, though one of the most important expressions you may make in your lifetime. I often explain to clients that you spend your entire life working on (hopefully) accumulating assets. You should not shortchange the process of caring for and transferring those assets to your loved ones or other beneficiaries. Once that is established, you should periodically review your will and estate planning, especially with the incidence of a life event.

When drafting your will, you should include these crucial elements:

- **Your Executor:** The person you appoint as executor, or personal representative in some states, will be responsible for overseeing your affairs. He or she ensures that your affairs are put in order. The executor's role is to make your family's time after your passing as stress-free as possible. Some of the executor's duties include, but are not limited to, gathering your assets, paying bills and taxes, canceling your credit cards, and notifying the bank and other business entities of your passing. Since wills specify how your assets will be distributed, your executor is obligated to handle your estate in accordance with your wishes and preferences. The executor, like other appointed positions under a will, is a fiduciary position. This means that the person or institution is obligated to

work on behalf of the beneficiaries, not for their own gain, though they may be entitled to compensation.

- **A Guardian for Your Children:** The existence of a will allows you to identify whom you wish to raise your children in the event of your passing. This ensures that someone you trust will raise and have control over your children. In the absence of a will, the court will take it upon itself to make this decision, and it may choose among family members or a state-appointed guardian, leaving you uncertain of your family's future.
- **A Trustee for Your Children:** If you have minor children, you also have the right to appoint a trustee. A trustee invests and takes care of the minor's inherited property, while a guardian stands in for the parent in the caring for the minor. Your will can have specific directions for applying the child's inheritance for support and education and specific directions for the age at which the child may receive the balance of the inheritance outright, free of the trust.
- **Ultimate Beneficiaries:** While thinking if a will is right for your needs, it is important to consider the following questions: Who do you want to inherit your estate? Are there specific bequests you want to leave to certain individuals? Do you have charitable intent? Without a will, these important decisions will be made for you.

You have spent most of your lifetime accumulating assets. Do not cheat yourself and your family by failing to attend to this important task. It may go

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Five Reasons For a Prenup — Even if You Aren't a Celebrity

By Alan Plevy and Kyung (Kathryn) Dickerson • First Published in The Huffington Post

There's nothing classically romantic about prenuptial agreements. Most couples willfully avoid them because they don't want to ruin their blissful idea of a marriage lasting until death do them part. But they can learn from the long list of celebrity splits about what can happen when you don't have a prenup. In one of the most expensive Hollywood divorces, actor/director Mel Gibson reportedly paid \$425 million to his ex, Robyn Moore.

Recently, actress Kaley Cuoco, the 30-year-old star of *The Big Bang Theory* and one of TV's highest-paid performers, split from tennis player Ryan Sweeting. Because of a prenuptial agreement, he reportedly will only get a lump sum of \$165,000 and \$65,000 for legal fees.

But you don't have to be a celebrity to benefit from a prenuptial agreement. Without one, divorce litigation can become costly and complicated. More importantly, a premarital agreement often forces couples to discuss in detail uncomfortable financial issues that they might otherwise have ignored. It is challenging to discuss what debt a person brings to the marriage and the basis of the debt — especially if it is consumer debt, like credit cards. Disclosing a prior bankruptcy can be more difficult than disclosing a prior marriage. A premarital

agreement, no matter who brings it up, opens the door to those conversations.

Here are some reasons prenuptial agreements can be useful for couples:

- **Second Marriages/Blended Families:**

Often, people have continuing obligations to their spouse or children from a prior relationship. Premarital agreements can determine which assets will be protected or allocated for the children of a prior relationship, and which assets will be safeguarded for the new spouse. Premarital agreements can also protect the new spouse's assets from being used to pay the arrears or debts arising out of their spouse's prior marriage.

- **If You Own a Business:** Young entrepreneurs rarely imagine a divorce being one of the biggest threats to the stability of their business, but it can significantly impact cash flow, ownership, and productivity. Regardless of whether you started your company before marriage, a spouse may claim a portion of the business appreciation or income. Prenups can classify which assets are separate or marital. This means you and your intended spouse can agree that your business will be considered your separate property and not subject to division upon divorce.

- **Death or Disability:** While most people think divorce when they hear about premarital agreements, such agreements can also protect your assets in case of disability or death. Premarital agreements can prevent or provide a remedy if an estranged spouse retitles or liquidates assets during their spouse's disability.
- **Debt:** Some couples may have more debt than assets. Couples with significantly different debt loads can protect themselves in the same way as couples with vastly different assets. The couple can agree as to which debt shall be considered a separate, non-marital obligation and how the income of the couple will be allocated during the marriage as to the payment of that debt.
- **Inheritances:** If one or both spouses expect to receive an inheritance over the course of their marriage, a premarital agreement can protect it from division upon death or a divorce. Family heirlooms can also be specified to remain in one spouse's possession.

If you have any questions regarding divorce or family law, please contact Alan Plevy at ablevy@smolenplevy.com or Kyung (Kathryn) Dickerson at kindickerson@smolenplevy.com.

Wills — Why Have One and What to Include

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a long way to give you and your family peace of mind knowing what your wishes are and that they will be followed after your passing.

If you have any questions regarding estate planning and probate, please contact Jason Smolen at jdsmolen@smolenplevy.com or Daniel Ruttenberg at dhruttenberg@smolenplevy.com.

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.

SmolenPlevy News



Daniel
Ruttenberg

Devotion to Children (DTC) hosted its 6th Annual Cards 4 Kids™ Texas Hold ‘Em Charity Poker Tournament on September 24 at Clyde’s of Tysons Corner. SmolenPlevy Principal Dan Ruttenberg, the longtime vice president of DTC, is proud that SmolenPlevy was once again the Card Protector Sponsor for the event. Cards 4 Kids™ raises funds for high-quality educational and childcare programs for children of economically disadvantaged families in the Washington, D.C. metropolitan area.

A court confirmed that music superstar Prince died without a will, leaving complicated questions about who inherits his vast fortune. In an interview on ABC 7, Dan Ruttenberg explained the problems that may occur when you die without a will, and why it’s vital to make sure that doesn’t happen to you.

Preparing in advance is vital if you want to protect your assets and have a say in how they are passed on. Dan Ruttenberg shared estate planning tips on the local TV show, *Senior Living in Alexandria*.

There is a lot at stake in the split between Angelina Jolie and Brad Pitt. Alan Plevy

was on News Channel 8’s *Good Morning Washington* explaining some of the nuances and complications arising out of their separation.

Accolades

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SmolenPlevy’s Jason Smolen, Alan Plevy, and Dan Ruttenberg were named to the Best Lawyers® 2017 list. Smolen, Plevy and Ruttenberg were selected by other leading lawyers from the Washington, D.C. area in the categories of trusts, estates and family law.

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- **Relocation:** Any residential move, no matter how close to or how far from the parent who shares custody, requires notice to the court and to the other parent and may require a revision of the parties’ custodial arrangements, whether by agreement or through litigation. What seems like a minor move in terms of distance could have a significant impact on the child. It could mean a change of school districts. Or, maybe the traffic, after-school activities and other logistics make mid-week, non-overnight visits to the other parent’s home impractical. The cost of exercising visitation could rise significantly if relocation takes a child to another state or another country.
- **Relationship Changes:** Any life change can result in a change in a parent’s relationship with the children — even the children simply getting older. While multiday time with one parent may not have been appropriate when the child was an infant, it may be appropriate for a five- or 10-year-old. One parent may have been the primary caregiver for a younger child, but, as that child becomes a teenager and highly invested in a par-

ticular sport supported by the other parent, extended time with the other parent may work better for the child. Parents should look at their time with their children in light of what the children need at that time, appreciating that those needs will change.

- **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 time with the children or custodial responsibilities. The parent seeking modification of child support, custody or visitation will need to file the appropriate petition with the court. Timing is extremely important because a court may not have time on its docket to hear a matter for several months after you file the motion.

If you want to relocate and expect that the other parent may object to the relocation, you should leave a considerable amount of time before the commencement of the next school year to resolve the matter. Unfortunately, this may not always be possible. For example, 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.

- **Don’t Count on Retroactive Solutions:** Changes in child support or spousal support may be retroactively awarded by the court, but, generally, the retroactivity is limited to the date upon which the person seeking modification files the petition. Therefore, if a parent loses their job and is unable to pay the child support previously ordered but waits six months to file a petition to reduce the payments, whatever arrears that accrued during those six months will still be owed — even if the court rules that the support should be reduced prospectively. And do not count on an “agreement” with the other parent to modify support, unless it is incorporated into a new support order.

If you have any questions regarding divorce or family law, please contact Alan Plevy at ablevy@smolenplevy.com or Kyung (Kathryn) Dickerson at kndickerson@smolenplevy.com.