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Estate Planning & Probate Section

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## The Mortmain

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Estate Planning & Probate Section

### Georgia Fiduciary Law Update

By Madalyn Davis, ADA DeKalb County



On April 14th, the Estate and Probate Section of the Atlanta Bar had the pleasure of hosting Georgia State University College of Law Professor Mary Radford as our speaker for lunch and learning at Maggiano's. Aside from the delicious food, a full house

paid rapt attention to one of the foremost experts on Wills, Trust, and Estate law.

Professor Radford presented a packet that gave the most recent developments in Georgia Fiduciary Law, from January 1, 2014 through February 28, 2015. The packet included highlights from cases on Intestacy, Wills, Administration of the Estate, Procedural and Jurisdictional matters, Trusts, Guardianships, and Non-Probate Assets. While time constraints made it difficult for Professor Radford to speak at length about each issue, the packet given to each attorney was clear enough to provide good case law and information should we wish to research a specific issue ourselves.

The lecture began with an update on Georgia intestacy laws. In *In re Estate of James Andrew Hawkins*, the probate court addressed the issue of "voluntary legitimization" (O.C.G.A §19-7-21.1; 119-7-229g) of a child born out of wedlock and the inheritance rights under O.C.G.A §53-2-3.

[Read the entire update](#)

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## Estate Planning for Married Couples: Stepped-Up Basis, Asset Protection, Portability & More

By Kim Martin, *Esquire, Lefkoff, Duncan, Grimes, McSwain and Hass, P.C.*



On Wednesday, March 11, Sam Donaldson presented a long-awaited summary of the post-American Taxpayer Relief Act of 2012, (ATRA) issues that estate planning attorneys need to know. Professor Donaldson is a Professor of Law at Georgia State University College of Law; he is a frequent speaker on many aspects of estate planning and administration, and appears at conferences across the country.

As always, Professor Donaldson's talk was thorough and entertaining. He began by discussing the pre-ATRA estate planning landscape, which featured a high transfer tax rate and low exclusion amounts from estate and gift tax. The combination of those factors, plus the fact that a decedent's unused exemption amount expired at death, caused estate planners to focus heavily on transfer tax planning. Even couples with combined assets under \$1 million might require tax planning to avoid wasting the exemption of the first spouse to die and causing the inclusion of taxable assets in the estate of the surviving spouse.

[Read the entire update](#)

## Divorce: A Primer for Fiduciary Law

By Wayne Morrison, *Kessler & Solomiany, LLC*



It is widely reported that not only do more than 50% of all marriages end in divorce, but that people are also marrying later in life. These facts present a need and an opportunity for lawyers who are tasked with preparing estate plans for clients or who are otherwise engaged in helping to preserve and protect assets. However, in meeting your client's needs, certain pitfalls should be avoided or at least explained to them. Frequently estate plans prepare for the transfer of property in the event a married couple stays together "until death do us part;" however, that may not always be the case. Therefore, a lawyer preparing an estate plan or other document designed to preserve a client's wealth

Elaine Levine

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will benefit from knowing basic terms and concepts in divorce law.

First, it is important to understand that Georgia is not a "community property" state and therefore marital assets are not necessarily divided equally. Further, the Georgia legislature has not codified detailed rules for determining how divorcing couples are to divide assets or financial burdens. Rather, marital assets and financial burdens are divided equitably. The following is an abbreviated glossary of terms, definitions and principles to help a lawyer who is preparing an estate plan more completely advise a client:

**Separate Property:** Any asset that either spouse acquired prior to the marriage, or by gift or inheritance from a third party during the marriage. Separate Property is a factor that can be considered when dividing marital property.

[Read the entire article](#)



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## Johannes Kingma Warns Our Section About the Risks of Trusts & Estates Practice

By Loraine M. DiSalvo, *Morgan & DiSalvo, P.C.*



On February 11, 2015, our Section heard from Johannes ("Joe") Kingma of *Carlock, Copeland & Stair, LLP*. Mr. Kingma's practice involves, among other areas, defending attorneys and accountants against allegations of malpractice. He opened his presentation with the ominous warning that "more and more" of his practice involves defending attorneys against malpractice claims relating to trusts and estates issues. He expects this trend to continue, and noted that the claims in this area are increasing in both number and severity. Mr. Kingma's presentation was intended to help Section members address and reduce the risks associated with a trusts and estates practice. However, he recommended that those who are risk-adverse consider choosing a different practice area altogether.

The high risk nature of a trusts and estates practice is created by many factors. An attorney may serve in many potential roles, including drafting documents, serving as Trustee or Executor, serving as the advisor to a Trustee or an Executor, serving as trial counsel, and, in some cases, even serving as a beneficiary. The area is complex and filled with many different issues of both state and federal law. A team approach is often used, in which many different professionals work on a given matter: while the team approach often brings many benefits, it can sometimes also mean that issues and tasks get overlooked. In addition, trusts and estates related work usually involves dealing with a client's family members, who often bring their own issues to the table.

[Read the entire update](#)

**Lisa Milot presents "Planning for the Disposition of Frozen Eggs, Sperm and Embryos and Excluding Children Born from these Materials in Estate Plans"**



The Atlanta Bar Association's Estate Planning and Probate Section was delighted to welcome University of Georgia School of Law Associate Professor Lisa Milot as our speaker at the January 14, 2015 section breakfast, where she discussed the various aspects of planning for the disposition of frozen eggs, sperm, and embryos and how children resulting from frozen materials can be included in estate planning.

The various technologies Professor Milot discussed fall under the general title of Assisted Reproductive Technology, or "ART." ART includes a range of methods used to circumvent human infertility, including in vitro fertilization (IVF), embryo transfer (ET), gamete intra-fallopian transfer (GIFT), artificial insemination (AI), manipulative procedures involving gametes (eggs and sperm) and embryos (a fertilized egg that has undergone cell division, but is less than 8 weeks from conception), and treatment to induce ovulation or spermatogenesis when used in conjunction with the above methods. (*NHMRC Ethical Guidelines on Assisted Reproductive Technology, 1996.*) ART is often used in conjunction with a surrogacy agreement, which is an arrangement whereby a woman agrees to become, or attempts to become, pregnant and bear a child for another person or persons. Surrogacy can be either gestational, meaning that no genetic material is coming from the surrogate mother, or traditional, where the egg comes from the surrogate mother. Advances in ART have also allowed for pre-implantation screening of zygotes (fertilized eggs) in order to eliminate the inheritance of unwanted genetic diseases or traits.

[Read the entire update](#)