

## RETIREMENT PLAN BENEFICIARY DESIGNATION TRUMPS WAIVER FAVORING EX AND AGAINST HEIR: KENNEDY V. DUPONT

This winter, the United States Supreme Court issued a significant decision in the estate planning arena. William Kennedy, a retired worker from DuPont, divorced his wife more than 30 years ago. In the divorce decree, Mrs. Kennedy waived her rights to his retirement plan at DuPont. Because no portion of the retirement plan was assigned to Mrs. Kennedy, the parties did not file a qualified domestic relations order (QDRO). A QDRO is typically filed when a retirement plan is divided.

But, Mr. Kennedy failed to file a change of beneficiary designation form changing the beneficiary to his daughter on the account valued at more than \$400,000. In addition, he did not designate a contingent beneficiary. He had designated his daughter on other DuPont retirement accounts. The high court ruled that even though the ex-wife waived all claims to the retirement plan in the divorce decree, in accordance with federal law and regulations, DuPont was required to pay out the \$400,000 account to the ex-wife. To add insult to injury, Mrs. Kennedy

was deceased, but because no contingent beneficiary was named, the account was devised to her estate.



This case illustrates the importance of preparing and reviewing your estate plan from time to time. Part of any estate plan review includes a review of how assets are titled and how beneficiaries are designated. Retirement assets, life insurance, annuities all require primary and contingent beneficiary designations.

The case also illustrates the importance of reviewing your estate plan periodically; generally

an estate plan should be reviewed every 5-7 years. Circumstances change - children grow up and are ready to take on more significant roles in aging elder's lives, or become your successor trustees and/or personal representatives. Some children continue to need special assistance and/or you may need to prepare for other siblings to help care for their brothers and sisters. Guardians identified when the children were young may no longer apply or the relationships between the persons trusted for the care of children or assets change, and those individuals have moved on. Some estate assets still identify former spouses. A new marriage raises a host of issues and renders an estate plan obsolete.

Please take the time to review your estate plan so that your intentions are clearly identified.

## THE PEOPLE'S COURT: WHEN TO FILE IN SMALL CLAIMS COURT



Do you have a dispute valued at \$3,000 or less? If so, filing suit against your disputant in small claims court could prove a viable means to resolve the claim. In Michigan a business or individual can file a claim up to \$3,000 in the Small Claims Division of the District Court of the city or county where (1)

the dispute took place or (2) the person or business being sued is located. Small claims court is the People's Court- an informal process, without the assistance of attorneys. A minimal investment in both money and time could lead you on your way to obtaining a judgment and/or resolving a claim.

## MAKE YOUR DECISIONS WISELY – DIVORCE JUDGMENTS ARE FINAL!

The decision to file for divorce is difficult to make as it is fraught with concerns both of an emotional and financial nature.

Often parties attempt to mitigate the difficulty of the situation in various ways. Some choose to “get it over with” quickly; others by making decisions that alleviate their guilt; or, especially in the current economic times, by completing the divorce as inexpensively as possible.

But there is a fundamental tenet of all divorces that must be remembered: divorce judgments are FINAL. It is a well-settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action. In the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which the party was engaged, a divorce judgment will not be overturned.

Thus, under typical circumstances, once the divorce judgment is entered the parties are bound to it forever. Given that reality, it is essential that parties contemplating divorce consider the issue on a long-term basis and make deliberate and educated decisions, even if the process takes a bit longer or requires a greater financial commitment than desired.

### MICHIGAN ADOPTS NEW MEDICAL MARIJUANA PROGRAM



In April 2009, Michigan joins several other states in allowing small amounts of marijuana to be possessed and grown for medical purposes. Michigan law is very specific about who

is qualified to possess and grow marijuana. The new law imposes strict requirements upon potential growers

and users to ensure compliance with the standards set forth in the statute.

If you or a loved one suffers from a serious debilitating medical condition which can be endured more comfortably by the use of marijuana, you may qualify for a registration card to allow you to possess or grow marijuana. Please contact us if you have any questions concerning your rights.

## EXPUNGING OLD CONVICTIONS - FROM MISSTEPS TO REDEMPTION

You may know someone who by youthful indiscretion was convicted of a crime but is now redeemed. Criminal convictions must be reported on job and graduate school applications and can prevent one from obtaining a professional license. If you know of someone with a misdemeanor or felony conviction, they may be eligible to have that conviction set aside or expunged.

Michigan law provides that a person may seek expungement of certain convictions after five years have passed from the date of sentencing.

Several factors must be considered first in evaluating whether the individual is eligible under Michigan law. Once it is determined that they are eligible, an application is prepared in order to seek the Court's approval. Such items as letters of support, evaluations, and other materials help the Court in its decision whether to expunge the conviction.

If you know someone and believe that they may be eligible or deserve to have a conviction expunged, contact this office to evaluate the case.

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