Guide to Good Divorce enewsletter Summer 2014

Temporary orders during divorce process can protect both spouses

By Trey Yates

For many individuals facing divorce, a common concern is the disruption of financial security during the divorce process. This issue can be especially frightening and overwhelming when a stay-at-home parent, a financially dependent spouse or a disabled spouse is facing divorce.

Here are some of the concerns I hear from spouses facing divorce who fear significant financial challenges:

- "My spouse earns much more than I do, how will I support myself and my children on my income alone while I'm going through divorce?"
- "My spouse has complete control of the household finances, I have no money to pay a divorce attorney."
- "My spouse is threatening to take away my children if I file for divorce since he/she makes most of the income."
- "I have cared for our children and our home for many years and do not have a job. I need help acquiring skills so I can get work after the divorce."

I have counseled many individuals in these and similar circumstances who are so concerned about finances, they are virtually paralyzed with fear and unable to take action. I cannot over emphasize that there are solutions to these and other concerns with regard to maintaining a couple's financial stability during the divorce process.

While the divorce is pending and agreements are being worked out, most couples should consider setting up temporary orders and/or support to protect their assets and credit during the divorce process. Whatever the

situation, either spouse can ask for a temporary support hearing at the time the divorce is filed or shortly thereafter.

Temporary orders can state, while the divorce is pending, who stays in the family home; who cares for the children; and who is financially responsible for the mortgage payment, utilities, car payments, etc. These orders also set rules restraining any inappropriate conduct by divorcing spouses.

In my experience, couples can often agree upon reasonable, temporary financial arrangements, through their attorneys, that will tide them over until the divorce is final. One attorney can draft a *Temporary Orders* document that outlines all the financial details agreed on. This document is then signed by each spouse and filed with the court. Agreeing on temporary orders at this stage moves the process along, alleviates fears and avoids incurring additional legal fees from going to court.

As far as paying attorney's fees, many lawyers today accept credit cards from clients going through divorce. This is an option to consider if couples do not have the cash reserves available to finance the divorce. This also may be a good solution for couples wanting to preserve what cash reserves they have to pay for unexpected expenses during the divorce process.

The first step to securing your finances during the divorce process is to find a family law attorney who is experienced in divorce and can assist you with these and other concerns you may have.

Late-life divorce brings unique financial challenges

By Patricia Barrett, CFP, FDFA

Divorce at any age or stage in life can be difficult -- both emotionally and financially. Yet, couples divorcing after age 50 face unique financial challenges that should be examined and resolved during the divorce process.

Most couples in this category have the added burden of dividing a life-time of accumulated assets from real estate and investment accounts. And often these assets are substantial and complex. There also may be significant household debt, and then there's the prospect of retirement on the horizon that should be appropriately explored before the divorce decree is signed.

Sorting out the particulars of late-life divorce can be daunting and may require the expert assistance of a certified divorce financial analyst for a satisfactory resolution.

Property division is different

Because couples in this category are older, there is less time for them to financially recover. Consequently, they should focus on evaluating their assets for post-divorce income potential. In my practice, I often find that women want to keep the marital home. This may or may not be a fiscally smart choice for her and should be carefully examined.

On the positive side, there may tax advantages for property taxes and mortgage interest, rental income (for part or all of the property) and the buildup of equity that can be accessed in later years when one downsizes. On the negative side, real estate valuations can take a downturn in a weak economy, diminishing the value of the home. Maintaining a home also can be expensive over time and difficult for a single, older homeowner to afford and manage. Also, paying utilities for a large home can be costly and inefficient. Whether or not to keep the home should never be a totally emotional decision. This decision should be carefully thought out and approached from a logical, business-like standpoint.

Generally, couples should take into account the value of a mixed and balanced portfolio, such as IRAs, stocks and bonds and cash on hand. The latter is particularly important for the lower earning spouse who may have to pull from cash to meet shortages. A good rule of thumb is that both spouses share the risk and take a percentage of multiple assets, with more of the bank accounts assigned to the lower earning spouse.

Evaluate Social Security benefit options

Retirement and *survivor benefits* are two types of Social Security options available that are linked to a former spouse. The couple needs to have been married for at least 10 years. The claimant spouse must be at least age 62 to qualify for benefits linked to a former spouse. However, the claimed benefits must be higher than those earned by the claimant. The amount of the benefit is 50 percent of the former spouse's retirement, but does not diminish his or her benefits. The rules get very detailed, so check with the Social Security Administration for complete guidelines. It is also a good idea to secure a copy of each spouse's most recent Social Security benefits statement which are available online from www.ssa.gov.

Know your complete debt picture

Another good rule of thumb for all divorcing couples, especially those over age 50, is to secure a credit report for each spouse during the divorce process. No one wants to discover post-divorce that one spouse racked up a $10,000 credit card debt without the other spouse's knowledge. Both parties would be responsible for the joint debt. Creditors, mortgage companies and the IRS are not bound by divorce agreements that say who is supposed to pay for what. However, there are methods of dividing marital assets and debt that avoid these types of risks and protects each spouse from potential surprises down the road.

Retirement and pension plans, 401(k)s and IRAs

Be especially cautious in the area of figuring out current market value and eventual payout value when it comes to complicated pension or retirement plans. This may require the assistance of a certified divorce financial analyst since the valuation may need to be adjusted for taxes to be incurred in the future, depending on when the funds will be tapped.