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GETTING GOING

Don't Make a Bad Split Worse: Plan a Financially Sound Divorce

By TERRI CULLEN
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ABOUT TERRI CULLEN

Terri writes the "Fiscally Fit" column every Thursday for The Wall Street Journal Online. Terri is an assistant managing editor and one of the original team of editors who helped launch the Online Journal. In 2002, she won the Medill School of Journalism Financial Writers and Editors Award for best financial columnist. Terri also is a contributor to the book, "The Wall Street Journal Online's Guide to Online Investing," published in 2000.

Some of the biggest financial blunders in divorce are also the most common. And most result from poor planning.

Decisions about who gets what, made in a rancorous environment, can have financially devastating consequences. "For most of my clients, this is the first time they've ever been asked to map out their financial lives and it can be an emotional experience," says Fadi Baradihi, president and chief executive officer of the Institute for Certified Divorce Planners in Southfield, Mich., near Detroit.

And today, rising joblessness and tight budgets only make things tougher. A survey of divorce attorneys conducted in November by the American Academy of Matrimonial Lawyers in Chicago showed that nearly half the respondents said the struggling economy was making divorce proceedings more contentious.

But some of the most common financial stumbles in divorce are easy to avoid with careful planning and a level head.

An Equal Split? Splitting assets often leads to contentious wrangling, with husband and wife battling to ensure each gets their fair share. But fair doesn't always mean equitable, Mr. Baradihi says. "Most often, the husband wants the retirement plan and the wife wants the house," he says. "But what many spouses fail to consider is whether they will be able to still afford to live in that house after the marriage is dissolved."

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Because real estate tends to be the largest portion of a couple's net worth, the spouse with the lesser-paying job often will argue the hardest to keep it -- but a home is an illiquid asset that carries a very hefty price tag to maintain. This can be particularly dangerous when the spouse who wants the home doesn't keep track of the family finances.

In many instances, it will make the most sense to sell the home and split the proceeds. But spouses already overwhelmed by the upheaval of the breakup typically are reluctant to part with their homes, particularly when there are children involved. Before you prepare to dig in your heels and fight to keep your home, weigh the costs of a monthly mortgage, taxes, utilities, and maintenance and upkeep of the home, says Lili A. Vasileff, a certified financial planner in Woodridge, Conn. "I can't tell you how many people don't have a clue," she says. "Most times people don't sit down and look at a budget, and what the expenses are."

Look at your overall financial picture post-divorce and consider whether you can get a settlement sufficient to maintain the home. Will you be struggling to pay the bills? Or worse, does getting the house mean you are sacrificing a comfortable retirement that would be afforded by your share of your spouse's account? Figuring out the costs before you begin negotiations will keep you from setting yourself up for future financial problems.

Cracking the Nest Egg. One of the biggest mistakes couples make when splitting their retirement benefits isn't improperly calculating who gets what, it is their failure to get the paperwork right.

TALKING POINTS

Here are some things to consider when negotiating a divorce settlement

- **Understand the price of keeping the house.** If you give up other assets in exchange for the family home, be sure you can afford to maintain it.
- **Do the paperwork on retirement benefits.** A delay in filing the forms to split up a pension plan may jeopardize your share of the funds.
- **Get life insurance on your ex.** If the supporting spouse dies, insurance can fill in for lost child support and alimony.

When splitting retirement savings that are subject to rules set under the Employee Retirement Income Security Act, which includes most employer-sponsored plans, the government requires that you file a qualified domestic-relations order. This QDRO form spells out to the asset-management company who gets what money held in a pension or 401(k) plan. "Most couples don't know they have to file this form, and when they do they sometimes fail to file a QDRO in a timely fashion and fill it out properly so that it conforms to the benefit plan's policies," says Morris Armstrong, president of Armstrong Financial Strategies in New Milford, Conn.

Without the QDRO, the plan sponsors won't divide the accounts as set out in the divorce settlement, he adds, and your rights to the funds may be in jeopardy. For instance, delays may allow a disgruntled spouse time to alter the retirement plan or even cash it out.

To ensure there are no missteps, ask your spouse's employer for a copy of the summary plan description, which lays out the plan's policies and payout options. After filling out the form, run it by the plan to make sure it passes muster before having the judge sign it.

With a properly filed QDRO, the spouse typically can take his or her share of the account once the divorce is final and roll it into another tax-deferred account without incurring early-withdrawal penalties or paying personal income tax on the funds.

Preparing for the Worst. Even the most amicable split-ups can lead to financial disaster without careful planning.

"What happens if on the day of the divorce your husband gets hit by a bus?" says Mr. Armstrong. "If the husband doesn't have life insurance you're out of luck."

He recommends that spouses receiving alimony and child payments take out a term life-insurance policy on the ex-spouse, in an amount that will be enough to cover the payments as well as future anticipated contributions to things like a college-savings account.

Why you, and not your spouse? "If you're the owner you get to name the beneficiary, that is, yourself, and you can be sure that the payments are being made so that the coverage doesn't lapse," he says.

If your spouse isn't willing to apply for a policy, a judge can order him or her to. But that doesn't guarantee your spouse will pass the physical. It is best to seek insurance prior to the divorce so there are no surprises. If your spouse turns out to be uninsurable, the property settlement should specify that a sum of money be set aside as an emergency fund.

--Jonathan Clements is on vacation. WSJ.com subscribers can read more of Terri Cullen's personal-finance coverage at WSJ.com/CullenCorner[3].

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