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Divorcing and Over 50?

Make Finances Your Top Priority

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Divorce is a reality for a growing number of aging couples, a phenomenon commonly referred to as "gray divorce". According to a study at Bowling Green State University, the divorce rate among adults ages 50 and older doubled between 1990 and 2010. Now, one in four Americans getting divorced is 50 or older.[1] The study also found that the divorce rate is 2.5 times higher for those in remarriages compared to those in first marriages. Those in the Baby Boomer generation, people born between 1946 and 1964, were the first to divorce and remarry while they were young and may experience even more divorce as they age.

Divorces among couples in this age group may have significant assets at stake. At the same time, it is not unusual for one spouse to have a lack of in-depth knowledge about the family's finances. In those circumstances, the non-moneyed spouse may not be aware of what a fair settlement should be.

Regardless of whether you handled financial decisions during marriage, it's critical to do whatever it takes to put emotion on hold when facing divorce. You'll need to focus on your future and set financial goals, as these decisions will likely affect the rest of your life. Unfortunately, there is no "do over" in divorce and you will need to focus on the money during this painful process.

Even those with little or no financial experience can become financially savvy by asking the right questions and seeking help from professionals such as attorneys or financial advisors who specialize in divorce. Many choose to work with a Certified Divorce Financial Analyst® (CDFA®) throughout the process. A CDFA® can either act as an advisor to you and your divorce lawyer or as a mediator for both you and your spouse to find an equitable settlement.

Financial mistakes related to divorce settlements are common and often rooted in not realizing the consequences of a decision that seemed to make sense at the time. These mistakes can happen when decisions are made emotionally, not taking into account the ramifications from a financial standpoint.
As an example, you might be tempted by an offer to keep your family home. You need to keep in mind that the real value of that home after the mortgage balance could be far less than its assessed value. A home with a market value of $3 million but with a mortgage of $2 million, is really only worth $1 million to you. In addition, if you keep the home, you will need to consider whether you can afford to maintain it over time, factoring in the mortgage payments, taxes, and other carrying costs. Alternatively, if you have decided to find a new place to live, you need to carefully consider whether your income and/or your settlement will be enough to maintain your desired lifestyle in that new location.

In addition to the example above, the following are financial mistakes to avoid if you are contemplating or going through a divorce:

Underestimating your living expenses – Most people know how much they are paid, but often times don't know exactly where their money goes each month. For those who are not employed and/or are not involved in financial decisions for the household, the problem is often amplified. Knowing how much you need to maintain your lifestyle will be crucial to negotiating the terms of your divorce settlement. Be sure to consider such expenses as health insurance, which you might have had through your spouse's work and may need to purchase independently post-divorce. When detailing expenses into the future, it is important to also take inflation into account. What something costs today (for example, college education) could be much more expensive in the future.

Retaining illiquid assets – In most divorces, one spouse keeps the primary residence and the other might get a corresponding amount in cash, retirement accounts, or other assets. A similar process can be used when a spouse or couple owns a business or significant investment portfolio.

Although the split might be equal on paper at the time of the divorce, one spouse can be left with an asset (a house or business) that could be difficult to sell. In addition, if a divorce settlement drags on for months or years, your financial situation can suffer until you are able to get access to those assets.

Failure to consider taxes – Be careful to consider the implications of taxes on your divorce settlement. Keep in mind that you will be taxed on any alimony that you receive.

You should also be aware of the taxes and penalties assessed on distributions from retirement assets. If you receive a portion of a retirement account as part of a Qualified Domestic Relations Order (QDRO), you will be subject to a 20% withholding tax if you fail to roll that retirement money directly into an IRA or other retirement account. You must also have a QDRO in place to avoid an additional 10% penalty on distributions taken before age 59½. A QDRO details how you and your spouse will split qualified retirement accounts such as 401(k) or pension accounts.

You will also need to consider capital gains taxes on any appreciated assets. This could include selling a home that has appreciated significantly or an investment portfolio with stocks that were purchased at a much lower dollar amount than what they are worth today. Although liquid and easy to sell, highly appreciated investment assets may have significant future tax liabilities due to capital gains and have a much lower actual after-tax worth to you.

INFORMATION IS POWER

Ideally, you should gather information about your finances before you or your spouse files for divorce. It can ultimately save you time and money because obtaining information or discovering hidden assets can sometimes become difficult later, resulting in potential added legal fees and stress.

You'll want current records of your assets detailing what you and your spouse each own, together and separately. Although information on children, property, and assets is only required once a divorce case is filed, it's much better to have in advance, especially if your spouse is likely to take his or her documents when you separate.

List assets – Providing an inventory of your assets and other financial information is critical, not only so that you know what you have, but to help your attorney in negotiating items such as alimony, child support, and division of property in your settlement. Items for the inventory include real assets such as your primary home, a secondary or vacation home, time shares, rental property, furniture, electronics, vehicles such as cars, boats, motorcycles, and recreational vehicles, art, jewelry, and anything else of tangible value. You should also inventory investments and liquid assets such as bank accounts and cash, retirement, pension, and investment accounts, and employee benefits or stock options. Your attorney also will need a list and details on all insurance policies including for life, health, home, vehicles and umbrella policies.

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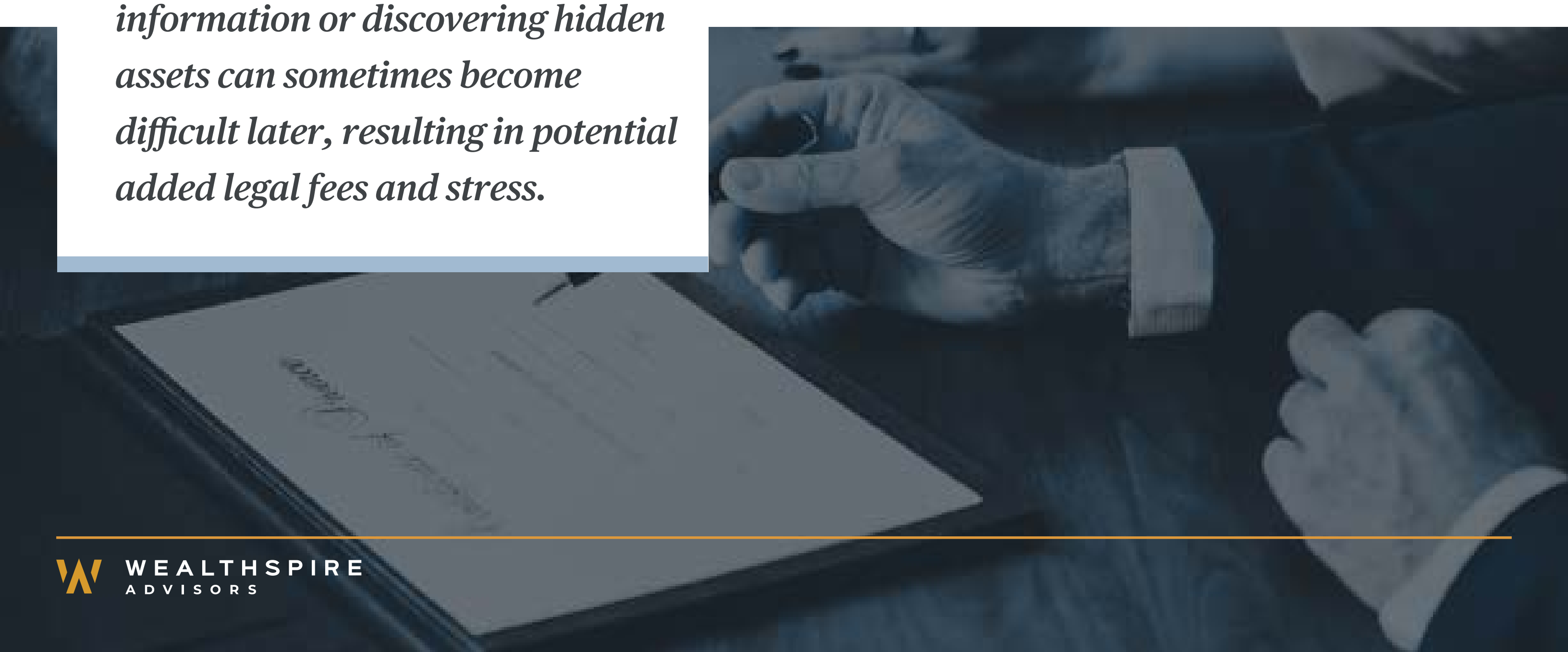

Other assets that sometimes are overlooked include frequent flyer miles, vacation pay, pensions or deferred compensation from a previous job, contents of safety deposit boxes, and collectibles or valuable items related to hobbies such as coins, books, or antiques. It is best practice to also have appraisals for valuables such as art, jewelry, and collectibles.

You should also list for your attorney any non-marital assets, or assets acquired or inherited before your marriage, that will not be included in a divorce settlement.

Gather legal and tax documents – Make sure you have all legal estate planning documents including wills, financial powers of attorney, healthcare powers of attorney, living wills, and trusts.

You also will need income tax returns for the previous five years along with all payroll statements and pay stubs. If you and your spouse own a business, you will need to gather tax returns for the business, accounting statements showing profit/loss and balances, any partnership agreements, and business credit card statements and records.

Identify liabilities and expenses – Your attorney will need information on your liabilities and living expenses in order to document your current standard of living and help you determine what it will be after your divorce. Your liabilities include what you owe in mortgages, lines of credit, credit cards, and any tax liabilities you might have, all of which will be taken into account when negotiating your settlement.

You will also need to detail all of your expenses and cash needs, including monthly mortgage or lease payments for your current or future home, utilities, insurance premiums for life, health, auto, home, or any other policies, current or future tuition, car payments, gas, car maintenance, food, clothes, home maintenance, memberships, vacations, dining out, entertainment, and attorney fees. Ultimately, these expenses should include anything you currently pay and anything you expect to have to pay in the future. Credit card and bank account statements are good resources to use to determine your historical recurring and occasional expenses.

Keep in mind that the income and assets that supported a single household will now be split to support the lifestyle for two households. When marriages end, living costs easily can double, as you will now need two homes plus the utilities, taxes, and maintenance attributable to each. By detailing your assets, liabilities, and expenses, and analyzing your spending habits, you and your professional advisors can craft the best possible settlement and help you set up a post-divorce financial plan to help ensure a secure future.

Determining where to file – In most situations, you will file for a divorce in the state in which you and/or your spouse live. If you and your spouse own property in different states or you live apart, you might be able to select the state in which to file. In those situations, you and your attorney should evaluate the respective states' divorce laws to determine the best choice. Among the items to consider are the length of time it will take to grant a divorce, the age of majority used in determining how long a parent is required to pay child support (for some states it is 18 and others it is 21), and filing and procedural rules, which can vary significantly.

In addition, some states have requirements that limit options even if a couple has multiple homes or live in separate states. For example, some states require that child custody be determined by a court in the state in which the children live; other states require that decisions about property must be decided by a court in the state where the property is located. Divorce laws also vary concerning other matters such as how prenuptial agreements are handled and whether alimony is allowed.

If you do have a choice on where to file for divorce, it's important to consult your attorney, and possibly a financial advisor, to ensure you make the best decision for your unique situation.

MOVING AHEAD

Once you have gathered all of the information that your attorney will need, you can start to consider the bigger picture questions. Initially, many people simply focus on the settlement itself and how much it should or could be. Instead, a lifestyle analysis is needed to identify the priorities that need to be covered.

Questions to consider as a part of this lifestyle analysis include:

- What type of post-divorce lifestyle do you want and is it realistic based on your assets and likely settlement?
- How much income will you need for the lifestyle you desire?
- Where will you live?
- If you have not worked outside the home, will you go back to work and if so, how much will you likely earn?

- When will you want to retire or need to start tapping your savings?
- Will you want or need to leave money to your children or grandchildren?
- Will you want to donate to charitable or other organizations?

Your analysis should consider your current assets, both liquid and those that can't be sold until later, along with current and future expenses. Examples of future expenses could be your next home, college tuition, weddings for your children, vehicles, and healthcare. You'll also want to estimate your eventual Social Security benefits, potential inheritances, taxes, and inflation. All of this information can help you determine how much you'll need to save, how much risk you can afford to take with your investments, and how much you can spend on a monthly and annual basis.

A lifestyle analysis will consider both wants and needs, and how they fit into the life and lifestyle you desire. For example, you might choose to work and save over a longer period, or invest more aggressively, so that you might be able to afford to travel or spend on other "wants" in the long term, or you might choose to save less now, or select safer, lower-risk investments, and live a more frugal lifestyle later. These are decisions that have the potential to affect you, and possibly your children, for the rest of your life, and they require careful thought and deliberation.

By working with an advisor throughout the divorce, you will have a better understanding of your current and future financial status. An advisor can help you pursue your plan, make adjustments as needed, and in the long run, maintain financial independence and retire comfortably.

Getting the best outcome – With complete information, your attorney should work to get an equitable settlement. Depending on the state, an equitable settlement does not necessarily mean equal amounts for both spouses. This is where it is critical for your attorney to aggressively negotiate to make sure your settlement fairly reflects the best opportunity for you to maintain your lifestyle. This includes making sure to secure a settlement that can generate the income you will need. It also means being careful not to accept a settlement that might lead to additional expenses that could be a drag on your finances and your future. For example, if your settlement includes highly appreciated stocks that will cause a large tax bill upon sale, or includes a home where the carrying costs are not reasonable for your post-divorce income, this could be detrimental to your future financial well-being. If possible, try to get payments upfront.

SECURING YOUR FINANCIAL LIFE AFTER DIVORCE

Do not overlook financial and estate documents - It's critical to make sure you have updated beneficiaries on insurance policies, wills, IRAs, retirement accounts, and similar documents after a divorce settlement. Failure to make changes can result in an ex-spouse inheriting assets that you intended to go to children, a new spouse, or another designated heir. It is especially important to have a Qualified Domestic Relations Order (QDRO) in place. As mentioned above, a QDRO will detail how you and your spouse will split qualified retirement accounts such as 401(k) or pension accounts. QDROs should be filed before the divorce is officially finalized because it will need to be approved by the retirement plan sponsor.

Make sure you protect a divorce settlement with insurance – Provisions in a divorce settlement such as child support, alimony, and college tuition are dependent on the ex-spouse's ability to continue paying. You can stipulate that your ex-spouse is required to carry disability and life insurance as part of your settlement, to guarantee payment will continue in the event your spouse dies or becomes disabled. Another option is to be designated as the beneficiary on your ex-spouse's retirement plan.

Don't forget about inflation – Inflation can have dramatic long term effects on a settlement. For example, college education costs historically have increased at a rate of 6%. Assuming this trend continues, what may cost $40,000 today, could cost over $80,000 in 12 years. Be sure to work inflation into your settlement negotiations.

Remember you could be entitled to Social Security – If a couple was married for 10 years or longer prior to divorce, a non-working or lower-earning spouse is entitled to a portion of his or her spouse's social security benefits. These benefits do not impact the worker spouse's social security payments.

Plan for the long term – Planning for your divorce settlement should include a post-divorce financial plan that considers your long term financial needs through retirement and beyond. Transitioning from one household to two will add expenses, while the total income supporting divorcing spouses may remain unchanged. You will need a realistic estimate of your financial resources to determine whether they match your long term needs and expectations. After you and your spouse are divorced, it is important for you to embrace the financial plan that helped to shape your settlement.

For some, post-divorce may be the first time they have managed their own money. An advisor can help execute a post-divorce financial plan and make adjustments as new circumstances and changes in assumptions require. In some cases, there may be a need to cut back on discretionary spending for entertainment or vacations, or the need to live in a smaller home. Working with a financial advisor who will help you define and set financial goals, will give you the confidence you need to manage money and build a comfortable future for yourself in your new life.

1 www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/Lin/The-Gray-Divorce.pdf