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PASTERNAK & FIDIS REPORTER

The Impact of Asset Title and Beneficiary Designations On Your Estate Plan

By Adam P. Swaim

Many people assume that once they have executed a will they need to take no additional steps to implement their estate plan and that post-execution actions will not disrupt their plan. These assumptions are incorrect and could lead to unintended results at death. A will only determines who gets certain assets, specifically, only those titled in an individual's sole name without a designated beneficiary. An asset titled jointly with another person with right of survivorship will go to the surviving joint owner regardless of the terms of the deceased's will. A bank account titled as a pay-on-death (POD) account with a designated beneficiary, a brokerage account titled as a transfer-on-death (TOD) account with a designated beneficiary, and a life insurance policy, annuity or retirement account with a designated beneficiary will be paid to the designated beneficiary regardless of the terms of the deceased individual's will.

Joint Title with Right of Survivorship. Two of the most common forms of joint title are "joint tenancy" and "tenancy by the entirety." The tenancy by the entirety is limited to joint ownership between spouses (including same-sex spouses in the District of Columbia and in Maryland if married in a state that permits same-sex marriage). The joint tenancy allows joint ownership between any two or more persons. One of the distinguishing features of both joint tenancy and tenancy by the entirety is the right of survivorship. When one joint owner dies, the deceased owner's interest in the asset goes to the surviving joint owner automatically. This result is not affected by the deceased owner's will.

Pay-on-Death (POD) Account and Transfer-on-Death (TOD) Account. A POD account is a bank account that enables an account owner to designate one or more beneficiaries who will receive the funds of the bank account at the account owner's death. A TOD account is a securities account that enables an account owner to designate one or more beneficiaries who will receive the assets of the account at the account owner's death. At the account owner's death, the assets of the POD or TOD account will go to the designated beneficiary automatically. As with jointly titled assets, this result is not affected by the deceased owner's will.

Unintended Consequences. An individual who retitles a solely owned asset into joint title with right of survivorship gives up the right to give the asset to another person by will. Similarly, when an account owner creates a POD account or a TOD account, she gives up the right to leave the account to another person under her will if she dies before the designated beneficiary. Actions such as this may unintentionally alter this individual's estate plan.

> There also may be significant income, gift, estate and/or inheritance tax consequences as a result of retitling solely owned assets to joint title or creating a POD or TOD account. Consult your estate planning attorney prior to retitling assets to these forms of ownership.

The impact of asset title on an estate plan is most apparent in a blended family. It is

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Spotlight on Lucy Nichols

Senior Associate Lucy Nichols, a member of the Divorce and Family Law Group, is known for taking on some of the firm's most emotionally challenging cases – those that involve contested child custody and access issues.

Although Lucy handles family law cases of all types, she finds custody cases particularly suited to her skills and interests.

"A lot of lawyers say these cases are too emotional," Lucy reflects. "But to me, kids are your life, your heart. I advise my clients not only as their lawyer but as their counselor in all respects, helping them get to the other side. I am particularly gratified that many of my clients still stay in touch with me, years after their cases have been resolved." Lucy got started in custody cases in Richmond, Virginia when she graduated from law school in 1990. In the early years, the tough custody cases that she was drawn to involved pursuing shared or even sole custody for fathers. She recalls one such case: "Recently I received a call from one of my first clients, a father who was seeking sole custody of his young daughter in the early 1990s. We prevailed in this effort and my client was thrilled to report that his daughter has now graduated from my college alma mater, the University of Virginia."

Lucy also became interested in custody cases involving non-traditional families from early experiences in her career. She was just a few years out of law school and practicing in a small Richmond firm when a lawyer she knew, who was not a family law attorney, had been appointed a guardian ad litem (an attorney appointed to protect the interests of a minor child in a lawsuit). Lucy volunteered to assist him in his representation of the young child who was subject of a custody battle. The fight took place in the Circuit Court for Henrico County, Virginia, between the mother of the child and the maternal grandmother. The mother was involved in a same-sex relationship at that time and her mother sought custody because she disapproved of her daughter's relationship with the other woman. The case, *Bottoms v. Bottoms*, is one of Virginia's first and most well known custody battles between a parent and a third party where the sexuality of the parent was at issue.

The case was later appealed to the Court of Appeals and the Virginia Supreme Court. See, *Bottoms v. Bottoms*, 18 Va. App. 481, 444 S.E. 2d 276 (1994) and 249 Va. 410; 457 S.E.2d 102 (1995).

Lucy went on to represent other children as a guardian ad litem in many difficult cases. "Serving as a guardian ad litem offered an entirely different perspective in custody litigation from that of representing a party-litigant."

Very recently, in April 2011, Lucy won a ruling from the Virginia Court of Appeals, affirming the continuing custody rights of a non-biological mother, Renee Kifus, to shared custody of her daughter. See the article about this case on page 5.

Lucy has handled several cases involving gay, lesbian and transgender parents. "As society has evolved, my practice has evolved as well," Lucy says. "In some ways, though, the law hasn't kept up with the times and the many complex ways that folks now form families."

Lucy has written articles and has participated in continuing legal education programs and other trainings on non-traditional families – such as couples, either same-sex or opposite-sex, with a child that is biologically related to only one member of the couple – and their legal rights and obligations in the District of Columbia, Maryland, and Virginia.

Lucy grew up in Fairfax County. She is a graduate of the T.C. Williams School of Law at the University of Richmond. She spent 14 years building a successful family law practice in Richmond, before returning to the D.C. area in 2005 when she joined Pasternak & Fidis.

Like other attorneys at Pasternak & Fidis, Lucy is trained in collaborative law. She offers her clients collaboration as an alternative to litigation, helping to resolve highly emotional issues in a fair, constructive and dignified manner.

Lucy has advanced scuba diving certification and has done wreck diving off the coast of Cape Hatteras. She temporarily put aside her scuba diving gear to raise her daughter Eleanor, who is now five years old. Lucy also enjoys cooking and is a former competitive swimmer.

Pasternak & Fidis was a sponsor for the inaugural Bond Beebe Charity Kickball Tournament to support A Wider Circle (www.awidercircle.org), a local non-profit dedicated to helping children and adults lift themselves out of poverty. The tournament was held Saturday, October 1, 2011 at Meadowbrook Fields in Chevy Chase. Although team Pasternak & Fidis managed to lose all of their games, they won the Team Spirit award and declared the day a great success.

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Asset Title and Beneficiary Designations

—continued from cover page

common for an individual who remarries to provide more for children from a prior marriage than for a second spouse under the terms of his will and, often, to have a premarital agreement that confirms his right to do so. If he retitles assets from sole name to joint names with right of survivorship, or creates a POD or TOD account with the spouse as beneficiary, then at his death, those assets will go to the surviving spouse automatically. As a result, the assets going to the children may be reduced or eliminated. This may be the case even if the couple entered into a premarital agreement giving each the right to leave their property to their own children and giving up the right to claim any property as a surviving spouse. This is because a premarital agreement does not prohibit one spouse from voluntarily transferring separately owned assets to the other spouse.

Let's look at an example: Fred and Carol are married. They have no children together. Fred has three children from a prior marriage. Fred and Carol entered into a premarital agreement providing that neither would have any right to property at the death of the first of them. This would allow each to leave his or her property to whomever that party wished. Fred's will provides that his assets will go at his death in equal shares to his three children. During their marriage, Fred retitled all of his separately owned real estate to Fred and Carol's joint names with right of survivorship. He made all his bank and securities accounts POD or TOD accounts with Carol as the designated beneficiary. Fred dies before Carol. Fred's assets go to Carol as the surviving joint owner or as the designated beneficiary regardless of the terms of Fred's will and despite the premarital agreement. Carol, as the absolute owner of the assets, may leave them at her death to whomever she wishes, for example, her nieces and nephews or a new husband, even to the exclusion of Fred's children. Fred probably wanted to provide for Carol during her lifetime, but it is unlikely that he intended to disinherit his children.

What could Fred have done differently? Fred could have left his assets in trust for Carol's lifetime. Carol would have had the right to the income. Fred would have controlled the ultimate disposition of his assets.

Trusts are an important tool for retaining control over assets. See *Pasternak & Fidis Reporter,* Summer 2011, "Post-2010 Estate Tax Law: Trusts Are Still Relevant" by Stephanie T. Perry.

Through a trust Fred could have ensured that Carol would be taken care of during her lifetime and that his assets would ultimately go to his children. This plan could have also helped to preserve the relationship between Carol and Fred's children following Fred's death as it would have eliminated the confusion and discontent felt by Fred's children after they learned that they had been disinherited by their father.

Another situation where the impact of asset title on an individual's estate plan can be an unintended consequence is where an individual retitles a solely owned financial account to joint title with right of survivorship in order to enable the other joint owner to pay bills and manage the funds for the individual's benefit. As a result of retitling the solely owned account to joint title with right of survivorship, the individual owner gives up her right to leave the assets of the account by her will if she is the first joint owner to die.

For example, Samantha, an elderly widow, retitles her solely owned investment account valued at $1.5 million in the joint names of Samantha and her oldest daughter Rose with right of survivorship. Samantha's intent is to enable Rose to write checks to pay Samantha's bills and to manage the account for Samantha's benefit. Samantha's will provides that her estate is to be divided equally among her four children. Samantha dies. The investment account goes to Rose as the surviving joint owner, regardless of the terms of Samantha's will, and to the exclusion of Samantha's other children.

What could Samantha have done differently? Samantha could have given Rose a general power of attorney to act on her behalf. Or she could have established a revocable trust to hold her assets and appointed Rose as trustee with the authority to manage the trust assets for Samantha's benefit. Had she done so, her intended estate plan would not have been disrupted.

Beneficiary Designations Should be Coordinated with Estate Plan. A will does not govern the disposition of benefits payable under a life insurance policy, annuity or retirement account, unless the owner's estate is the designated beneficiary. The payment of these assets upon the death of the owner is governed by the contract between the owner and the life insurance company or retirement account custodian. Therefore, the benefits must be paid to the named beneficiary.

For example, Mary, a single woman, has one adult child, Abby. Abby is a spendthrift. Therefore, Mary's will provides that all assets of Mary's estate will be held in a trust for Abby's benefit to ensure that they are prudently managed. Mary owns a $500,000 life insurance policy and has an IRA valued at $750,000. Prior to executing her will, Mary made Abby beneficiary of both. Mary fails to update her beneficiary designations after executing her will. Mary dies. Abby, as the beneficiary, receives the life insurance and IRA outright and not in trust.

For tax, probate, and asset protection reasons, it is generally not a good idea to designate the owner's estate as the beneficiary of these types of assets.

What should Mary have done differently? Mary should have submitted new beneficiary designation forms to the life insurer and custodian of her IRA that designated the trustee of Abby's trust as the beneficiary. Had she done so, the beneficiary designations would have been coordinated with Mary's estate plan.

Conclusion. The foregoing examples illustrate the importance of asset titles and beneficiary designations in an estate plan. If decisions regarding asset title and beneficiary designations are made without a complete understanding of their consequences, your assets may not be disposed of at your death in accordance with your wishes regardless of the terms of your will. You should carefully review the current title of each of your assets and your current life insurance, annuity and retirement account beneficiary designations to ensure that they implement your intended estate plan. This review should be performed in consultation with your estate planning attorney.

In October 2011, four Pasternak & Fidis attorneys traveled to Cambridge, Maryland, to present at the regional conference of Capital One Bank's financial advisors and business bankers. Marcia Fidis' presentation, Estate Planning 2011: What Has Changed, and Jeremy Rachlin, Mitchell Alkon, and Roger Hayden's presentation, A Business Law Primer for Financial Advisors and Business Bankers were well-received by Capital One's financial advisors and business bankers from the Northern Virginia, Maryland, and District of Columbia regions. The estate planning and business law attorneys of Pasternak & Fidis continue to work collaboratively with accountants and financial advisors, offering a full-service approach to meet their mutual clients' estate planning objectives, which often include wealth transfer, transfer of business interests, and transfer of property interests.

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Frequently Asked Questions about Alternative Dispute Resolution in Civil Cases

By Jeremy D. Rachlin

The intersection of more cost-sensitive and risk-averse litigants with an overburdened judicial system has led to an explosion of cases being resolved via alternative dispute resolution (ADR). The benefits of ADR include reducing litigation costs, providing certainty to litigants, and speeding up resolution. This article will answer some frequently asked questions about two of the most popular forms of ADR in civil cases: arbitration and mediation.

1) How might a party to a lawsuit become involved in an ADR process?

Arbitration It is rare for parties to agree to binding arbitration after a dispute arises. The more frequent scenario is a contract with an arbitration provision that compels the parties to go to arbitration to resolve any future dispute that may arise under the contract. A party seeking to enforce its rights under the contract initiates arbitration proceedings. Look closely at the fine print of a consumer contract around your house – the chances are high that it contains an arbitration provision.

Mediation Mediation can be court-ordered or it can be voluntary. In most Maryland counties, a judge can order parties in a pending lawsuit to at least one mediation session prior to trial. In the District of Columbia, litigants are strongly encouraged (and occasionally ordered) to mediate prior to trial. In many cases, perhaps because the parties acknowledge that they will be required to engage in mediation, whether they volunteer to do so or not, they agree early in the litigation process to mediate the matter.

2) Who conducts the process?

Arbitration In arbitration, the arbitrator controls the proceedings. Perhaps the best way to think of the arbitrator is as a privately-retained judge. Both of the parties have input into the choice of the arbitrator. Frequently, an arbitrator is chosen who has specialized knowledge in the area of law at issue. A complex construction dispute won't be resolved by an arbitrator whose expertise is in employment law.

Mediation In mediation, the mediator controls the proceedings. The mediator may be court-appointed or selected by the parties and privately retained. Court-appointed mediators are required to complete extensive training in mediation and interest-based dispute resolution. Privately-retained mediators have often completed the same training as the court-appointed mediators, but also may have some specialized expertise. For example, retired judges and senior partners at law firms frequently are retained to serve as mediators in complex disputes. In cases pending in federal courts, United States magistrate judges offer free mediation services.

3) What are the rules of the process?

Arbitration Arbitration resembles a court proceeding but takes place in an office or conference room, in private, not in a courtroom. Prior to arbitration, the arbitrator may set rules requiring the exchange of documents and witness lists between the parties. The arbitrator will meet with the parties and lawyers to clarify the rules for the arbitration proceeding and to gain a clearer picture of the issues he or she will be expected to resolve. Within the arbitration hearing, each side offers opening and closing arguments. Witnesses can be called to testify. The lawyer calling the witness can ask the witness questions on direct examination, and the witness is subject to cross-examination by the lawyer for the other party. The arbitrator reviews documents pertinent to each side's case. The rules of evidence may not be applied as strictly as they would be in the courtroom. Whereas testimony in court is recorded and is generally a matter of public record, testimony before an arbitrator is not available to the public. Arbitration, like a trial, can last from just a few hours to many days.

Mediation Mediation is less formal than arbitration. Prior to mediation, the parties submit confidential mediation statements to the mediator. Mediation statements generally set forth: (i) the contested legal and factual issues; (ii) the perceived strengths and weaknesses of each party's case; (iii) the history of settlement negotiations to date; and, (iv) the minimum amount the plaintiff is willing to accept as a settlement of the case (or the maximum amount the defendant is willing to pay). On the day of mediation, the parties, lawyers and mediator will convene. Each party may make an opening statement or comment. After the opening statements, the parties may disperse to different rooms and the mediator goes back and forth between them. The mediator points out the strengths and weaknesses in each side's case and assists the parties in reaching the monetary and non-monetary terms of a settlement. As in arbitration, parties' statements in mediation are confidential.

4) Who decides the outcome of the process?

Arbitration In a binding arbitration, the arbitrator (or arbitrators, if there is more than one) makes a decision that resolves the matter, just as a judge would do. The arbitrator makes a finding of liability and makes an award of damages (if he/she finds liability), including an assessment of the costs of arbitration against the appropriate party. The arbitrator will submit his/her award to the court, which will then enter an order confirming the award of the arbitrator. There is no jury. There is no appeal except under very narrow circumstances.

Mediation The mediator can help the parties to a resolution but cannot impose one. The parties themselves decide the outcome. When mediation is successful, the outcome is usually a term sheet, signed by the parties, which sets forth the general terms settlement. Counsel will then take the term sheet and create a binding settlement agreement to be signed by the parties.

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Another form of ADR is collaborative dispute resolution. Collaborative dispute resolution to date has been used almost exclusively in divorce and other family cases. However, lawyers outside of family law are beginning to appreciate the benefits of this form of dispute resolution. Pasternak & Fidis partner Roger Hayden is trained in collaborative law and is a member of the newly formed Collaborative Law Section of the Montgomery County Bar Association. See also: "Collaboration: A Family-Friendly, Client-Friendly, and Pocketbook-Friendly Way to Divorce" *Pasternak & Fidis Reporter,* Summer 2010

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Morgan v. Kifus and the Custodial Rights of Same-Sex Partners in Virginia

Last fall, Lucy Nichols argued and won an important case before the Virginia Court of Appeals, *Morgan v. Kifus*, 2011 Va. App. Lexis 126. On April 12, 2011, the Court issued its opinion affirming the trial judge's ruling in favor of the non-biological mother, Renee Kifus. Lucy Nichols represented Ms. Kifus at trial and on appeal.

Renee Kifus and Sherrie Morgan lived together in a committed relationship. They decided they wanted a child and enlisted a male friend to assist them. Sherrie Morgan became pregnant and gave birth to a baby girl. The women raised and cared for her together. Not long after the birth, the women obtained a consent order from the juvenile court providing them with joint physical and legal custody. They continued to raise their child together for 8 years.

After the adult relationship ended, the biological mother, Sherrie Morgan, filed a petition seeking to sever the relationship between Ms. Kifus and the 8 year-old child. Among other things, she attacked the 2002 consent joint custody order as invalid. Virginia Code section 16.1-241(A)3, gives authority to the juvenile court to make a custody determination when a child's "custody, visitation or support is a subject of controversy or requires determination." In this case Ms. Morgan and Ms. Kifus were in agreement about custody in 2002 when they sought the custody order.

Ms. Morgan's legal theory was that the juvenile court did not have authority to enter a consent custody order, arguing there must be an actual live conflict between the parties. The Court of Appeals disagreed with Ms. Morgan, holding "regardless of whether Morgan and Kifus were in agreement when the petition was filed or reached an agreement during the pendency of the proceedings, their agreement did not strip the [juvenile] court" of its authority to make the order. Ms. Morgan also argued that the 2002 custody order was void because it violated Virginia law that prohibits recognition of same-sex marriage or any legal status for same-sex relationships. The Court of Appeals also rejected this argument. Rather, it recognized that what was before the trial judge was the relationship between an adult and a child, not the relationship of the two women with each other.

This ruling is important. If Ms. Morgan had prevailed in her appeal, the legal effect would have been to sever a child, now 10 years old, from a loving relationship with a woman she has known as one of her parents since birth. This decision has meaning for all families in Virginia not comprised of heterosexual, biological, married parents and a child. For example, a single parent might wish to name a same-sex partner, an opposite-sex partner, a sibling or a grandparent as a shared custodian of a child and seek a consent order to that effect from a juvenile court. This case makes it clear that a custody order of this type is valid and legally recognized in Virginia.

Most significant is the protection this decision affords a child like the child in this case. It legally preserves her relationship with a woman who has been a parent to her for more than 10 years. This is a major victory for children's rights in Virginia.

Questions about Alternative Dispute Resolution —continued from page 4

5) What are the advantages?

Arbitration Except for very limited rights of appeal, arbitration offers a final and binding resolution of the issues, backed by a court order. Arbitration can be less expensive than a trial in court. It is private. Often parties can get their matter resolved more quickly than they could in a court with a crowded docket. They may be able to hand-pick an arbitrator with specialized knowledge of the disputed matter. There is no jury trial in arbitration.

Mediation Like arbitration, mediation can be attractive because it offers privacy, less expense, and a quicker resolution. A good mediator can help parties find a compromise solution to a dispute that is more acceptable than one imposed by a judge. Mediation allows parties to maintain control over the outcome.

6) What are the disadvantages?

Arbitration One of the advantages of arbitration is also one of the disadvantages – the extremely limited right to appeal. A court may modify or correct an arbitrator's award only where the arbitrator clearly made an error or miscalculation in reaching the award (a math error) or where the arbitrator inadvertently issued an award on a legal issue that was not authorized in the contract for mandatory arbitration. The court may throw out an arbitrator's award only when it was procured by corruption or fraud, there was corruption or misconduct by the arbitrator, the arbitrator refused to hear evidence material to the issues, or the arbitrator refused to postpone the hearing despite good cause to do so. A party who merely disagrees with the arbitrator's decision has no recourse.

Another feature of arbitration that can be both an advantage and a disadvantage is there is no jury trial. A party whose claim might be more appealing to a jury will not have that opportunity.

Mediation There is little downside to attempting mediation. Parties may try and fail to settle and will have incurred legal fees for the failed effort. If the mediation is unsuccessful, a party may have tipped off the other side to the strengths or weaknesses of its case. However, these strengths and weaknesses would likely be independently uncovered by the other party, as part of the pretrial discovery process.

7) Who pays for the process?

Arbitration Arbitrators are generally compensated at a fixed hourly rate. The fees can be in the tens of thousands of dollars for a multi-day arbitration. Arbitration agreements typically require the party who does not prevail at arbitration to pay for the arbitrator's services.

Mediation The costs of mediation are normally equally borne by the parties. The parties compensate the mediator for his or her time preparing for mediation and attending the mediation. Mediation fees are often substantially less than the fees that may be incurred in arbitration.

Conclusion

ADR is taking on a more prominent role than ever before in civil litigation. Perhaps nothing highlights this fact more than a recently-enacted comment to the Maryland Rules of Professional Conduct that advises lawyers that "when a matter is likely to involve litigation and, in the opinion of the lawyer, one or more forms of alternative dispute resolution are reasonable alternatives to litigation, the lawyer should advise the client about those reasonable alternatives."

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New Maryland Rule 9-205.2 -- Parenting Coordination

By Lucy E. Nichols

High conflict custody cases have always been a huge drain on court resources as warring parents engage in custody battles that never end. When a formal court proceeding does end – whether with a trial or a settlement – the battle may continue, to the detriment of the children and their parents. Judges and practitioners, encouraged by the mental health profession, have sought to find new tools to assist parents to manage conflict over children after the dissolution of the adult relationship. One such tool is the parent coordinator.

Maryland is the first jurisdiction in the Metro area to formalize rules governing parent coordination. Maryland Rule 9-205.2 became effective July 1, 2011. Among other things, it establishes minimum qualifications for parent coordinators, sets forth the responsibilities of a parent coordinator and the scope of his or her services, and provides a mechanism for regulation of fees. For a number of years Maryland trial judges have been appointing parent coordinators in custody matters without any uniform standards governing the process. The new rule fills that gap.

The new rule defines parent coordination as "a process in which the parties work with a parenting coordinator to reduce the effects or potential effects of conflict on the parties' child." The parent coordinator is an impartial person who provides services to the parents while their custody case is pending in court. The court may appoint a parent coordinator in connection with a post-judgment motion to modify custody as well.

The court may appoint a parent coordinator when a parent makes a request or upon a joint request. The court may also appoint a parent coordinator on its own initiative in cases where the conflict between the parties warrants it. The rule applies only to court-appointed parent coordinators, including one appointed when the parties submit a consent order requesting such an appointment. Parties who wish to do so may utilize the services of a parent coordinator on their own without court approval in which case the new rule has no application.

New Rule 9-205.2 specifies qualifications for court-appointed parent coordinators. He or she must have a post-graduate degree in psychology, social work, counseling, negotiation, conflict management, or a related subject area, or from an accredited medical or law school; have at least three years of related professional experience; and be licensed, if required in the individual's area of practice. A parent coordinator also must have 20 hours of training in a qualified family mediation training program and 40 hours of accredited specialty training in parent coordination in areas ranging from conflict coaching to developmental stages of children. There are also continuing education requirements under the rule. The rule provides a process by which qualified persons may apply for appointments and for each circuit court to maintain a list of qualified parent coordinators.

Some roles the parent coordinator may play include facilitating communication between the parents, assisting in defining a parenting plan and providing guidance when the parties are at an impasse on a particular decision. The rule prescribes specific services the parent coordinator may provide and those he or she may not provide. The former range from educating the parties about making and implementing decisions to deciding a post-judgment dispute by making minor, temporary modifications to child access provisions of a court order. A parent coordinator will only be permitted to make a change to an order, however, if the order authorizes such decision-making and the parties have agreed in writing or on the record that the parent coordinator may do so. A parent coordinator may not testify as an expert witness to give an opinion about how a dispute should be resolved. However, he or she may testify in the custody action as a fact witness.

New Rule 9-205.2 is an important addition to the effort to reduce family conflict over children.

Protecting Families: Standards for LGBT Families

The dissolution of a family and its impact on children is terrible enough when that family is afforded the protection of law and full access to the courts. When the family does not receive full legal protection, as is the case for many LGBT families, the results can be devastating. A newly issued publication, "Protecting Families: Standards for LGBT Families," is the result of a collaborative effort of several groups that have been working to create legal protections for all families.

The Standards are addressed to members of the LGBT community and to the lawyers who represent them. However, many of the ideas expressed there are equally applicable to non-LGBT families. The key theme of the Standards is that all families deserve respect and protection, all the more so when the adult relationship is in the process of falling apart.

The Standards urge parents to obtain legal protection for their parent-child relationships before the adult relationship dissolves or a parent dies. There are a variety of legal mechanisms by which this can be done, depending on where the parties live, including a second-parent adoption, a consent custody order, or a parenting contract.

The following is a brief summary of recommendations for parents and their lawyers when the parents' relationship is in the process of dissolving:

- Maintain continuity for children by respecting their existing parent-child relationship regardless of label. Protecting the child's best interest should be the primary goal and that means preserving the child's relationship with the adults the child views as his or her parents.
- Seek a voluntary resolution of conflict over custody. Litigation should be a last resort.
- Allegations of domestic abuse should be investigated. Domestic abuse does occur and when alleged should be fully investigated. A victim of abuse should seek assistance from a domestic violence program. A parent should never use a false claim of domestic abuse to gain an advantage in a custody dispute.
- Refuse to resort to homophobia or transphobia to gain an advantage in a custody dispute.

This publication is available online at www.glad.org/protecting-families.

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P & F News

The Daily Record recently featured Business, Real Estate & Litigation partner Roger Hayden in a story on the Maryland state sport of jousting. The article (which can be accessed on the P & F website at http://74.50.5.212/_pdf/HaydenJousting.pdf) details Roger's 25 years of introducing riders and horses as the official announcer for jousting tournaments throughout the State of Maryland and elsewhere. Jousting, for those unfamiliar with this English sport with medieval roots, is a competition in which a horse and rider gallop down an 80 yard track and attempt to grab metal rings using a long spear, called a lance. With an English history undergraduate degree Roger often fills in the lulls during the competition by telling the audience stories about the traditions of jousting in England as well as its long history in Maryland.

Managing Partner **Nancy Fax** has joined the Board of Trustees of the Levine School of Music, a community non-profit music school that offers instruction to over 3,500 students of all ages each semester and over 1,000 children each summer through its Music and Arts Camp. Levine is one of only 12 community music schools in the United States accredited by the National Association of Schools of Music.

On October 13 -15 in Falls Church, Virginia, Divorce & Family Law partner **Jan White** trained attorneys, financial experts and mental health professionals on the collaborative divorce process. Clients report that this approach to divorce reduces the pain and stress of ending a marriage.

Over the summer **Jan White**, **Vicki Viramontes-LaFree**, and **Linda Ravdin**, all members of the firm's Divorce & Family Law Group, participated in a retreat at the Collaborative Practice Center (CPC) of Greater Washington. The CPC brings together collaboratively trained lawyers, mental health professionals, and financial professionals. The Center is located at Dupont Circle. Two lawyers and two mental health professionals maintain offices there fulltime. Jan, Vicki and Linda, and a score of other collaborative professionals are associate members. This enables them to use the facilities to conduct collaborative meetings. It also makes them participants in an exciting experiment. The CPC's mission statement is "Changing the way people resolve disputes."

Business, Real Estate and Litigation Partner **Mitchell Alkon's** appointment as a Commissioner on Montgomery County's Commission on Common Ownership Communities (CCOC) was extended for another year. As a Commissioner Mitchell serves on and often chairs panel committees adjudicating disputes between homeowners and their community associations (i.e.- Home Owners and Condominium Associations). In addition to taking testimony and writing opinions, Mr. Alkon assists the CCOC in educating the public and associations on common ownership law and obligations and providing policy suggestions to County lawmakers.

Business, Real Estate & Litigation partner **Roger Hayden** was a speaker at the Maryland Land Title Association convention held September 15 -19 at the Hershey Lodge in Hershey, Pennsylvania. Roger is a member of the association's education committee. He will present a CLE on Title Insurance Committment and Policy to the Association in early December.

Linda Ravdin, partner in the Divorce & Family Law Group, has spoken to several groups on the subject of premarital agreements. In September, she was on a panel at the regional conference of the American College of Trusts and Estates Counsel (ACTEC), in Cambridge, Maryland, where she spoke on the subject of same-sex premarital agreements. She also made a presentation to the Montgomery/Prince George's Tax Forum on premarital agreements and the business owner. Linda is the author of three books on premarital agreements. Her most recent, *Premarital Agreements: Drafting and Negotiation*, was published by the American Bar Association in August 2011.

Pasternak & Fidis is a proud sponsor of the 2011-2012 Performance Series at American Dance Institute (ADI) in Rockville. Called "home...to the Washington area's best high-profile experimental modern dance performances" by Washington City Paper, ADI brings to Washington DC some of the most daringly innovative dance works being created in the US today. ADI's Performance Series will feature three critically-acclaimed New York City-based companies making their Washington DC-area debuts. The season began with two striking works by award-winning Jane Comfort and Company and will feature David Dorfman Dance's Prophets of Funk on November 5-6. The season concludes March 24-25 with Necessary Weather, a collaborative work by Dana Reitz, Sara Rudner and renowned lighting designer Jennifer Tipton exploring the relationship between movement and light. Estate Planning & Administration Group Partner **Anne Coventry** is a member of the ADI Board. For more information about ADI's 2011-2012 Performance Series or to buy tickets, visit www.americandance.org.

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On November 17, **Oren Goldberg** will co-present a discussion before the DC Bar, Estates, Trusts and Probate Law Section on wills versus trusts (revocable and irrevocable). The discussion will review the pros and cons of each instrument and how practitioners can determine which will best serve their clients' interests.

Divorce Tax Workshop – December 8

It's universally agreed that any lawyer who practices divorce law needs to know something about taxes. As P & F partner Anne (Jan) White says, "nearly all financial decisions and many child-related decisions in any divorce require an understanding of tax law." Alimony, child support, and the division of property in a divorce all have significant tax implications.

In order to ensure that family lawyers understand tax law, partner Marcia Fidis will serve once more as co-chair and speaker at the Divorce Tax Workshop, sponsored by the Maryland State Bar Association, to be held on December 8, 2011. Partner Anne (Jan) White will lead a breakout discussion group there.

Marcia, who is one of a handful of tax practitioners who practice and teach in the area of divorce taxation, has participated in leading this program since its inception in 1984. Jan has been part of the program faculty since the early 1990s.

The idea behind the program is to teach family law attorneys the complicated tax rules that apply to alimony, child support and the division of property at divorce. The program has not been offered since 2006.

In the program, after an initial overview led by Marcia, lawyers will break into three groups – advanced, intermediate, and beginner – for half-day sessions. Marcia and Jan will co-lead an advanced session. Participants will be given hypothetical divorce situations and will work out the tax consequences under the guidance of the group leaders.

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