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ARE YOUR ASSETS "QUARANTINED" DURING A DIVORCE?

If you are thinking of filing for divorce, you might wonder whether your assets could be "quarantined" during the process. Although we all hope our days of quarantining because of COVID-19 are soon over, I couldn't help but use this play on words to launch my explanation of what you can and cannot do with your assets during a divorce. May you sell your assets during a divorce? May you acquire new assets during a divorce free from the claim of your soon-to-be ex-spouse? What if you reach an agreement with your soon-to-be ex-spouse during the divorce on the division of assets, but after that, before your divorce is final, you acquire new assets – do you have to share those assets with your soon-to-be ex-spouse?

In most counties in Ohio, when you file for divorce, the court will issue a mutual restraining order that says something like this, "effective the date you filed, you



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and your spouse may not sell, damage, destroy, encumber, lessen the value of, or hide assets." What type of assets does this apply to? Real/personal property, household goods and furnishings, vehicles, etc., but normally not your checking account (because the court recognizes you still need to use your checking account to "live" during the divorce). So, the short answer to the question of "may you sell your assets during a divorce" is no, unless the other side agrees and you present the court with an agreed order, signed by all parties, saying it is okay for you to sell the asset(s), and if needed, the order will explain what will be done with the money from the sale of the asset(s).

The "don't sell your assets" restraining order doesn't prohibit acquiring new assets. But, if you do acquire new assets during the divorce process, and those assets were acquired with monies

earned during the marriage, your soon-to-be ex-spouse may make a claim to 50 percent of the value of the new asset, generally.

But what if you and your soon-to-be ex-spouse have both signed a "separation agreement" that untangles you both financially by setting forth "who gets what and who pays for what," among other things. Once it is signed, you'd expect that you could buy whatever you want and it wouldn't be subject to a claim by your soon-to-be ex-spouse. However, that's not always the case. Until the court makes the "separation agreement" an order of the court (by a decree of divorce), your soon-to-be-ex-spouse can ask to modify the "separation agreement" to add to it a division of, or 50 percent compensation for, the value of the new asset.

How can you prevent this? A carefully worded "separation agreement" that says something like "any assets acquired by either spouse after the date

EDUCATION & EVENTS

Wednesday, April 21 • 8:30 – 9:30 p.m.
Live Webinar: Navigating the Medicare Maze

Friday, April 23 • 1:30 – 3:30 p.m.
Live Webinar: Premises Liability: Slip, Trip and Fall
2.0 CLE Hours

Thursday, April 29 • 1 – 2:30 p.m.
Live Webinar: Growth Tactics: From Surviving to Thriving
1.5 CLE Hours (0.5 Prof. Conduct)

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this agreement is executed are, and shall remain the property of the spouse that acquired the asset, free and clear of any claim by the other spouse," should suffice. ■

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SCOTUS CASE UPDATE: FULTON V. CITY OF PHILADELPHIA

In *Employment Division v. Smith*, the U.S. Supreme Court, in a decision written by Justice Antonin Scalia, held that the First Amendment's Free Exercise Clause is not violated by a neutral law of general applicability. In *Smith*, Native Americans who ingested peyote for sacramental purposes challenged an Oregon law prohibiting consumption

of controlled substances on the ground that it violated their religious freedom under the First Amendment. The Court concluded that the Free Exercise Clause does not provide a basis for an exemption from a generally applicable law. That has remained the governing



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law since 1990. *Fulton v. City of Philadelphia*, argued to the Court on Nov. 4, 2020, may upend that understanding of First Amendment rights. A bit of background: Philadelphia contracts with private agencies to provide certain foster care services on behalf of the government. Some of these private agencies are secular, and others, like Catholic Social Services, are religious. Philadelphia's contract with each of its 30 contractors includes a provision incorporating the city's Fair Practices Ordinance, which prohibits discrimination on the basis of sexual

orientation. In 2018, when the city learned that CSS had a policy against serving LGBT couples wishing to become foster parents, conflict and then litigation ensued.

Among many other arguments, CSS challenged the terms of its contract with the city on the ground that evaluating and certifying same-sex couples would substantially burden the exercise of their religion that views homosexuality as a sin. And critically, one of the three questions presented to the Court was whether *Smith* should be overturned in favor of a test requiring stricter scrutiny of government action that substantially burdens religious freedom.

The city, on the other hand, asserted that *Smith* should remain in place, that their actions satisfy the *Smith* test and that overturning *Smith* would have drastic consequences for civil rights in the employment context and beyond. With a strict scrutiny test in place, for example, government contractors could object to the antidiscrimination provisions in their government contracts, and all employers subject to Title VII or state antidiscrimination laws could bring robust challenges to those laws on the ground that they substantially burden their religious freedom.

The Court is expected to issue its decision in *Fulton* before the end of June. ■

GROWTH TACTICS

📅 April 29, 2021 ⌚ 1:00pm–2:30pm on Zoom



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