

## Report From Counsel

Insights and Developments in the Law

Summer 2018

### 6 Summer Vacation Tips for Divorced or Separated Parents

By Alan Plevy and Kyung (Kathryn) Dickerson

It's an annual rite of spring — children are eagerly anticipating the end of the school year and the start of their summer break. The same can't be said for a number of divorced or separated parents. Summer vacation can deteriorate into a very stressful, chaotic and combative time for parents who share custody, as well as a confusing time for their children. This nightmarish scenario can be avoided.



Alan Plevy

Family law attorneys Alan Plevy and Kyung (Kathryn) Dickerson offer some tips to help create peace and ensure that your children have a fun summer.

#### Plan ahead

"To avoid last-minute disagreements, parents

should discuss and come up with a vacation schedule," says Plevy. Most separation agreements or court orders set out what time each parent has with the children during the summer. This can simplify this time of year for those families, but the agreements or orders often set out deadlines by which you must notify the other parent of your vacation. Plevy advises if you don't make timely decisions you can lose your right to have priority in the selection of exclusive time with the children.

#### Communicate trip details

During the school break planning phase travel may be a significant consideration.

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Kyung (Kathryn)  
Dickerson

### Keeping the Family Business in the Family

By Jason Smolen and Dan Ruttenberg

Transferring a family business to the next generation requires a delicate balancing act. Estate and succession planning strategies aren't always compatible, and the older and younger generations often have conflicting interests. Jason Smolen and Dan Ruttenberg, principals and estate planning attorneys at SmolenPlevy in suburban Washington, D.C., say, by starting early and planning carefully, however, it's possible to resolve these conflicts and transfer the business in a tax-efficient manner.

#### Ownership vs. Management Succession

One reason transferring a family business is such a challenge is the distinction between ownership and management succession, says Smolen. When a business is sold to a third party, ownership and management succession typically occur simultaneously. But in the

family business context, there may be reasons to separate the two.

From an estate planning perspective, transferring assets to the younger generation as early as possible allows you to remove future appreciation from your estate, minimizing estate taxes. On the other hand, you may not be ready to hand over the reins of your business or you may feel that your children aren't yet ready to take over.

Smolen and Ruttenberg say there are several strategies owners can use to transfer ownership without immediately giving up control, including:

- Placing business interests in a trust, family

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### Accolades

SmolenPlevy is pleased to announce that Principals Alan Plevy, Kyung (Kathryn) Dickerson and Dan Ruttenberg are recognized as Top 100 Virginia Super Lawyers in 2018. Ms. Dickerson is also included in the Top 50 Virginia Women Super Lawyers list. Fewer than five percent of attorneys in Virginia receive both honors. This is the fourth time since 2014 that Ms. Dickerson has received both awards.

SmolenPlevy is pleased to announce Principals Jason Smolen, Alan Plevy, Daniel Ruttenberg and Kyung (Kathryn) Dickerson are named in the 24th edition of The Best Lawyers in America® for 2018. Co-Founding Principal Jason Smolen is also honored as the Best Lawyers® 2018 Business Organizations "Lawyer of the Year" in Washington, D.C. Smolen, Plevy, Ruttenberg and Dickerson were selected for this honor by other leading lawyers from the Washington, D.C. area in the specialties of business organizations, family law, family law mediation, and trusts and estates.

### In the Media

As if divorce isn't difficult enough, the new tax law does away with the alimony tax break. The change would likely make divorce more expensive for the person paying their ex — and will have an immediate effect on divorce negotiations. Both WTOP Radio and MoneyTips turned to SmolenPlevy Founding Principal Alan Plevy on how the new tax law could affect people getting a divorce.

SmolenPlevy Principal Dan Ruttenberg was a featured guest on the TV show *Probate Nation*. Dan's topic: "Good and Bad Ways to Avoid Probate." *Probate Nation* is dedicated to helping the public understand the probate system when a loved one passes away.

# Unmarried Couples Must Consider Alternative Planning Strategies

By Jason Smolen and Dan Ruttenberg

Unmarried couples face many of the same estate planning concerns as married couples. However, married couples can use more advantageous estate planning strategies than unmarried couples. Estate planning attorneys Jason Smolen and Dan Ruttenberg say this means unmarried couples must engage in special planning to ensure that their decisions regarding asset distribution and health care are carried out per their wishes.



Jason Smolen

## Strategies unavailable to unmarried couples

Because intestacy laws offer no protection to an unmarried person who wishes to provide for his or her partner, it's essential for unmarried couples at a minimum to create a will or living trust, says Ruttenberg. Without those arrangements, a partner can find themselves at the mercy of the children or other relatives of the decedent taking the estate assets, even if the couple lived together for many years. But marriage offers several additional estate planning advantages that unmarried couples must plan around, such as:

### Marital deduction

Estate planning for married couples often centers on the marital deduction, which allows one spouse to make unlimited gifts to the other spouse, free of gift or estate taxes. Unmarried couples don't enjoy this advantage; thus, lifetime gift planning is critical so they can make the most of the lifetime gift tax exemption and the \$15,000-per-recipient annual gift tax exclusion.

"Unmarried couples should also pay close attention to transactions that may inadvertently trigger gift taxes, such as payment of a partner's living expenses," says Smolen.

### Tenancy by the entirety

Married and unmarried couples alike often hold real estate or other assets as joint tenants with rights of survivorship. When one owner dies, title automatically passes to the survivor. In many states, a special form of joint ownership — tenancy by the entirety — is available only to married couples.

In addition to survivorship rights, tenancy by the entirety offers protection against claims by

the spouse's individual creditors. "Unmarried couples who seek greater protection against creditor claims should consider placing assets in a trust," says Ruttenberg.



Daniel  
Ruttenberg

### Will contests

Married or not, anyone's will is subject to challenge as improperly executed, or on the grounds of lack of testamentary capacity, undue influence or fraud. For some unmarried couples, however, family members may be more likely to challenge a will simply because they disapprove of the relationship.

To reduce the risk of such challenges, Ruttenberg suggests unmarried couples should review their wills to make sure they are carefully worded and properly executed and use separate attorneys, which can help

refute charges of undue influence or fraud. In addition, consider including a "no contest" clause, which disinherits anyone who challenges the will and loses. Finally, explain in the will the reasons for favoring one's partner over relatives.

### Health care decisions

A married person generally can make health care decisions on behalf of a spouse who has become incapacitated by illness or injury. Unmarried partners cannot do so without a written authorization, such as a medical directive or health care power of attorney. A durable power of attorney for property may also be desirable, allowing a partner to manage the other's assets during a period of incapacity.

### Take advantage of a GRIT

Although married couples enjoy several estate planning advantages over their unmarried

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## Domestic Violence Is More Common Than You Realize

By Alan Plevy and Kyung (Kathryn) Dickerson

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."

Those who are in a relationship may be a victim of domestic violence and not even know it. Once they know the signs of domestic violence, the next step is to attempt to resolve the situation safely. In some instances, this may require a separation or divorce. 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.

Family law attorney and principal Kathryn Dickerson says, "Physical abuse is usually the easiest type to identify." When this happens, protective orders can be issued by the court that require the offending party to 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, each spouse will secure a protective order.

Financial abuse comes in different forms and can be harder to identify, says Dickerson. 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

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# Domestic Violence Is More Common Than You Realize

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still considered domestic violence and can be just as harmful to the victim, says Dickerson.

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 and Dickerson suggest:

- 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 organizations 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 [abplevy@smolenplevy.com](mailto:abplevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [knickerson@smolenplevy.com](mailto:knickerson@smolenplevy.com).

## Keeping the Family Business in the Family

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limited partnership (FLP) or other vehicle that allows the owner to transfer substantial ownership interests to the younger generation while retaining management control

- Transferring ownership to the next generation in the form of nonvoting stock
- Establishing an employee stock ownership plan (See “Using an ESOP as an exit strategy.”)

“Another reason to separate ownership and management succession is to deal with family members who aren’t involved in the business,” says Ruttenberg. It’s not unusual for a family business owner to have substantially all of his or her wealth tied up in the business. Providing heirs outside the business with nonvoting stock or other equity interests that don’t confer control can be an effective way to share the wealth while allowing those who work in the business to take over management.

Another strategy is to purchase life insurance to create liquidity for family members not involved in the business.

### Conflicting financial needs

Another unique challenge presented by family businesses is that the older and younger generations may have conflicting financial needs, advises Smolen. For example, a business owner may be relying on the value of the business to fund his or her retirement, while his or her children might hope to acquire the business without a significant investment on their part.

Fortunately, Smolen and Ruttenberg suggest several strategies to generate cash flow for the owner while minimizing the burden on the next generation. They include:

### An installment sale of the business to children or other family members

This provides liquidity for the owners while easing the burden on the younger generation and improving the chances that the purchase can be funded by cash flows from the business. Plus, so long as the price and terms are comparable to arm’s-length transactions between unrelated parties, the sale shouldn’t trigger gift or estate taxes.

### A grantor retained annuity trust (GRAT)

By transferring business interests to a GRAT, owners obtain a variety of gift and estate tax benefits (provided they survive the trust term) while enjoying a fixed income stream for a period of years. At the end of the term, the business is transferred to the owners’ children or other beneficiaries. GRATs are typically designed to be gift-tax-free.

### An installment sale to an intentionally defective grantor trust (IDGT)

This is a somewhat complex transaction, but, essentially, a properly structured IDGT allows an owner to sell the business on a tax-advantaged basis while enjoying an income stream and retaining control during the trust term. Once the installment payments are complete, the business passes to the owner’s beneficiaries free of gift taxes.

Because each family business is different, it’s

important to work with your estate planning advisor to identify appropriate strategies in light of your objectives and resources.

### Get an early start

The Tax Cuts and Jobs Act of 2018 increased the estate exemption to \$11.2 million for individuals and \$22.4 million for couples, excluding many estates from taxation at the federal level. The tax, though, is a hefty 40% in excess of the amount and the higher exemption expires January 1, 2026, unless extended.

Regardless of your strategy, Smolen and Ruttenberg advise that, the earlier you start planning, the better. Transitioning the business gradually over several years or even a decade or more gives you time to educate family members about your succession planning philosophy, to relinquish control over time, and to implement tax-efficient business structures and transfer strategies. There are many family and business dynamics at play.

Starting early will also give your children time to obtain the training and experience they need to successfully manage the business. In addition, if the transition will involve a sale of the business to the younger generation, an early start gives them time to put together the necessary funds and increases the chances that the purchase can be financed by cash flow from the business.

If you have any questions, please contact Jason Smolen at [jdsmlen@smolenplevy.com](mailto:jdsmolen@smolenplevy.com) or Dan Ruttenberg at [dhrruttenberg@smolenplevy.com](mailto:dhrruttenberg@smolenplevy.com).



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"Proper communication with the other parent is essential," says Dickerson. When a parent leaves the state with a child, it is important that the other parent be notified in advance, unless your agreement or order states otherwise. Dickerson says, if you don't share your vacation plans, you can face legal action from your ex or soon-to-be ex. You should confirm transfers in writing. A text or email will do. Something as simple as "Yes, I agree we'll meet at the library at 4pm on July 2nd" will significantly minimize family tension.

## **Cover your bases**

If a parent plans on taking the children out of the country, passports must be in order and, generally, both parents must give their written notarized 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 to visit. Whether a particular country or region is considered safe could change from the time the plans are made to the time of the actual trip.

Some parents are particularly concerned about 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 legal framework for the return of children who have been abducted in violation of a valid court or-

der. If a parent takes a child to a country that does not recognize the convention, there may be no processes in place to require that parent to return the child.

## **Make a checklist**

Parents need to be sure that anyone taking the child abroad has copies of health insurance and immunization documentation, and adequate supplies of any of the child's regular medications. Plevy says it's a 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 agreement or court order.

## **Don't make it a competition**

When you are coming up with vacation plans, don't turn it into a competition with the other parent, suggests Dickerson. Children value quality time over fancy trips and they don't care about which parent takes them on a beach vacation. A trip to the zoo or tubing on a nearby river can be just as exciting as a fancy vacation. "Regardless of their family situation, children just want to be with their parents and have fun," says Dickerson. Above all, they want to be happy and not be subject to the tensions that may accompany a separation or divorce.

## **Prepare the children**

Once parents have agreed to a plan, they

should then jointly communicate it to the children, says Plevy. This will help the children understand that the schedule is something that the parents came up with together. Remind your children that, even though they won't see you for several days, they will have fun and you are happy they can spend time with their other parent. Dickerson suggests to take care of themselves when the children are gone by staying busy and treating themselves to something they might not be able to do when the children are around.

Keeping your children's best interests in mind and working together cooperatively with the other parent will go a long way in helping you provide your children with a fun, safe and organized summer vacation. For more information, contact Alan Plevy at [ablevy@smolenplevy.com](mailto:ablevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [kindickerson@smolenplevy.com](mailto:kindickerson@smolenplevy.com).

## *In the Community*

SmolenPlevy is proud to announce Partner Joshua Isaacs has been named the incoming President of the Fairfax Law Foundation. The Fairfax Law Foundation works with the Fairfax Bar Association to serve the community by providing legal and other assistance to the indigent and those with special needs, providing law-related community education programs and promoting access to and improvements in the justice system.

SmolenPlevy Principal Joshua Isaacs co-chaired the Fairfax Law Foundation's Heroes vs. Villains 10th Annual Run for Justice 5k. Participants wore their best superhero or villain costume as they ran to raise money for the Foundation's Pro Bono Program. It provides legal services for impoverished residents in Fairfax County and law-related education programs for students in the community.

SmolenPlevy Principal Dan Ruttenberg, Vice President of Devotion To Children (DTC), is proud to announce the 7th Annual Cards 4 Kids Poker Event helped raise almost \$50,000 for high-quality educational and childcare programs for children of economically disadvantaged families in the metropolitan area. The 8th Annual Cards 4 Kids™ Texas Hold 'Em Charity Poker Tournament will be held on September 22 at Fleming's Prime Steakhouse & Wine Bar.

## *Unmarried Couples Must Consider Alternative Planning Strategies*

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counterparts, there are a few situations in which unmarried couples have an edge. For example, with a grantor retained income trust (GRIT), one partner transfers assets to an irrevocable trust for the other's benefit. By retaining income and certain other interests in the trust, however, the grantor minimizes its value for gift tax purposes.

So long as the grantor survives the trust term, a GRIT has the potential to transfer substantial amounts of wealth tax-free, which led Congress in the late 1980s to eliminate these tax benefits for intrafamily transfers.

But Smolen says unmarried couples and other "nonfamily" members can still take advantage of this powerful estate planning strategy.

## **Planning options are available**

There are many reasons life partners decide not to marry. Even though this prevents these couples from using powerful estate planning strategies, there are specific strategies available to achieve estate planning objectives. Contact Jason Smolen at [jdsmlen@smolenplevy.com](mailto:jdsmlen@smolenplevy.com) or Dan Ruttenberg at [druttenberg@smolenplevy.com](mailto:druttenberg@smolenplevy.com) to help you identify and implement those strategies.

*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.*