

LEAVING MONEY TO YOUR CHILDREN:

How to Leave Them At Peace, Not War by Marcia C. Fidis

Most parents would like to leave their children a financial inheritance. It is increasingly likely in our society that many parents who consider themselves of “moderate means” will leave a significant inheritance to their children. These are parents who have worked hard, saved, and spent wisely during their lives to accumulate an estate. Yet many of them do not give much thought to the effect an inheritance will have on their children or on the children’s relationships with one another. The following checklist identifies some of the most common situations that create conflict among children after parents die.

DISTRIBUTION OF TANGIBLE PROPERTY

Some of the most bitter disputes among siblings after their parents’ deaths relate to furniture, furnishings, jewelry and other objects, whether or not they have significant value. Before you do your will, try to find out what items each child may be interested in (sometimes you will be very surprised) and prepare a written list of items that each child wants. Be precise in describing the items to be distributed to each child. If your will leaves all your “art” to one son, does that include your one-of-a-kind wooden bench with a hand carved bison for a back? If you leave the house and the furniture and furnishings in it to your son, does that include the Asian art collection or African masks you acquired while working and living

abroad? Try to determine what items each child wants. If there are conflicts, you can work them out during your lifetime so they are not the subject of an unpleasant fight after you are gone. Some wills provide for a lottery system, or other random method of distributing personal effects to children who cannot agree. Discuss with your estate planning attorney how best to accomplish the disposition of these personal items.

LOANS TO CHILDREN

If you have made any loans to children, be sure to discuss this with your estate planning attorney so that the loan can be either forgiven or repaid at your death in accordance with your specific wishes. This should avoid having your children argue about whether or not a loan to one of them has to be repaid or was intended as a gift.

UNEQUAL DIVISION OF ESTATE

If you intend to divide your estate unequally, consider whether or not you should discuss this with your children. You may find that the daughter who is very well off will feel penalized for being successful if you leave a larger portion of your estate to the daughter with modest means. Also, if the “successful” daughter is a business woman, what happens if her business fails, she loses everything to creditors, or becomes disabled? Sometimes discussing these issues in advance can allow for a resolution that is satisfactory to both you and your

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REPORTER

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Evicting the Deadbeat Tenant in Maryland and DC

by M. Bradley Blommer

Rental properties have become an extremely popular investment choice, especially over the last few years, given the skyrocketing housing prices in the area and low interest rates. These wise investments can quickly become a financial hardship, however, if the tenant fails to pay the rent and continues to live in the property. In such cases, it may be necessary to go to court to evict the tenant and obtain a judgment for the unpaid rent. Both Maryland and the District of Columbia have special courts designated specifically to hear landlord-tenant cases. However, the two jurisdictions have different procedures which must be followed to achieve the desired result of evicting the tenant, obtaining a judgment for the unpaid rent, or both.

The first step in DC is to serve the tenant with a Notice to Quit. This notice must be in English and Spanish and, in most cases, must be personally served on the tenant. After 30 days the landlord can then file a Complaint for Repossession of Rented Property. The Notice to Quit is not required in Maryland where the filing of the Complaint will be the first thing a landlord must do to begin the process of eviction. If a landlord is seeking only a judgment for possession of the property, both jurisdictions will permit the Complaint documents to be mailed to or posted on the property rather than requiring personal service on the tenant. However, if a money judgment for the unpaid rent is also sought, then both Maryland and DC require that the landlord arrange for personal service of the documents on the tenant. Both courts will ask for proof that the papers were properly served. In Maryland this can be accomplished by asking the process server to swear under oath that he/she served the tenant. DC will ask the same and also insist that the Affidavit contain certain specific information, including a physical description of the tenant.

In Maryland only, the tenant may pay the unpaid rent at any time up to the date of eviction. However, if the court has entered three judgments of possession against a tenant in a 12-month period, the tenant no longer has the right to redeem the property. This is known as

foreclosing on the tenant's right of redemption.

Maryland and the DC have similar procedures for the actual eviction of the tenant. The county sheriffs in Maryland and the U.S. Marshalls in DC conduct the eviction. In Maryland, the landlord may apply for a Warrant of Restitution no earlier than five days after the trial date at which the court entered the judgment of possession; the landlord must wait three days in DC. The sheriff or U.S. Marshall's office will contact the landlord to set up the eviction. It can take two to four weeks to receive the scheduling call depending upon the volume of evictions in the jurisdiction. The U.S. Marshalls give only one day notice of the eviction and require that a certain number of persons be present depending on the size of the rental property. For example, for a single family home, twenty-five persons must be present to move any furniture or belongings. If those persons are not present, the eviction is cancelled. Hiring a professional moving company is often the best option.

The tenant's only defense for failure to pay rent is that a dangerous condition in the rental property remains unrepaired. The court may establish a rent escrow in such a situation whereby the tenant would pay the rent into the court's registry. In Maryland, a county inspector will conduct an investigation of the tenant's claim. If true, the landlord will have 30 days to make the repairs after which the parties will return to court to determine the amount of rent owed. Both jurisdictions require that the tenant give notice to the landlord of the dangerous condition before the rent escrow procedure may be utilized. The DC courts may order similar procedures in proper cases.

Maneuvering in landlord-tenant court in Maryland and DC can be difficult. This is especially true when the tenant is avoiding service or is otherwise non-responsive. The courts do allow alternative methods of service if certain procedures are followed. Even with the most experienced landlord, remembering the subtle procedural differences between the two jurisdictions is always challenging. If you need any assistance in these matters, please feel free to contact me or any other attorney in the Business, Real Estate & Commercial Group. ●

Traveling abroad with a child?

If your child is traveling outside the United States alone, with one parent, or with someone other than a parent, take note. Recently imposed requirements to deter child abduction require you to provide documentation, both at the U.S. airport before you leave and also at the foreign border. Requirements vary by country; so consult the foreign embassy or the U.S. Department of State Consular Information Sheets for your destination country at www.travel.state.gov. Mexico, for example, requires a child (under 18) traveling alone or with someone other than the parent to bring notarized consent from both parents or from the parent with sole custody (in the latter case, along with the custody decree). If the child is traveling with one parent, the parent must bring notarized consent from the other parent (with dates of travel, the accompanying adult's name and contact information for the consenting parent) or, alternatively, a custody decree of sole custody or a death certificate if the absent parent is deceased.

Careful, careful, careful. If the traveling parent's name differs from the child, bring the birth certificate or adoption decree and the court document showing any name change. Although the Consular web pages do not specify, we advise you to always bring certified copies of court and other documents. Also bring English translations of foreign documents. Some countries, Mexico, for example, require translations into their native language, although these requirements may not be consistently enforced.

Passports for children under age 14. To obtain a new passport, these children must now appear in person with at least one parent (and consent of the other) and present proof of U.S. citizenship, proof of relationship, and the parent's identification. Acceptable documents for the parent's identification, including a driver's license, and proof of relationship are listed at www.travel.state.gov. Note that a prior passport is not acceptable proof of the child's relationship to the parent. ●

Maryland Estate Tax

An important change to the Maryland estate tax recently was passed by the Maryland legislature and signed by the governor.

Under the current federal estate tax law, the federal estate tax exemption was increased to \$1 million in 2002, to \$1.5 million in 2004, to \$2 million in 2006 and to \$3.5 million in 2009. Under former Maryland law, the Maryland estate tax was computed using the federal exemption amount in effect in the year of death.

Under the new Maryland estate tax law, however, the Maryland estate tax exemption amount is only \$1 million. This change is effective for persons dying after December 31, 2003. This change will expose to Maryland estate tax

every estate of a person dying after 2003 with a federal taxable estate greater than \$1 million (even though the same estate will not be exposed to federal estate tax unless the taxable estate exceeds the federal exemption amount). For example, in 2004, a taxable estate of \$1.5 million will not be liable for any federal estate tax, but will be liable for \$64,400 Maryland estate tax.

The District of Columbia also has limited its estate tax exemption amount to \$1 million.

If you are a Maryland resident or own real property in Maryland and you wish to review your estate plan in light of the new Maryland estate tax law, please contact a member of our Estate Planning and Administration Group. ●

Spotlight on:

N. Alfred Pasternak

N. Alfred Pasternak is a founding member of Pasternak & Fidus, P.C.. He practices in the areas of tax and business planning and estate planning. Al received a bachelor's degree from Colgate University, a master's degree in business administration from Columbia University and a doctor of jurisprudence degree from George Washington University Law School. In this issue we spotlight Al's background and accomplishments.

Al Pasternak started out to be a Certified Public Accountant, not a lawyer. His first CPA job was with the accounting firm now known as Deloitte & Touche. But when he went out on audits he became familiar with what the lawyers for his audit clients did and he decided that it would be more professionally rewarding to be a lawyer. After Al received his law degree, he went to work for the Securities & Exchange Commission. A year later he hung out his shingle as a solo practitioner. In the early years Al was hungry so he took whatever work came his way. He was fortunate to share space with several experienced lawyers who were willing to be mentors. When a new client came in he took copious notes, then met with one of his office-mates to get advice about what to do.

Eventually Al became interested in estate planning. A colleague asked him to be on a panel discussion for a program of the Maryland State Bar Association's Estates and Trusts Section. The other speakers were three top estates and trusts practitioners from Baltimore. Al feels serving on this panel gave him "expertise by association." Soon he started getting referrals for wills and he was elected to the American College of Trust and Estate Counsel. He began to study estate planning in earnest realizing that "you like to do what you know how to do." Estate planning was a good fit with Al's tax background, enabling him to do the sophisticated estate and business

planning that his clients needed.

In 1980 Al, along with Marcia Fidis and two other attorneys, formed what is now known as Pasternak & Fidis, P.C. In addition to his dedicated work for his clients over the years, Al serves as the Pasternak & Fidis unofficial morale officer, promoting collegiality among both lawyers and staff. One of the most important things Al feels he learned early in his career is the tremendous benefits of being actively involved in bar association activities. Involvement allowed him to meet interesting, knowledgeable people who have been a resource for advice and information throughout his career.

Al has a life outside of the office. His favorite activity is spending time with his seven grandchildren. "That gives me the most pleasure of anything I've ever done." Al and his wife, Molly, also like to travel frequently and he stays active playing golf and tennis. Yet, after almost 40 years in practice he still loves coming to work. Why? "Because I enjoy the people I work with and my clients," he says. ●

On May 11, 2004, **Al Pasternak** received the **Tax Excellence Award** given by the Section of Taxation of the Maryland State Bar Association for his careful and ethical advice in assisting clients to solve their problems. The Tax Excellence Award is presented annually to a lawyer who exemplifies excellence, integrity, compassion and commitment in the practice of tax law.

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children. It certainly will likely take some of the steam out of any post death conflicts.

LEAVING MONEY TO ONE CHILD TO PROVIDE FOR ANOTHER

If you have one child who is disabled or simply cannot handle money, you might think you want to leave your entire estate to the other counting on him/her to take care of the less able child. In addition to the conflict that sometimes is created when one child becomes the "caretaker" for another, the more able child could die and pass his/her assets to a spouse or children, leaving your disadvantaged child without assets that were intended for his/her

care. Discuss with your estate planning attorney whether or not a trust for the money is a better solution.

CONSIDER CAREFULLY ANY LARGE GIFT TO ONE CHILD

If you have several children and leave your house to one child and the other assets to be divided between the others, consider what will happen if you have spent most of your other assets so that the house is the only significant asset at your death. You could inadvertently disinherit the children who do not receive the house.

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PASTERNAK & FIDIS, P.C.

N E W S

It's been a busy Spring for several P & F employees. We offer our congratulations to Associate Attorney Lauren Krauthamer who recently was awarded an L.L.M. degree in Taxation from the Georgetown University Law Center; Assistant to the Administrator Jennifer Jennings who received a B.S. in Computer Information Systems from the University of Maryland, College Park; and Intern Geoffrey Sparks who received an M.A. degree in Acoustics from the Peabody Conservatory of Music at the Johns Hopkins University in Baltimore. A very talented group!

P & F partner Nancy Fax completed a 40 hour mediation training program in March of this year. The program was offered by the Oregon Mediation Center in collaboration with the American College of Trust and Estate Counsel.

Associate Brad Blommer has been appointed by John J. McCarty, President of the Montgomery County Bar Association, to chair the Mentor-Mentee Committee. Mr. Blommer requests that any attorneys who would like to serve as a mentor or become a mentee please contact him at (301) 656-8850 or bblommer@pasternakfidis.com.

Nancy Fax has been appointed co-chair of the Domestic Partnerships Subcommittee of the State Laws Committee of the American College of Trust and Estate Counsel. The newly formed subcommittee will focus on surveying existing laws relating to domestic partnerships and promoting changes in the existing laws as appropriate.

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DO NOT ASSUME THAT CHILDREN FROM YOUR FIRST MARRIAGE WILL GET ALONG WITH YOUR SECOND SPOUSE AFTER YOUR DEATH

Your children may be concerned that your second spouse will change his/her will after your death and disinherit them from the assets you left to your spouse. Speak to your estate planning attorney about various options available to you in second marriage planning.

AVOID JOINT OWNERSHIP OF PROPERTY WITH ONE CHILD

Do not assume that if you put one child's name as co-owner of your house or bank account, that child will divide the assets with his siblings. He/she is not legally required to. In order to pass the assets to the children in accordance with your wishes, you should retain full ownership of your assets and provide for disposition of those assets through a will or revocable trust.

COORDINATE YOUR BENEFICIARY DESIGNATIONS WITH YOUR WILL

Naming one child as beneficiary of your IRA, another as a beneficiary of your life insurance, a third as the beneficiary of your savings account and a fourth as the joint owner of your house is certain to invite disaster if one or more of these assets is depleted at the time of your death because it was used to pay your health care or other living expenses. Work with your attorney to coordinate all these pieces of your estate plan so that you treat your children equally if that is your goal.

GRANT APPROPRIATE RECOGNITION TO A SUBSTANTIAL CAREGIVER

If one of your children has been a substantial caregiver during your lifetime, consider how to recognize and perhaps arrange financial compensation for this child, particularly if the child has given up his/her own career or goals to provide significant care to you or your spouse. Do not assume that if you leave assets equally to your children, the ones who were not care-

givers will voluntarily give up some of their share of your estate to provide that compensation after your death.

CONSIDER THE IMPLICATIONS OF APPOINTING ONE CHILD EXECUTOR

This can be one of the most difficult decisions. If you have three children, appointing all three as co-executors can be cumbersome if they do not get along, can create stalemates and otherwise be disruptive and costly to the administration of the estate. On the other hand, appointing one of three children as executor simply because he/she is the eldest, might not be a good solution either. He/she may not be the best choice to handle the job efficiently or may exercise his/her power in such a way as to make siblings feel inferior. Although children are logical choices to serve as executors, sometimes another choice is indicated. Consider whether the appointment of one child (or of all the children) will have a negative effect on their relationship.

DISCUSS YOUR BURIAL WISHES

Although this issue is not one of inheritance, it can be a source of conflict. If one child believes that an elaborate funeral for you is the only way to show proper respect and another child wants a simple funeral to avoid huge expense, the strain could cause hard feelings and disruptions in the children's relationship. Make your wishes known before your death, preferably in writing, and share this information with your children.

Most parents are aware (although they may choose to ignore) frictions among siblings in their family. These frictions generally do not improve after the death of a parent. In fact, underlying issues between siblings can be exacerbated to the point of destroying sibling relationships if parents do not plan their estates carefully. Your estate planning attorney can help you avoid unpleasant situations after your death by assisting you to implement a well-thought out estate plan. With careful planning you can leave a legacy of harmony rather than strife. ●

New Resource for D.C. Domestic Practitioners

D.C. domestic practitioners Linda Ravdin, a Pasternak & Fidis partner, and Faith Dornbrand, of Dornbrand & Associates, LLC, are heading a new committee of the D.C. Bar Family Law Section that will soon bring a much-needed resource to domestic relations lawyers in the District. The Committee on Family Court Opinions is developing a database of digests of unpublished opinions of Family Court judges which will become available through the D.C. Bar website.

There are few opinions of either trial court judges or the D.C. Court of Appeals in family law matters. Yet there are many issues on which practitioners could benefit from guidance about what Family Court judges have been doing. For example, how is the presumption of joint custody being interpreted? What access schedules are ordered most frequently? Is the presumption of joint custody being interpreted as calling for an equal time-sharing arrangement? How are the new equitable distribution and alimony criteria being applied? How are judges applying the new rehabilitative alimony statute? How are judges awarding child support in above-guideline cases? Are they applying the guideline formula to all income above the guideline or are they using other methodologies? Under what circumstances are they ordering parents to pay for private school? As the database of opinion digests grows practitioners will have a valuable source for guidance that will enable them to better serve their clients.

The Committee on Family Court Opinions is seeking new opinions and orders as they are issued. It is also seeking opinions and orders issued over the past three years. The Committee asks that practitioners contribute to this resource by mailing copies of opinions resulting from contested proceedings to either Faith Dornbrand, Dornbrand & Associates, L.L.C., 7700 Old Georgetown Road, Bethesda, MD 20814, or to Linda Ravdin at Pasternak & Fidis. ●

PASTERNAK & FIDIS, P.C.

NEWS

On July 20 the D.C. Bar Continuing Legal Education Committee and the D.C. Bar Estates, Trusts and Probate Law Section will present a program entitled "Practical Drafting Under the New D.C. Uniform Trust Act." Nancy Fax will be the featured speaker. She was instrumental in the enactment of the law and is one of the leading experts on the new law.

P & F partner Jan White is one of eleven attorneys selected by the Family Law Section of the Bar Association to serve as mentors to the Montgomery County Circuit Court Custody Evaluators. As a mentor, she has provided a legal and court room perspective to assist the Evaluators in their responsibilities of reporting to the Court in custody and visitation cases.

P & F welcomes Julie Lucas as a Paralegal in the Divorce and Family Law Practice Group. Julie has B.A. from Ohio University in Sociology and Criminology and will complete a Post-Graduate Legal Assistant Program at Georgetown University in August. Julie has worked as a Paralegal on a complex, nation-wide contract case, as a Courtroom Assistant at the Montgomery County Circuit Court, and completed a Summer Internship with the Maryland State Police where she accompanied State Troopers on patrol.



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