

# SMOLENPLEVY

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## Report From Counsel

Insights and Developments in the Law

Winter 2022

### *7 Things You Should Know About the Divorce Process*

If you are getting a divorce, or even simply considering a divorce, life currently feels complicated. Between practical and financial concerns that arise during a divorce, on top of handling the regular stresses of life, it can become overwhelming. Fortunately, for most divorces, you can have a good idea of what to expect going forward. SmolenPlevy Principals Alan Plevy and Kyung (Kathryn) Dickerson are here to help, laying out seven issues that commonly arise in a divorce:



Alan Plevy



Kyung (Kathryn)  
Dickerson

the courts and couples to settle certain issues in divorce cases. While not appropriate for everyone, you may find yourself in mediation with your spouse to work out issues related to your divorce. Mediations have the advantage of not being legally binding, meaning that if it goes poorly, you are not at risk of losing much in the divorce itself, so long as you don't sign anything. It is best to work with an attorney during the mediation process

#### **Dividing Marital Property**

One of the biggest issues that face every couple going through a divorce is how to divide their marital property. Common points of contention can be ownership of the family home, a second home, investment accounts, vehicles, and other valuables. You may also see arguments over pensions or retirement assets, depending on your circumstances. In fact, one of your first challenges may be disentangling your separate property from your marital property, where possible.

#### **Child Custody and Visitation Rights**

Another major source of contention, if you have minor children, is child custody and visitation rights. "Whether

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### *SmolenPlevy In the Community*

For the 8th consecutive year, SmolenPlevy is a 'Best Law Firm' by U.S. News & World Report. SmolenPlevy also received its first national ranking in the 2022 edition with a Tier 3 award for Trusts & Estates Law. Read the full announcement on SmolenPlevy.com.

SmolenPlevy attorneys Jason Smolen, Alan Plevy, and Kyung (Kathryn) Dickerson are named 2021 "Top Lawyers" by Northern Virginia Magazine. Read the full announcement on 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.*

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## What Makes a Trustee So Trustworthy?

It is increasingly more common for people planning their estates to use testamentary trusts to protect their property and avoid some of the rigors of the probate process. Creating a testamentary trust places the fate of your property in the hands of a trustee, who is responsible for managing and distributing that property according to your wishes. But how do you know you can trust your trustee, especially once you've passed on?

Who you appoint as your estate plan's trustee is important. SmolenPlevy's estate planning attorneys Jason Smolen and Daniel Ruttenberg are here to help, noting some key truths to consider:

A testamentary trust is a type of legal arrangement where one person, known as a grantor, entrusts money or property to another person, known as a trustee, with the expectation that the trustee

will dispose of the property as the grantor desires once they pass away. In the case of physical property, a trustee may be given physical possession of the grantor's property to watch over; in the case of money, they might be given control of a bank or investment account. Either way, the trustee is entrusted with protecting and managing the money or property on behalf of the grantor.



Jason  
Smolen



Daniel  
Ruttenberg

“Ideally, of course, a grantor should always trust the person they are going to appoint as their trustee, but there is another reason a grantor should have confidence their trustee will work in their best interests,” Ruttenberg reminds. Trustees have what is known as a fiduciary duty to the grantor,

meaning they are legally required to place the grantor's interests over their own. A trustee who breaches their fiduciary duty by stealing from the trust or otherwise using the property to advance their own interests can be sued, or even potentially charged with a crime for their misconduct (depending on the severity of the breach). Though the selection of a good trustee is a critical component of estate planning, this additional legal protection gives reassurance to anyone forming a trust that their property will be taken care of even once they are gone.

If you have additional questions, contact Jason Smolen at [jdsmlen@smolenplevy.com](mailto:jdsmolen@smolenplevy.com) and Daniel Ruttenberg at [dh Ruttenberg@smolenplevy.com](mailto:dh Ruttenberg@smolenplevy.com).

## The Do's and Don'ts of Social Media and Divorce

No one wants their private messages to hit the internet – let alone be read out to strangers in a courtroom during a divorce proceeding. However, the added influence of social media in day-to-day life means it can significantly impact a potential divorce. 81% of attorneys discover social networking evidence worth presenting in court. Social media can be used as evidence during divorce procedures to show proof of infidelity, gains in income, and even affect child custody by posting reckless behavior.

If you are going through a divorce, here are 4 do's and don'ts to help you handle your social media presence during the process.

### **Don't post anything you wouldn't want read in court**

Remember that anything you put online can be used as evidence against you in your divorce. This includes but is not limited to; private messages, second accounts, and even dating apps. Incriminating social media content can potentially affect property distribution and child custody arrangements, so it is crucial to be extremely careful with your content. Posting positive changes like a new house or job change can affect your divorce, just like posting pictures of partying and drinking can.

### **Do change passwords**

Making your accounts private and

changing your passwords are both excellent ways to ensure that your social media is protected from your ex-spouse and their attorneys. Cases could possibly move to criminal court if spouses attempt to break into their ex's accounts, and it is crucial to ensure you are the sole viewer and curator of your content.

### **Don't post about your spouse**

Whatever you do, never speak ill of your ex or try to provoke them with your posts. Even if they are blocked, mutual friends and other followers could share this information, and it

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## *What is a Revocable Living Trust and Do You Need It?*

A revocable living trust, which is more commonly referred to as simply a living trust, is created to hold ownership over an individual's assets. The person who creates the trust, a grantor, also serves as the person who controls and manages the assets placed in the trust, a trustee. In some cases, a grantor may appoint an attorney or an institution to act as the trustee of a living trust. A living trust is used to cover three stages of the grantor's life cycle: their lifetime, during incapacitations and after death.

### **The Living Trust When a Person is Alive**

While the grantor is still alive and in full control of their faculties, the living trust is a highly fluid testamentary tool that allows assets to be freely added and removed by the grantor. At this point, the living trust acts as a means of managing the grantor's personal assets. It can also confer substantial financial benefits.

### **The Living Trust When a Person is Incapacitated**

As part of their living trust, the grantor typically names a successor trustee who will take over the trust in the event of the grantor's incapacity (provided they did not already have a trustee managing the living trust on their behalf). The terms of the trust typically lay out the exact conditions under which the grantor might be considered incapacitated, which triggers the takeover of the trust by the successor trustee, says Principal Jason Smolen. "While the grantor is incapacitated, the successor trustee manages the trust's assets on behalf of and typically for the benefit of the grantor, bound by law to manage their property as best as they can."

### **The Living Trust After Death**

Once the grantor passes away, the living

trust changes from being a revocable trust to an irrevocable trust, becoming another testamentary instrument in the grantor's estate. The terms of the living trust will typically lay out who will receive the property within the trust after they die, naming them as successor beneficiaries. The trustee then becomes bound to distribute and manage the property in the trust on behalf of these successors, as dictated by the terms of the trust.

### **The Benefits of a Living Trust**

A living trust carries several potential benefits. Property held in the trust is considered non-probate, meaning that it avoids many of the difficulties that come from distributing property through a last will and testament. Avoiding probate does simplify your estate administration by reducing or eliminating court supervision and further has the benefit of keeping your arrangements private. Another significant benefit is that in the event you are disabled or otherwise

incapable of handling your affairs, your successor trustee can take over without the requirement of going through the judicial process of appointing a guardian for you. Finally, because the living trust automatically converts to a testamentary trust upon death, you may not need to organize separate instruments after you pass away.

### **The Drawbacks of a Living Trust**

That said, a living trust is not for everyone. A trustee must be paid for their services, making it a potentially expensive prospect to maintain. It can also come with numerous bureaucratic difficulties that can become problematic if you are not careful.

Unsure of whether a living trust can fit your needs? Please contact estate planning attorneys Jason Smolen at [jdsmolen@smolenplevy.com](mailto:jdsmolen@smolenplevy.com) or Daniel Ruttenberg at [dhрутtenberg@smolenplevy.com](mailto:dhрутtenberg@smolenplevy.com)

## *The Do's and Don'ts of Social Media and Divorce*

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could end up being used against you in court. This includes private direct messages on any platforms. Nothing on social media is 100% private, and it is not worth risking your case just to bad-mouth your ex.

### **Do take time off**

If you are not confident that your content online is safe from your ex's attorneys, it is a good idea to take a break from social media. Even if you just interact with other friends' content

and don't share any of your own, it is a good idea to take a break from sharing about your life when you are going through a divorce.

If you have any questions about making smart choices with your social media during a divorce, please do not hesitate to reach out to Alan Plevy at [ablevy@smolenplevy.com](mailto:ablevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [kindickerson@smolenplevy.com](mailto:kindickerson@smolenplevy.com)



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# What You Should Know Before Starting a Business as an LLC

Limited liability companies, more commonly referred to as LLCs, are a common type of business organization often seen among smaller businesses. For some, LLCs offer a relatively simple way of legally organizing a business while also offering protection from legal and financial liability. However, an LLC is not necessarily right for every business, and you should make an informed decision about how to organize your company. SmolenPlevy Principals Jason Smolen and Daniel Ruttenberg identify five things you need to know about LLCs:

LLCs are not the same thing as corporations – Although they have many similarities to one another, LLCs are not considered a type of corporation. Instead, they are considered an unincorporated business entity, which operates under the terms of its articles of organization. This means that LLCs do not have shareholders the way a corporation does, and they are not bound to many of the same strict legal requirements that corporations are.

An LLC can protect you from liability – “Despite being unincorporated entities, LLCs offer protection from legal and financial liability similar to corporations,” says Smolen. Normally, without a corporation, someone who is faced with debts or lawsuits related to their business would be personally responsible for paying the costs of those liabilities themselves, if the company could not bear the cost. With a properly maintained LLC, however, the business’ owners are protected and will not face personal hardship, no matter the financial status of the business itself.

LLCs avoid “double taxation” – Because LLCs are unincorporated, without a specific election to be treated otherwise, they are not subjected to a corporate income tax. This is incredibly beneficial

for business owners who otherwise might fear “double taxation,” which occurs when a corporate dividend is taxed as income for a corporation’s shareholders after it has already been taxed as corporate income. In many cases, LLC owners will keep more of their business income than they would if their business was a standard corporation.

LLCs may cause all income to be taxed as earned income – Organizing your business as an LLC can have its drawbacks. “Compared to a

corporation, a single member LLC requires all income to be taxed as employment income. The concept of a salary and a separate distribution blend,” says Ruttenberg.

An LLC is not right for every business – LLCs are subject to a number of restrictions that can make them less convenient for certain businesses. They can face difficulties when trying to expand the business, and may not be the best vehicle to conduct business transactions outside of the United States.

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one parent gets total custody, or there is a shared custody agreement, it is likely to be one of the most intense arguments you have with your spouse during the divorce,” Dickerson warns, noting how even couples that split on relatively amicable terms often continue this argument into the foreseeable future. Custody is subject to modification based upon a change of circumstances.

### Child Support

Following the argument of custody is one of child support. This payment is intended to cover a child’s reasonable and ordinary living expenses, including medical care, clothing, food and anything else that might be necessary to ensure their needs are taken care of. Unsurprisingly, child support is also often a source of conflict.

### Spousal Support

Independent of child support is the consideration of spousal support, which is also known as spousal maintenance or alimony. In theory, spousal support is meant to help a divorcing spouse maintain their current standard of

living to avoid having the threat of a reduced income from divorce. It is possible for someone to be assigned both child support and spousal support, depending on the exact circumstances of your case.

### Relocation issues

“Normally people are free to move wherever they want, but when it comes to divorce cases where custody is an issue, one parent choosing to relocate is a big deal,” Plevy notes. “Not only can it make pursuing the case harder, but it can also have a significant impact on the school and social life of children.” Thus, any attempt by a parent in a divorce case to relocate to a new home can result in significant litigation. “The court cannot tell either party where to live, but can tell you where your children will live.”

A divorce is a difficult time for everyone involved, and you don’t have to go through it alone. Family law attorneys Alan Plevy and Kyung (Kathryn) Dickerson are here to help guide you through each step.