

A Roundtable Discussion

WEALTH MANAGEMENT: EXECUTIVE DIVORCE

Issues That Splitting Couples Must Face



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What impact will the recently enacted tax law have on divorcing individuals, including those who filed for divorce prior to 2018?

Morgan Stogsdill: For agreements entered after 2018, there will be more money going to the government and less for the family. Also, the new law hits high-end real estate hard. Gone are the unlimited property tax deductions if you itemize, which are now subject to a \$10,000 annual cap—this includes your personal state taxes, as well. This change alone will make the decision of whether to keep the marital home that much more important.

What should divorcing couples consider when deciding whether to keep the marital house?

MS: Emotional considerations aside, financially speaking, divorcing couples should first consider the elimination of unlimited property tax deductions. Under the new tax law, homeowners can only deduct \$10,000 a year combined for personal state taxes and property taxes, meaning that maintaining a luxury home will become a lot more expensive. They must further consider rising interest rates. A divorcing party who wants to keep a marital residence will often be required to remove his or her spouse from the mortgage by

refinancing. With mortgage rates a point or more higher than they were just a few years ago, monthly payments could increase substantially. Coupled with the cap on property tax deductions, the spouse who wants to keep the marital residence may not be able to afford to do so.

How does non-marital wealth and potential inheritances impact the division of marital assets?

MS: Common sense rules here—if one party has a vast non-marital estate, it's likely that the other party will receive a disproportionate share of the marital estate. Non-marital wealth is only one factor out of several that a court will consider when dividing marital property. Inheritances, once received, are generally considered non-marital property, provided they're kept separate. However, a future inheritance is not a guaranteed asset, since beneficiaries may be changed. As such, an inheritance is nothing more than future expectancy and should not technically be considered in the division of marital assets. Note that there are certain trusts that are excluded from this rule and their assets may be considered an asset, not an expectancy even if the beneficiary may have yet to receive a dime.

In the age of cryptocurrencies, what problems, if any, do you foresee when dealing with these potential assets?

MS: Cryptocurrencies are one of those cutting-edge problems that many attorneys are still attempting to solve. An attorney must be well-versed in cryptocurrency to even know what to ask for in discovery, how to value such assets, and where to look for the red flags which may suggest that cryptocurrency is being used to hide what many would consider “traditional divorce assets.” The good news is that there should be a trail of money any time cryptocurrency is purchased or sold. However, the increasing use of bitcoin as a currency to purchase goods and services, rather than a security to be bought and sold, may make it difficult to determine the value and extent of a party's cryptocurrency holdings. Further complicating matters is the volatility of the cryptocurrency markets. For example, between August 2017 and December 2017, the price of bitcoin rose from \$1,800 to \$19,000 and as of April 2018, is approximately \$8,000. Thus, the same couple with the same bitcoin holdings would

have had very different asset divisions depending on when they were divorced.

When a divorce settlement is final, what steps should each party take to secure their individual futures?

MS: The easiest way to make sure no accounts are overlooked is to go through the balance sheet designating how the marital property was divided and marking off each account as it's handled. The parties are essentially determining their financial futures after a major life changing event.

What should divorcing individuals look for when selecting legal and financial advisors?

MS: The search for a legal advisor should start with seeking out professionals with impressive credentials. Then, comfort is the next consideration, because a divorce attorney often becomes his or her client's most important confidant. People should ask themselves, “Does this person understand what my goals are, and can I see myself speaking to this person about my most personal issues?” If the answer is no, they should move on to other options. Another important consideration is the attorney's ability to adapt and succeed in a variety of situations, because divorces aren't just resolved in the courtroom. A good attorney should be capable of engaging in confidential negotiations outside of court, attending mediation, participating in collaborative processes, and/or commanding a courtroom in litigation. It's important to choose an attorney who can easily change course if required to do so, and who is not only skilled, but who's also a source of comfort and reassurance throughout the case. The right balance of professional and personal skills is key.