

page 2
Valuation date is critical in
property division

Woman who got \$2M in
divorce still gets support

page 3
Arbitration agreement
enforceable against spouse

page 4
Wife's claims from first
divorce can't be revived after
failed reconciliation

Family Law
winter 2018

Legal Matters®

Can a court make you maintain life insurance for your ex-spouse?

In many divorces, one spouse is ordered to make monthly payments for “alimony” or “maintenance” to the other spouse to help that spouse support him/herself. Usually the spouse receiving the payments is entitled to keep receiving them unless he or she remarries or starts “cohabiting” or living with someone else as a partner.

But what if the spouse who’s paying the support passes away sooner than expected, leaving the other spouse without any means of support?

In some states, a judge can order one spouse to purchase and maintain a life insurance policy for the benefit of the other spouse to protect against that. This means the spouse pays an insurance company a certain amount of money each month (a “premium”) in exchange for the insurance company’s promise to pay the ex a certain sum (a “death benefit”) if he or she dies.

In many states, this is a pretty new development. For example, Virginia just passed a law giving divorce courts the power to order a support-paying spouse to keep a life insurance policy for the benefit of the recipient spouse. Previously, Virginia only allowed courts to order



© nito103

that such a policy be maintained if it was being used to support the children. Still, the new law has its limits. For example, it doesn't allow a judge to order a paying spouse to go out and buy a brand-new policy for his or her soon-to-be ex. The court can only order that an existing policy continue after the divorce, preventing the paying spouse from changing the beneficiary.

continued on page 3

Arnold & Smith
ATTORNEYS AT LAW

The Historic John Price Carr House • 200 North McDowell Street • Charlotte, North Carolina 28204
(704) 370-2828 • www.CharlotteDivorceLawyerBlog.com

Valuation date is critical in property division

Sometimes a division of property in divorce is quite simple. The value of assets is very straightforward and splitting them is easy. But some assets can be much tougher to value and the issue can become quite contentious. This is particularly true when dealing with spouses' interests in a business. That's when the importance of the valuation date comes into play, as a recent Florida case indicates

In that case, a couple with two children was divorcing. The husband had ownership interests in three companies that operated a number of restaurants across the state. At one point during the proceeding, a trial judge assessed the value of the couple's marital estate as of the date the divorce petition was filed. But when the court issued its judgment, it used a later date to value the couples' business interests. This difference mattered because the business earned significant profits between the two dates.

The husband argued that the wife shouldn't be entitled to share in these "post-valuation" profits.

An appeals court agreed and reversed the trial court, holding that these profits shouldn't be divided between the husband and wife.

A case in Minnesota, however, had slightly different facts and a slightly different result. The husband in that case ran a successful gelato company. In 2008, he and a business partner bought a majority interest in the company and set up a limited liability company to hold his interest. He transferred 20 percent of his interest to trusts created for his children, with the rest held in his own name.

Over the next few years, the value of his share in the gelato company grew significantly. Meanwhile, a parent company was established and the husband held an interest in that company too. Soon the members of the parent company, including the husband, sold all of the parent company's assets, including the gelato company, to Unilever, a big multinational corporation.

The husband filed for divorce in 2014, around the time the Unilever deal closed. The LLC that the husband set up received about \$70 million up front plus a right to a percentage of future "earn out" payments from Unilever based on future sales.

During the divorce, the wife demanded a cut of the earn-out payments as part of the property division. A trial judge, using the date of the closing as the valuation date, said "that only the up-front payment could be divided. Any future "earn-out" payments were the husband's non-marital property, according to the court.

But an appeals court reversed the decision. According to that court, the earn-out payments were built into the price of the deal and should have been considered as part of the value as of the purchase date. Now the husband will have to split these payments with his ex-wife.

All of these types of issues are very complicated, and a divorce court in one state won't necessarily treat them the same as a divorce court in another. So if you have complicated property arrangements, such as interests in businesses that are structured in unconventional ways, it's important to discuss all your options with a family law attorney.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Woman who got \$2M in divorce still gets support



© Buurserstraat38

For anyone who thinks alimony and support is just for those spouses who otherwise might not be able to support themselves, a recent Virginia decision says otherwise.

In that case, a woman whose husband was the primary breadwinner during their 27-year marriage got half of their \$4.5 million marital estate in the divorce. This means she was awarded more than \$2 million for her share.

Considering the modest lifestyle that the comparatively wealthy couple had maintained, a lot of people would say her share of the estate would have generated plenty of income for her to live on.

But over the husband's objection, the divorce judge

also awarded the wife \$12,000 a month in spousal support. The husband appealed, but the Virginia Court of Appeals upheld the award.

The court reasoned that the wife had given up her career to raise their child and that her sacrifices in living a frugal lifestyle had enabled the couple's wealth to grow. The husband was still working in his lucrative career as a financial planner, which would enable his assets to continue to grow while, at some point, the wife would begin dissipating her assets to support herself. The court believed it wouldn't be fair to force the wife to live entirely off her assets while the husband's continued to accumulate.

Laws around maintenance and support are, of course, complicated and can differ from state to state. Talk to an attorney to learn more about how the law might handle your situation.

Can a court make you maintain life insurance for your ex?

continued from page 1

Other states have similar laws. In Minnesota, a court apparently has the power to order that a life insurance policy actually be purchased in certain circumstances. There's no specific statute in place that states this, but courts have ordered spouses to do this without higher courts overturning the orders on appeal.

Regardless of where you live, however, you shouldn't expect a judge to order your ex to purchase or maintain a life insurance policy for your benefit at the drop of a hat. If it's allowed, the judge will take into account things like how old or healthy the paying spouse is. That's because insurance companies don't like to insure older, sicker people given the high likelihood they'll be paying a big death benefit before collecting much in premium payments.

Courts will also consider the age and health of the spouse who supposedly needs support. If that person is fairly young and healthy, a court is less likely to enter such an order because that spouse is probably capable of working and contributing to his or her own support. If a judge is considering ordering a life insurance policy as backup for alimony payments, the judge will

probably take into account the number of years for which alimony has been ordered. It wouldn't be fair to make someone purchase a policy for a longer term than the alimony term. Like anything else, it all comes down to fairness.

It's also worth mentioning that if you live in a state that does not allow a court to require someone to buy a new policy or maintain an existing policy for the ex's benefit, you might want to check your existing life insurance policies and, if you have someone else in mind who you'd rather receive the proceeds if you pass away, change your beneficiary designations. But it's also a good idea to first talk to a family attorney to find out more about the laws where you live, since these are such complex issues.



© nito103

Arbitration agreement enforceable against spouse

If you've ever signed up for a credit card, a gym membership, cell phone service or any other number of services, you've probably signed an arbitration agreement without even realizing it. These are provisions buried deep within consumer contracts, loans and even employment agreements under which by signing the contract you're agreeing not to take the company to court over any disagreement that may arise. Instead, you agree to have your case decided by an "arbitrator" — a supposedly neutral third party who's chosen and paid by the company. This means you're giving up important rights, such as the right to have a jury hear your case, the right to have the other side disclose evidence that could help you win and the right to appeal an unfair decision.

It can be an unpleasant surprise to get into a legal dispute and find out you've waived the right to go to court. But it can be even more unpleasant to find out that someone else's waiver applies to you too.

That's what happened recently in Arizona. Four days after a couple's wedding, the wife signed an auto lease that contained an arbitration agreement. At some point,

the husband started receiving automated robo-calls from the leasing company. He asked them to stop, but they continued calling, which he claimed violated federal telecommunications laws.

The leasing company asked the court to dismiss the claim, citing the arbitration agreement.

The husband argued that the agreement didn't apply to him since it was his wife's lease.

But a federal judge disagreed, ruling that when the husband married his wife, he entered a "community property" estate, meaning everything that was hers would also be his from that point on. This included the lease, said the judge.

That means that when the wife signed the lease, she was binding the "marital community" of both her and her husband to its terms.

If you're curious about what other rights and obligations you may unknowingly share with your spouse, or whether you live in a state that shares Arizona's notions of "community property," talk to a family lawyer where you live.



The Historic John Price Carr House
200 North McDowell Street
Charlotte, North Carolina 28204
(704) 370-2828
www.CharlotteDivorceLawyerBlog.com

Wife's claims from first divorce can't be revived after failed reconciliation

When a couple takes the dramatic step of divorcing, they're generally doing so for good reason. That's why most couples who get divorced stay divorced. Still, some couples may decide that the divorce was a mistake and give marriage a second chance. Sometimes it works out, and sometimes it doesn't. But as a recent case from North Carolina indicates, the award that a spouse received or was likely to receive the first time around will not dictate the award the second time around.

The couple in the case, Beverly and Peter Farquhar, divorced in 2004 after 10 years of marriage. A year later they decided to remarry. At the time, they still had pending claims from their divorce and they voluntarily agreed to dismiss these claims.

However, their second marriage ultimately didn't work out any better than the first one, and after 10 years of remarriage they separated again.

Beverly then went to court demanding to reinstate her claims from the first divorce, seeking a property division, alimony award and attorney fee award based on the couple's situation a decade earlier.

But a divorce judge said the claims couldn't go forward because they hadn't been filed within a year of the couple's agreement to dismiss them (state law requires the re-filing of such claims within a year). The judge said it doesn't matter that the couple had remarried before that one-year period had elapsed, because the law's the law and the clock doesn't stop.

A court of appeals agreed, stating that it would be unfair to allow a spouse to file alimony and property division claims based on a first marriage, voluntarily dismiss them when reconciling, but still hold onto them as a "sword" to use in a potential second divorce.

