

Don't let divorce derail your retirement

By Trey Yates

If you are considering or going through divorce, it is likely that divorce will impact your retirement.

However, the more knowledgeable you are about yours and your spouse's finances, including your retirement benefits, and divorce law in Texas, the better prepared you will be to make sure divorce doesn't derail your retirement.



You and your spouse will begin the divorce process by gathering together all your financial documents. This will include statements for all your retirement accounts -- Individual Retirement Accounts (IRAs), 401(k) and 403 (b) accounts, and profit-sharing plans, as well as Roth IRAS and other pension plans. Increasingly, the variety and complexity of these plans may require some expert consultation or valuation during the divorce process.

You and your spouse will also be required to provide documentation on any other marital assets purchased during the marriage such as real estate, cash, stocks and bonds, automobiles, trust interests, businesses, stock options, valuable collections and more.

Working with your legal team, marital assets will be designated as *community property* or *separate property*, according to Texas divorce law. If the property was acquired by yourself or your spouse before marriage, it will likely be considered separate property and not subject to division in a divorce. Be prepared to provide documentation as to its origin. However, if the separate property has increased in value, that increase may be considered marital or community property, and thus, subject to division. If during your marriage, property was acquired through a gift, bequest, inheritance, law suit, etc., the asset may be your separate property even though it was acquired during the marriage.

All marital assets designated as community property should be appraised or valued. This may require special expertise, for example, if a family business or unique executive benefit packages are involved. Be cautious when comparing the dollar value of marital assets. A \$100,000 IRA is not equal to a home with \$100,000 in equity. Homes typically require ongoing maintenance and unexpected repairs; real estate values can also fluctuate dramatically in market downturns and may incur capital gains taxes when they are sold.

As you become knowledgeable on the financial aspects of divorce as well as divorce law in Texas, you will be in a better position to know what assets you want to secure from the settlement. Discuss your post-divorce goals with your divorce attorney. Then, map out a strategy designed to help you achieve those goals, without derailing your retirement plans.

Changes to Social Security rules may impact divorce strategies

By Patricia Barrett, CFP, CDFA

Did you know you may qualify to receive Social Security on the work record of your ex-spouse or soon-to-be ex-spouse? Well, it's a fact. However, you must meet several rules for qualifying to receive those benefits. And Congress recently (2015) eliminated some Social Security filing strategies that many couples have used in the past to add funds to their retirement incomes.



By the way, Social Security's regulations and policies are gender-neutral and apply equally for men and women. Here are the basic rules for qualifying for Social Security benefits on the work record of your ex-spouse:

- 1) You must be at least age 62 and married 10 years or more to your ex;
- 2) Your divorce must have been final at least two years before you file;
- 3) Your ex-spouse must have reached the age at which he or she is eligible to receive a retirement or disability benefit;

- 4) Not entitled to a higher Social Security benefit under your own work record;
and
- 5) You must be unmarried.

If you meet all the above criteria, and you have reached your full retirement age -- *now age 66 for people born from 1943 to 1954, or 67 for birthdates in 1960 and later* -- then you qualify for 50 percent of the amount your spouse is due at his or her full retirement age. If you are 62, then you qualify to receive 35 percent of his or her benefits.

Any benefit you get does not affect the amount your former spouse, or his or her current spouse, may receive. And the remarriage of the ex-spouse has no bearing on your ability to file under his or her earnings record. It is only your own remarriage that revokes your eligibility to file under his or her work record. If you remarry and are married for 10 years or more and divorce, you can take either benefit, whichever is greater.

New Social Security rules and divorce

The strategies that will be phased out thanks to new legislation are known as *file-and-suspend* and a *restricted application for spousal benefits*. Prior to the new rules, these strategies have allowed both members of a couple who are 66 or older (married or unmarried) to delay claiming benefits based on their own earnings record, while filing to receive a so-called spousal benefit based on the other's earnings. Under certain circumstances, some people can still take advantage of the old rules -- provided they act quickly.

The restricted-application changes apply to people who are married, divorced, in the process or considering divorce. Under the new rule, only those who turn 62 this year or are older will be able to file a claim based on the ex-spouse's earnings record while allowing his or her own benefit to grow, but only when they turn 66. Younger divorced people will receive either their own earned benefit or a spousal benefit, whichever is higher; they will not have a choice to take one and switch to the other later.

Since each divorce is unique, and the new rules are up to interpretation by the IRS, consult with a Certified Divorce Financial Analyst to get clarification. CDFAs are trained professionals who are up-to-date on tax law changes and knowledgeable about maximizing your Social Security benefits following divorce from within the context of your total financial situation. Knowledge is power, even when it comes to Social Security and divorce. For more specific information on divorce financial planning, visit www.socialsecurity.gov.



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This guidebook was developed by the American Bar Association Section of Family Law to help illuminate the financial aspects of the divorce process. Each spouse in a divorce needs to work together with their legal teams on the various financial aspects of the process. Active participation and engagement in this process by both spouses is required in order to secure a desired outcome.