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Divorce During a Pandemic (and the Holidays!)

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Written Exclusively for It's Over Easy by Sharon Klein, President Family Wealth Eastern U.S. Region

We all know divorce is stressful. Researchers tell us divorce is the second-most stressful life-changing event, second only to the death of a spouse and even more traumatic than serving jail time.

Add to that the tragic reality of the pandemic, on top of the challenges seeing loved ones this holiday season, and dissolving a marriage at this time can be exponentially more painful. Although we may not have full data for some time on how COVID-19 has affected divorce rates, there is evidence to suggest the pandemic is indeed putting high strain on more marriages.

Even for couples who make it through the holidays, the New Year could serve as a wakeup call. We've seen past Januarys yield upticks in online divorce filings, awarding it the name "Divorce Month."

With couples spending more time than ever before at home, plus the insurmountable stress brought on by this year, you're not alone if you are reassessing your marriage. If previous years are any indication of the future, we could see a historic number of filings in January.

If you are one of the many people re-evaluating your marriage and considering divorce any time soon, there are several key factors to keep in mind that could make the process go more smoothly for you.

As you read these points, keep mind that it is important to discuss your unique situation with your attorney, financial advisor and other experts to choose the course that's right for you. A silver lining in the process is that it will enable you to re-calculate your long-term financial planning with an eye towards your future.

Practice Patience

Divorce proceedings, including uncontested divorces (which are usually the quickest and least expensive way to get divorced) are taking an extended amount of time because of the pandemic.

With almost all courts shut down at some point in 2020, there remains a massive backlog of divorce cases in many jurisdictions. Pile on the increased number of divorce actions, and you'll likely wait more time than usual for your divorce to be final.

Also, meetings, hearings and trials are being held virtually, which adds another layer of stress. So take deep breaths and focus on your wellness as the process grinds on.

Assemble Your Team

If a couple is able to agree on the details of their settlement, they will save money on legal fees by managing the legal part of their uncontested divorce themselves. However, many people hire attorneys to represent them in divorce matters.

Either way, it's also important to work with experts who can help manage the other aspects of your life, especially life after divorce. This includes a financial advisor with experience in divorce and someone who can help you plan your estate, including life insurance, to maximize what you can leave to the loved ones you want to benefit.

Plan for the Unexpected

In the middle of a medical crisis, it is critical to make sure that your plans are current.

You will likely want to update your will if your soon-to-be ex-spouse is a beneficiary; typically, you do not have to wait until the divorce is final to do so. However, keep in mind that a prenuptial agreement or state law may require you to bequeath a minimum amount of assets to your spouse, so it’s advisable to have an estate planning expert help guide any changes you make.

You may also need to change the beneficiary of your life insurance benefits and the assets in your retirement plans, as well as your healthcare proxy and power of attorney should anything unfortunate happen to you.

You typically don’t want your ex-spouse making medical and financial decisions for you if you cannot decide for yourself.

Life insurance can be important to secure future alimony, child support and other divorce obligations. Divorcing spouses may be well-advised to work with an expert to strategically maximize their insurance benefits.

For example, a trust can be established to “own” life insurance policies. If, upon your death, the benefits are paid to a trust, surviving family members may be able to avoid having to pay estate taxes on the money, which can consume a large chunk of funds intended to help loved ones.

Work the Numbers

The pandemic has reminded all of us that when your divorce process reaches the financial settlement phase, it’s vital to stress-test the proposal from your spouse to ensure that your sum will allow you to sustain your lifestyle.

It’s not sufficient to use basic excel-type calculations to project how well a settlement sum can sustain a lifestyle.

Making simplistic assumptions about spending and projected portfolio growth rates can lead to a false sense of security: Simple calculations are linear and static; the markets and life are not, particularly with a pandemic gripping the globe and the volatility that it causes.

An experienced professional can help you stress-test a proposed settlement using many different assumptions, including serious setbacks such as a job loss or medical problems caused by COVID-19.

An expert also can parse the characteristics of different types of assets included in a proposed settlement to help secure the most effective outcome for you over the course of your lifetime. For example, a portfolio of tech stocks might be best suited to grow over time. But bonds may be able to provide you steady investment income now.

Analyzing how spousal support or a divorce settlement will affect your tax situation is also important.

For example, the 2017 federal Tax Cuts and Jobs Act changed the way alimony payments are treated for both payer and recipient. Being able to plan for changes in the tax regime is a key component to achieving peace of mind at the negotiating table.

The Liquid Phase

Of course, not all divorce settlements include alimony. Sometimes one spouse receives a one-time, lump-sum payment. In this case, the recipient needs to plan both for how much cash flow the money will provide to sustain their lifestyle, as well as how to create liquidity to cover an unexpected issue like large medical bills.

A professional can help plan for future changes such as cost-of-living adjustments well in advance to help prevent shortfalls in cash flow. And while no one can predict the future, particularly now, a recipient can aim for a financial cushion to provide them much-needed liquidity without having to sell assets in a fire sale, at potentially depressed values with devastating tax consequences.

Another attractive option is a line of credit based on the value of a portfolio. A recipient can draw on that credit to quickly create liquidity while leaving an underlying portfolio intact.

Final Thoughts

COVID-19 has prompted many people to rethink their priorities, including their marriage. While divorce during a pandemic is not easy, planning and forethought can help streamline the process and make for better long-term results.

This can be a springboard to a more rewarding life in this new normal in which we all find ourselves.

About the Author

Sharon L. Klein is President of Family Wealth, Eastern Region, for Wilmington Trust, N.A. She is responsible for coordinating the delivery of all Wealth Advisory Services by teams of professionals, including planning, trust, investment management, family governance and education, family office, and private banking services, to high net worth clients in the Eastern United States.

Sharon has over 25 years of experience in the wealth advisory arena and is a nationally recognized speaker and author. She has spoken for many professional organizations, including the Heckerling Institute on Estate Planning, the New York University Institute on Federal Taxation, the Notre Dame Estate Planning Institute, the Duke University Estate Planning Conference, and the Bloomberg BNA Tax Management Advisory Board. Sharon is frequently featured or quoted in publications such as the Wall Street Journal, The New York Times, Estate Planning Magazine and Trusts & Estates Magazine.

Sharon is a Fellow of the American College of Trust and Estate Counsel and a member of New York Bankers Association Trust & Investment Division Executive Committee, The Rockefeller University Committee on Trust and Estate Gift Plans, the Professional Advisory Council of the Anti-Defamation League, the Estates, Gifts and Trusts Advisory Board for The Bureau of National Affairs and the Thomson Reuters Trusts & Estates Advisory Board. She is a past Chair of the New York City Bar Association's Trusts, Estates and Surrogate's Court Committee, a past Chair of the New York State Bar Association's Trusts and Estates Law Section Taxation Committee, and a member of the New York City Bar Association's Matrimonial Committee. In June, 2018, Sharon was honored by the UJA-Federation of New York Lawyers Division for her contributions to the Trusts & Estates community and the community at large.

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