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Federal Civilian Employee Benefits and Divorce

By Vicki Viramontes-LaFree

There are complex federal laws and regulations that govern retirement benefits and health, life and long term care insurance benefits for federal civilian employees and annuitants. This article provides an overview of the benefits available to them and addresses what spouses contemplating divorce should know about these benefits. A unique aspect of the DC-MD-VA area is the substantial number of federal civilian employees—over 280,000 according to recent estimates. According to a January 2014 report by the Government Accountability Office (GAO), an estimated 59,000 employees each year between 2012 and 2017 will be eligible to retire. Retirement is complicated enough but adding divorce to the mix can make it especially challenging.

Federal Retirement Plans

The Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), and the Thrift Savings Plan (TSP) are the major federal retirement plans. They cover employees of executive agencies, Members of Congress, their employees, law enforcement personnel, and a variety of others who work for the federal government.

CSRS covers employees hired prior to January 1, 1984; these employees are not covered under the Social Security System (except for Medicare). FERS covers hires on or after January 1, 1984 and is a three-tiered system, combining a basic defined benefit annuity, a defined contribution plan, the TSP, and coverage under the Social Security System.

The TSP works much like a 401(k) in the private sector. The government makes a contribution to the TSP for all FERS employees and additional contributions on behalf of employees who contribute to their own accounts. FERS participants hired on or after July 31, 2010 will automatically be enrolled in the TSP and will have to opt out if they do not wish to participate. CSRS employees may contribute to the TSP but without a government match.

CSRS employees may retire and start receiving an immediate annuity at age 55 with 30 years of service, at age 60 with 20 years of service, or at age 62 with 5 years of service. FERS employees may retire after reaching a minimum retirement age between 55-57 with 30 years of service, age 60 with 20 years of service, or age 62 with 5 years of service.

For both CSRS and FERS, an employee's self-only annuity is a percentage of the "high three average" – the average of his or her highest three years of basic pay. CSRS employees receive 1.5 percentage points per year for the first 5 years, 1.75 for the next 5 years, and 2 points for all years over 10. FERS employees generally receive 1 percentage point per year of service. The annual pension amount is

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Linda J. Ravdin, Editor
Pasternak & Fidis, P.C.
7735 Old Georgetown Road
Suite 1100
Bethesda, Maryland
20814-6183
301-656-8850
Fax: 301-656-3053
www.pasternakfidis.com

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7735 Old Georgetown Road
Suite 1100
Bethesda, MD 20814-6183
301-656-8850
Fax: 301-656-3053
www.pasternakfidis.com

Estate Planning and Administration Group
Anne W. Coventry
Nancy G. Fax
Marcia C. Fidis
N. Alfred Pasternak
Stephanie T. Perry
Megan A. Schaeffer
Micah G. Snitzer
Alex S. Tanouye

Divorce and Family Law Group
Mary Katherine Hayburn
Morriah H. Horani
Linda J. Ravdin
Vicki Viramontes-LaFree
Anne (Jan) White

Business, Real Estate and Litigation Group
Roger A. Hayden, II

Premarital Agreements and the Young Couple

By Linda J. Ravdin

A premarital agreement is a legally binding contract between two people who intend to marry that determines the property rights of the surviving spouse upon the death of the first spouse and that may also determine property and support rights if the marriage ends in divorce.

Not so long ago the typical person considering a premarital agreement was older, had been widowed or divorced and had children from a prior marriage for whom he or she wanted to provide at death. A premarital agreement remains a useful planning tool for such individuals. When there is a significant disparity in property and income, the economically better off partner may wish to limit his or her financial obligations, especially in the event the marriage ends in divorce. Even when such persons are in comparable economic circumstances, they may each wish to preserve their own assets and to avoid disputes with each other, if marriage ends in divorce, or with the other heirs of the deceased spouse if the marriage ends in death. Often, because of their ages they have no expectation of having children together.

As premarital agreements have gained favor as a means to predetermine financial and property rights, more younger couples entering into first marriages are seeking them. There are no reliable statistics documenting this trend, or the reasons for it, but the experience of the author and other attorneys at Pasternak & Fidis, coupled with an informal and unscientific survey of colleagues, suggests that the trend is real. There appear to be several reasons for it:

- Many young adults are delaying marriage until their early 30s. Some of these more mature young people have become established in a career and have built up assets, often have acquired a home and retirement benefits, or have become wealthy as entrepreneurs. A premarital agreement is one way for such persons to protect that premarital wealth as a separate asset.
- Today's young adults will be the beneficiaries of the tremendous wealth built by their grandparents or great-grandparents, the frugal children of the depression and the post-World War II period, and their own successful parents. Sometimes the wealth coming from the older generation is in the form of a family business that the bride or groom is, or expects to become, active in. Parents, wishing to preserve their wealth in the family, urge their children to seek a premarital agreement.
- Many young adults are from blended families themselves; they had a front row seat at their parents' divorce and are seeking an alternative to the sometimes bitter fighting that sapped energy and resources from the family. Some of these young adults witnessed the tensions that can arise over disposition of property after the death of a parent or grandparent who was married several times and did not plan for allocation of property among the widow or widower and the children and stepchildren.
- Premarital agreements have gained much wider acceptance generally. The notion that a premarital agreement is a token of lack of faith in the future of the marriage has begun to fade. More persons getting married are able to consider whether a premarital agreement is appropriate for them – and they are not for everyone – while still holding on to their belief in romantic love.

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Linda J. Ravdin is the author of *Premarital Agreements: Drafting and Negotiation* (2011), published by the American Bar Association. *Washingtonian* Magazine has called her "one of the nation's leading specialists" in premarital agreements. She is a member of the District of Columbia, Maryland and Virginia Bars.

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Love, Marriage, and Remarriage: Common Estate Planning Questions from Blended Families

By Megan A. Schaeffer

Estate planning for blended families presents particular concerns. Questions about estate taxes, picking the right fiduciary, and how to best provide for loved ones are issues that all people face when preparing their estate plans. But the answers become more complicated as spouses, ex-spouses, children, and step-children become part of the picture.

Here are some common estate planning questions we get from clients trying to plan for their own blended families:

1. ***We both have children from prior relationships, and we have children together. How do we provide for each other, while also balancing the interests of children and stepchildren?***

Balancing the interests of your current spouse, the children you have together, and your children from previous relationships can be tricky. Many spouses expect to maintain their current standard of living, even after their partner dies. Many children expect to receive an inheritance when a parent dies, even if that parent has remarried. Frustrating these expectations can create serious family tension.

A good first step is to determine who among your spouse, children, and stepchildren should inherit from your estate. The answer is not merely a financial decision, but an emotional one as well. You and your spouse may disagree about who should receive a share of your assets at your death. The emotional decision-making involved with estate planning is often the biggest barrier for blended families. It is important to remember that any decision is better than no decision, as the consequences of dying without an estate plan in place are often burdensome, costly, and emotionally draining for the surviving family members.

Once you determine who will have a share in your estate, the next step is to determine how big a share each person will have. Preparing a list of your assets, including the values of each, can be a good place to start. For some blended families, it makes sense to divide assets into varying percentages (such as half to the surviving spouse, one-fourth to children, and one-fourth to stepchildren). Other times it may make more sense to evaluate assets individually and then determine who gets what. For example, you may have family heirlooms or a family business that you wish to pass to your children.

An estate planning attorney can help blended families with both of these steps and find solutions that accomplish personal goals and address the needs of the family.

2. ***I want to provide for my spouse, but, ultimately, want to make sure that my children from my previous relationship are taken care of. How can I do that?***

When contemplating the division of assets at death, many people want to make sure that their spouses are provided for and are able to continue enjoying certain assets, such as the family home. This is especially true if one spouse relies on the other for support and does not have significant separate assets of their own.

An outright gift of assets is certainly the simplest way to provide for a surviving spouse. However, this option is usually not the best choice for blended families. Giving assets to a surviving spouse outright means that he or she has total control over how to dispose of such assets when they die. Consider the following scenario:

> Jack and Diane own their house as joint tenants with right of survivorship. At Jack's death, Diane becomes the sole owner of the entire house and she lives there until her death. This is consistent with Jack's wishes. At Diane's death, the house is sold and 100% of the proceeds are divided among Diane's children. The children from Jack's prior relationship receive none of the proceeds from the sale. This is not consistent with Jack's wishes, but his children have no legal recourse, as the house was entirely in Diane's name at the time of her death.

Jack and Diane could have titled the house as tenants in common. In that case Jack's 50% of the house would not automatically pass to Diane at his death. Jack could then have prepared a will providing for his 50% of the house to pass to a trust for Diane's benefit. Diane could continue to reside in the house during her lifetime, but at her death, Jack's 50% could pass to his children.

No matter the assets involved, many blended families find that setting up a trust for the benefit of a surviving spouse during their lifetime is a useful technique to provide for them while ensuring that assets ultimately pass to each spouse's children.

3. ***We signed a premarital agreement. Is that enough? How does that affect our estate plan?***

A premarital agreement states how your assets will be divided at the end of the marriage, whether by death or divorce. When the agreement addresses death, it will generally specify the share your spouse has a right to receive upon your death. Each state has rules regarding how much a surviving spouse is entitled to receive from a deceased spouse's estate. A premarital agreement may alter these rules so as to allow the parties to leave a larger portion of their estate to their own children. A premarital agreement can also allow parties to leave assets in trust so as to control their disposition after the surviving spouse dies.

Spouses with a premarital agreement still need estate planning documents, such as a will or a revocable living trust, to provide how and to whom their assets are to be distributed. If you have a premarital agreement, it will be important to make sure that your estate plan complies with its terms.

The thoughtful preparation of estate planning documents can save money, time and heartache for blended families and their heirs.

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the high-three multiplied by the applicable percentage. A CSRS employee with 25 years of service gets 46.25 per cent of his or her high-three; a FERS employee with 25 years of service gets 25 per cent. The FERS annuity is in addition to Social Security benefits.

Phased Retirement under CSRS/FERS.
After GAO reported concerns about the large number of federal employees eligible for retirement, which would create a mass exodus of skilled employees, OPM put in place a succession planning tool. Effective November 6, 2014, certain eligible employees may apply for "phased retirement" with consent of their employing agency. Phased retirement allows an employee to transition into retirement by continuing to work 50 percent time and receive 50 percent of their monthly annuity.

Employees eligible for phased retirement must: (1) have been employed full-time for at least 3 years; (2) have attained the minimum retirement age and service, except that employees age 62 with 5 years of service are not eligible; (3) have agency approval. Some employees, such as part-time workers and employees on disability are not eligible.

Phased retirees are considered full-time employees even though working a part-time schedule and will maintain their health and life insurance coverage. If approved by the employing agency, a phased retiree may elect to return to regular employment, or may elect at any time to enter into full retirement status by submitting an application to Office of Personnel Management (OPM).

Division of CSRS/FERS Pension at Divorce
At divorce a court can award a former spouse a share of an employee-spouse's CSRS or FERS annuity benefits accrued during marriage. OPM will honor an order so long as it states the former spouse's share as a fixed amount, a percentage or a fraction of the annuity, or provides a formula with variables (such as years of service) that are available in OPM records. The court order must tell OPM what to do if an employee who is not retired applies for a refund of employee contributions— i.e., award a portion to the former spouse or prohibit the employee from receiving the refund. The annuity payments to a former spouse terminate upon the death of the retiree unless he or she elected a survivor annuity.

Survivor and Death Benefits under CSRS and FERS
An employee entitled to an annuity at retirement must separately elect a survivor annuity. An employee who is married at retirement has no choice – the survivor annuity is automatic unless the spouse consents to waive it. The maximum CSRS survivor annuity is 55 percent of the retiree's self-only annuity. The FERS survivor annuity is 50 percent of the self-only annuity.

A survivor annuity may be awarded to a former spouse under a court order. However, subject to a few exceptions, OPM may not honor an order awarding a survivor annuity to a former spouse if the marriage did not last at least 9 months. The survivor annuity of a former spouse terminates upon his/her remarriage prior to age 55, unless the employee and former spouse were married for 30 years or more. The survivor annuity can be restored if a subsequent marriage ends by death, divorce, or annulment.

The election for the survivor annuity is irrevocable and whatever level of survivor benefit was elected at retirement, whether the maximum annuity or a lesser amount, will remain in effect after divorce. If the employee spouse is still working at the time of divorce, the court may award the former spouse all or a portion of the survivor annuity. Unless a court order provides otherwise, the cost of providing the survivor annuity – about 10 per cent of the self-only annuity – is automatically deducted from the employee's self-only annuity before any other deductions are made (i.e., health and life insurance premiums). If parties intend to provide a survivor annuity for the former spouse, it must be expressly stated in their marital settlement agreement. If parties are in litigation, counsel for a non-employee spouse should ask the court to award it. In either case, a court order must provide for the award of the survivor annuity consistent with federal laws and regulations.

An alternative to the survivor annuity is the "insurable interest annuity." If an employee is in good health at retirement, he/she may elect a reduced annuity naming a beneficiary with an insurable interest, *e.g.,* a domestic partner. If the employee is married, spousal consent is required to elect an insurable interest annuity. One advantage of this type of annuity is that the survivor benefit does not terminate upon remarriage before age 55. A disadvantage is federal law has no provision for recognition of a court order awarding this type of annuity. Moreover, the insurable interest annuity can be voided by a later election for a survivor benefit on behalf of a subsequently acquired spouse.

Division of TSP Accounts at Divorce
A court can award a former spouse a share of the marital portion of a federal employee's TSP account.

Federal Employees Health Benefits Program (FEHB)
Upon divorce a former spouse will lose FEHB coverage under the employee or retiree's family enrollment. However, the spouse can obtain his or her own health insurance in the FEHB program if he or she: (1) is covered under the employee/retiree's FEHB health insurance for at least one day during the 18 months prior to divorce; (2) is entitled to receive a portion of the CSRS or FERS retirement annuity or a survivor annuity; (3) applies for FEHB coverage within 60 days after divorce; and (4) does not remarry before age 55. The former spouse is responsible for 100 percent of the premium. If a former spouse is not eligible for FEHB coverage, he/she may elect continuation of coverage but only for three years after the divorce. It is prudent for a former spouse to apply for temporary continuation of coverage so there is no gap in health insurance pending a decision on FEHB coverage as a former spouse.

Some divorcing couples agree to waive their rights to each other's retirement

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Premarital Agreements and the Young Couple *—continued from page 2*

When the couple is young, they, and the attorneys who represent them, must recognize that the approach to formulating the specific terms of the agreement should not necessarily be the same as if the couple were over 50 with independent assets and the means of supporting themselves. There are several key factors that parties and their attorneys should take into account:

- The couple may have children together. Children change everything. Even if the couple assumes they will both continue to work fulltime, their plans may prove unworkable. A child may be disabled or otherwise require an unusual level of parental attention. The couple may discover after a child is born that having a parent at home suits both of them. Or, the couple may realize that it is in their common economic interest that one career take a backseat.
- The younger the couple, the longer the timeline that must be taken into account. A 30-year old couple getting married today may still be together in 60 years. The number of unknowns in their lives is virtually impossible to contemplate and plan for in a contract. Younger couples tend to focus on the possibility the marriage may end in 5 or 10 years and on terms that may be appropriate if that occurs. They have much greater difficulty contemplating a 60-year marriage that ends in death and the terms that would be appropriate after so many years.
- Any provision of an agreement that predetermines the rights of the economically disadvantaged party at a fixed amount may prove to be unfair to that party if the marriage ends, whether by death or divorce, after 20 or 30 years. He or she may develop health problems and be unable to work. Inflation may erode the value of a fixed cash payment. There are also risks for the wealthier party in fixing an obligation at a predetermined level. If that party loses his or her wealth as a result of business reverses or bad investments he or she will remain liable to meet the financial obligations established under the agreement.

There are a number of options younger couples and their counsel may wish to consider in formulating the terms of a premarital agreement that will meet their objectives and still stand the test of time:

- The agreement could provide that each party retains the right to seek spousal support in the event of divorce, or that the economically weaker party retains such a right while the wealthier party waives his or her claim. Of course, in the event of divorce that party would still have to prove the need for support. There are variations on this theme. For example, parties who wish to avoid court could agree to binding arbitration of a spousal support claim. Or, the agreement could provide for a limited duration support waiver; for example, a waiver that stays in effect until a child is born or the fifth anniversary of the marriage with the right to seek support reinstated thereafter. Such a provision would provide some security for an economically weaker party who may leave fulltime work to rear children.
- The agreement could provide that in the event of divorce each party would retain exclusive rights to his or her premarital assets and any assets received by gift or inheritance in the future while also providing for the parties to share the fruits of their common labor. This is similar to the property rights divorcing parties currently have in the three Metro area jurisdictions. For parties whose primary objective is to protect their right to inherited assets, and who will be working during the marriage and creating shared assets, such an agreement can work well for both parties. It would allow both to build some financial security through savings and investment during the marriage while allowing each to decide how they wish to deal with their nonmarital assets. Over time some may wish to contribute more of their separate assets to the household, but a party who wants to keep his or her nonmarital property separate would have the right to do so.
- A variation on the above is an agreement that singles out a specific asset for special treatment in the event of divorce. Often the asset is an ownership interest in an existing business or a professional services practice, such as a law or CPA firm. A nonmarital business that appreciates in value as a result of the efforts of either or both parties during the marriage could be subject to an equitable distribution claim at divorce. An agreement could preclude such a claim, and the costly litigation that goes along with it, while retaining the non-owner spouse's right to share in retirement benefits and other assets acquired with the compensation received by the owner-spouse for working in the business.
- When a wealthier party wishes to retain his or her exclusive right to property in his or her name, the agreement could include some compensating features to provide financial security to the other spouse. For example, the agreement could provide for the wealthier party to transfer specific property, such as a home, into the joint names of the parties. It could provide for the wealthier party to make a specified cash gift to the other party upon marriage, or on a specified schedule thereafter, to enable him or her to build up an investment portfolio for future financial security. There are a variety of ways such an obligation could be structured, limited only by the desires and the imaginations of the parties and their counsel.
- To address the death scenario, one option is the parties could simply retain their rights under state and federal law in the event of death. This means that the surviving spouse would be entitled to survivor benefits under a private, qualified retirement plan and under most governmental retirement plans, just as he or she would if there were no agreement. It would mean he or she would have the same right to a spouse's share of the deceased spouse's estate as would be in effect if the parties did not have an agreement.
- Another option for providing for the death of a spouse is for the wealthier spouse to agree to create a trust funded at a specified level, or with specified assets, that provides for the survivor to have the income, and, if necessary, to invade the principal. However, as discussed above, parties and their counsel should

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benefits, but one spouse needs health insurance coverage. In this instance, a court order may award him or her $1.00 per month of the CSRS or FERS annuity and $1.00 per month from the survivor annuity. This award permits the former spouse to keep health insurance until his/her death.

Federal Employees Dental and Vision Insurance Program (FEDVIP)

A former spouse eligible for FEHB coverage is not entitled to continue FEDVIP coverage after divorce. Accordingly, OPM will not honor a court order that purports to award FEDVIP coverage.

Federal Long Term Care Insurance Program (FLTCIP)

A former spouse is not entitled to apply for FLTCIP coverage because he/she is not a qualified relative of an employee or retiree. However, if he/she was enrolled in FLTCIP coverage prior to the divorce, he/she may continue the coverage as long as the premiums are timely paid.

Federal Employees Group Life Insurance (FEGLI)

FEGLI is group term insurance; it does not build up any cash value. Most federal employees are eligible for basic life insurance under the FEGLI program and are automatically enrolled unless they opt out. Under the basic program, the employee pays 2/3 of the premium and the government pays the other 1/3. There are three optional insurance plans available at the employee's cost provided he/she has the basic coverage.

Courts in DC, Maryland and Virginia do not have authority to order a spouse to provide life insurance for a former spouse after divorce. Nonetheless, it is quite common for parties to agree to maintain life insurance as part of a settlement, especially in cases involving child support, college expenses, or spousal support, and to designate the other as beneficiary. A court order incorporating a settlement agreement which provides for the former spouse to be beneficiary will be honored, even if the individual failed to execute an appropriate designation form, but only if a certified copy of the order is served on the agency before the death of the insured individual, or, if the insured is a retiree, on OPM.

A federal employee/annuitant may irrevocably assign his/her FEGLI coverage to another person, such as a former spouse. Such assignment automatically terminates the employee or annuitant's right to change the beneficiary; however, the premium payments continue to be deducted from his/her pay or annuity. A court order will not suffice to assign an employee or annuitant's FEGLI coverage to a former spouse. An assignment is only effective if the insured files the appropriate assignment form.

Conclusion

There are many decisions which need to be made as retirement approaches. Some decisions are irrevocable. Federal law and regulations are complex and they become more so in the event of divorce. Couples thinking about retirement and contemplating a divorce should consult with a domestic relations attorney who understands the unique set of rules, terms and procedures for cases dealing with federal civilian employee benefits.

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consider the possibility that the death may occur very far into the future and that the terms will be either inadequate for the survivor or unreasonably burdensome for the decedent's estate.

- Parties may also wish to consider provisions for life insurance. Again, however, as discussed above, an amount that may seem entirely adequate today may be wholly inadequate 20 years from now. Moreover, if the spouse obligated to maintain insurance opts for term insurance, which will be very inexpensive when the parties are young, he or she may discover that the cost of maintaining it is prohibitively expensive in the later years. For some couples, a life insurance product that builds cash value may be a better option.
- An option parties may wish to consider to provide financial security for the economically weaker spouse under either the death or divorce scenario is an obligation on the part of the wealthier spouse to pay the premiums on a policy of long-term care insurance. Such a policy will provide for at least some of the cost of nursing home care for a spouse who needs such care.

A good premarital agreement will be tailored to meet the specific desires and circumstances of the parties. The solutions suggested above to achieve such an agreement are by no means the only options nor are they mutually exclusive.

Ideally, a party who wishes to have a premarital agreement will broach the subject and begin negotiations well before the wedding date. The proposed agreement will be drafted and given to the other party in sufficient time to get meaningful legal advice about whether to sign it as is or seek modifications. When the couple is young, it is even more important that the discussions and drafting begin far in advance of the wedding. Many couples decide to get married, pick a date, and start making financial commitments for a venue, caterer, and other vendors. Only then do they focus on a premarital agreement. Negotiations that take place in the midst of wedding plans with invitations about to go out can be extremely stressful for both and too often unfair to one of them. Ideally, the couple would decide to get married, start the discussion about a premarital agreement, resolve any disagreements, and only then start making deposits for catering and invitations.

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P & F News

In February, **Anne Coventry**, a partner in the Estate Planning & Administration Group, testified before a meeting of the Maryland House Health & Governmental Operations Committee in Annapolis in support of the Maryland Fiduciary Access to Digital Assets Act (HB531). This legislation is critically important to ensure that (i) online service providers cannot seize (or hold in limbo) the digital property of a deceased account holder, causing his or her family to lose value in the estate (and incur additional expense trying to get it back), and (ii) account holders can designate someone to manage and secure their digital property on their behalf in the event of incapacity, to protect against identity theft and damage to their reputations. Anne spoke on behalf of the Maryland State Bar Association's Estate & Trust Law Section. In March she will appear before the Maryland Senate Judicial Proceedings Committee on the corresponding Senate Bill (SB429).
We encourage Maryland residents to contact their legislators in support of House Bill 531 and Senate Bill 429.

Estate Planning & Administration Group partners **Stephanie Perry** and **Alex Tanouye** offered a presentation in January to the Montgomery County Bar Estates & Trust Section summarizing the major topics presented at the 2015 Heckerling Institute, an annual gathering of estate planners, including attorneys, charitable giving professionals, accountants, certified financial planners, investment advisors, trust officers, non-profit advisors, and educators.

The Estate Planning & Administration Group welcomes back **Patrick Schoshinski** as Of Counsel. Prior to joining the firm, Mr. Schoshinski was in private practice in the metropolitan area and was an associate of the firm from 2003 – 2006. He says, "I'm pleased to re-join my colleagues at Pasternak & Fidis and work again with some of the most respected practitioners in the field." Pat concentrates his practice on structuring and implementing sophisticated estate plans for high net worth individuals and advising clients on federal and local tax matters.

Divorce & Family Law Group partner **Morriah Horani** was quoted extensively in a September 2014 featured article in *The Daily Record Maryland Family Law Update.* "ACA: What Family Lawyers Need to Know: Obamacare Expands the Options for Negotiation" takes a look at the array of new possibilities offered to divorcing parties by the Affordable Care Act that may make it easier to reach an agreement. Morriah stated, "The ACA could … change the dynamic surrounding spousal support or alimony because there is more information available about the actual costs of health insurance…. It brings more certainty to financial negotiations."

Linda Ravdin, partner in the Divorce and Family Law Group, was a faculty member for two continuing legal education programs on same-sex marriage, one for the D.C. Bar on February 19, 2015, and again the following day for the Virginia Trial Lawyers Association. Her topic for both programs was "Same-Sex Couples and Marital Contracts."

"Dumping a Trustee," a September 2014 article in *Barrons*, quoted Managing Partner **Nancy Fax** commenting on a Pennsylvania court ruling that "will make it easier to remove and replace trustees," by not requiring the beneficiary to show cause, such as negligence, to force a trustee out. Certain states that have adopted the Uniform Trust Code's no-fault trustee removal provisions permit a less burdensome procedure but there can still be significant hurdles. "If I am a beneficiary, and I am unhappy with the trustee, the first thing I am going to do is go to the trustee and say 'I'd really like you to step aside,'" advises Nancy. Failing that, those who are seeking a change usually have to go to court. As the article concludes, "The lesson: Write into your trust easy-to-execute provisions for removing trustees."

Megan A. Schaeffer, an associate with the Estate Planning & Administration Group delivered a presentation entitled "Fundamental Aspects of Estate Planning" in November 2014 for the U.S. Department of State Foreign Service Institute. Megan's talk is part of the Mid-Career Retirement Planning Series, which is designed as a retirement check-up for mid-career employees from the State Department and other U.S. government agencies who are more than 10 years from retirement eligibility.

Estate Planning & Administration Group partner, **Anne Coventry**, spoke on the subject of digital assets at the January meeting of the National Capital Gift Planning Council.

Congratulations to paralegal **Sarah Hassan** on her engagement to Michael Kazemburg. Sarah and Michael are planning a spring 2016 wedding.

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SOUTHERN MD
PERMIT No. 4507

Pasternak & Fidis, P.C.

7735 Old Georgetown Road

Suite 1100

Bethesda, Maryland

20814-6183

The New Able Account for Disabled Persons

By Al Pasternak

The tax laws have long encouraged Americans to save for college for their kids or to save for their retirement, but for families of those with disabilities, there was no tax-advantaged way for them to save for those individuals. The recently enacted Tax Increase Prevention Act of 2014 contains an important new provision which changes that.

The new law, which applies for tax years beginning January 1, 2015, permits States to create "Achieving a Better Life Experience" (ABLE) Programs. Here are some of the key features of ABLE accounts:

- ABLE accounts can be created by individuals to support themselves or by families to support their dependents.
- There is no federal taxation on funds held in an ABLE account. Assets can be accumulated, invested, grown and distributed free from federal taxes. Contributions to the accounts are made on an after-tax basis (i.e., contributions aren't deductible), but assets in the account grow tax free and are protected from being taxed so long as the funds are used to pay for qualified expenses.
- No federal tax benefits are provided for those who contribute to an ABLE account.
- Money in an ABLE account can be withdrawn tax free if the money is used for disability-related expenses. Expenses qualify as disability related if they are for the benefit of an individual with a disability and are related to the disability. They include education; housing; transportation; training; health, prevention, and wellness costs; plus assistive technology and personal support services.
- Distributions used for nonqualified expenses are subject to income tax on the portion of such distributions attributable to earnings from the account, plus a 10% penalty on that portion.
- Each disabled person is limited to one ABLE account, and total annual contributions by all individuals to any one ABLE account can be made up to the gift tax exclusion amount ($14,000 in 2014, which is adjusted annually for inflation). Aggregate contributions are also subject to the State limit for education-related Section 529 accounts (currently $350,000).
- An ABLE account can generally be rolled over only into another ABLE account for the same individual or into an ABLE account for a sibling who is also an eligible individual.
- Eligible individuals must be blind or severely disabled, and must have become so before turning 26, based on a marked and severe functional limitation or receipt of benefits under the Supplemental Security Income (SSI) or Social Security Disability Insurance (DI) programs. An individual doesn't need to receive SSI or DI to open or maintain an ABLE account, nor does the ownership of an account confer eligibility for those programs.

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