

Report From Counsel

Insights and Developments in the Law

Summer 2019

Divorce and College: Planning Ahead is Crucial

What's your major? Who's your roommate? Dorm room or fraternity house? These are all questions on the minds of parents who are sending their children off to college this fall. But if you are divorced — or thinking about getting a divorce — one of the most pressing questions you'll have to answer is: who will pay for college?



Alan Plevy

Child support generally ends when children reach the age of emancipation. Depending on the state in which you reside, the age of majority can be 18, 19 or 21 years old; in Virginia, child support ends when the child is 18, unless the child is still in high school, then it ends upon the child's graduation, but no later than the age of 19. Unless there is a written agreement between parents before the child reaches this age, there is no legal obligation for either parent to pay for college or any post-high school training or education. So even if your children are very young when you and your spouse separate, and you can't imagine them old enough to cross the street without holding your hand, much less graduating from high school,

SmolenPlevy family law attorneys Alan Plevy and Kyung (Kathryn) Dickerson note that it is critical that you negotiate how college expenses will be handled in your divorce agreement.



Kyung (Kathryn)
Dickerson

"Education is one of the best gifts a parent can give their child," says Plevy. "But a court cannot order either parent to pay for his or her child's college education, so you must take this into consideration when negotiating an agreement."

Some important items to discuss with your attorney:

- Public versus private and in-state versus out-of-state tuition?
- What percentage of college expenses will each parent be responsible for?
- If you wish to take advantage of a state's 529 college savings plan, will both parents contribute? How much and how often? Which parent is the custodian of the plan?
- Should you restrict where the children can attend college or the limit of each parent's obligation?

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Accolades

SmolenPlevy is pleased to announce that Principals Alan Plevy, Kyung (Kathryn) Dickerson and Dan Ruttenberg are recognized as Super Lawyers in 2019. Ms. Dickerson is also included in the Top 50 Virginia Women Super Lawyers and Top 100 Virginia Super Lawyers list. Fewer than five percent of attorneys in Virginia receive both honors. This is the fifth time since 2014 that Ms. Dickerson has received both awards.

Washingtonian magazine has again named Alan Plevy to its "Top Lawyers" list. The SmolenPlevy co-founding principal is recognized for his outstanding work in the areas of divorce and family law.

In the Community

On April 7, 2019, SmolenPlevy sponsored the Fairfax Law Foundation's 10th Annual Heroes v. Villains 5k and Kids' Fun Run, where Partner Joshua Isaacs was honored for his steadfast commitment and contributions to the Run's 10 successful years.

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.

Estate Planning for Pets: Protecting Your Pets After You're Gone

Pets are often seen as a member of the family. So what happens to them in the event your pet outlives you? Far too often, pet owners pass away without having left clear instructions to make sure the animal gets proper care. The result: A friend or family member suddenly inherits the pet — and the financial burden of caring for it.

Estate planning attorneys Jason Smolen and Dan Ruttenberg say it's only natural that dogs, cats, and other animals should be factored into your plans. With nearly 70% of all Americans owning a pet, Smolen says it's important to know the right options for caring for your pet after your death.



Jason
Smolen

What happens to your pet if there's no estate planning?

Far too often, pet owners pass away without having left clear instructions to make sure the animal gets proper care. The result: A friend or family member suddenly inherits the pet — and the financial burden of caring for it. Without a proper plan, there could also be confusion on who is the heir. Worst case scenario, your pet ends up in an animal shelter to be euthanized or abandoned.

How can I protect my pet with a pet trust?

"A pet trust is like a savings account for your pet," says Smolen. With a pet trust, the owner can outline how they would like the pet taken care of, how often it should be groomed, how the pet trust money should be spent, and any other special needs the pet might have. Pet owners should also meet with assigned caretakers and trustees to eliminate any confusion and ensure they are all

aware and on board with the plan. Pet owners should update their pet trust and will whenever they get new pets or say goodbye to old ones.

How much should I leave to my pet?

The amount of money in your pet trust should correlate with your animal. "For example, taking care of a horse will require more money than a cat," says Ruttenberg. If the pet dies before the owner, the trust balance is returned to the owner, although many people decide to donate their pet's trust fund to ASPCA or another charity of their choice in memory of their pet.

Should I include my pet in a trust AND my will?

The law doesn't take a warm and fuzzy view of pets, treating them simply as tangible personal property when their

owner dies. That's why pet owners should also include their pet in their will. The will should name a specific caretaker, and provide a detailed plan spelling out care instructions and financial arrangements, especially if there is no immediate family member to take care of the pet once its owner passes.

What are pet trust laws in the region?

The Virginia, Maryland and District of Columbia Animal Trust Laws allow a trust to be set up for the entire lifespan of an animal that was alive during your life, whereas many states cap the trust at 21 years. This is beneficial if the trust is for an animal with a long lifespan, like a parrot.

Contact Jason Smolen at jdsmolen@smolenplevy.com or Dan Ruttenberg at dh Ruttenberg@smolenplevy.com for more information on estate planning for pets.

Preparing for a Divorce: Gathering Your Financial Documents

Many people jump into the divorce process without making any preparations — understanding and anticipating the financial implications of the divorce, knowing what and where their assets are, what their debts are, etc. While every marital breakup is different, there are certain steps that couples, or an individual, should take before separating.

Family law attorneys Alan Plevy and Kyung (Kathryn) Dickerson provide the following checklist to prepare for a divorce:

Follow the money: In most marriages, there is a division of labor. One person might do the cooking and mow the lawn, while the other one might do the laundry and pay the monthly bills. Even if you aren't the household CFO, you still need to understand what accounts exist, how they are titled and how they are managed. You should be able to access any accounts on which you are titled. If account passwords are changed regularly or have been changed since you've last looked at the accounts, make sure you know the new ones and where they are kept.

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Preparing for a Divorce: Gathering Your Financial Documents

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Gather copies of documents that verify assets, liabilities, income and expenses: This includes gathering recent bank, brokerage and retirement statements, tax returns, real estate deeds and anything else that will determine what the marriage looks like financially. In essence, have a paper trail of documents from the institutions – not just handwritten notes.

Check your debt: Any debt incurred in the joint names of the parties will remain the joint liability of the couple. You should pull at least one credit report on yourself so that you know what liabilities are in your name and whether they are jointly or solely titled debts. These reports are free.

Sever credit ties: If your marriage is in trouble, consider whether you want to continue sharing credit card accounts. Having joint accounts gives

you transparency, so that you know how much your spouse is spending and on what, but, if you are concerned about accruing significant debt, there are steps you can take. If your spouse is an authorized user on one of your cards, you can ask the issuer to remove your spouse's name from the account. If you are joint obligors, you can ask the issuer to freeze the account. While this will keep you from being able to use the account, it will also prevent your spouse from running up charges for which you may be responsible. The same theory goes for home equity loans.

Protect your beneficiaries: Review retirement plans and insurance policies to determine what changes need to be made to protect minor children. If you decide to name a minor child as a beneficiary, you'll have to determine a guardian who is not your soon-to-be ex.

Be reasonable: A huge mistake a lot of people make before getting a divorce is emotional/revenge spending. They rack up debt on purchasing frivolous or expensive items, such as trips, vacations, clothes, etc. that they know their family cannot afford. Another big one is deliberate ignorance – choosing not to take the time to educate yourself on your family's assets and debts.

Going through a divorce can cause a tremendous amount of emotional pain. But as hard as it may be, putting aside your emotions and taking steps now can reduce the possibility of significant financial pain later. This requires gathering information, seeking guidance from experts, and taking action when necessary to protect your interests. For more information, contact Alan Plevy at ablevy@smolenplevy.com or Kyung (Kathryn) Dickerson at kndickerson@smolenplevy.com.

Age Discrimination in Employment

Job seekers are still facing an ongoing battle of age discrimination in the workplace, beginning as early as in their mid-thirties. What do you do when you're considered too old to be hired?

The Age Discrimination in Employment Act (ADEA) prohibits age discrimination in the employment of persons who are at least 40 years old. The ADEA covers most private employers with 20 or more employees. It forbids age discrimination in advertising for employment, hiring, compensation, discharges, and other terms or conditions of employment. Retaliation against a person who opposes a practice made unlawful by the ADEA or who participates in a proceeding brought under the ADEA is a separate violation.

The ADEA takes into account that, sometimes, there is a correlation between age and the ability to fulfill the requirements of a job, and that even older workers must comply with employers' rules and requirements that have nothing to do with age. An employer does not violate the ADEA if it takes an otherwise prohibited action where age is a "bona fide occupational qualification" necessary to the operation of a particular business. Nor is it a violation to differentiate among employees based on reasonable factors other than age or to fire or discipline an employee for good cause.

Before suing in court, an aggrieved person first must allege unlawful discrimination in a charge filed with

the Equal Employment Opportunity Commission (EEOC) and then wait 60 days to allow the EEOC an opportunity to resolve the dispute informally before taking further legal action. Court remedies include injunctions (court orders stopping a discriminatory practice), compelled employment, promotions, reinstatement with back pay and lost benefits, and an award for attorney's fees and costs of bringing the suit. If a court finds that an employer's violation of the ADEA was willful, it may also award liquidated damages equal to the out-of-pocket monetary losses of the former employee.

It is not essential to an ADEA lawsuit

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In the Media

Legendary fashion designer Karl Lagerfeld's beloved cat Choupette will reportedly inherit millions, leaving the cat to happily continue its luxurious lifestyle. While we all may not have a fortune to leave behind, Lagerfeld's death shows it's more than just fashionable to include your pet in your estate plans. *Financial Advisor Magazine* and ThinkAdvisor turn to Principal Jason Smolen on how to make sure your pet is cared for after you're gone.

The new tax law does away with the alimony tax break, making divorce more expensive for the person paying their ex. WUSA9 talks to Principal Alan Plevy about how the new law had people scrambling to resolve their case before the deadline.

Hire a Mergers & Acquisitions attorney to avoid potential pitfalls becoming larger legal issues in a business sale transaction. On the ExitReadiness podcast, SmolenPlevy Business Attorney Scott Taylor discusses the need for an M&A attorney and their role and responsibilities in a sale transaction.

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State schools are significantly less expensive than out-of-state ones.

- What about living expenses during college? Will anyone pay for the plane tickets home? Room and board? Books and extracurricular activities?
- Will either parent be obligated to purchase a computer or other equipment for the student? What if the student regularly changes majors and cannot decide what to do with their education — is there a limit in years or by maintained GPA as to how long each parent is obligated to support the student?

Another important item to keep in mind — if either or both parents remarry, there could be other children to support and educate, which could dilute a parent's financial resources. An agreement cannot be modified unless both sides agree and obligations to

pay for college for children of a prior marriage are generally not reduced or excused because the paying parent subsequently chooses to have more children or to assume obligations for other children.

Dickerson recommends that divorcing parents do their best to leave their emotions behind and work together to provide for the best they can for their children. By reaching a consensus early on in the process, each party will have an understanding of what their obligations will be when their child or children are ready to tackle the challenge of higher education and the parents can budget and plan now for that future obligation.

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.

Age Discrimination in Employment

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that there be a "smoking gun" in the form of derogatory age-based comments about older employees. In fact, remarks of that kind will not support liability if they have no connection to the challenged employment decision. In a recent lawsuit brought by an on-air television reporter who was fired, a boss' comment that "old people should die" was an insignificant stray remark because it was made about the boss' own father. On the other hand, it was very helpful to the plaintiff's case that the same boss had stated repeatedly that she wanted to "go with a younger

look" and she did not like having an older man appearing on the news.

Employers sometimes select older workers to be terminated as a money-saving measure, given their generally higher compensation and their being close to vested retirement benefits. It is not a violation of the ADEA to treat employees differently because of something other than age, such as money. An employer will not be liable under the ADEA for terminating an employee solely to prevent his pension benefits from vesting. (That conduct

might violate ERISA, however.) Such a scenario is distinguishable from situations in which employers face ADEA liability because they have made decisions based on the stereotype that productivity and competence always decline with old age. Contact Dan Ruttenberg at dh Ruttenberg@smolenplevy.com or Scott Taylor at swtaylor@smolenplevy.com if you have questions about age discrimination practices or related employment policies.