

Report From Counsel

Insights and Developments in the Law

Winter 2013/2014

Domestic Violence Is More Common Than You Realize



Alan Plevy

Many people don't realize that they're victims of domestic violence because they don't understand the sometimes insidious form that domestic violence takes. While physical

abuse is what one initially associates with the term, emotional and financial abuse can also be violent acts. As SmolenPlevy co-founding Principal Alan Plevy explains, "Domestic violence crosses all boundaries—rich, middle class, poor, female and male. Most people want to think that it cannot or is not happening in their marriage but often, it is—they just cannot recognize it."

Plevy has advised many clients over the course of more than thirty years of practicing law on how to identify domestic violence situations and how to resolve them safely—which may require separation and divorce. Often he has to begin by educating his client about the situation. In many cultures, what may seem to be acceptable behavior to one or both parties in a marriage is a crime in the United States and the victim can seek the assistance of the court. Other times, people can fall into relationship habits which devolve over time until the parties find

themselves in an abusive and unhealthy relationship.

Physical abuse is usually the easiest type to identify. When this happens, protective orders can be issued by the

Continued on page four.



From left, Alan Plevy, Kyung (Kathryn) Dickerson, Daniel Ruttenberg and Jason Smolen

Accolades for SmolenPlevy

Washington SmartCEO Magazine has presented SmolenPlevy principals Jason Smolen, Alan Plevy, Daniel Ruttenberg and Kyung (Kathryn) Dickerson with 2013 Power Players Awards. SmartCEO recognized them at a reception honoring the area's 50 most influential accountants, attorneys and bankers on November 18. At the event, Kyung (Kathryn) Dickerson was named Attorney Power Player of the Year for Divorce, Domestic Relations, and Child Custody and Adoptions.

Smolen, Plevy, Ruttenberg and Dickerson were also named "Top Lawyers" by *Northern Virginia Magazine*.

Alan Plevy was selected as one of the 2014 "Best Lawyers in America" and will be featured in the 20th edition of *The Best Lawyers in America*. Plevy was selected for this honor by other leading lawyers throughout the United States.

Deducting the Business Use of Your Home

The federal income tax deduction for the business use of a home has a good dollars-and-cents upside for those who qualify. Some detailed questions have to be answered correctly to get to that point, however. Not surprisingly, the IRS publication on the subject makes use of a complex flowchart filled with “yes or no” questions to guide taxpayers to a determination of their eligibility for the deduction.

Qualifying for the Deduction

To pass the threshold for use of the home business deduction, a taxpayer must satisfy the following two basic sets of requirements: The first set concerns the nature of the business activities, while the second set relates more to the place itself.

First, the use of the business part of the home must be exclusive (with exceptions to be discussed), regular, and for the business. Second, the business part of the home must be one of the following: the principal place of business—the place where the taxpayer meets or deals with patients, clients, or customers in the normal course of business—or a separate, detached structure used for business.

The exclusive use factor means that the area is used *only* for business, not for a mixture of business and personal uses. However, the exclusive use requirement does not have to be met when a part of the home is used for the storage of inventory or product samples or for a day-care facility. Be aware that not every activity that makes money for the taxpayer constitutes the use of the home for a trade or business: If you use a computer in your den for day-trading stocks or online gambling, do not count on taking the deduction.

As for what constitutes a “regular” use for business, that essentially means business conducted on a continuing basis, not occasionally. Even if a taxpayer has a place in the home used exclusively for business, the deduction is not available if the business activity is only sporadic.

As for the requirements relating to the place itself, the area in the home used for business is a “principal place of business” if it is used exclusively and regularly for the administrative or management activities of the business and there is no other fixed location where substantial activities of that kind are carried out. If some business is transacted at more than one location, determining whether the home location is the principal place of business requires consideration of the relative importance of the activities at each location.

If that does not provide an answer, the time spent at each site should be considered. Remember that the deduction is available if either the home is the place for meeting with patients, clients, or customers, or a separate structure on the premises is dedicated

for business.

If the taxpayer is an employee using part of his or her home for business, the deduction is available if all the requirements described above are met, plus additional tests. The business use must be for the convenience of the employer (not just appropriate or helpful). If the taxpayer rents part of his or her home to his or her employer and uses the rented part in performing services for the employer as an employee, the deduction for the business use of the home is limited.

Mortgage interest, qualified mortgage insurance premiums, real estate taxes, and personal casualty losses for the rented part are deductible, subject to any limitations. However, the taxpayer cannot deduct otherwise allow-

Continued on page three.

SmolenPlevy in the Media

In an article in the *Realty Times*, “The Reality of Realty: Avoiding Promises You Cannot Keep and Debts You Cannot Honor,” SmolenPlevy co-founding Principal Jason Smolen urges people embarking on real estate deals to avoid making obligations they cannot meet.

By spending time with an experienced attorney before entering into a deal, you can anticipate pitfalls and challenges before they happen, Smolen adds. With more than thirty years of experience advising real estate clients, he urges his clients to consider two key issues before they enter into a deal: the potential consequences of making a promise they cannot keep and the recognition that agreements are binding and enforceable. Also, it’s important to consider potential pitfalls and to carefully consider how debt will be handled within the agreement. This “levels the playing field and gives clarity to the question of whether or not someone should proceed with a deal,” says Smolen.

Principal Daniel Ruttenberg was featured in “The Case of the Preemptive Strike and the Wronged Widow” in the December 2013 issue of *Northern Virginia Magazine*. The article profiles Ruttenberg’s recent case before the United States Supreme Court, *Hillman v. Marett*.

Visit SmolenPlevy on the Web at www.smolenplevy.com to read both articles.

E-Mail Is Binding

In law as in society at large, signing contracts on paper in ink (and maybe in triplicate) now seems so 20th century. If your reflex is still to regard e-mail communications as only informal give and take, think again. A recent case demonstrates that if the necessary terms for an agreement are present in e-mails, a binding agreement will result. If you don't want that outcome, you are well advised to make it clear in the e-mail itself that no party will be bound until a final agreement is signed by all parties.

Eric signed an agreement to buy a truck stop. The agreement included a financing contingency and required Eric to make a large refundable deposit that would be held in escrow. When Eric could not secure the necessary financing, he terminated the purchase and sale agreement and asked for his deposit back. The owner declined, saying that Eric had broken the agreement in bad faith.

After Eric sued the truck stop owner in federal court and was hit with a counterclaim, the parties, through their attorneys, engaged in settlement negotiations by e-mail. Ultimately, Eric's attorney accepted the owner's settlement offer involving a division of the deposit money between the parties. Eric's attorney concluded an e-mail by saying, "To move this along, I will send you a draft settlement agreement (and other documentation) tomorrow." The next day the owner's lawyer replied in another e-mail, saying, "Glad we were able to get it done. Thanks."

About a week later, when the settlement had been reduced to writing and was ready for signatures, the defendant owner of the truck stop was placed into receivership by a state court. The receiver refused to follow through with

the settlement agreement. Eric went back before the federal court, where his motion to enforce the settlement was granted.

Rejecting a contention made by the defendant, the court ruled that because all of the material parts of a settlement had been set out in, and agreed to, in the exchange of e-mails, there was a binding and enforceable settlement,

even though in their e-mails the parties had alluded to a later writing that would embody the agreement. When the parties executed that written agreement, they were merely "memorializing" the terms of the settlement, not creating them. The agreement was complete and binding when the attorneys clicked "Send" to exchange their last e-mails finalizing the settlement.

Home Business Use

Continued from page two.

able trade or business expenses, business casualty losses, or depreciation related to the use of the home in performing services for the employer.

What Is Deductible?

Deductible expenses for a business use of the home include items such as the business portion of real estate taxes, deductible mortgage interest, rent, casualty losses, utilities, insurance, depreciation, painting, and repairs. This is not likely to be an all-or-nothing proposition, though. Generally, an expense is fully deductible if it is direct, that is, incurred only for the business part of the home.

An indirect expense, incurred for running the home as a whole, is deductible based on the percentage of the home used for business. Any reasonable method for determining that percentage is acceptable, such as dividing the square feet used for business by the total square feet or dividing the number of rooms devoted to business by the total number of rooms. If an expense is unrelated to the business part of the

home, it is not deductible at all.

If the taxpayer's gross income from the business use of the home is lower than the total business expenses, the deduction for certain expenses will be limited. But those expenses that cannot be deducted because of such a limitation can be carried forward for the next year's home business expenses.

A new development in 2013 was the IRS offering of a simplified option for figuring deductions for the business use of a home. Instead of involving the sometimes complex calculations generally required for taking the deduction, the new "safe harbor" method, starting with the 2013 return that most taxpayers will file in 2014, makes the calculation easier. It caps the deduction at \$1,500 per year, based on \$5 per square foot for up to 300 square feet of space.

Bear in mind, though, that the basic requirements for claiming the deduction still apply even if the safe harbor method is used. All in all, it would be prudent to consult your tax advisor as to whether the "old" or the "new" method of calculating the deduction is better in your particular circumstances.

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.

Domestic Violence

Continued from page one.

court that require the offending party stay a certain distance away from the victim. Physical violence can also result in criminal charges against the perpetrator. In situations where both parties have acted in a violent manner, Plevy says that sometimes both parties secure protective orders.

Financial abuse comes in different forms and can be harder to identify. Sometimes a husband or wife asserts control by limiting their partner's access to money, credit cards and financial information. They may require that their spouse report every penny spent or they may limit resources to the point that the other spouse literally has to beg for grocery or gas money.

Sometimes spouses inflict emotional pain in the form of verbal or emotional abuse. While they may not hurt their partner physically, making verbal threats, calling them names, embarrassing them in front of others, or threatening physical harm or mistreatment is still considered domestic violence and can be just as harmful to the victim.

No matter what form violence takes in a marriage, it is often very difficult for the abused party to break away, especially when children are involved. Plevy suggests that:

- In the case of physical violence, get a protective order so that you have an order that provides for your physical safety and which you can use if you need to summon the assistance of law enforcement.
- Seek professional mental health counseling. Pick a therapist who has dealt with victims of violence. Therapists can help devise what Plevy calls a "safety plan," that may include having a secret cell phone programmed to call 911, money set aside for when the victim eventually leaves the home, and ways in which to protect children who may be involved. If money is an issue, there are charitable, government and religious organiza-

tions that can provide free mental health counseling.

- Speak to an experienced attorney who can help you understand the legal ramifications of your situation. "Sound legal advice is critical during this time," he says.

Plevy acknowledges that it's very difficult to leave a violent situation as there is usually a great deal of fear

involved. "By knowing your legal rights and getting proper counseling," he says, "you will be in a much better position to make a safe exit from a difficult situation."

If you have any questions regarding Divorce or Family Law, please contact Alan Plevy at 703-790-1900 or by email at abplevy@smolenplevy.com.

What Is a REIT?

If investing in real estate appeals to you but you are not so well-heeled that you can go shopping for investment properties like they were appliances, you may want to give some thought to investing in one or more real estate investment trusts (REIT). As you would with shares of common stocks, you can buy and sell different REITs, and having REITs in your portfolio of investments could be a good way to add some diversification. Another attraction for REITs is that you can invest in them with relatively small amounts of money, as compared with the sums required to buy the real estate itself.

There are two basic categories of REITs, although even within each category there are variables to consider. An equity REIT owns a mix of stocks and one or more pieces of property, often specializing in a particular type of real estate, such as shopping centers. As the name suggests, a mortgage REIT owns debt instruments, buying existing mortgages, collecting payments on them, then passing on the money to investors.

The fortunes of the two kinds of REITs rise and fall with the markets in different ways. Equity REITs prosper in a strong real estate market and when the values of stocks are on the rise. Shares in mortgage REITs, combining the features of real estate and bonds,

tend to trade with the bond market, so that when interest rates rise, mortgage REIT shares generally fall along with bond values.

The federal tax code requires a REIT to pay investors at least 90% of its taxable income each year. This means that REITs pay little or no corporate income tax, thus improving on the tax treatment of dividends, which can be taxed twice, with both the company and the shareholders owing taxes on them.

The end result is that REITs potentially can have relatively high returns. Within the general category of REITs, there are significant differences in such features as levels of risk and the limitations on when an investor can sell his or her shares. As with any investment, you should collect and understand all information for any REITs being considered before investing.



For more information about SmolenPlevy, scan here.