

BARRISTER'S CORNER

Apportionment of retirement benefits in divorce cases

matured. To the extent that the work was performed before the date of marriage or after the date of separation, the benefits are the employee spouse's separate property.

The apportionment of retirement benefits in a divorce case must be reasonable and fairly represent the contributions of the respective estates. The most common method of apportioning retirement benefits between the community and separate property is the "time rule." This method apportions community property by the ratio of the time worked by the employee spouse between the date of marriage and the date of separation bears to the entire period of employment. The remaining portions are the employees separate property. Although this rule is frequently used, the trial court has discretion to modify or to use other methods that are more appropriate for the circumstances and unique nature of the retirement plan.

Where an employee spouse is single throughout employment and marries only after retirement, pension or other deferred compensation is separate prop-

erty even though received during the marriage. An exception to apportionment of a non-employee spouse's right to share in a community pension interest are certain preexisting obligations. A non-employee spouse's right to share in a community pension interest may be subordinate to other liabilities assertable against that interest such as where the benefits are already committed to a third party under a preexisting legal obligation. Situations like this arise in instances such as obligations arising out of prior divorce cases or a spouse's prior tax deficiency liability enforceable against the retirement benefit through tax levy.

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ATTY. JOEL R. BANDER

THE long waiting time for immigrant visa processing is an issue of important interest to Filipinos. The Philippines is one of the countries with the highest numbers of immigrants in the United States and longest waiting time period for immigrant visa processing. While visa numbers are immediately available to spouses, parents, and minor children of US citizens, other relatives of citizens and immigrants generally wait several years ranging from five to 22 years before they could immigrate into the United States.

A serious problem posed by the lengthy visa processing is the possibility of losing the petition when the petitioner dies before the beneficiary is granted the visa. Under the regulations, when the petitioner dies, an approved I-130 petition is automatically cancelled by operation of law. Thus, even if the petition has been approved and the beneficiary is only waiting to receive the immigrant visa, the petition automatically dies with the death of the petitioner.

However, this problem is ameliorated by an exception provided by the regulations that allows the US Citizenship and Immigration Services (USCIS) to grant discretionary reinstatement of "dead" I-130 petitions based on humanitarian reasons. To qualify for reinstatement, the petition must have been approved prior to the death of the petitioner. To invoke this benefit, the principal beneficiary of the visa petition has to request for reinstatement of the approval of the petition and establish that a substitute sponsor is willing to file an affidavit of support and the particular circumstances of the case warrant the reinstatement of the petition.

Resurrecting the dead: Humanitarian reinstatement of I-130 petitions

ment of "dead" I-130 petitions based on humanitarian reasons. To qualify for reinstatement, the petition must have been approved prior to the death of the petitioner. To invoke this benefit, the principal beneficiary of the visa petition has to request for reinstatement of the approval of the petition and establish that a substitute sponsor is willing to file an affidavit of support and the particular circumstances of the case warrant the reinstatement of the petition.

The substitute sponsor must either be a citizen or national or a legal permanent resident who is at least 18 years of age and have a domicile in the United States. A spouse, parent, mother-in-law, father-in-law, sibling, child at least 18 years of age, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of the beneficiary may qualify as a substitute sponsor.

There are no clear rules as to what the USCIS must look at in exercising this discretionary authority. However, there is a clear intent that this authority should be used in those cases where revocation would be clearly contrary to the furtherance of justice. The following factors have been considered:

- (1) Disruption of an established family unit;
- (2) Hardship to US citizens or

lawful permanent residents;

- (3) If beneficiary is elderly or in poor health;
- (4) If beneficiary has had lengthy residence in the United States;
- (5) If beneficiary has no home to go to;
- (6) Undue delay by DHS or consular officer in processing petition and visa; and
- (7) If beneficiary has strong family ties in the United States.

It is worth emphasizing that there is no appeal from a denial of a request for reinstatement. Hence, if one believes he or she has a good case for reinstatement, it is very important to ensure that the request is properly and completely done. It is always advisable to consult an immigration lawyer for guidance.

Bander Law Firm, LLP has been providing immigration services for over 15 years and has multilingual staff. Feel free to call Bander Law Firm, LLP at (213) 873-4333 to schedule your consultation regarding your legal concerns. Bander Law Firm provides a full range of legal services in the fields of Immigration, Mortgage Litigation, Personal Injury, Bankruptcy, Criminal and Removal Defense, Civil and Business Litigation, Wage and Hour Litigation and Class Action lawsuits.

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HOME BUYERS



KENNETH GO

Loan modification: Success or failure?

portunity to do the Loan Mod yourself and just follow their instructions on your own. With early AM phone calls and follow ups, I believe you will do a lot better than paying a third party to do it for you. Your aggravation will either be from the lender or your Loan Mod third party. I prefer it from the lender so I can keep extra cash in my pockets.

Pitfall #2 - the offer of forbearance

When contacted by borrowers seeking help with mortgage modification per the government's instruction, lenders are currently reverting to the old way of doing business, which is an offer of forbearance. Forbearance simply means they will forgo the borrower's payments for a period of time, let's say three months, to help relieve the pressure and add (re-amortize) these payments back into the mortgage payment later. That's right, the borrower gets three months reprieve so they will have bigger payments later. How in the world will this help? If they can't afford the payments they have now, what makes the lender think they can make bigger payments later? So the offer of Forbearance only delays the inevitable!

Solution #2

Do not accept forbearance, it is not in the best interest of the borrower and only delays default or foreclosure.

Pitfall #3 - Predatory modifiers

It was only last summer that the government launched HOPE, the Homeowners Foreclosure Prevention Program. According to a January '09 article by Les Christie, CNNMoney.com staff writer, in the five months since it (HOPE) has been in effect, HOPE has helped exactly one homeowner avoid foreclosure. This, despite Congress making \$300 billion available to back these loans and estimates that the program would benefit as many as 400,000 families."As it stands now, we've only gotten 752 applications," said Federal Housing Authority spokesman, Brian Sullivan, "and only insured one loan. Needless to say, the program isn't working terribly well."

Before it was revised by Congress on March 4, 2009, the modification plan was only available to those who were behind in their payments and possibly under the threat of foreclosure. Announcement of this program

brought out a plethora of fast talking rip-off artists to prey on those in distress. Many of these unscrupulous cons collected upfront fees from the homeowners then instructed them to 'stop making payments' so they could qualify for modification.

You can imagine what happened next; they kept telling the homeowners that they would have an answer soon. Then after collecting a bunch of money, they disconnected the phones, changed names, and moved their offices! And, of course, the homeowner's upfront money was lost, along with their home, their pride, and the efficacy of the program. This crime was so often perpetrated that authorities could not prosecute the offenders fast enough, thus leaving a swath of devastation in their path.

Mortgage Modification is a Giant Win for ALL - the Consumer, the Lender, Real Estate Agents/Brokers, and the Economy!

President Obama enacted law and allocated \$700 million to cure the ills of predatory lending (sub prime) practices that initiated the meltdown of our economy. Lending institutions, overwhelmed with requests, cannot handle the projected 25 percent of homeowners who are in possible threat of delinquency or foreclosure and are seeking the cure of Mortgage Modification. The public needs help. Yes, the government has stepped up but the mortgage lenders cannot keep up. Professional help is a necessity and a relief. It is without doubt that America will survive this economic fracture and President Obama has designed a solution that will work. It will work only if our American Dream of homeownership survives. And it will - with professional help.

Who is in a better position to help the homeowner than the real estate professional?

Real estate agents and brokers have a direct line to the 25 million homeowners who are eligible for mortgage modification. They are our past clients, customers, friends, neighbors, and family with whom we've established trust and communication. We can assist in education, knowledge, and help in keeping their home - and getting back on their feet.

Call Ken Go of 1st Innovative Finance Group to give you a quote, call (888) 822-5363 or write to: Kennethgo@verizon.net

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MINDING YOUR FINANCES



ATTY. RAYMOND BULAON

DO YOU want to simplify your life, reduce stress and regain control over your financial future? If you are one of the millions of people in this country who are drowning in debt, maybe you are feeling a sense of urgency and desperation about your situation but don't know what to do.

Are debt problems making your life too complicated?

Someone said that we are living in a society afflicted with "influenza" - defined as a "painful, contagious, socially transmitted condition of overload, debt, anxiety and waste resulting from the relentless pursuit for more". Perhaps you recognize the symptoms. Today, our worth is defined by the financial success we achieve and the material possessions we accumulate. Our pursuit of the "American Dream" has caused an epidemic of stress, overwork and excessive indebtedness, in my opinion. We want big houses, expensive

cars, big screen TV's and all the latest toys and gadgets, hoping that having all these things will make us happier. The media, of course, constantly bombards us 24/7 with advertising messages reinforcing this idea.

Simplifying your life can be a simple process but it will take some discipline. First, you need to stop living beyond your means. Cut up your credit cards and don't sign up for new ones no matter how tempting it may be. Next, you need to learn how to distinguish between "needs"

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Asylum for domestic violence...

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of" one of the "five protected grounds," which include (1) political opinion, (2) race, (3) religion, (4) nationality, or (5) membership in a particular social group. The successful asylum applicant must also establish that the persecutor is either the Government in their home country, or a group or individual that the Government is unable or unwilling to control.

In the case at issue, a woman sought asylum due to repeated rapes, captivity and an attempted burning while alive perpetrated by her "common law husband" in her home country. Previously, victims of abuse were denied asylum, because the USCIS and the Bush

administration argued that the harm suffered, i.e. persecution, was not related to one of the five protected grounds for asylum. The Whitehouse now espouses a view that victims of domestic violence or sexual abuse could be considered a "social group," thereby basing their claims on one of the protected grounds. The Brief concluded, therefore, that "it is possible that [the victim in Matter of L.R.] and other victims of domestic violence could qualify for asylum."

The Government's modified interpretation of asylum law will offer protection to many victims of domestic violence and sexual abuse. The Brief counseled, however, that in

addition to the basic requirements of asylum law, a victim of such abuse must show that she was viewed as subordinate by her abuser and that domestic abuse is widely tolerated in their home country. The filing of the brief could mark an end to nearly 13 years or legal turmoil addressing asylum eligibility for victims of severe abuse.

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HELPING FILIPINO EMPLOYEES OBTAIN FAIR WAGES UNDER THE LAW

As an employee, you may be entitled to additional pay if:

- You work more than 8 hours a day, even though you are a "salaried" employee.
- You work before or after your shift without extra pay.
- Your job title is "Manager," "Administrator," or "Supervisor" but you do not make managerial or executive decisions and are not paid overtime.
- You are classified as a professional (for example, accountant or chemist) but do not have a California license and are not paid overtime.
- You are not provided a 30-minute uninterrupted meal break or a 10-minute rest break.
- You are classified as an independent contractor without overtime pay or benefits even though the employer controls your work.
- You are a nurse or healthcare employee and paid different hourly rates for the same job, depending on the hours of your shift.

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