

Follow us on social media!



facebook.com/MVLSProBono/



Maryland Volunteer Lawyers Service



@MVLSProBono

Visit www.mvlslaw.org/events for more info on upcoming training and clinics!

Of Love & Regret: Family Law Hot Topics



MARYLAND VOLUNTEER LAWYERS SERVICE

First Presenter – Moges Abebe

Navigate Law Firm LC

www.navigatelawfirm.com

mabebe@navigatelawfirm.com

240-203-8023

HOW THE NEW
FEDERAL TAX LAW
AFFECTS YOUR
FAMILY LAW
CASES

TAX CUTS & JOBS ACT

[NB: Not the actual name of the law but a more memorable way to refer to it.]

Enacted 12-22-2017 the TCJA eliminates the alimony deduction that has been in the Federal Tax Code since 1942 (26 U.S. Code 215, Public Law No: 115-97).

Prior to TCJA alimony was deductible from payor's income for federal tax purposes & includable in the income of the payee.

TCJA eliminates alimony deduction for alimony payments under agreements entered into after December 31, 2018 & for divorce decrees requiring payment of alimony "executed" after December 31, 2018.

As of effective date ***payors of alimony cannot deduct*** alimony payments and ***payees will not be federally taxed*** on the alimony they receive ***unless you have an agreement or divorce decree executed on or before 12-31-2018 requiring alimony payments.***

26 U.S. Code 71(b)(2)

DIVORCE OR SEPARATION INSTRUMENT.—For purposes of this paragraph, the term ‘divorce or separation instrument’ means—

“(i) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

“(ii) a written separation agreement, or

“(iii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.”

26 U.S. Code 71(c)(1) & (c)(2)

(c) Effective Date. The amendments made by this section shall apply to (1) any divorce or separation instrument (as defined in [section 71\(b\)\(2\)](#) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) ***executed after December 31, 2018***, and

(2) any divorce or separation instrument (as so defined) ***executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.***

Impact of TCJA & Tips: Part I

Putative alimony payors will become less willing to pay alimony therefore there will be more trials on alimony. Putative alimony payees will have even more need for counsel, including pro bono counsel, to try alimony cases.

Tip #1: ***Form relationship with CPAs / tax lawyers*** who can consult with you on various tax issues & also those who can qualify as experts at trial & those who are collaboratively-trained financial neutrals.

Tip #2: In cases where alimony is a live issue & parties are semi-cordial explore ***Collaborative Process option*** [MD Rule 17-501 et seq.] because in that process parties can retain a joint neutral financial to examine finances and help devise a plan to cooperatively manage financial / tax repercussions of dissolution of marriage in the interests of both parties.

Judges can take judicial notice under Rule 5-201 of change in federal tax law, however, they'll need expert testimony if change in tax law will be the basis of an argument about ability to pay alimony.

Impact of TCJA: Part II

Md Code, F.L. § 12-204(a)(2)(ii): *“If the court awards alimony or maintenance, the amount of alimony or maintenance awarded shall be **considered actual income for the recipient of the alimony** or maintenance and shall be **subtracted from the income of the payor of the alimony** or maintenance under § 12-201(c)(2) of this subtitle before the court determines the amount of a child support award.”*

There is a pending bill in legislature to update 12-204 to track TCJA.

Note: child support award would be slightly higher for primary custodial parents if alimony was subtracted from payor’s income but not added to recipient’s income in guidelines calculation. However, there may be no compelling reason to change the child support calculation since recipients of alimony will receive alimony as federal-tax-free income under TCJA .

Impact of TCJA & Tips: Part III

Tip: If possible, transfer marital property in lieu of alimony b/c marital property transfers in divorce are, in vast majority of cases, tax free. Marital property can include money in bank accounts as long as the money in those accounts were acquired during the marriage & aren't otherwise excluded by prenup / postnup, gift from 3rd party to 1 spouse or inheritance.

[NB: Exceptions to this rule to keep in mind are transfers to a non-resident alien spouse, transfers in trust & certain stock redemptions. Consult CPA / tax lawyer if you're facing any of these scenarios.]

Mortgage interest deduction more important in negotiations than previously.

Tip: In lieu of (some or all) alimony, parties can agree in writing that the wealthier spouse - if liable on the mortgage - will pay the mortgage & claim the mortgage interest deduction. However, such an arrangement will likely deprive the poorer spouse, if s/he is living in the home, from being able to claim HOH. *[NB: Make use of experts for tax planning and/or litigation.]*

[NB: Beginning in 2018, taxpayers may only deduct interest on \$750,000 of qualified residence loans. The limit is \$375,000 for a married taxpayer filing a separate return. These are down from the prior limits of \$1 million, or \$500,000 for a married taxpayer filing a separate return.]

Heads Up: TCJA suspends from 2018 until 2026 the deduction for interest paid on the combined amount of **home equity loans & home equity lines of credit**, unless they are used to buy, build or substantially improve the taxpayer's main home (or second home) that secures the loan.

THE NEW MUTUAL
CONSENT GROUNDS
FOR DIVORCE

Mutual Consent Grounds

Md Code, Family Law Art. 7-103(a)(8) allows absolute divorce based on mutual consent, if:

(i) the parties execute and submit to the court a written settlement agreement signed by both parties that resolves all issues relating to:

1. alimony;
2. the distribution of property, including the relief provided in §§ 8-205 and 8-208 of this article; and
3. the care, custody, access, and support of minor or dependent children;

(ii) the parties attach to the settlement agreement a completed child support guidelines worksheet if the settlement agreement provides for the payment of child support;

(iii) neither party files a pleading to set aside the settlement agreement prior to the divorce hearing required under the Maryland Rules; and

(iv) after reviewing the settlement agreement, the court is satisfied that any terms of the agreement relating to minor or dependent children are in the best interests of those children.

-----//

Md Code, F.L. Art. 8-205: Marital Property.

Md Code, F.L. Art. 8-208: Family home; family use personal property -- Award of possession and use; standards; order or decree; allocation of financial responsibilities

Marital Property

Md Code, Family Law Art 8-201(e)

- (1)** "Marital property" means the property, however titled, acquired by 1 or both parties during the marriage.
- (2)** "Marital property" includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement.
- (3)** Except as provided in paragraph (2) of this subsection, "marital property" does not include property:
 - (i)** acquired before the marriage;
 - (ii)** acquired by inheritance or gift from a third party;
 - (iii)** excluded by valid agreement; or
 - (iv)** directly traceable to any of these sources.

Family Home

8-201 (c) : FAMILY HOME

- (1)** "Family home" means the property in this State that:**(i)** was used as the principal residence of the parties when they lived together;
- (ii)** is owned or leased by 1 or both of the parties at the time of the proceeding; and
- (iii)** is being used or will be used as a principal residence by 1 or both of the parties and a child.
- (2)** "Family home" does not include property:**(i)** acquired before the marriage;
- (ii)** acquired by inheritance or gift from a third party; or
- (iii)** excluded by valid agreement.

Family Use Personal Property

8-201(d): FAMILY USE PERSONAL PROPERTY

- (1)** "Family use personal property" means tangible personal property:**(i)** acquired during the marriage;
(ii) owned by 1 or both of the parties; and
(iii) used primarily for family purposes.
- (2)** "Family use personal property" includes:
(i) motor vehicles;
(ii) furniture;
(iii) furnishings; and
(iv) household appliances.
- (3)** "Family use personal property" does not include property:**(i)** acquired by inheritance or gift from a third party; or
(ii) excluded by valid agreement.

Second Presenter – Jose Canto

The Canto Law Firm

301-244-8048

jose@cantolaw.com

**Standby
Guardianship –
MD. Code, Estates &
Trusts § 13-901 to 908**

What is Standby Guardianship?

A person appointed by a parent of a child in the event the parent becomes:

- Deceased or incapacitated
- Debilitated by illness or injury
- Subject to **adverse immigration action**

Guardianship v. Custody

Both parents should consent in writing to guardianship

Either parent may **revoke** their consent at any time

Parents do not lose any **parental rights** at any time

Can be setup today to prepare for tomorrow

How?

Must be writing

Must be signed by parent(s), proposed standby guardian, and two witnesses. Preferably notarized too.

Document must address:

- Identity of parents, the minor, and standby guardian (with IDs)
- State the duties of the standby guardian
- Indicate that the parent(s) intend the standby guardian to become the minor's guardian if necessary

Adverse Immigration Action

Arrest or for an alleged violation of federal immigration law

Detention by the Department of Homeland Security (or any agency acting on behalf of Homeland Security)

Voluntary or involuntary departure from the United States under an order by the Immigration Court

Revocation of a visa by the Department of State

Denial of readmission by Homeland Security

After Adverse Action

Standby guardian has 180 days to petition the court for a judicial appointment

Standby guardian must file:

- Parental designation signed by the parents and the guardian
- Evidence of the adverse immigration action against the parent
- Child's birth certificate

Maryland pre-prepared forms are available online:

<https://www.mdcourts.gov/family/formsindex#guardianship>

Corroboration & Appearance

No Corroboration

No need for separate witness to testify that the couple has not spent one night together for **12 consecutive months**

Moving party's testimony is **sufficient** to corroborate 12 month separation

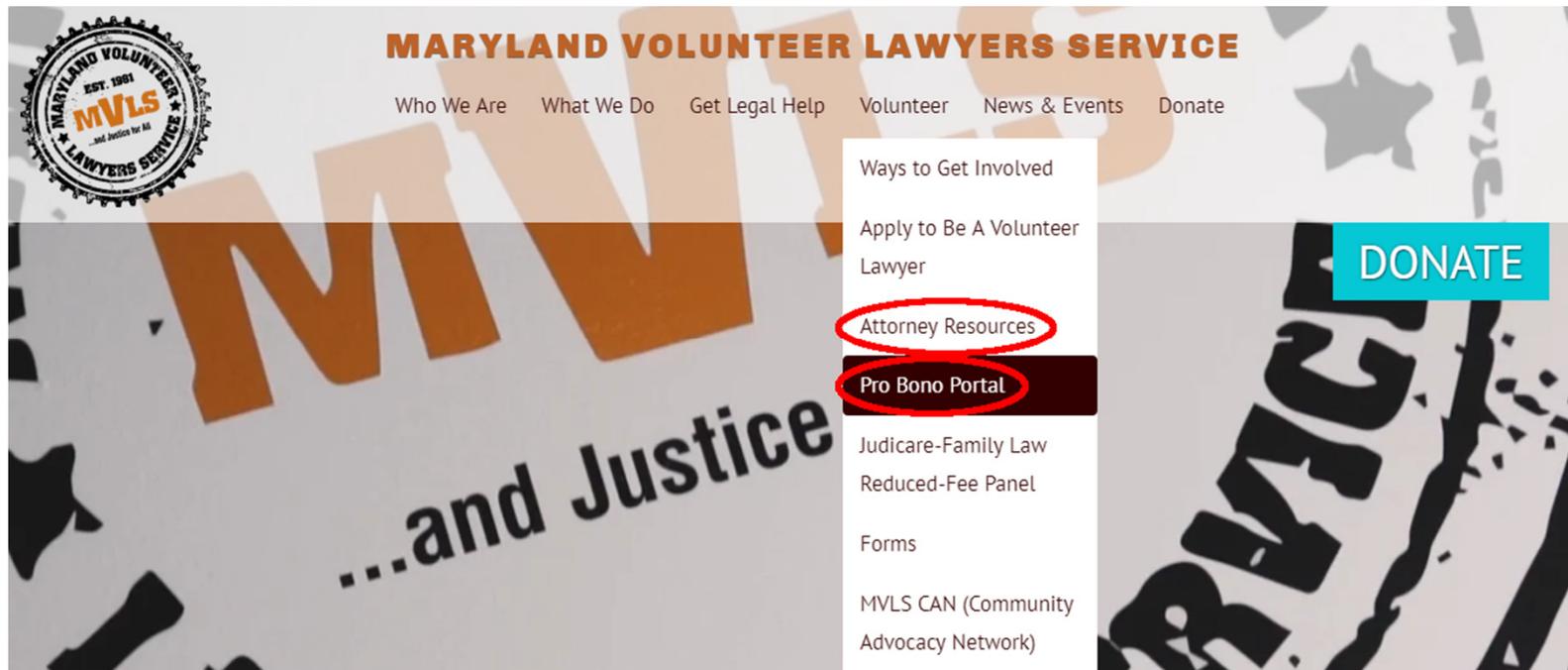
Other **fault grounds for divorce** (adultery/cruelty of treatment/desertion) still require corroboration to satisfy burden of persuasion

Second Party - Appearance

“Family Law — Divorce on Grounds of Mutual Consent – Court Appearance”

Eliminated the need for the responding party to a case to appear in court for mutual consent.

Resources for MVLS Volunteers: Looking for Pro Bono Cases?



Pro Bono Portal

WELCOME TO THE MVLS PRO BONO PORTAL!

Select a case today by reviewing available cases shown below in real time. You can click "Learn More" to express your interest in the case, or click "Share Case" to forward the available case to a colleague.

If you are not currently a MVLS volunteer, please [click here](#) to register.
By taking a case today, you are helping MVLS to ensure Justice For All.

[All](#) [Bankruptcy](#) [Debt Collection](#) [Deed Transfer](#) [Estates](#) [Expungement](#) [Family](#) [Foreclosure/Tax Sale](#) [Landlord-Tenant](#) [Tax](#) [Other Category](#)

Search ... All Counties

Single Mom Can't Afford A Large Payment

Client is being sued by her former landlord for \$4146.59. She admits she owes some but not all of the debt and is hoping to reduce the amount she has to pay. Court date set for 7/20/18 at 1:30pm.

Location:	Ref. #:	Case Type:
Baltimore County	18-0138741	Debt Collection

[Share Case](#) [Learn More](#)

I Admit To The Debt, But Can We Negotiate A Settlement.

Client is being sued for \$933.00 for failing to make payments towards a debt. Client agrees that she owes the debt. There are no judgments entered in the case. Client has paid approximately \$300 toward the debt and would like to work out a settlement for the remaining. Affidavit Judgment Hearing: 7/23/18 at 1:00PM. Trial: 8/3/18 at 9:00AM.

Location:	Ref. #:	Case Type:
Washington	18-0138685	Debt Collection

[Share Case](#) [Learn More](#)

You Have Left Me No Other Choice But To File For Rent Escrow.

Client wishes to initiate a rent escrow case after nothing has been done to make repairs. Client has lived in the property since October 2016 and problems in the unit began in December 2017. To date LL, has not tried to resolve the mold issue, flooding, falling attic stairs, and the hole in the ceiling.

Location:	Ref. #:	Case Type:
Baltimore County	18-0138671	Landlord-Tenant

[Share Case](#) [Learn More](#)

Landlord Requests The Move, Now Refusing My Security Deposit.

Client filed suit against her previous Landlord for the return of her security deposit and three times the amount. Client only lived in the property for 3

Looking Towards A Fresh Start

Client seeks help with expunging her criminal record.

Here's To New Beginnings!

Client seeks to go over her criminal record with a volunteer and to have the eligible cases expunged from her record.

FREE Upcoming Training & Volunteer Opportunities:
Go to mvlslaw.org/events for more info!

**March 21 – Debt Relief Scams: Helping Clients Avoid
and Recover**

**March 22 – Divorce 101: The Nuts and Bolts of
Divorce**

**April 5 – Custody 101: The Nuts & Bolts of Custody
Proceedings**

