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INSIDE

A New Way to Divorce—Collaboratively

By Anne (Jan) W. White

Divorce subjects many people to the legal system for the first time in their lives. Traditional divorce, with its legal terms, unpredictability, formal production of information and documents, and with a premium on besting the other spouse, forces the client to depend upon the attorney to guide him or her through the process and make many of the decisions. At best, it is an unpleasant and expensive process. Now, a new process — collaborative law — offers an opportunity for divorcing spouses who are willing to work toward a mutually acceptable resolution of their issues to do so with the full assistance of their attorneys.

The collaborative process is a revolutionary approach to resolving divorce conflict. Yet, it eludes easy description and, upon first impression, can be confused with mediation. Indeed, collaborative law has some characteristics in common with mediation, predominantly, the requirement that the spouses take responsibility for making their own decisions and commit to a mutually acceptable resolution of their conflict.

However, different from mediation, collaborative law radically alters the role of the attorneys by requiring both spouses' attorneys to meet with them together in a series of four-way group meetings where they share factual information and legal expertise and resolve the issues. The spouses' attorneys, along with mental health and financial experts, as needed, form the collaborative team who work with the divorcing couple to keep the collaborative process on track and to assist in their problem-solving.

The hallmark of the collaborative process is the Collaborative Contract, which both spouses and attorneys must sign in order for the process to begin. In this contract, the spouses and attorneys commit to the collaborative principles: full transparency to the other spouse and counsel, including full disclosure of factual and legal information; commitment to refrain from taking advantage of mistakes of the other spouse and counsel; listening to the other spouse and considering his or her needs; giving up litigation and court-based negotiations, posturing and hidden agendas; and treating the other spouse with respect. These principles are laudable and seemingly noncontroversial. Yet each of these principles, when carried out, requires the spouses and their attorneys to conduct themselves differently than in a traditional divorce negotiation when legal strategy is behind the scenes and posturing conceals hidden agendas.

Most dramatically, in the Collaborative Contract the spouses and the attorneys agree not to file a contested court case or to threaten to file one. If a case is filed, the collaborative process terminates, and both attorneys are barred by the contract from further representation of the spouses. Although a spouse's right to seek a court trial cannot be curtailed, the contractual commitment not to litigate and the penalty for violation — starting over with new attorneys — is designed to ensure that the spouses seriously consider their commitment before they sign onto the process. Also, because the attorneys are forever barred from litigating

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When Mature Couples Marry

By Marcia C. Fidis

Marriage among mature couples is on the increase. Not only are people living longer and remarrying after the death of a spouse or a divorce, but many people are marrying for the first time at a much later age after establishing a career and acquiring assets. There are many issues facing couples entering marriage in their later years. This article discusses a few of them.

A common goal for the older couple is to provide for children of a prior marriage (or for other family members) as well as for the new spouse. A person marrying at a later age may wish to have assets ultimately go to his/her own relatives rather than to the children of the new spouse. It requires some planning to balance the needs of the new spouse with the desire to leave assets acquired prior to marriage to children of the prior marriage or to other beneficiaries. To understand the planning options, it is important that the parties understand the rights and obligations that each spouse acquires upon marriage as well as some of the choices facing them.

Legal Rights of a Spouse. The legal rights of a spouse are determined by the law of the state where the parties reside and, as to some types of assets, by federal law. The following is a summary of some of these rights.

Right of Inheritance. When two people marry, state law provides each of them certain rights of inheritance in the property of the other upon the death of the first spouse. Absent a valid waiver of these rights, a surviving spouse is entitled to a share, known as the statutory share (also called the elective share or the forced share), of the deceased spouse's assets. In Maryland, the surviving spouse has a legal right to elect to take one-third of the deceased spouse's probate assets regardless of the provisions in the deceased spouse's will. District of Columbia law is similar to Maryland law. Some types of assets are not included in the probate estate, such as retirement accounts, life insurance, and annuity contracts, and joint accounts. Virginia has a different statutory scheme which provides a surviving spouse a right to a certain amount from the deceased spouse's estate which is calculated on the value of all of the assets owned by the deceased spouse (with a few exceptions, such as for property received by gift), including life insurance and retirement accounts.

Right of Support. State law imposes upon a married person the obligation to support a spouse whose assets are insufficient to provide for his/her own support. With older couples, the prospect of substantial long-term nursing care expenses for one or both spouses is increasingly a concern. Particularly if one spouse has few assets, the obligation of support may be a significant issue for the older couple contemplating marriage and is frequently the subject of provisions in a premarital agreement.

Survivorship Right in Retirement Assets. An increasing number of individuals have acquired substantial retirement assets during their working years in an IRA, 401(k), profit sharing plan, company pension plan, government retirement plan or other deferred compensation plan. Federal law governs many of these private plans. ERISA (Employee Retirement Income Security Act) mandates that surviving spouses be provided certain protected rights in private sector plans, such as a survivor benefit in the event of the death of the participant spouse. ERISA does not apply to IRAs, either traditional or Roth IRAs. ERISA does apply to many private employer retirement plans that provide tax advantages such as pension plans, 401(k)s and profit-sharing plans. Also, many governmental plans, such as the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) plans for federal government employees, provide similar rights for surviving spouses. Generally, these rights attach after the parties have been married for some period of time. Although many plans allow a spouse to waive survivorship rights, there are specific requirements for a valid waiver. If these requirements are not followed, an attempted waiver may be invalid.

It is important for a couple about to be married to be familiar with the rules applicable to any retirement plan that affects them; otherwise, they may miss a planning opportunity. For instance, a retired federal employee may be able to pay into the retirement system and obtain survivor benefits for a newly acquired spouse. A retiree who

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the case, they are freed from the conflict inherent in a traditional divorce negotiation of trying to solve a problem while at the same time trying to posture and avoid concessions damaging to the client.

Custody cases serve as a poignant example. In a traditional custody negotiation, the needs of the child usually call for the parents to be responsive and flexible with each other and to cooperate to promote increased involvement of the other parent with their child. However, this flexible approach carries the risk that the more cooperative parent will be penalized in court for agreeing to a schedule that becomes the status quo likely to be adopted by the court. When the spouses and the attorneys commit in the collaborative process to resolving their conflict out of court, they can cooperate without fear of damage to a litigation position.

Although each client's communications with his or her attorney are privileged in the collaborative process, as they are in mediation or litigation, the client, by signing the Collaborative Contract, agrees to certain limits on his or her rights in order to promote full transparency of the process and to ensure that the collaborative team and the spouses work together as a group to resolve the conflict. Specifically, the contract requires that pertinent facts be discussed only within the safe structure of the group meetings, where discussions are confined to an agenda prepared in advance by the spouses and their attorneys. Any urgent last minute issues a party wants to discuss must be revealed to the other spouse and attorney prior to the meeting so that there are no surprises. In a departure from traditional negotiations, the spouses instruct their attorneys in the contract to provide legal advice only in the presence of the other spouse and attorney. This requirement ensures that attorneys shift gears and work very differently in the collaborative process than they would in a traditional negotiation, even a negotiation which they expect to result in a settlement. Importantly, the spouses instruct their attorneys to enforce the disclosure obligation. According to the contract, if an attorney knows that his client is refusing to disclose relevant information and continues to do so despite the attorney's advice, the attorney must withdraw and notify the other spouse and attorney that the process must terminate.

The spouses also instruct the attorneys not to take advantage of mistakes of the other. If a mistake is discovered, the Collaborative Contract requires that it be brought into the open and corrected. This is a radical departure from the way lawyers are trained to work. Taking advantage of the opponent's mistakes is a hallmark of traditional legal representation.

For their part, the attorneys commit to comply with the very predictable and neutral rules of the process–starting the four-way meeting (usually of two hours duration) on time and with all members present, checking in with the other team members and the client briefly before and after each meeting to see if there are any concerns that need to be shared with the group, sticking to the pre-set agenda in the meetings, documenting points of agreement on flip charts during the meeting, and quickly committing the points of agreement to minutes after each meeting. The attorneys commit to helping the spouses follow the collaborative principles of listening to the other spouse, treating the other with respect, expressing his or her needs instead of arguing positions or knuckling under to end the dispute, committing the time to meet regularly and to complete assigned homework, such as gathering information, and ensuring that the process is transparent and conducted without secrecy.

Collaborative law should not be viewed merely as a less expensive way to divorce. Given the escalating costs of a court case, the collaborative process is almost always less expensive, but it is not cheap. The primary benefits of the collaborative process are better communication between the spouses, a parting with less bitterness and rancor, and better decisions, made with full information and the shared expertise of the full professional team. The process requires both attorneys to educate their clients about the law within the structure of the group meetings, but also to support the spouses' choice to make their decisions based upon other considerations, such as fairness or the needs of the spouses and their children. The process can be individualized to respond to the divorcing couple's finances and expectations. Although the pain of divorce remains, the process is designed to support the couple and assist them in identifying and dealing with their pain and conflict while they constructively resolve their issues and focus on a better future. Collaborative lawyers commit to serve the best interest of their clients by conducting themselves with the highest integrity, supporting their clients' good faith participation in the process, and seeking a resolution that meets the needs of both clients. The attorney supports and represents the client, but without secrecy and without developing detailed positions and arguments that promote the interests of his or her client over those of the other spouse.

The spouses and their attorneys work together to select the right professionals to be part of the collaborative team: a mental health expert to serve as a divorce coach to help the clients communicate or to meet with them to help them resolve custody issues; a financial professional, such as a financial planner, CPA or mortgage broker, to help the spouses develop their cash flow projections, plan for retirement and other large expenses, calculate tax consequences, and arrange for the sale and purchase of property. In contrast to the traditional method of divorce negotiation, virtually all of the work is done in the presence of both clients. All the professionals on the collaborative team offer their expertise to the spouses in the group meeting, or, if agreed by the group, in a meeting of the spouses together with one of the non-attorney experts.

Collaborative law developed in the early 1990s out of the frustration of a Minneapolis family lawyer, Stu Webb, with the limitations and the emotional and financial cost of traditional court-based litigation. As a last resort, before giving up his law practice, he envisioned a new method of resolving divorce issues that incorporated attorneys into a mediation model, but with the added requirement of a contract in which the attorneys refused to go to court if the process broke down. From this early concept, legal communities in the mid-West, California, New York, Texas, and Canada developed a formal structure to promote this approach. There are now eight to ten thousand collaboratively trained attorneys in forty states and several other countries. Collaborative

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wishes to provide such benefits for a new spouse must take action within a specified period of time after marriage. Since the government bears some of the cost of the spousal survivor benefit, this may be a cost-effective way for a retired federal employee to provide death benefits for a new spouse.

An individual with plans to marry who is nearing retirement should consider whether to marry before or after retirement. If a private pension plan participant marries after retirement, he or she will not be required to take a reduced pension to provide a survivor benefit for the spouse. If the marriage takes place before retirement the new spouse may have certain survivor rights although he or she can voluntarily waive those rights. Spouses of federal government employees have similar rights. The timing of the marriage may therefore depend on whether or not the participant wishes to provide survivor rights in the plan benefits to the new spouse. In addition, a new spouse of a federal government employee may be eligible for health insurance as a family member. This valuable health coverage continues into retirement. A government employee close to retirement should consider this as well in deciding on the timing of a new marriage.

Right to make health care and burial decisions. Unless an individual has executed an advance health care directive specifying otherwise, the law of most states provides a spouse the right to make health care decisions for a spouse who is incapacitated and cannot make his/her own decisions. Also, in many states, the right to make burial decisions for a deceased spouse belongs to the surviving spouse. In most states, individuals can execute documents specifying someone other than the spouse to have the right to make health and burial decisions. Persons considering marriage should give some thought to whether a new spouse should have these powers or whether they should remain with an adult child or other family member.

Survivorship right in jointly held or tenants by the entirety real estate. Many married couples wish to own their marital residence jointly. The residence may be titled as tenants by the entirety (the most common form of ownership for a married couple) or joint tenants with rights of survivorship. Under either type of title the real estate will automatically go to the surviving spouse. This means the surviving spouse will have the right to sell the property and use the proceeds as he or she sees fit. It means the surviving spouse can leave the property in his/her will to his/her family members to the exclusion of the family of the first spouse to die. This result may not be acceptable to many couples.

Planning for Marriage. Unless a couple has planned for their particular circumstances, the spouse who dies first will have no assurance that his/her estate plan will be honored by the surviving spouse who may decide to elect legal rights of inheritance. Rather than permit state or federal law to determine what the surviving spouse's rights will be in the event of death or divorce, couples may agree to determine these matters in advance through an agreement before marriage, a premarital agreement, also known as a prenuptial agreement, or even after marriage, a marital agreement. Such an agreement generally provides for a waiver of state and federal law spousal rights upon death or divorce in return for provisions for each spouse which are set forth in the agreement. The specific terms of the agreement will depend upon the circumstances and wishes of the parties.

Provisions for death. If both prospective spouses have assets and children of their own, the solution to balancing the interests of the new spouse and children of a prior marriage may be fairly direct. For instance, an agreement may provide that each spouse waives statutory rights to claim a share of the deceased spouse's estate. This leaves each spouse free to make a will leaving all of his or her assets to his or her children or others. An agreement may provide that a wealthier spouse will make specific provisions for the other spouse's support upon death. One option is for the agreement to provide for the creation of a marital trust so that the surviving spouse will have income from the trust assets for support during life, but upon his or her death, the assets in the trust would pass to the children of the first deceased spouse.

Provision for marital residence. Another common provision in a premarital agreement deals with the marital residence. Many older couples who wish to keep their assets essentially separate and pass them on to their own children from a prior marriage will nevertheless want to own jointly a marital residence and perhaps a vacation home as well. They both may want the investment in real estate and the tax advantages it may bring or they may just want to feel that the marital residence is "ours" and not his or hers. For some, being able to live at home as long as possible is very important and they may want the assurance of being able to remain after the first spouse dies. In some cases one spouse will already own a residence which the parties intend to make their marital residence and they may want to provide for the nonowner spouse to buy an interest in the residence. In other cases, the couple may plan to purchase a joint marital residence upon marriage and they may make equal or unequal cash contributions for acquisition.

If the parties own a home as tenants by the entireties (the most common way spouses jointly own real estate) then upon the death of the first spouse the residence passes to the surviving spouse automatically regardless of what the deceased spouse's will states. The result is that a substantial asset may eventually go entirely to the children of the spouse who lived longer to the exclusion of the children of the other spouse. This may not be acceptable to some. One option is for the parties to own the residence as tenants in common. In that event, the will of the deceased spouse can specify what happens to his/her share. The deceased spouse may leave it to children of a prior marriage. The difficulty with this arrangement is that the surviving spouse may not want to be a joint owner with his or her stepchildren. In such a case, it may make sense to have the deceased spouse's share of the residence held in trust by an independent trustee with whom the other spouse feels comfortable. The trust can provide terms and conditions for the surviving spouse's right to remain in the residence for a period of time or to buy out the stepchildren.

Use of trust to hold assets. If both spouses have contributed, or will contribute, to the purchase of a residence, an agreement

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should clarify what the parties intend to happen to the residence upon the death of the first spouse. The couple should consider a number of questions. Will the entire residence pass to the surviving spouse? Will the deceased spouse's share of the residence pass into a trust which provides the surviving spouse a right to continue to live in the residence for an agreed time? What will happen to proceeds from sale of the residence when the surviving spouse dies or moves from the house or the house is sold? There are many ways to implement a plan for a joint residence that will meet the goals of both spouses. A trust can be used to hold the deceased spouse's share of a residence, as well as other assets of a deceased spouse to provide a stream of income for the support of the surviving spouse. The advantage of a trust is that specific provisions can be made for the protection of the surviving spouse but with the trust assets eventually passing to the children of the first spouse to die. Trusts are extremely flexible. They can be designed to provide for the surviving spouse and to specify where the assets will go upon the surviving spouse's death. In addition, utilizing the right type of trust can provide substantial estate tax savings for the spouse who has more assets.

Support obligations during marriage. Premarital agreements commonly limit or eliminate the right to spousal support in the event of a divorce and may provide that each spouse is responsible for his/her own personal expenses during marriage, such as health care costs. A waiver of all rights of support in a premarital agreement will not necessarily protect a spouse whose partner requires expensive health care. Some states' laws may not honor a waiver of support by a spouse who has exhausted his or her assets and is unable to provide for his/her own support. Therefore, some couples should consider funding long term care insurance to meet the need for assisted living or other forms of care in the later years. Long term care insurance can provide for care for a disabled spouse as well as protect the assets of the other spouse.

Division of property on divorce. Most premarital agreements specify which assets of the parties are to be treated as separate property, free from the claims of the other spouse upon divorce, and which assets are to be treated as marital property and divided between them in the event of divorce. If the parties do not have an agreement specifying how their assets will be divided in the event of divorce, then state law rules of separate property and marital property will apply. Generally assets acquired by either party during marriage (except for assets acquired by gift or inheritance) are martial property regardless of who earned the funds used to purchase the property or how the asset may be titled. If property is considered marital property under state law, then each spouse is entitled to a share of the value of that property in the event of divorce. If, for instance, one spouse works and earns income during marriage and uses that income to purchase a residence in his/her name, absent an agreement which provides otherwise, that house is marital property and therefore subject to the claims of the other spouse in the event of divorce. Retirement benefits earned during the marriage are also marital property and subject to spousal claims at divorce. A premarital agreement can alter these rules and can implement the expectations and wishes of the parties. Premarital agreement provisions should be carefully considered and tailored to achieve the results desired by the parties.

Provisions for retirement assets. A party coming into a new marriage with a substantial pension may wish to assure that the new spouse does not automatically acquire survivorship rights in the retirement asset as a result of the marriage as this will reduce the income available to the retiree during his/her life. When both parties have substantial retirement benefits it may not make economic sense for each to be required to pay for survivor benefits for the other when only one of them will live to enjoy them. As mentioned above, federal or state law may provide protected survivorship rights in a pension to a surviving spouse. Although most plans permit a waiver of these rights, a simple statement in a premarital agreement waiving a right to survivor benefits is almost never enough. Federal law requires that a waiver of a right to survivor benefits in a retirement plan be made by a "spouse." Thus, a waiver in a premarital agreement, when the parties are not yet spouses, is not sufficient for many plans. If parties intend to have a waiver, the premarital agreement should provide that the waiving spouse must sign the necessary forms after the marriage. The plan participant will be responsible for getting the right form from his or her plan administrator and giving it to the other spouse to sign.

Promoting family planning and family harmony. Setting in place a thoughtful and workable plan for both spouses can not only alleviate potential sources of conflict between the spouses, but can also address the inevitable concern of children about the effect of the new marriage on what they may perceive as their right to a family inheritance. A common benefit of this type of planning, in addition to addressing the needs of each spouse, is to assure children that neither spouse is in a position to take advantage of the other. Whether or not the mature couple elects to use a premarital agreement, proper planning can also assure that they not only provide for the needs of each other, but can also promote harmony between both sides of the new family by protecting assets that are to pass to the next generation.

Charitable Giving Provisions for Individuals in the Pension Protection Act of 2006

by N. Alfred Pasternak

The Pension Protection Act of 2006 was signed into law on August 17, 2006. The new law contains important provisions designed to encourage charitable contributions by individuals. The law also restricts the deductibility of some charitable giving practices. Below is a summary of some of the charitable contribution provisions of the Pension Act.

Tax-Free Distributions from IRAs

Effective for a two-year period (January 1, 2006 – December 31, 2007), distributions made from an IRA to a qualifying public charity are excluded from the income of the IRA owner. The owner must be at least age 70 ½ to take advantage of this provision, and the amount excluded is limited to $100,000 per year. The provision removes a number of impediments that stood in the way of IRA owners who wanted to give all or a portion of an IRA to charity.

Cut-Back on Deductions for Gifts of Tangible Personal Property

Under prior law, a donor of a gift of appreciated tangible personal property (such as a work of art) could deduct only the tax basis of the property, rather than its higher fair market value, if the donee charity did not use the property in its exempt function. This restriction is extended by the Pension Act to apply to property that is disposed of by the charity within the same year that it was received. In addition, if the charity disposes of the gifted property in a subsequent taxable year, but within three years of the gift, the IRS will recapture the tax benefit that the donor received in the year he or she made the gift. These adverse consequences can be avoided if the charity provides a certification that its original intended use of the property became impossible or infeasible.

Limitation on Contributions of Household Goods and Clothing

Many taxpayers take advantage of the charitable contribution deduction by making gifts of used clothing and household goods (furniture, furnishings, electronics, appliances, and linens). Due to concern about abuses of this type of deduction, the Pension Act provides that the deduction will be allowed only if the donated clothing or household goods are "in good used condition or better." This provision is effective immediately. It is not clear what Congress meant by "good used condition or better" and it is expected that the IRS will be issuing guidance in this area.

Fortunately, the limitation on "good used condition" does not apply to gifts of food, art objects, jewelry, gems, or collections, as well as to individual items of clothing or household goods with a value of $500 or more that is supported by an appraisal.

Limits on Deduction of Cash Gifts

New recordkeeping requirements in the Pension Act will probably have the effect of disallowing a deduction for small gifts of cash. Under the Pension Act, any gift or money (by cash or check) may be deducted only if it is supported by a bank record (cancelled check or bank statement), credit card record or a written acknowledgement from the donee organization indicating the date and amount of the gift. This provision is effective for contributions beginning in 2007, and may discourage small cash gifts, such as those to the Salvation Army.

Restriction of Gifts of Fractional Interests

Gifts of fractional interests have been an accepted planning technique for donors of personal property such as artwork or collections. In a typical transaction, the owner of a painting gives a museum a gift of a 50% interest in the painting, which allows the donor to retain possession of the painting for six months out of the year while still getting a deduction for 50% of the value. The donor could make additional fractional gifts of the painting to the museum in future years (or at his or her death), until the museum held 100% ownership.

The Pension Act imposes significant limitations on this type of planning beginning August 17, 2006. Although a donor may still make fractional gifts, they have become subject to the following restrictions: (1) the donor must own 100% of the property before making the first gift; (2) subsequent gifts of fractional interests must be valued as if made at the time of the initial gift (thereby eliminating the benefit of any appreciation in the property); and (3) any tax deduction will be recaptured (with interest) if the donee does not receive 100% of the property by the earlier of the donor's death or 10 years after the initial gift. The effect of these restrictions is to severely limit the usefulness of this technique.

Contributions to Donor-Advised Funds

The Pension Act contains a number of restrictions on so-called "donor-advised funds," which are separately identified accounts funded by a donor and held by a charity for future distribution at the donor's recommendation. The Pension Act provides that a contribution to such a fund will not be deductible unless the sponsoring organization for the fund is a charity and the sponsoring organization provides the donor with a written acknowledgment of the gift that explains that the sponsoring organization has exclusive control over the use of the gift.

The purpose of these restrictions is to discourage gifts to organizations that allow the donor excessive control over distributions from the fund. It should have no impact on gifts to mainstream donor-advised funds, such as those administered by the Community Foundation for the National Capital Region and the Northern Virginia Community Foundation. (For more information about community foundations and donor-advised funds, see "Charitable Giving through Community Foundations" by Nancy G. Fax in the June 2003 issue of this Newsletter, available at www.pasternakfidis.com).

As you can see, the Pension Act made a number of important changes, several of which may have an impact on your charitable giving practices. Please feel free to contact us if you have questions regarding the information contained in this article.

Client Alert for Maryland Married Couples

In our July 2006 newsletter, we advised our clients about a change in the Maryland estate tax law, the "state-only QTIP election" providing a new estate tax savings opportunity for married clients living in Maryland. Because special drafting may be required in wills and revocable living trusts to take advantage of this new law, we are providing this additional information to ensure that our Maryland clients are aware of the change and the possible need to revise estate plans accordingly.

The federal estate tax exemption is $2 million (and is scheduled to increase to $3.5 million in 2009) and the threshold amount for Maryland estate tax is $1 million. Until the new Maryland law was passed in 2006, the dilemma facing a married couple in Maryland was whether or not to use the full federal exemption, thus triggering Maryland estate tax on the differential between the federal exemption and the Maryland threshold of $1 million. The alternative would be to use only the amount of federal exemption that is exempt from Maryland estate tax ($1 million), thus avoiding all taxes at the death of the first spouse to die but wasting a significant portion of the federal exemption amount.

Because the federal estate tax rate is a flat 45%, for many married couples it is advisable to use the full federal exemption on the death of the first spouse. However, under prior Maryland law, claiming the full federal exemption (currently $2 million) would cost the estate $99,600 in Maryland tax on the difference between the federal exemption and the Maryland threshold of $1 million. With the Maryland threshold scheduled to remain at $1 million, the problem will be exacerbated as the federal exemption increases and the gap between the federal exemption and Maryland estate tax threshold widens. For a decedent dying in 2009 when the federal exemption will increase to $3,500,000, the cost of using the full federal exemption will be $229,000 of Maryland estate tax.

The 2006 change in Maryland law now permits a Maryland couple to avoid both federal and Maryland estate tax at the death of the first spouse without wasting any of the larger federal estate tax exemption. This is accomplished by establishing both a credit trust to hold the first $1 million (which is exempt from both federal and Maryland estate tax) and a state-only marital trust for the benefit of the surviving spouse to be funded with the differential between the federal exemption amount and the Maryland threshold amount (under current law $1 million). A ***state*** marital deduction election would be made for the second trust but no ***federal*** marital deduction election would be made. The result is that both the credit trust and the state-only marital trust are sheltered from federal estate tax at the death of the surviving spouse, thus using the full federal exemption available at the death of the first spouse. The assets remaining in the state-only marital trust upon the death of the surviving spouse would be included in the surviving spouse's taxable estate for ***Maryland*** estate tax purposes, but would not be included in the surviving spouse's taxable estate for ***federal*** estate tax purposes.

If your estate planning was completed before 2006, your plan may need to be revised. If you are unsure, please check with us.

A New Way to Divorce—Collaboratively —***continued from page 3***

law has gained recognition in the Washington, D.C. metropolitan area and interest is growing as more attorneys become trained and committed to promote it. Groups of collaborative professionals have organized in Maryland, the District of Columbia, and Virginia to promote collaborative law and to train lawyers and other professionals interested in practicing collaborative law.

The family law attorneys at Pasternak & Fidis, P.C., have trained in Collaborative Law and are committed to the continuing training needed to be effective collaborative lawyers. They serve as leaders in local collaborative law groups. Most have trained personally with Stu Webb, as well as other excellent trainers. If you are interested in collaborative law, our family lawyers will be pleased to tell you more. You can also learn more from the website of the International Academy of Collaborative Professionals (www.collaborativepractice.com), and two books, *The Collaborative Way to Divorce* by Stuart G. Webb and Ronald Ousky, and *Collaborative Divorce* by Pauline Tesler and Peggy Thompson.

PASTERNAK & FIDIS, P.C.

NEWS

Divorce & Family Law Group attorney, Lucy Nichols, has been admitted to the DC Bar. Lucy is also a member of the Virginia and Maryland Bars.

Maryland Super Lawyers 2007 has named P & F Managing Partner, Nancy Fax, as one of the top 50 lawyers in Maryland. In addition, Marcia Fidis and Nancy Fax are listed among the top 25 women attorneys in the state. *Super Lawyers* also named Divorce & Family Law partner, Linda Ravdin, as an outstanding lawyer in the Family Law specialty, and Al Pasternak, Marcia Fidis and Nancy Fax in the Estate Planning specialty. *Maryland Super Lawyers* is published annually in collaboration with *Baltimore Magazine* by Law & Politics, a survey company which identifies the top 5% of lawyers in the state through an extensive peer review process.

On December 12, 2006, Marcia Fidis was a featured presenter at the American Bar Association Section of Family Law teleconference entitled *Guidelines for Negotiating and Drafting Valid Premarital Agreements: Addressing Issues and Avoiding Pitfalls*. Marcia's topic was "Negotiating Issues Related to Rights on Death."

Divorce & Family Law partner, Faith Dornbrand, published an article in the fall edition of *Family Law Quarterly*. "Executive Compensation: A Divorce Lawyer's Guide to Certain SEC and IRS Mandated Disclosure" provides a road map for divorce attorneys seeking to uncover information about earnings, benefits, and deferred compensation of high level executives in publicly traded corporations or tax-exempt organizations. On April 10, Faith, Jan White and Marcia Fidis will teach a 3-hour evening seminar to Maryland divorce attorneys on this and other financial topics.

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