

# SMOLENPLEVY

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## Report From Counsel

Insights and Developments in the Law

Fall 2022

### *New Rule on Inherited IRAs Could Impact Tax Liability*

The IRS is considering a very complicated new tax rule that could substantially increase the amount of taxes paid on certain IRAs. This rule, if implemented, could seriously impact how much your IRA can help your loved ones after you pass away.



Jason  
Smolen

#### **New Rule on IRAs**

The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 required non-spouse beneficiaries who inherited an IRA (except a Roth IRA) to withdraw all money from the IRA within 10 years. If you are taking annual required minimum distributions (RMDs) from your IRA, the proposed new IRS rule would also force non-spouse beneficiaries to continue taking the RMDs from the inherited IRA during that 10-year period.

#### **Why the New Rule?**

Historically, IRAs allowed beneficiaries to keep money within them indefinitely, so long as they withdrew an

amount of money equal to the RMD. The money within these IRAs was exempted from income taxes until it was withdrawn, making IRAs ideal

testamentary instruments for some people. However, Congress saw IRAs as a means of hoarding wealth indefinitely without paying income taxes on it, hence the provision in

the SECURE Act. The new rule further accelerates the emptying out of most inherited IRAs, making the money taxable — faster.

#### **How It Can Affect Your Taxes**

Non-spouse IRA beneficiaries are in for a bigger tax bite if the new rule is approved. For some, this could mean a painful increase in the amount of taxes they will owe.

#### **What You Can Do**

Consider potential alternative investment vehicles. With the right estate planning tools, you can help

### *SmolenPlevy In the News*

Featured on Fox 5 DC: Principal Jason Smolen shared four estate planning documents that every college student should have in case of emergencies. Watch here: [https://youtu.be/\\_yzC7lklGRE](https://youtu.be/_yzC7lklGRE)

Featured on Fox 5 DC: Principal Alan Plevy offered insights on how mediation can help divorcing couples sort out their differences outside of the courtroom. Watch here: [https://youtu.be/t9D\\_1A3LUxk](https://youtu.be/t9D_1A3LUxk)

### *SmolenPlevy In the Community*

Daniel Ruttenberg raised over \$50,000 for the public charity, Devotion To Children through his 12th Annual Cards4Kids Charity Poker Tournament.

Arlington Magazine named Jason Smolen, Alan Plevy and Daniel Ruttenberg 2022 “Top Attorneys.”

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## Adopting a Child From a Spouse's Previous Marriage

It is increasingly common for people with children to divorce and remarry. Unsurprisingly, many people want to adopt their new spouse's children as well. However, this can create legal complications you will need to sort out if you want to avoid potential issues later.

### Adoption Benefits

There are two primary benefits to adopting your spouse's child from a previous marriage, aside from embracing the child as your own.



Alan Plevy

The first benefit is that the child legally becomes your own, meaning that they will be considered your legal heir for the purposes of inheritance and not inherit from the other natural parent. In addition, they can be covered by your health insurance, and you can make decisions on their behalf in the event of a serious emergency without needing to wait for your spouse.

### Potential Problems

There are several potential pitfalls that can arise when you attempt to adopt your spouse's child. You need documentation related to your spouse's divorce that may be relevant, such as a child support order. In addition, you need to provide information related to the child's other biological parent, who may be able to impede the adoption.

### The Rights of Biological Parents

Even after a final divorce order, and

even in cases where custody has been granted to your spouse, your spouse's ex still have some legal rights when it comes to their child. If they choose to do so, a biological parent can refuse to give consent to the adoption of their minor child, which can complicate the adoption process. That is



Kyung (Kathryn)  
Dickerson

why you should try to obtain their consent before going forward with the adoption if possible. If it is not possible, there may be other alternatives you can explore. Additionally, child support will cease between the natural parents.

### Handling Potential Adoption Problems

If you are looking to adopt your spouse's child from a previous marriage, and you are uncertain about what you should do, or if you think you may run into legal problems, you should speak to a lawyer with experience handling adoption cases. They can help you through the process of the adoption, help you to get past potential legal hurdles, and minimize the risk of unwanted surprises. That way, you can focus on the needs of your family, rather than the requirements of the legal system.

If you need assistance adopting a child from your spouse's previous marriage, contact Alan Plevy at [aplevy@smolenplevy.com](mailto:aplevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [kindickerson@smolenplevy.com](mailto:kindickerson@smolenplevy.com).

## New Rule on Inherited IRAs Could Impact Tax Liability

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protect your estate and ensure your heirs gain the maximum benefit from the inheritance you grant them. To understand the implications of this estate planning, including potential income tax ramifications, speak to a lawyer with experience handling estate law.

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

## When Is it Time for a Business Divorce?

A business relationship with another person can be like a marriage, in part because of how financially intertwined you get, but also because of how contentious it can be when a business breaks up. And sadly, there is always the risk you might need to separate from your business partners. But when is it time for you to get a "business divorce?"

### What Is a Business Divorce?

When business partners involved in a joint venture choose to part ways, they need to go through a legal process that removes one or both of them from the entity they had formed to

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# When Is it Time for a Business Divorce?

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conduct the business. Depending on how many business partners are involved, and how the business is structured, this could be a relatively simple process, or it could result in the business dissolving entirely. And just like a regular divorce, fighting over who gets to keep what, and how the business divorce happens, can become incredibly contentious.

## **What Does a Business Divorce Entail?**

In a business divorce, the owners of a business get together to split up the business. Depending on how the business is structured, it may be as simple as one partner choosing to sell their share of the company's ownership to the remaining owner(s). In other cases, however, it can become an incredibly long and drawn-out process that effectively results in the end of the company, requiring all debts to be satisfied and all business operations to be wound down.

## **Why Might Someone Get a Business Divorce?**

A business partner could decide they just want to move onto other things or they might need immediate capital for other expenditures, investments, or debts. Sometimes, a business relationship may simply sour over time, so the partners decide they no longer wish to be in business with one another anymore. Whether financial or personal, however, the fundamental process is the same.

## **What Should I Do if I Want a Business Divorce?**

If you want to end a business relationship, you should speak to a lawyer with experience handling business law matters. They can help you explore your options and explain your potential obligations and liabilities. They can also help guide you through the process of the business divorce and litigate any problems that arise.

## **What Should I Do to Make a Potential Future Business Divorce Go Smoothly?**

Just like a prenuptial agreement can limit what you fight about during a divorce from a marriage, an agreement among owners can do the same for a business divorce. Business partners should have an agreement put in place while everyone is on good terms, which lays out what happens if someone wants out, dies, etc. If you have questions or would like to discuss putting such an agreement in place, contact Jason Smolen at [jdsmolen@smolenplevy.com](mailto:jdsmolen@smolenplevy.com) or Scott Taylor at [swtaylor@smolenplevy.com](mailto:swtaylor@smolenplevy.com).

## *The Collateral Consequences of Child Support*

Child support can be a difficult situation. The financial cost alone can be painful, and there can be emotional pain on top of that if your divorce was particularly bitter. However, you might also need to handle additional issues that are not always apparent when you are first ordered to pay child support by the court.

For example, child support is considered a court-imposed debt by credit agencies, similar to a lien or other legal judgment. Thus, an obligation to pay child support can impact your credit rating, especially if you fail to make payments on time. Additionally, child support is one of the few kinds of debt that isn't

discharged if you declare bankruptcy, so you will still be obligated to pay it even if you declare bankruptcy at some point.

Moreover, child support will appear on a background check for any job you apply for, potentially impacting your ability to find employment or get a loan. Added together, this can make child support incredibly troublesome, especially if you do not have regular employment when you're ordered to pay it.

Whether you have already been ordered to pay child support, or are facing a potential child support issue, you will need good legal counsel to guide you through your options.

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# What is Employee Misclassification?

One surprisingly common issue that employers must face is the risk of employee misclassification. The question of how you classify your workers can have serious legal and financial implications, for both you and your workers. But what is employee misclassification, and how can you avoid it?

## What Is Employee Misclassification?

Put simply, employee misclassification involves confusion between the two primary types of workers: employees and independent contractors. Whether by accident or on purpose, some employers will classify an employee as an independent contractor, or vice versa. When an employer accidentally misclassifies a worker, they can cause substantial legal and financial problems for both them and their worker and face potential litigation as a result.

## Employee or Independent Contractor?

The difference between an employee and an independent contractor is not always clear. In practical terms, an employee is someone that an employer has substantial control over, but who also benefits from certain protections only afforded to employees, while an independent contractor is someone who operates independently from the employer but lacks many of the protections that employees get. Courts look at a variety of factors when determining whether a worker is an employee or an independent

contractor, including:

1. Whether a worker's services are considered critical to the business.
2. Whether the relationship is permanent or temporary.
3. How much the contractor must invest in equipment or facilities.
4. How much control the employer exerts over the worker.
5. Whether a contractor has opportunities for additional profit or loss.
6. Whether a contractor is expected to openly compete with others on the market to succeed.
7. Whether there is independent business organization or operation.

## What Are the Problems with Employee Misclassification?

There are several legal issues that can arise when an employee is misclassified. For example, an employer can be held liable for actions undertaken by an employee in the course of their employment, but an independent contractor bears the burden of their actions by themselves. In addition, certain benefits, such as mandatory sick or vacation days, may only accrue to an employee, and employers are only responsible for paying for workers' compensation insurance for employees, not independent contractors. Finally, an employer is responsible for paying half of an employee's Social Security taxes, while the rest must be withheld from their salary; independent contractors

are responsible for paying their entire Social Security tax themselves.

## How Can You Avoid Misclassifying Your Employees?

If you are not certain if a particular worker should be considered an employee or an independent contractor, consider the above listed factors. If a particular worker is someone you hold control over, who depends on you for facilities and equipment, who works for you on a permanent basis, and who has limited ability to compete or operate independently, they are probably an employee. The more independently they operate, the less control you have over them, and the more responsible they are for their own equipment and facilities, the more likely they are to be an independent contractor. If you are unsure, speak to a lawyer with experience handling employment law matters, who can help you to sort out these issues.

*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.*