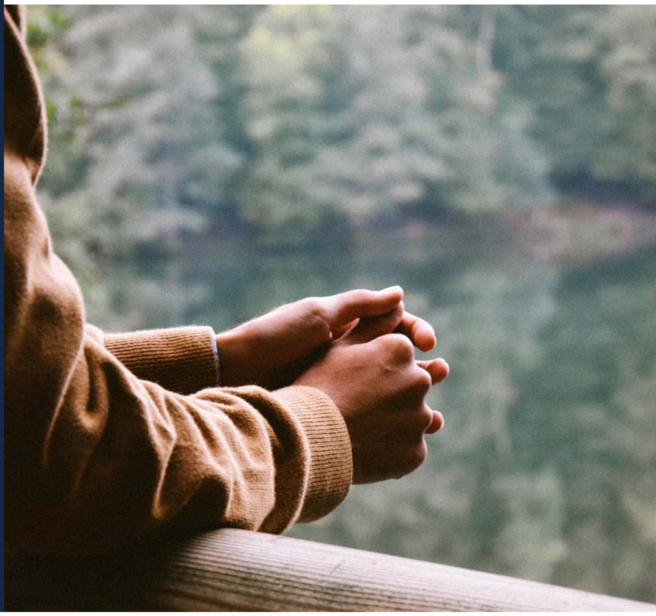
DIVORCE PLANNING CONSIDERATIONS

Divorce is an emotional and life-changing experience for all parties, especially when children are involved. Access to the right financial literacy can be instrumental in helping to become familiarized with this process. The divorce landscape is not static and a multidisciplinary approach that considers the ever-changing legislative guidelines relating to income tax, estate and gift taxes, state estate taxes, and family law can be advantageous.



Division of Assets - House versus Investments

It's not uncommon for clients with children who are minors to want to maintain their home through a divorce, even opting to forgo some entitlements to investment accounts. In determining the viability of retaining a home, consider your cash flow, rising property taxes, future repairs and compare historical investment rates of return to those of home ownership.

Tactics to consider may include:

- Quitclaim deeds, a legal tool used to transfer interest in real property
- A refinance if a mortgage naming both parties exists
- The exclusion of gain on the sale of residence may be excluded if both parties agree to sell the house, provided certain requirements are met

Business Valuation

Business valuation is particularly important, yet can be complex to calculate. A variety of approaches can be employed including assets minus liabilities, market valuation, income/cash-flow based, or some combination. It's important to consider what financial and labor-related contributions were made to the business by either spouse during the time of the marriage. Estimating future profits as a result of financial and labor contributions that occurred during the marriage shouldn't be overlooked as well as the following questions:

Did most of the marital money reinvest back into the business instead of the household?

Could your spouse argue that he or she is entitled to a larger percentage of your business because he or she did not derive financial benefit during the marriage?

Did the Tax Cuts and Jobs Act, implemented in December 2017, impact the business valuation as many pass-through entities received increased cash flow and reduced taxes as a result?

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Alimony

Alimony is no longer deductible by the payor nor includable in income for the recipient for divorces or separation agreements executed after December 31, 2018. Executed prenuptial agreements allowing for the deduction of alimony prior to that date may or may not hold up in court. It's advisable for alimony recipients to consider whether tax-free alimony precludes them from making IRA contributions and if they qualify for income-based benefits whereas alimony payors may opt to negotiate for lesser payments due to the lack of a deduction.

QDRO

Engage in a conversation with your attorney about the valuation date for accounts split by a qualified domestic relations order (QDRO), addressing the following:

- Is the value based on the date of the marriage's dissolution, the date the divorce proceeding began or another date?
- When is the account to be split?
- Who is charged with paying for and completing the QDRO?
- Did the attorney address COLA, death/surviving spouse rights, shared or separate interest?

Finally, confirm that the assets named in the QDRO can be divided as some government plans are excluded. Seek QDRO counsel at the onset of the divorce to avoid costly mistakes.

Estate Planning

It's necessary to update all beneficiary designations on qualified accounts such as 401(K) plans, IRAs, and pension plans as well as nonqualified accounts with named beneficiaries such as life insurance, annuities, and transfer on death accounts. Updating your Will and Trust documents do not override your named beneficiaries on the aforementioned accounts.

Same-Sex Marriage

If a same-sex couple has entered into a civil union or domestic partnership before legal marriage, those contracts may not be overridden by marriage. The date of marriage is important in terms of social security and pension benefits. It's important to determine the official date of marriage in addition to the timeline around a civil union.

TAX CONSIDERATIONS

Income taxes are often overlooked during the division of property.

1. BASIS

Understand the tax basis of the property and whether that basis carries over. Most transfers between spouses/former spouses incident to divorce are non-taxable, however, exceptions such as nonresident alien spouses and transfers occurring greater than one year after the marriage dissolved may exist. Ideally, judgments should require, at the time of transfer, that the transferor supply the transferee with records to determine the basis and holding period of the property. Consider tax basis when dividing property in a community property state -- those states require the court to equally divide community estates absent an agreement of the parties or otherwise by law.

2. OTHER TAX CONSIDERATIONS

The right to deduct losses associated with an asset may be transferred depending on the type of asset. For asset transfers involving income, it is important to note that income is taxed to the person who earns it. If income has already been earned, a spouse cannot assign the right to receive income to the other spouse, even by contract. Future income, however, can be transferred to a spouse. Exceptions may exist under federal law and vary by state.

3. BEFORE AGE 59.5

Withdrawals from qualified accounts before the age of 59.5 may be subject to a penalty unless 72T or another exception applies.

4. TAX RETURN

If you are legally divorced by year-end, you must file "single" or "head of household." If not legally divorced, you may continue to file "married filing jointly" or "married filing separately." Each option carries different financial and legal ramifications.

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Conclusion

Many professionals, led by a family law attorney, are typically involved throughout the divorce process. A CPA can assist with tax issues, while an estate planning attorney can help re-draft estate planning documents. Consider hiring a Certified Divorce Financial Analyst® (CDFA) for divorce-specific financial forecasting and expertise. These professionals are experienced in the division of assets and their ensuing tax consequences, cash flow, income needs/withdrawals, retirement projections and risk management. Frontier employs CDFAs as well as CERTIFIED FINANCIAL PLANNER™ professionals who work collaboratively with your trusted team. The financial decisions you make or do not make today will transform your future.

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