

Report From Counsel

Insights and Developments in the Law

Summer 2013

Summer Vacation Tips for Divorced or Separated Parents



Alan Plevy

The school year is ending soon and divorced or separated parents should have a comprehensive and thoughtful plan in place for their children during the summer months.

SmolenPlevy's Co-founding Principal, Alan Plevy, reminds people that the weeks when school is not in session can be a complicated time for parents who share custody and it can be very confusing for the children. "If the court has entered an Order or you have a written agreement, you should already have a plan in place," he says, "and most agreements set out deadlines for travel usually well in advance of school breaks—if parents don't make timely decisions, they can lose their right to have priority in the selection of exclusive time with the children."

He always cautions parents to avoid becoming competitive over the children. "Children value quality time over fancy trips and they don't care about which parent takes them on a beach vacation," he opines. A trip to the zoo or tubing on the Shenandoah River can be just as exciting as a fancy vacation. Plevy believes that children, no matter what their family situation,

just want to be with their parents and have fun. Above all, they want to be happy and not feel subject to the tensions that may accompany the end of a marriage. Along these lines, creating new traditions like going to see fire-

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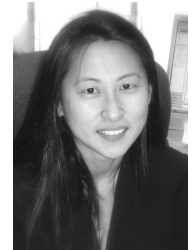
Marriage and Divorce Laws Vary State-by-State: Take the Time to Learn Your Rights

The things people think they know about the laws affecting marriage and divorce are more often wrong than right. It is not uncommon for the attorneys at SmolenPlevy to spend the first half-hour of a consultation with new clients correcting misunderstandings and dispelling misinformation they have picked up from friends, the Internet, movies and television.

Laws regarding marriage and divorce vary from state to state. You only have to drive the short distance from SmolenPlevy's offices in Virginia across the state line into Maryland or into the District of Columbia to observe how differently states treat the issue of fault in a marriage, child support, spousal support and property rights. For issues like same-sex marriage, the treatment of these marriages

vary by state but how the law treats these relationships is further complicated by the impending U.S. Supreme Court's decision in Windsor v. United States, which challenges the Defense of Marriage Act (DOMA), a federal act passed in 1996 that explicitly defines marriage as a union between a man and a woman.

If you are contemplating either marriage or divorce, you'll save yourself time, money, and heartache by sitting down with an attorney to discuss how your state's laws affect your options



Kathryn Dickerson

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Take the Time to Update Your Will

By some accounts, 70% of adult Americans do not have a will. If you have at least gone to the trouble of making a will, consider yourself ahead of the curve and pat yourself on the back. Then come back to earth and understand that your work is not completely done. A will is not a static instrument. To serve its purposes, it must keep current with life changes, including an individual's financial circumstances, and with some external factors, such as tax laws. With the help of a professional, you should periodically review your will, staying alert to new or different circumstances that might call for updates.

Marriage, Divorce, and Remarriage

Obviously, a marriage usually brings a new beneficiary into the picture, and a divorce may remove one. Some of the changes in a will prompted by a change in marital status may not be so apparent. For example, when a widow or widower remarries, the will may need to be updated to show how children from the previous marriage and the new spouse are to be provided for.

Additions and Subtractions

A new child is a new beneficiary, but a will can and should cover more than just the distribution of property to heirs. Parents can name a guardian, and even an alternate guardian, to care for their children in the event that something happens to both parents. Absent such a provision in a will, a court will appoint a guardian.

The death of an executor, guardian, beneficiary, or trustee creates a gap in how the will is supposed to operate. Fill in the gaps by making necessary changes, such as naming a new individual or, in the case of a deceased beneficiary, simply removing him or her from the will.

Changing Fortunes

If you enjoy an unexpected wind-

fall, you may still want the larger pie divided up as before. But it is likely that some changes in your will are called for. If the increase in the potential estate is large enough, it might trigger the need for planning to avoid or minimize estate taxes. A reversal of fortune could also suggest some changes. For example, you may have to revise downward that fixed sum you were planning to leave to a favorite charity.

Moving Out of State

You will not have to start from scratch if you move to another state, because all of the states recognize a

will that was properly created in another state. Nonetheless, legal advice should be sought in the new state because changes in the law from state to state could require some tinkering with the will. There may be more than tinkering involved if you move to or from a community property state.

Changes in Tax Laws

The government's intentions can change even if your intentions have not. Some of the changes benefit individuals with wills, but you can take full advantage of them only if you are

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Careful Whom You Add to Accounts

Various types of bank accounts held in the name of a single individual or entity have the virtue of simplicity, and the added bonus that the account holder does not have to wait to make decisions until after a consensus has been reached with others. But sometimes other considerations make it desirable to add someone else, usually a relative, to an account.

That is a perfectly reasonable step to take, but it is important to consider the ramifications, especially as it may affect federal deposit insurance for accounts insured by the Federal Deposit Insurance Corporation (FDIC). Of course, another overriding consideration having more to do with human nature than federal regulations is whether there is a trusting relationship between or among everyone whose name is on an account.

Joint Bank Accounts

Under FDIC rules, a joint account is a deposit account owned by two or more people who have equal rights to withdraw all of the deposits and to

close an account. Married couples, assuming they want to share the funds in the account, like the convenience of such a joint account so that either person can write checks on the account and pay bills from it. At an FDIC-insured institution, each co-owner is insured for up to \$250,000 for his or her share in all joint accounts in that institution. But if all persons on the account do not have equal withdrawal rights, the account will not necessarily be FDIC insured up to the same amount as for a true joint account under FDIC rules.

If the goal is to give someone limited access to a bank account when needed but not to grant ownership rights to the account, an alternative is to grant that person a power of attorney. Powers of attorney, which typically authorize someone to represent or act on another's behalf in financial matters, can be crafted to permit the desired amount of access to bank accounts.

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Update Your Will

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aware of them. The big item here is changes to the federal estate tax exemption, which is the amount an estate can reach before it is subject to a (hefty) estate tax. In recent years the exemption has headed up, but there are no guarantees about what Congress will do with the exemption going forward.

You Change Your Mind

If you decide you want to change beneficiaries, a guardian, an executor, or anything else in a will, you can do so. For example, you want to make sure that the beneficiaries in your will are the same as the beneficiaries you have named in your insurance policies and retirement accounts. Otherwise, the beneficiaries actually named in those documents, not the beneficiaries under the will, will get the money from the policies and accounts. Bear in mind that no amount of talking about your new intentions will make them happen. The changes must be indicated in a properly executed will.

You should keep the finished (at least until the next update) product in a safe place. When “they” say “keep this with your important papers,” think of your will. Your family should know where to find the executed will. An unsigned copy of your will in its latest form is a good starting point for the next periodic review.

Letter of Instruction

Even the best-drafted will is not likely to cover everything needed for a smooth disposition of your estate. To supplement the will, consider executing a letter of instruction. It generally is not legally binding, but it can go a long way to expedite the process and provide information not to be found in the will.

SmolenPlevy in the Media



Dan Ruttenberg

On Monday, April 22, SmolenPlevy Principal Dan Ruttenberg presented oral argument before the Supreme Court of the United States. In the case of *Hillman v. Maretta*, a husband had life insurance through the Federal Employees’ Group Life Insurance Plan and named his then-wife as his beneficiary. When he divorced and later remarried, he failed to change the beneficiary designation of his policy. Upon his death, his ex-wife received the insurance proceeds. His widow sought to recover the insurance benefits from his ex-wife.

During the hearing, Ruttenberg answered numerous questions posed to him by the panel of nine Supreme Court Justices. Though the Court did not rule in Ms. Hillman’s favor, Ruttenberg appreciated the opportunity to appear before them. “I never thought I’d have this opportunity,” he said. “Being in front of the nine Justices was an amazing experience.”

And the lesson to be learned from this case? According to Ruttenberg, “Make sure your estate plan is up to date, so you don’t have to go before the United States Supreme Court to get your final wishes fulfilled.”

Ruttenberg’s case was prominently featured on the front page of WTOP.com and received extensive coverage from The Washington Post and the Huffington Post. Visit www.smolenplevy.com to learn more about the case.

Accounts

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Safe-Deposit Boxes

The various states and banking institutions have their own rules and procedures for access to safe-deposit boxes. Since granting a second person access to a safe-deposit box amounts to giving that person the right to empty the box without the need for anyone else’s approval, this is a step that should be taken only with care and forethought.

Credit Card Accounts

There are two different ways to give a second person the ability to use a credit card. Making that person a co-owner means that he or she will be financially responsible for all of the debt incurred with the credit card, regardless of which co-owner authorized

a particular charge. In the alternative, an authorized user of the card may or may not be financially responsible for the debt, depending on the cardholder agreement. The card owner can put restrictions on authorized users, such as how much debt the authorized user can incur with the card.

Cosigning Loans

Succinctly put, a cosignor on a loan has agreed that the creditor can look to him or her for satisfaction of the debt if the debtor does not pay the debt. This obligation may well extend to any late fees and collection costs made necessary by the debtor’s delinquency. On top of that, the cosignor’s own credit rating could take a hit if the debtor doesn’t pay the debt or pays it late. All in all, the watchwords for cosigning on a loan are “proceed with caution.”

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.

Vacation Tips

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works on the 4th of July or having a Father's Day picnic in a park can help make the time they spend with one of their parents special and memorable.

Travel is a significant consideration. If a parent plans on taking the children out of the country, passports must be in order and both parents must give their permission for the children to leave the country. Parents should also discuss whether or not to take children to countries that may not be considered safe environments to visit. This could change from the time the plans are made to the time of the actual trip.

Of particular concern are visits to countries that do not recognize the Hague Convention on International Child Abduction. The Convention seeks to prevent international child abduction and provide a secure legal framework for the return of children who have been abducted in violation of a valid Court Order. If a parent takes a child to a country that does not recognize the Convention, there are no processes in place to require that parent to return the child.

Also, parents need to be sure that anyone taking the child abroad has copies of health insurance and immunization documentation and adequate supplies of medications. Plevy believes it's simple common courtesy for the non-traveling parent to be given an itinerary of the trip—and often the provision of this information may be part of an Order.

Some other helpful tips include:

Prepare your child . . . and yourself. Remind your children that even though they may not see you for several days, you think about them and will miss them but you are happy they can spend time with their other parent. Likewise, take care of yourself when they're gone by staying busy and treating yourself to something you might not be able to do when the kids are with you.

Try to keep similar household rules, bedtimes, and routines. If one parent limits video game or cell phone use or

only allows desserts for special occasions, it's helpful to the children if the other parent adheres to comparable rules.

Involve the kids in the planning but not in the details: it's fine to ask the children what they may want to do and where they may want to go, but they don't need to know about who refused or agreed to a certain plan, who is paying for what, etc.

Plevy recommends jointly communicating the plan to the children, once the parents have agreed. This will help them understand that the schedule is something the parents came up with together and the children will have clear expectations of how they will

spend their school break. "Confirm transfers in writing," says Plevy. "A text or email will do. Something as simple as 'Yes, I agree we'll meet at the library at 4pm on July 2' will significantly minimize family tension."

Keeping their children's best interests in mind and working together cooperatively will go a long way in helping parents provide their children with a fun, safe and organized summer vacation.

If you have any questions regarding Divorce or Family Law, please contact Alan Plevy at 703-790-1900, by email, ablevy@smolenplevy.com or contact Kyung (Kathryn) Dickerson at knDickerson@smolenplevy.com.

State Laws

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and choices. After all, for most people, marriage will be the biggest "investment"—financially or emotionally—that they will make.

Marriage and divorce are governed (and a court's decisions are constrained) by state law. The grounds on which a divorce may be granted vary from state to state, yet people often have the impression that such grounds are universally available. For example, a divorce based on "irreconcilable differences" is not available in Virginia.

Similarly, clients occasionally think that they will automatically get half of everything in a divorce, because they've heard somewhere about the concept of "community property". However the laws in Maryland, D.C., and Virginia do not require an automatic 50/50 division of assets in a divorce.

To further complicate issues, with our highly mobile population a couple might get married in one state but divorced in another. Because laws vary from state to state, learning what the law is in the state in which you currently reside would be prudent. More-

over, those laws change regularly. In Virginia and other states that have finite legislative sessions, new laws are enacted in each session and go into effect usually in July of each year, unless the statute specifies otherwise.

For anyone thinking about marriage or divorce, taking the time to see your attorney prior to committing to a course of action is only prudent. Don't assume you know your state's laws—regardless of what you may learn from friends, Hollywood, or on the Internet.

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