

MAY 2012 NEWSLETTER

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THE FINANCIAL DISSOLUTION OF A MARRIAGE PART I

FIRM ALERT:

1. UPCOMING SEMINARS:

Joseph R. Pozzuolo, J.D., B.B.A. and Jeffrey S. Pozzuolo, J.D., M.B.A., B.S., B.A.

“How Middle Income Families Should Prepare for Retirement”

Wednesday May 23rd 1pm-5pm

Judith P. Rodden, Esquire and Lesley M. Ibanez, Esquire

“Commercial and Residential Real Estate Practice Today: From Agreement of Sale to Closing, with Ethics”

Wednesday June 13th 8am-12pm

Seminars are held at:

Penn State University, Cooperation Extension (Doylestown)

<http://bucks.extension.psu.edu/>
1282 Almshouse Road
Neshaminy Manor Center
Doylestown, PA 18901-2896

To Register or for more Information: Theresa Bloom (215) 881-7402

2. OMG! MY PARENTS ARE GETTING OLD!

Pozzuolo Rodden, P.C. are pleased to announce that Joseph R. Pozzuolo, Esquire, Jeffrey S. Pozzuolo, Esquire, and Stephen P. Taylor, Esquire have been retained to write two chapters of Faye Levow's new book titled OMG! My Parents Are Getting Old! This book is intended to be the definitive resource for families on what to do when you are caught up in the whirlwind of dealing with unprepared, aging parents. It is written to be very user friendly. Ms. Levow is targeting an October 2012 release date and the temporary website is:

www.OMGMYPARENTSAREGETTINGOLD.com. Joseph R. Pozzuolo and Jeffrey S. Pozzuolo wrote the chapter titled: Estate Planning for Pet Owners. Joseph R. Pozzuolo and Stephen P. Taylor wrote the chapter titled: Same Sex Couple Estate Planning. Pre-publication drafts are available by emailing Chrissy at: chrissy@pozzuolo.com

THE FINANCIAL DISSOLUTION OF A MARRIAGE

PART I

While everyone hopes their marriage will last forever, more than fifty (50%) percent of marriages end in divorce. When a couple separates they must begin to untangle the lives they so carefully built together, divide assets acquired during the marriage, social friends and make financial arrangements for themselves and their children. Typically the economic realities of divorce, including, but not limited to, temporary alimony known as alimony pendente lite or APL, alimony and child support can cause separating couples extraordinary stress and heartache. During the next two months this firm will explain in two parts the basics of dissolving the finances of a marriage to enable you to understand the legal process of divorce. The topics covered will be: 1) support and maintenance for the spouse and

child(ren); and, 2) equitable distribution of marital assets. In Pennsylvania, the Divorce Code governs the dissolution of a marriage.

A. Alimony Pendente Lite

Alimony pendente lite (“APL”) refers to payments to be paid by one spouse to the other spouse (generally paid by the primary bread winner to the dependent spouse with less or no earnings) during the separation period and pendency of the divorce proceedings until a final decree of divorce is entered by the court. APL originally arose from the concept that a husband should support his wife throughout the marriage and that during divorce proceedings the marriage was still continuing. However, based on more modern ideals, either husband or wife may now apply for APL. Generally, the spouse who applies for and receives APL is not working or earns less.

A typical APL award is calculated as thirty (30%) percent of net income after deductions and child support for a paying spouse who also pays child support. When there is no child support order being paid by the paying spouse, this percentage increases to forty (40%) percent of net income. From an income tax perspective, APL is deductible from the taxable income of the paying spouse and reported as income and taxed to the receiving spouse. In Pennsylvania, either party to a divorce action can withhold his/her consent to divorce for two (2) years from the date of separation which allows the dependent spouse to receive APL during this two (2) year period and thereafter until a divorce decree is entered. The duration of APL depends on the facts of a given case. If the parties reach an agreement and consent to a divorce, the paying spouse may be required to pay APL for less than two (2) years.

Recently in Childress v. Bogosian, the Superior Court of Pennsylvania examined APL. The Court explained that APL is “based on the need of one party to have equal financial resources to pursue a divorce proceeding when, in theory, the other party has major assets which are the financial sinews of

domestic warfare.” This shows that one of APL’s main purposes is to allow the less financially solvent spouse to have the necessary resources to obtain counsel and properly litigate their rights during the divorce proceeds. For these reasons, APL is not dependent on the state of the litigation which is why APL awards end upon the entry of a divorce decree. The Court found that even though a wife was living with a man other than her husband and had his child post separation, the husband is still required to pay APL to the wife during the pendency of the divorce proceedings. The Court did, however, impose a twenty (20%) downward deviation of APL since the wife was co-habiting with another man, whom she had a child with after separation, and who was not contributing towards her living expenses. However, deviations in APL are not normally granted under the Pennsylvania Divorce Code and marital misconduct –i.e. adultery, brutality, abandonment, etc, - is not a defense against APL. Still, a divorce must be filed before an APL award can be granted.

Furthermore, in Pennsylvania one spouse may also seek “spousal support” from the other spouse without filing for a divorce. However, marital misconduct is a defense to such an award. Spousal support is defined by 23 Pa.C.S. § 3103 as “care, maintenance and financial assistance.” The amount of a spousal support award is determined using the same formula as APL, as discussed above. However, spousal support is a cause of action separate and distinct from APL and unlike APL may arise prior to divorce proceedings because spousal support arises from the marital relationship, whereas APL arises based on the need for support during the pendency of divorce. Therefore, the duty to pay spousal support terminates upon the entry of a decree of divorce. However, if a decree of divorce is entered and economic claims, such as equitable distribution or alimony remain between the parties, an order for spousal support will be deemed an order for APL until the remaining economic claims are resolved.

In all instances, APL and spousal support proceedings, the court may allow adequate health and

hospitalization insurance coverage during the pendency of the action.

B. Alimony

Alimony is generally a court ordered obligation of a former spouse to provide support to the other former spouse after the marriage has ended and a decree of Divorce has been entered by the court. Alimony may be awarded for rehabilitative purposes - to allow the formerly dependent spouse time to acquire skills or education to reenter the workforce and become self-supportive.

Historically, alimony was only available when marital misconduct had occurred and, therefore, early alimony was tied to fault of the husband. Eventually this began to shift from fault based alimony to need based alimony. This shift began in part because male salaries were higher than females, who often were not employed, and a wife could show her need for financial support.

In the 1970s, the Supreme Court of the United States ruled that a gender bias should not exist in alimony and that men could apply for similar support from their wives after divorce. This was a modern shift from the earlier ideals that it was a husband's duty to support his wife. An article in the Wall Street Journal examined that reluctance of males to discuss their receipt of alimony. There has been a shift from the historical perspective of a male bread winner and now women are often earning higher salaries than their husbands.

Currently, in Pennsylvania, alimony may be granted at the Court's discretion. This should not be confused with APL which is paid prior to divorce and based on a statutory formula. Pursuant to 23 Pa.C.S. § 3701, a Court, in its discretion, may award reasonable alimony to a party if it finds that such an award is necessary to effectuate economic justice between the divorcing parties. Marital misconduct, adultery, and abandonment is one of the factors a court must consider before making an award post divorce of alimony, but, it is only one of seventeen factors. The seventeen (17) relevant factors

pursuant to 23 Pa.C.S. § 3701 that the Court must consider in making an alimony determination, are as follows:

- (1) The relative earning capacity of each party;
- (2) The ages and the physical, mental and emotional conditions of each party;
- (3) The sources of income of each party, including, but not limited to, medical, retirement, insurance or other benefits;
- (4) The expectancies and inheritances of the parties;
- (5) The duration of the marriage;
- (6) The contribution by one party to the education, training or increased earning power of the other party;
- (7) The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child;
- (8) The standard of living of the parties established during the marriage;
- (9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;
- (10) The relative assets and liabilities of the parties;
- (11) The property brought to the marriage by either party;
- (12) The contribution of a spouse as homemaker;
- (13) The relative needs of the parties;
- (14) The marital misconduct of either of the parties during the marriage. The marital misconduct of either of the parties from the date of final separation shall not be considered by the court in its determination relative to alimony, except that the court shall consider the abuse of one party by the other party. If a party commits adultery during marriage prior to separation, there is no eligibility for alimony after divorce;
- (15) The Federal, State and local tax ramifications of the alimony award;
- (16) Whether the party seeking alimony lacks sufficient property....to provide for the party's reasonable needs; and

(17) Whether the party seeking alimony is incapable of self-support through appropriate employment.

Additionally, once an award for alimony has been made it may be subject to modification and termination based on the changed circumstances of either party. If a party receiving alimony remarries, cohabitates or dies, the award of alimony terminates under the statute. If parties are amicable, it is possible for them to negotiate and enter into an agreement concerning alimony. Then that agreement may be entered as an Order of the court.

Additionally, alimony can be an important negotiation tool, and should not be underutilized as such. For example, in lieu of alimony a spouse may receive a larger non-income taxable percentage of the joint assets or marital property acquired during the marriage. For example, the court may order the distribution of sixty (60%) percent of assets to dependent spouse and forty (40%) of assets to independent spouse. This is especially useful in negotiation for couples that wish to completely part ways upon the entry of a divorce decree and do not want a monthly obligation of support keeping them entwined in each others lives.

C. Child Support

It is a basic legal principle that a biological parent - married or not - must pay to support his/her child. The purpose of child support is for the financial benefit of a child. It permits the child to enjoy a lifestyle similar to the intact family prior to separation. Typically, child support is paid to the custodial parent of a child by the other legal parent upon separation. Even if the parents of a child are not married to each other, or never marry, the obligation of a biological parent to support his/her child continues. In that case, the custodial parent will seek child support by filing a petition for child support and an order will be entered unless there are paternity issues that have to be resolved.

In Pennsylvania, the amount of a child support award is determined based on the Pennsylvania

Support Guidelines. The Support Guidelines attempt to provide a child of separated parents the same financial support and proportion of the combined incomes of the parents that the child would receive the benefit of if his/her parents were not separated or cohabitated. The amount of child support is based on the income of the parents and the number of children that are included in the child support order. However, courts will not hesitate to order payment of a child's private school tuition, summer camp or special and/or unreimbursed medical needs/expenses where the child has a history of attending such school/camp or receiving the medical care. The amount of child support payments may be modified if the parents share physical custody of the child.

Once an Order for child support has been entered by the Court, it may be modified based on a party's change in circumstances. A change in circumstances, by way of example, may include the loss of employment of the paying spouse, an increase in income of the receiving spouse or the disability of a spouse. However, a voluntary change in circumstances resulting in a reduction of income of the paying spouse is not grounds for a child support modification (e.g. quitting a job to avoid paying child support). A party seeking modification of child support must file a petition for modification with the Court and the Court will decide if a modification is warranted based on the facts of the case.

Child support payments will continue until a child is unemancipated. Typically this happens when a child reaches eighteen (18) years of age or graduates high school, whichever occurs last. Pennsylvania law does not extend child support obligations after a child reaches eighteen (18) years of age or graduates high school. There is no provision in the Pennsylvania Divorce Code which requires child support payments to continue during a child's post-secondary education nor to pay the cost of post-secondary education. However, often times parties will enter into a voluntary agreement as part of a divorce settlement agreement to provide for the payment of a child's college expenses. Additionally, if the child suffers from either physical or mental disabilities it is possible that a parent's support

obligations will continue after the child has reached eighteen (18) years of age but this is not the normal rule under the Pennsylvania Divorce Code and Support Guidelines. The obligation of parent to pay child support does not automatically terminate once the child reaches eighteen (18) years of age. Upon the child attaining the age of eighteen (18) years old, to end support payments in Pennsylvania a Petition to Vacate must be filed with the Court.

D. Conclusion

Alimony pendente lite, alimony and child support are only a few of the financial issues that must be resolved in the event of a divorce. There are many financial considerations that parties should fully address in ending a marriage. If you have any questions or concerns about the financial implication of divorce please contact Joseph R. Pozzuolo, Esquire or Judith P. Rodden, Esquire to discuss any other issues. The firm has a continuing sophisticated family law litigation practice in both Pennsylvania and New Jersey and can address your questions. Next month this office will review the equitable distribution issues in the June 2012 Newsletter.

Please visit our web site: www.pozzuolo.com

UPCOMING SEMINARS

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Publications

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

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How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Money Purchase Pension Plan Falls Out Of Favor

Why An Employment Contract Is Mandatory

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

How To Look, Act And Sound Like A Professional Corporation

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How to Structure a Suitable Buy-Sell Agreement

Estate Planning

Estate Planning For Pet Owners

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Diversify Strategies For An Effective Estate Plan

Use Wills To Maximize Family Protection And Minimize Tax

Six Proven Estate Planning Techniques

Divorce Raises The Need For Performing An Estate Planning Review

Divorce and Estate Planning

Remarriage Situations Can Raise Special Estate Planning Considerations

College Funding Tool Offers Estate Planning Advantage

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Why Living Wills Advance Directives Are An Essential Part Of Estate Planning

Special Needs Trust - An Estate Planning Tool For The Disabled

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

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. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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