

To The Point

Family Law



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A woman with curly hair is shown in a close-up, looking thoughtfully to the side. She is wearing a striped shirt. In the background, another person is visible but out of focus. The overall mood is contemplative and serious.

Introduction

Family law is an intricate and complex legal area – often made more so because it frequently involves personal difficulties and intense emotions. Family law issues are broad, yet often intractably interrelated. This white paper will outline many of the issues that commonly arise in family law matters, including separation/divorce, property division, child-related matters, alimony and spousal support, and adoption.

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General Overview of Family Law Issues

Separation / Divorce

Preparing for a legal separation, and ultimately divorce, from a person's spouse involves much more than simply securing alternate living arrangements. Separation and divorce implicate many other issues, depending on the particular circumstances of the divorcing couple. There may be real and personal property to sell or divide. There may be retirement accounts in which both parties have an interest. The couple may have debt. If the parties have children, issues involving custody and child support will be raised. Based upon the consideration of many different factors, one spouse might be obligated to provide spousal support to the other spouse.



Another consideration is whether a person wishes to obtain an absolute divorce or a limited divorce. An absolute divorce is “permanent,” meaning that the parties are permitted to remarry (each other or other people) after being granted an absolute divorce. When a party files for absolute divorce, the Court is permitted to address all property claims of the parties. The purpose of a limited divorce is to formalize the parties’ separation and to provide for orders regarding support (spousal, child, or both) and use and possession (of the family home and/or family use personal property). Parties who have been granted a limited divorce are not permitted to remarry and the Court is not permitted to determinate property claims between them.

In order to file for divorce, a person must have “grounds.” Grounds for a limited divorce include cruelty of treatment of the complaining party or of a minor child of that party, excessively vicious conduct to the complaining party or to a minor child of that party, desertion, and separation. Grounds for an absolute divorce include adultery; desertion that has continued for 12 months without interruption, is deliberate and final, and there is no reasonable expectation of reconciliation between the parties; conviction of a felony or misdemeanor; separation that has continued for 12 months without interruption; insanity; cruelty of treatment toward the complaining party or a minor child of the complaining party if there is no reasonable expectation of reconciliation; excessively

vicious conduct toward the complaining party or a minor child if the complaining party; and, mutual consent.

To be eligible for grounds of mutual consent, the parties must have entered into a written settlement agreement signed by both parties that resolves all issues relating to alimony, property, and custody, care, access, and support of the minor children (including child support guidelines if the agreement provides for payment of child support); neither party has filed a pleading to set aside the settlement agreement prior to the divorce hearing; and, the Court must be satisfied that any terms of the agreement relating to the minor children are in the best interests of those children (if applicable).

Property Issues

It is likely that the parties to a marriage acquired various items of property during their marriage. This may include real property, personal property, retirement interests, and financial accounts. The Court



may award various forms of relief with respect to this property, and the parties are free to reach agreements with respect to the division and distribution of this property.

There is a specific three-step process that the Court must follow: (1) determine which property is marital property; (2) determine the value of all marital property; and, (3) consider the factors to determine whether a monetary award is appropriate.

The purpose of a monetary award is to accomplish an equitable division of the marital property—which does not necessarily mean an equal division. The purpose behind the monetary award is to mitigate any inequity that may result by distributing marital property in accordance with title alone. In determining whether to make a monetary award, the Court considers these factors: the monetary and non-monetary contributions of each party to the well-being of the family; the value of all property interests of each party; the economic circumstances of each party at the time the award is to be made; the circumstances that contributed to the estrangement of the parties; the duration of the marriage; the age of each party; the physical and mental condition of each party; how and when specific marital property was acquired, including the effort expended by each party in accumulating the marital property; the contribution by either party of non-marital property to the acquisition of real property held by the parties as tenants by the entirety; any award of alimony and any award with respect to family use

personal property or the family home made by the Court; and, any other factor the Court feels is necessary or appropriate to consider.

All property acquired by one or both parties during the marriage, regardless of how that property is titled, is marital property, except for property that was (1) acquired before the marriage, (2) acquired by inheritance or gift from a third party, (3) excluded by valid agreement, or (4) directly traceable to any of these sources.



Marital debt is that which is directly traceable to the acquisition of marital property. For example, a \$10,000 credit card debt incurred for family purposes (i.e., food, a vacation, recreation, etc.) is marital debt.

The Court also has the ability to award “use and possession” of real property or other property used for family purposes. An award of use and possession means that the receiving party has the exclusive right to use or reside in that property. This right can be granted with respect to the family home and/or family use personal property.

A “family home” is the property that was used as the principal residence of the parties when they were together, is owned or leased by one or both parties at the time of the court proceeding, and is being used or will be used as a principal residence by one or both of the parties and a child. “Family use personal property” is tangible personal property acquired during the marriage that is owned by one or both parties and was used primarily for family purposes. For example, automobiles, furniture, appliances, and furnishings. The Court can award use and possession of the family home and/or family use personal property to one party during the pendency of the proceeding and/or for a period up to three years after a divorce or annulment is granted. In determining whether to make an award for use and possession, the Court must consider the best interests of any child, the interests of each party in continuing to use the property or continuing to occupy the family home

or to use that property or home for the production of income, and any hardship imposed on the party whose interest is infringed upon. The Court may also order that either or both parties be responsible for paying expenses associated with the property, such as, for example, mortgage payments, insurance, or taxes.

Retirement assets may also be subject to division during divorce proceedings. The law provides for specific rules of division with regard to deferred compensation plans. The portion of retirement assets that accrues after the date of the marriage is marital property and is subject to equitable division.

Child-Related Matters

Custody & Visitation

Custody of the children encompasses the issues of legal decision-making regarding the children, as well as parenting time spent



with the children. In that vein, there are two types of custody: physical and legal. Physical custody determines with whom the child resides on a day-to-day basis. Legal custody pertains to making decisions on behalf of and relating to the child, including decisions affecting the child's health, education, and welfare.

The over-arching consideration when determining issues relating to legal decision making and parenting time with the children is the "best interest of the children." When it is the Court making decisions regarding the children, this is the standard the Court will consider. Accordingly, this is the standard considered by parties when attempting to reach resolutions regarding their children. Maryland case law explains a variety of factors that are considered in determining the best interest of the

children. Those factors include, but are not limited to: (1) the fitness of the parents; (2) the character and reputation of the parties; (3) the requests of each parent and the sincerity of those requests; (4) any agreements between the parties; (5) the willingness of the parents to share custody; (6) each parent's ability to maintain the child's relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child's best interest; (7) the age and number of children each parent has in the household; (8) the preference of the child when the child is of sufficient age and capacity to form a rational judgment; (9) the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (10) the geographic proximity of the parents' residences and opportunities for time with



each parent; (11) the ability of each parent to maintain a stable and appropriate home for the child; (12) the financial status of the parents ; (13) the demands of parental employment and opportunities for time with the child; (14) the age, health, and sex of the child; (15) the relationship established between the child and each parent; (16) the length of the separation of the parents; (17) whether there was a prior voluntary abandonment or surrender of custody of the child; (18) the potential disruption of the child's social and school life; (19) any impact on state or federal assistance; (20) the benefit a parent may receive from an award of joint physical custody and how that will enable the parent to bestow more benefit upon the child; and (21) any other consideration the Court determines is relevant to the best interest of the child.

As between the natural parents of a child, there is no presumption in favor of either the mother or the father. However, there is a presumption that it is in the best interest of a child to be in the custody of its parents, rather than a third party (for example, a grandparent). Before the Court can award custody to someone other than the natural parent(s), the Court must find that both natural parents are unfit or that extraordinary circumstances exist sufficient to rebut the presumption, and that it is in the best interest of the child for the third party to have custody.

When one party is awarded (either by Court order or agreement of the parties) custody of a child, the other party will generally

be entitled to visitation or access with the child. However, this is not automatic. If the Court determines it is in the best interests of the child, a parent may be denied the right to access with the child. There are many factors to consider in determining the access schedule that is in the best interest of the child. One such factor is the child's age. A schedule that works for a teenager (i.e., a week with each parent on an alternating basis) might be developmentally inappropriate for a one-year-old, for whom frequency of contact is important for bonding. Depending on the age of the child and the geographic proximity of the parents' residences, it might be appropriate for there to be different access schedules during the school year than over the summer. The parents may have a right to vacation time with the child. There might be a specific holiday schedule, which supersedes the regular access schedule.

Child Support



In Maryland, child support is calculated based upon the "Income Shares Model," which encompasses the general premise that the child should enjoy the same standard of



living the child would have received were the parents living together. Maryland uses Child Support Guidelines to calculate the appropriate amount of child support for a child or children. The factors included in the Guidelines are the incomes of the parties, as well as other factors discussed below. When the combined incomes of the parents is less than \$180,000 per year, the Child Support Guidelines amount is presumed to be correct. This presumption can be rebutted by evidence that application of the Guidelines would be unjust or inappropriate. When the combined incomes of the parents exceeds \$180,000 per year, the Child Support Guidelines do not strictly apply. The amount calculated in accordance with the Child Support Guidelines represents an extrapolation in child support,

and may be the appropriate amount of child support, but not necessarily. In “above guidelines” cases, the Court has discretion to award child support in accordance with the best interest of the children. The Court may consider the extrapolated child support amount, but it should also consider the needs of the children and the ability of the parents to meet those needs.

The cost of providing health insurance, which includes medical, dental, and vision insurance, for a child may be divided between the parents in proportion to their incomes. Extraordinary medical expenses, which means uninsured expenses for medical treatment in excess of \$250 in any calendar year, may be divided by the parents in proportion to their incomes.

Expenses associated with attending a special or private elementary or secondary school to meet the particular needs of the child or expenses for transportation of the child between the homes of the parents may be divided by the parents in proportion to their incomes. Work-related child care expenses include actual child care expenses incurred because of employment or job search efforts of either parent are to be divided between the parents in proportion to their incomes. While the cost of expenses associated with extracurricular activities for the children is not divided between the parents in accordance with a statute, the parents can agree to a division of these expenses. Alternatively, either party can request that the Court order a specified division of any such expenses.

Generally, child support continues until a child is emancipated—meaning, the child turns age 18 or graduates from high school,

whichever is later. However, a parent has a continuing duty to support a destitute adult child. This term is defined as a child who has no means of subsistence and is unable to be self-supporting, due to mental or physical infirmity.

It is important to note that agreements or court orders regarding child-related matters (including custody, visitation, and support) are never final. They can always be modified in the best interests of the child, upon a showing that a material change in circumstances affecting the welfare of the child has occurred.

Alimony and Spousal Support

There are several different types of alimony, which is financial support paid for the benefit of a spouse/former spouse. *Pendente lite* alimony is support that is paid during the course of litigation. Temporary or rehabilitative alimony is paid for a specified



period of time. Indefinite alimony does not have a specific conclusion date.

In order to obtain an award for *pendente lite* alimony, the party seeking alimony must prove the existence of the marriage, that a divorce case is pending, that there is a need for alimony, and that the other party has the ability to pay. Obtaining an award for alimony other than *pendente lite* alimony is far more complex and dependent upon many other factors. Fixed term or rehabilitative alimony is, in essence, support designed to enable the recipient to become self-supporting. It may include costs required for the party to obtain training or education necessary to become self-supporting. Indefinite alimony may be awarded when it would not be reasonable to expect the recipient spouse to ever achieve self-support or when fixed term alimony would result in substantial inequity. If, even after the recipient spouse makes as much progress toward self-support as can be expected, the respective standards of living between the parties would be unconscionably disparate, permanent alimony may be awarded.

The Court must consider the following factors in determining whether to make an award of alimony, as well as the duration and amount of that award: (1) the ability of the party to be wholly or partly self-supporting; (2) the time necessary for that party to gain sufficient education or training to find suitable employment; (3) the standard of living that the parties established during their marriage; (4) the

duration of the marriage; (5) the monetary and non-monetary contributions of each party to the well-being of the family; (6) the circumstances that contributed to the estrangement of the parties; (7) the age of each party; (8) the physical and mental condition of each party; (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony; (10) the financial needs and resources of each party, including income, assets, the property distribution awarded and whether there was a monetary award, and the financial obligations of the parties; (11) any agreement between the parties; and (12) any other factor the Court deems relevant.

Unless the parties reach an agreement regarding alimony, including an agreement that the terms with respect to alimony will be fixed and non-modifiable, either party may petition the Court to have an alimony term modified – the amount, the duration of the award, or both. The burden is on the party seeking the modification to prove that there has been a material change in circumstances warranting the modification requested.

Often, spouses are covered by the same insurance policy available to one of them through his or her employment. The court has the ability, subject to federal law and under circumstances set forth by federal law, to require continuation or reinstatement of medical insurance benefits for one party and may allocate the expenses for such coverage between the parties.

Adoptions



Adoption is the creation of a parent-child relationship by a Court order, which also ends the parental rights of the child's natural parents. There are several different types of adoptions, including public agency adoptions, private agency adoptions, and independent adoptions. To initiate an adoption, the prospective parent seeking the adoption files a petition with the Court. The natural parents, if they are known and/or if they can be located, are given the opportunity to respond to the petition. They can either consent or object to the adoption. If one or both of the natural parents does not consent to the adoption, the adoption may still be able to proceed over a natural parent's objection. The prospective parent, or petitioner, will have to demonstrate, at a contested hearing, that he or she has had custody of the child for more than 180 days, has significant emotional ties with the child, in addition to one of the following: (1) the

objecting parent has not had contact with the child while the petitioner had custody; (2) has not contributed to the child's support; (3) has abused the child; (4) has been convicted of abusing any offspring; (5) has been convicted of a crime of violence against a minor offspring, the child, or another parent of the child; or (6) has lost parental rights to a sibling of the child.

Requesting Relief in Family Law Cases

Equally as important as determining the issues involved in a family law matter is determining the relief (or outcome) the client desires. If a case proceeds to litigation, this may mean considering what requests a client might make of the Court, i.e., what does the client want the Court to order? If a case is in the settlement negotiation phase, this may mean considering what a client wants to request of the opposing party (either directly or through counsel).

The Court can make an extremely wide array of Orders with respect to each and every family law issue. Parties can agree to an even broader array of issues than could be addressed by the Court. For example, when children have emancipated (meaning that they have reached age 18 or have graduated from high school—whichever occurs later) the Court loses jurisdiction to award relief with respect to those children. Emancipated children are not subject to Court-ordered custody or access schedules. Similarly, a Court cannot order one parent (or both) to pay for an emancipated child's college



tuition. However, the parties can reach an agreement with respect to this issue. This is just one example of an issue that can be addressed by an agreement between the parties but cannot be addressed by a Court's ruling.

The Process

In general, family law matters follow the following trajectory: (1) determining the issues; (2) determining the relief desired; (3) settlement negotiations; (4) court filings and discovery; (5) court preparation; and, (6) court appearances. However, settlement negotiations may occur throughout the entirety of the process. Some family law matters do not involve Court filings at all. Initiation of litigation does not foreclose the possibility of reaching a partial or comprehensive resolution of a family law matter.

Alternative Dispute Resolution

Parties may engage in alternative dispute resolution in lieu of, as a precursor to, or during litigation. Alternative Dispute Resolution, in addition to Settlement Conferences as described below, can take various forms.

Mediation

A mediator is a third-party neutral who can sit down with the parties, or the parties together with their attorneys, to attempt to reach a resolution of the family law matter. The mediator may be helpful in providing a neutral voice in disagreements between the parties, evaluating the reasonableness of the position of each party, and moderating party expectations. If a case involves child custody and visitation matters, and a proceeding has been initiated in Court, the Court will order mediation, as long as mediation is

appropriate. This means that if there is a history of abuse of a party of a child, the Court will not order mediation.

Four Way Meetings

Sometimes, it is helpful for the parties and their attorneys to meet face-to-face, in an attempt to reach a settlement. This is similar to mediation, except that there is no third-party neutral present.

Collaborative Law

Collaborative law is a process through which the parties agree to avoid going to court. Each party hires an attorney who has been trained in collaborative law. Other professionals become involved, including, as applicable, a financial planner, a child development expert, or divorce coaches. The parties also agree to exchange information and to work toward the goal of reaching

a comprehensive settlement agreement. If the collaborative process is unsuccessful, meaning the parties are unable to reach a complete resolution of all issues raised, the parties may have to proceed with the litigation process, and the attorneys who represented the parties during the collaborative process are ethically prohibited from representing them in litigation.

Litigation

“Litigation” means simply taking legal action—i.e., filing a lawsuit. In family cases, this may mean, for example, a Complaint for Absolute Divorce, a Complaint for Child Support, a Complaint for Modification of Custody, or a combination thereof. When a case is filed with the Court, it may proceed through the litigation process, which involves various “decision makers.” At certain points throughout the case,





the Court may act—i.e., a Judge will make a ruling or a Magistrate may make a recommendation. Judges and Magistrates are the decision makers in the litigation process. A Magistrate is an officer of the Court and may hear a variety of family law matters. However, a Magistrate does not have judicial powers. Therefore, a Magistrate does not issue “orders.” Rather, a Magistrate issues a Report and Recommendations, setting forth certain findings and conclusions, which culminate in a recommended order. The parties then have the opportunity to “take exceptions” to the Magistrate’s Report and Recommendations. This is a sort of appeal process. If a party takes exceptions, the case will be reviewed by a Judge, who might accept the Magistrate’s recommendations over the party’s objections, hear the case in its entirety or in part “de novo,” meaning anew, or the Judge might make his or her own ruling based upon the record (evidence

and testimony) that was presented to the Magistrate.

The first step in initiating litigation is filing a Complaint with the Court. The Complaint will set forth the relief requested by the party – for example, a judgment of divorce, custody of minor children of the parties, child support, division of property, alimony, reimbursement for attorney’s fees. The Complaint will also set forth the facts supporting the party’s claims for relief – i.e., the facts that demonstrate that the party is entitled to the relief requested. But, in accordance with the Maryland Rules, the Complaint must be concise. The Complaint should include the necessary facts, but it should not be so detailed as to reveal the filing party’s entire hand of cards. After the Complaint is filed, together with any other required documents (such as, for example, a financial statement setting forth information

about the party's income, expenses, assets, and liabilities), the Complaint, with any other documents filed concurrently therewith, as well as the Writ of Summons issued by the Court, will need to be served on the opposing party. Service can be accomplished by hand delivery (by a non-party who is over eighteen years old) or by certified mail, return receipt requested. If the opposing party is represented by an attorney, that attorney may agree to accept service of the Complaint and related paperwork on behalf of his or her client by way of first class mail or even electronic mail. Once service is achieved, the opposing party will be required to file an Answer –a pleading responding to the allegations set forth in the Complaint. The opposing party may also choose to file a Counter-Complaint, in which he or she sets forth facts from his or her perspective, as well as requests for relief.

Discovery is the method of gathering information throughout the litigation process. There are many different forms of discovery. Interrogatories are written questions which the receiving party must answer in writing, under oath. Each party is limited to asking thirty (30) Interrogatories. Request for Production of Documents or Other Tangible Items are written requests by which one party asks the other to turn over tangible objects, usually documents, such as wage statements, tax returns, bank statements, emails, etc. A deposition is when one party obtains testimony under oath before a court reporter, outside of the court room setting. The court reporter transcribes what is said and prepares a written transcript of the deposition. Request for Admissions consist of a list of declarative statements. The responding party is required to admit each statement, deny each statement, or



explain why he or she is unable to either admit or deny the statement.

Just as discovery requests can be issued to the opposing party, certain forms can be used to gather information from non-parties. These include depositions or subpoenas. For example, through a subpoena and deposition notice, a party can question the opposing party's alleged paramour. Or, a party can obtain documents regarding the opposing party's income and retirement assets directly from the party's employer.

The litigation process also involves various court appearances. In most jurisdictions, the Court holds a Scheduling Conference, at which future Court dates will be scheduled. The Court will also issue a Scheduling Order, which sets forth various deadlines for the remainder of the case, including, for example, the deadline by which discovery must be completed and the deadline by which all motions must be filed. The Scheduling Conference may take place before a Magistrate, a Standing Magistrate,

or a Judge. Most jurisdictions also hold Settlement Conferences, at which the parties and their attorneys will meet with a Judge, a Magistrate, or a retired Judge, to attempt to reach a resolution in the case. Typically, the judicial officer conducting the conference will meet with the attorneys; but, on some occasions, the officer might meet with one party and his or her attorney at a time, or with all four people together. If a settlement agreement is reached, the agreement may be placed on the Court record before the settlement officer. Alternatively, the parties and counsel may draft and sign a written agreement memorializing the terms of the settlement. If no settlement is reached, the matter will proceed to trial. In some cases, the matter will proceed straight from Scheduling to a Settlement Conference. In other cases, there will be a *Pendente Lite* Hearing in between the Scheduling Conference and Settlement Conference (or Merits Hearing if there is no Settlement Conference). At a *Pendente Lite* hearing, the decision maker will hear evidence (in the form of oral testimony and/or reach a ruling on a temporary basis and will set forth an Order which will remain in place during the course of the litigation. The hearing and resulting order can address matters such as custody, child support, alimony, use and possession of a family home and/or family use personal property, and can provide for interim awards of attorney's fees. The Court will not address issues surrounding property division at the *pendente lite* hearing (for example, the Court will not order that the parties divide a retirement account titled





in the name of one of the parties). But, the Court can award one party use and possession of the family home and/or family use personal property. The purpose of the *pendente lite* hearing is to provide some predictability and stability for the parties, in the form of a Court Order, during the pendency of the litigation, which can be a fairly lengthy process.

Cases that have not been settled or resolved will proceed to trial for a hearing on the merits, at which the Court will accept testimony and other evidence, as well as argument, relating to all open issues in the case. The decision maker will then issue an oral and/or written decision with respect to each pending issue. This constitutes the “final” order in the case; however, issues pertaining to the children (such as custody and child support) are always modifiable. An award of alimony

is also modifiable. This means that either party can petition the Court to change the order, if that party alleges that a material change in circumstances has occurred. The petition filed by a party starts the litigation process over again. Following the entry of an order, either party also has the ability to file an appeal, alleging error committed by the Court. If the higher court decides to consider the appeal, the order may be affirmed, reversed, remanded, or some combination thereof.

Attorney’s Fees

In general, each party is responsible for his or her own attorney’s fees. The parties are permitted to agree to an alternative arrangement. In certain circumstances, the parties are also permitted to petition the Court for an order that one party be responsible for all or part of the other party’s

attorney's fees. By various statutes, Maryland law provides that a Court may award attorney's fees in cases involving alimony, child support, custody, visitation, paternity, limited or absolute divorce, marital property, and/or a monetary award. In making such an award, the Court is required to consider certain factors, depending upon the statute pursuant to which an award of fees is sought. In general, the Court will consider the financial needs and status of each party, as well as the justifiability of the position(s) taken by each party.

Other Third Party Neutrals

Some parties may agree to use, or the Court may appoint, a person called a "Parenting Coordinator." A Parenting Coordinator is a mental health professional who has training in dispute resolution. The Coordinator meets and/or communicates with the parties to help them work through disputes concerning their child or children.

Custody Evaluations

The Court may order, or the parties may agree to conduct, a Custody Evaluation. This process can provide a wide array of factual information to the decision maker in a family case—the judge or magistrate. A Court-ordered Custody Evaluation is typically conducted by a Court employee. A private Custody Evaluation is conducted by a third party—a mental health professional who meets specific educational and licensure requirements. The Evaluator may visit the homes of the parties, interview the parties, observe the child or children in the presence and/or homes of each parent, and conduct interviews of collateral individuals, including, for example, teachers, extended family members, or neighbors. The Evaluator will prepare a report for use by the Court, which may include a recommendation for custody.



Enforcing Orders / Agreements

Unfortunately, it is all too common that a party fails to comply with a Court Order or an Agreement between the parties. When that occurs, the person might want to seek the involvement of the Court in enforcing the terms of the Order or Agreement. There are several different avenues available to the party seeking enforcement. If a person fails to comply with a Court Order, the party seeking enforcement can file a petition with the Court, asking that the other party be held in contempt. Typically, this will be civil contempt, which is intended to force compliance with the Order. There will be a penalty for contempt, and there must be a manner in which the party may “purge” that contempt—by performing some condition that he/she has the ability to perform. If a person has failed to pay a sum of money as required by a Court Order, that sum may be reduced to judgment and the other party can take action to collect that judgment. This might include seizing or garnishing the person’s property or garnishing the person’s wages, for example. If a person has failed to comply with an Agreement which has sufficiently clear and definite terms, the other party may file a lawsuit for breach of contract. Often times, a person will have both a Court Order and an Agreement. For example, the parties might have entered into a Marital Settlement Agreement, which was incorporated but not merged into a Judgment of Absolute Divorce (which is a Court Order). The parties would then be permitted to use both contempt and breach

of contract actions to seek enforcement. Alternatively, if the parties’ Agreement is merged into a Court Order, the parties lose the ability to enforce the terms of the Agreement by way of breach of contract actions. Whereas, if the Agreement is incorporated without being merged, the parties are able to use both/either means of enforcement.

Protective Orders



Domestic violence is a common theme across many family cases. When a person qualifies under Maryland’s statute, that person may be eligible to file for and obtain a Protective Order. A person who is eligible for relief under the statute can file a Petition for a Protective Order, as can a person filing on behalf of a minor child or disabled person who is eligible for relief. The person filing for relief is referred to as the “Petitioner.” Generally, a person who



is eligible for relief is someone who has a blood relationship, spousal relationship, former sexual relationship, cohabitation relationship, or has a child in common with the alleged abuser. The Petitioner must be able to establish that abuse has occurred. “Abuse” includes an act that causes serious bodily harm, an act that places the person in fear of imminent serious bodily harm, assault in any degree, rape or a sexual offense as defined by the criminal statute, or stalking as defined by the criminal statute.

Typically, when a person files a Petition, the initial hearing will proceed on an *ex parte*, emergency basis, meaning the alleged abuser (or, the “Respondent”) does not have to be provided notice of the initial hearing. If the Petitioner proves that abuse has occurred, the Court will grant a Temporary

Protective Order, which will be effective for seven days. The Respondent will need to be served with the Temporary Protective Order and Petition. Usually, law enforcement is tasked with service. If there are issues with service, the Temporary Protective Order may be extended. Once service is achieved, the Protective Order hearing will proceed. This may be a contested hearing if the Respondent shows up. Other times, the Respondent might not show up for the hearing, or the Respondent might consent to the entry of a Protective Order. Again, at this hearing, it is the Petitioner’s burden to prove that abuse has occurred. Protective Orders are in effect for up to a year, and may be able to be extended under certain circumstances. There is a variety of relief that can be awarded as part of a Protective Order,

including, but not limited to, orders that the Respondent not contact the Petitioner, that the Respondent vacate the residence of the parties, that the Petitioner have temporary custody of any children in common, that the Respondent pay temporary family maintenance, and that the Respondent undergo counseling.

Representing Children

By request of either party (which may or may not be opposed by the other party), or by consent of the parties, the Court may appoint an attorney to represent a minor child. There are several different types of attorneys for children, and each type has a different role. A Best Interest Attorney (BIA) provides independent legal representation for a child for the purpose of protecting the best interests of the child. The BIA is not bound by the desires or goals of the child.

In fact, the child's wishes may not coincide with what the BIA believes is in the best interest of that child. A Child Advocate Attorney provides legal representation for a child, and owes that client the same duties of confidentiality, competence, and loyalty as an attorney owes any adult client. A Child Advocate Attorney provides the child with a voice in the Court and is able to advocate for the child's desires. However, if the Child Advocate Attorney determines that his or her client does not exercise considered judgment, it may be appropriate for the Child Advocate Attorney to withdraw from the case, in favor of a BIA. A Child Privilege Attorney can be appointed to determine whether to waive or to assert any statutory privilege possessed by a minor child. For example, a minor child may be treated by a therapist, with whom that child enjoys a statutorily provided



privilege of confidentiality. A Child Privilege Attorney may determine that the child's privilege should be waived, so that the child's therapist can participate in a custody matter. A child's treating provider may possess valuable information elucidating to the Court regarding the best interest of that child. However, if waiving privilege would cause a set back to the child's treatment, the Privilege Attorney may determine that the benefits of obtaining relevant information are outweighed by harm to the child's progression, thus privilege should be asserted.

Same-Sex Relationships

Same-sex marriage has been legal in the State of Maryland since January 1, 2013. All the same issues that arise in heterosexual relationships can also arise in same-sex relationships, depending on the specific circumstances of the parties; for example,

whether the couple has children and whether both parties are recognized as the parents of those children. Under Maryland law, any adult is permitted to petition to adopt a child, and Maryland law recognizes same-sex partners as co-parents to a child, if both were petitioners to the adoption. Maryland law also recognizes "de facto" parents, which may come up in both heterosexual and homosexual relationships. A person may be considered a de facto parent when a parent permits and facilitates the de facto parent's establishment of a parent-like relationship with the child, the de facto parent resided with the child, the de facto parent was significantly involved in ensuring the child's care, education, development, and financial needs were met, and the relationship existed for a period of time sufficient to allow for the creation of a bonded, dependent, parental-in-nature relationship. A de facto parent, who is neither a biological nor adoptive parent to the child, may be able to





seek custody of or visitation with a child. Property rights are determined differently when the parties are not married.

Other Professional Services

Family law is a broad and encompassing. Often, other areas of law and other professional services become involved in family law matters. For example, it may be appropriate for the minor children to obtain therapy services. The family might benefit from family reunification therapy. A party might need tax advice from a tax professional. A party might also want to update his or her estate plan when separating from a spouse. If the firm is unable to

provide a required service to our clients, we take pride in referring our clients to seasoned professionals in these, and many other, disciplines, to ensure that all of our clients' needs are met.

Conclusion

As stated, family law matters can be emotional, stressful, and overwhelming. Relationships between parents, domestic partners, spouses, and parents and children can be extremely complicated. So too are the mechanisms for formalizing the end or defining the terms of those relationships. By providing support, composure, and advocacy along the way, much of the anxiety and pressure associated with family law matters can be significantly alleviated.

If you have questions about your family law needs, please feel free to call us at 410-995-5800 or visit www.darslaw.com.



About Our Firm

Davis, Agnor, Rapaport & Skalny, LLC is based in Howard County, Maryland and serves the greater Baltimore-Washington Corridor. Our attorneys provide a broad range of services, legal advice and solutions for businesses, organizations, families, and individuals.

Our team members include experienced attorneys and support staff who make client service the top priority. With years of experience, we offer a unique combination of personal attention and expertise. We take the time to get an in-depth understanding of your needs, explain everything to you in language that's easy to understand, and work hard to put together the best solution for you or your business. Practice Areas Include: Family Law; Civil Litigation; Business & Transactional (including Mergers & Acquisitions); Real Estate; Estate Planning & Elder Law; Probate & Trust Administration; Tax Planning & Litigation; Guardianships, Will Contests & Fiduciary Litigation; Health Care; Labor & Employment; Banking & Financial Institutions; Intellectual Property & Technology; Non-Profit Organizations; and Community Association.

More information is available at www.darslaw.com. And, we invite you to connect with us on social media.



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