

SMOLEN PLEVY

EST. 1977

Report From Counsel

Insights and Developments in the Law

Fall 2023

Child Support: An Overview

As a separated or divorced parent, you might be wondering whether you are entitled to receive child support payments from your child's other parent. Following are a few initial considerations regarding parents' rights to receive child support payments.

When married parents divorce or separate, or if unmarried parents are not living together, the court may order one parent to pay a certain portion of his or her income as child support to the other parent. This is not the only scenario in which child support might arise. Less frequently, when neither parent has custody, the court may order them to pay child support to a third party who cares for their child.

No matter what situation gives rise to the need for child support, children have a legal right to proper care and upbringing.

When a non-primary parent fails to pay child support, it deprives the child of what he or she needs to grow up healthy and successful, based upon both parties' incomes.

Child support payments are intended to cover the various costs of raising a child, including the cost of food and clothing, medical expenses, education, and anything else that might reasonably arise. Depending on the circumstances, a non-primary parent may also be asked to list the child as a dependent on their health insurance policy.

The exact amount of money that a parent may be ordered to pay in child support depends on their total gross income. This includes income from their jobs, as well as the value of any government benefits, income from court judgments,

payments from investments, and any other revenue they might receive. The court uses a chart to determine the appropriate payments that should be made, based on the number of children in the relationship and the total share of income. Child support may also factor in the amount of time each parent has the child.

In practical terms, this means that the more the parent earns as a proportion of the household income, the more that parent will need to pay in child support. It also means that the more children there are in the relationship, the larger the child support payment will be.

However, things are not necessarily so cut and dried when it comes to child support payments. Adjustments may be made, for example, if the parents are involved in a split custody or shared custody arrangement and may have

Continued on page 2



Alan Plevy



*Kyung (Kathryn)
Dickerson*

Recent Awards

- Top Lawyers 2023 list by Northern Virginia Magazine
- Best Lawyers in America by Best Lawyers
- 2023 Virginia & Washington DC Super Lawyers

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.

Federal Estate Taxation

When a loved one passes away, it is important to ensure that all of his or her affairs are in order. This includes paying off any debts, as well as paying any necessary federal and state taxes required on their estate. The estate tax taxes both the transfer of assets from the decedent to the beneficiaries, as well as the income generated by the assets of the estate.



Jason
Smolen

What Is the Estate Tax?

In simple terms, the estate tax is a federal tax placed on all estates over a certain total valuation. As of 2023, that amount is \$12.92 million for unmarried individuals, and \$25.84 million for married couples. Once they exceed that base valuation, the federal government will generally impose a tax rate on all assets from the estate of 40%. Obviously, this can significantly reduce the inheritance your heirs will receive when you pass away.

How Can Someone Know if the Estate Tax Will Affect Them?

Unfortunately, determining whether you will be subject to the estate tax is not as simple as just adding up the total value of all of your assets and seeing if it goes above the federal estate tax exemption. Certain types of assets are not counted towards that limit, and there are deductions you can make to reduce the overall value of your estate and lower your federal estate tax liability. These deductions include, but are not limited to:

- certain outstanding debts
- legal and administrative fees
- funeral costs
- charitable requests
- money paid towards satisfying state taxes



Daniel
Ruttenberg

What Other Tax Issues Can People's Estates Face?

In addition to the estate tax, there is also a federal tax on gifts that exceed \$17,000 in money or property to any one person in a single year. In addition, all estates are subject to the tax laws of whatever state the estate was established in, meaning you could face additional state tax liability.

What Can People Do to Minimize the Effect of the Estate Tax?

Placing money or property from the estate into a trust may protect it from both taxation and debt collection to a significant extent. Other methods also exist, but you should speak to a lawyer with experience handling estate law matters, who can advise you on your best course of action.

If you have additional questions, contact Daniel Ruttenberg at dh Ruttenberg@smolenplevy.com or Jason Smolen at jdsmlen@smolenplevy.com.

Child Support: An Overview

Continued from page 1

their payments reduced, depending on how much they care for their children. In the end, a parent may always need to pay child support, even if the parents have a completely coequal shared custody arrangement.

Child support payments can also be adjusted by the court due to a variety of factors, depending on individual circumstances. These include, but are not limited to: payment adjustments due to misreported or underreported income; increased payments for children with special educational or medical needs; increased payments for children who are unusually high achievers, such as star athletes or gifted children requiring advanced education; and any other factors which may lead to increased costs in raising a child.

Generally, child support payments are intended to last until children turn 18, when they become legal adults. Under certain circumstances, however, child support payments may be extended longer than a child's eighteenth birthday, such as if the child is unable to support himself or herself and has a physical or psychological disability that prevents them from obtaining gainful employment. In these cases, child support may last far longer to help cover the costs of their care.

Finally, it is important to understand that child support payments are not necessarily final once authorized. Either parent may ask for adjustments to their child support payments, depending on their economic circumstances. For example, a parent that loses their job may

have their payments temporarily reduced until they once again find employment or they have a significant increase in income.

Ultimately, to get the best outcome for a child support case, you should make sure you are represented by a lawyer with experience handling child support matters. They can help you get the best possible outcome, given your circumstances.

If you need assistance regarding child support, contact Alan Plevy at abplevy@smolenplevy.com or Kyung (Kathryn) Dickerson at kindickerson@smolenplevy.com.

Revocable Living Trusts

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. Here, 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 very limited 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: their lifetime, 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 may be modified as circumstances change and allows assets to be freely added and removed by the grantor. The living trust, at this point, 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 creating a 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 also lay out the exact conditions under which the grantor might be considered incapacitated, which triggers the takeover of the trust by the successor trustee. While the grantor is incapacitated, the successor trustee manages the trust's assets on behalf of the grantor, bound by law to manage their property as best as they can for the benefit of the grantor.

The Living Trust after Death

Once the grantor passes away, the living trust changes from being a revocable trust to an irrevocable trust and becomes 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 the grantor dies, 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, which may include sub-trusts for children or other beneficiaries for a period of time.

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. Trusts are also administered privately. Additionally, because the living trust automatically

converts to a testamentary trust upon death, you do not need to organize separate instruments for after you pass away.

The Drawbacks of a Living Trust

That said, a living trust is not for everyone. It is generally more expensive to set up. A professional or commercial trustee must be paid for their services (family members or friends do not always charge a fee), making a trust potentially expensive to administer following incapacity or death, though many of these costs are similar or more in the administration of an estate without a trust. Second, numerous bureaucratic difficulties can arise. Consult with a lawyer for more information on whether a living trust fits your needs.

Seven Common Issues That Arise in a Divorce

If you are getting a divorce, or even simply considering a divorce, your life is probably pretty tumultuous. Between all the practical and financial concerns that arise during a divorce, and handling all the regular stresses of life, it can feel overwhelming. Here are seven issues that commonly arise in a divorce:

1) Prenuptial Agreements

Prenuptial agreements, which are often referred to simply as prenups, are a common issue in many divorces. If you have a prenup, you should be aware of its terms, and speak to an attorney about its implications. In particular, they can have a strong impact on how your marital property is divided between you and your spouse.

2) Divorce Mediation

Mediation is a kind of alternative dispute resolution that is often used by parties to settle 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. Mediation has the advantage of not being legally binding, meaning that, if it goes poorly, you can start over unless your mediation has resulted in an agreement.

3) Dividing Marital Property

One of the biggest issues faced by every divorcing couple is how to divide their marital property. Common points of contention can be ownership of the family home, vehicles, and other valuables, although you may also see arguments over less concrete property, like pensions or Social Security benefits, depending on your circumstances. In fact, one of your first challenges may be disentangling your personal property from your marital property, where possible.

Continued on page 4

What Are Shareholder Rights, and Why Do They Matter?

A corporation is theoretically supposed to put the interests of shareholders first because they are effectively the corporation's owners and the ones who derive a direct benefit from its profits. However, there are times when shareholders find a company's interests being steered away from them, or they may find themselves being deprived of what they are entitled to. When that happens, it may become necessary for them to exercise their shareholder rights.

What Are Shareholder Rights?

The term "shareholder rights" refers to the legal rights that every shareholder is entitled to as a result of owning stock in a corporation. While certain shareholders may have access to certain rights that others do not, as a result of owning different classes of stock issued by a corporation, some rights are accorded to all shareholders by law. These rights are intended to protect shareholders' interests and keep them from being abused by a corporation's executives, its board of directors, or even by other shareholders.

What Can You Do With Shareholder Rights?

All shareholders have certain rights in common, although some may differ, depending on state law and the exact rules set forth by the corporation itself. These rights include:

- the right to receive a share of a dividend when it is issued (depending on their class of stock)
- the right to vote at shareholder meetings (if they have voting stock)
- the right to purchase or sell shares, and to benefit from a company's growing profitability
- the right to view the corporation's books and demand an accounting
- the right to sue on behalf of the company in the event of director or executive misconduct
- the right to sue the company if it has violated these rights

Why Do Shareholder Rights Matter?

Shareholder rights exist to ensure shareholders receive the full benefits of the stock they own in a corporation. Every shareholder can use their shares to hold negligent or malicious executives and directors accountable by bringing legal action against them on behalf of their company. They can also seek legal relief in the event that a majority shareholder attempts to use their power to abuse the rights of minority shareholders.

What Should You Do if Your Shareholder Rights Have Been Violated?

If you are a shareholder in a corporation and you believe your rights have been violated, or you wish to bring a lawsuit as a shareholder on behalf of your corporation, do not wait. Many legal claims have strict statutes of limitations, and the longer you wait, the harder a time you will have seeking relief. That is why you should speak to a lawyer with knowledge of business and corporate law, who can assist you with your case.

Seven Common Issues That Arise in a Divorce

Continued from page 3

4) Child Custody and Visitation Rights

Another major source of contention is child custody and visitation rights, if you have any children. Whether 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. Even couples that divorce on relatively amicable terms can spend months arguing over custody and visitation, so be prepared for that and couples and custody or visitation is always modifiable by a court until the child is 18 years of age.

5) Child Custody and Support

Along with the argument of who gets custody of a child is whether a parent must pay child support. This payment is intended to cover a child's living expenses, including medical care, clothing, education, therapy, and anything else that might be necessary to ensure their needs are taken care of. Unsurprisingly, child support is also often a source of major contention, with the one parent doing their best to

avoid having child support obligations until their child becomes a legal adult.

6) Spousal Support

Independent of child support is the consideration of spousal support, which is also known as spousal maintenance or alimony. Spousal support is not only meant to help a divorced spouse maintain their current standard of living. It is entirely possible for someone to be assigned both child support and spousal support, depending on the exact circumstances of your case.

7) Relocation Issues

In theory, people are normally 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. Not only can it make pursuing the case harder, it can have a significant impact on the school and social life of children. Thus, any attempt by a parent in a divorce case to relocate can result in significant litigation.