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Great, I'm Divorced, Now What?

A primer for the newly divorced individual

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With all of the negotiations, arguments, threats and exasperation that come with a divorce, when finalized, many recently divorced spouses are faced with things they haven't had to deal with for years or even decades. We are not talking about rejoining the dating pool, but dealing with one's own financial affairs. To quote a Peter Allen song, "Everything old is new again." Re-establishing personal credit, paying bills, dealing with investments and getting ready for taxes can prove frustrating. This frustration will be felt by both parties, maybe not equally, but both will feel it and, inevitably, each will have to fill in where the other has left off. As professionals in the family law arena, it is incumbent upon us to properly advise our clients, not only helping guide them through the divorce process, but preparing them for their new life after their divorce.

Throughout this article, various financial issues each divorced person will face—and, likewise, the professionals—are highlighted. Some will have been handled during the proceedings, such as opening a checking account, getting a new credit card and paying bills. From experience, we have learned that even the simplest task to one party may feel insurmountable to the other. We have broken down the issues into seven areas, adding a reminder regarding cohabitation. The remainder of the article is written as if the reader is one of the parties to the divorce and not the family law professional.

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Day-to-Day Finances

Typically, one spouse takes care of the mundane task of paying bills. If that was your former other half, you need to set up a system so bills get paid timely. If you are somewhat computer literate, a program, such as QuickBooks, can help with the recordkeeping. It may take a little getting used to, but is well worth the time and effort. As an aside, many community colleges and adult schools offer courses for learning QuickBooks. Of course, you need to understand the cash flow process, which simply is how much money will be coming in and how much is expected to get spent each month.

Budgeting

When anyone first hears the word "budget," thoughts of scrimping and saving immediately come to mind. However, there are huge differences between living on a budget and creating a budget on which to live. It doesn't have to include every dollar, just provide a framework. Include fixed expenses, such as mortgage or rent, mostly fixed expenses, such as utilities or gym memberships, and variable expenses, such as food and entertainment. We tend to use Microsoft Excel to create budgets, which, for basic spreadsheets, is easy and effective. List each income and expense item, limiting it to cash flow items. For example, if you receive interest or dividends on investments, but don't use them on a monthly basis, don't include them in your budget. On the expense side, estimate amounts to be paid each month. Regarding loans, start by using the minimum required payment. Amounts can always be increased if there is an excess of cash inflows over outflows. While it is not expected that anyone will stick to their budget, it provides a way of understanding your cash flow. For the first several months, we recommend that you compare inflows and outflows to your budgets. If anything is significantly off base, adjust it. Remember that your budget reflects your lifestyle and its purpose is to help with money management.

Investment Management

If you are fortunate to have received investments through equitable distribution, decision making is inevitable and difficult, even for a seasoned investor. If you are comfortable with the prior investment manager, ask him/her to discuss your needs and goals, both current and long-term. If you are the least bit uneasy because of the prior relationship between the investment manager and your ex-spouse, we recommend interviewing several investment advisors, asking each how he/she would invest your money. Then choose the one with whom you feel most comfortable. In addition to discussing your needs and goals, discussions need to consider risk tolerance and personal feelings about certain industries. Remember, it is your money and you have the final word.

Pensions & Retirement Plans

Whether you had your own plan during the marriage, received a portion of your spouse's account through a Qualified Domestic Relations Order (QDRO), or have no retirement plan, you need to prepare for your retirement. Even if you do not work, but collect alimony, you are allowed to contribute to an IRA or Roth IRA. There are several differences between traditional IRAs and Roth IRAs. While contributions to a traditional IRA are tax deductible, contributions to Roth IRAs are not. New Jersey doesn't allow the deduction, so it is not a factor. The second important difference occurs upon withdrawal. After reaching retirement age, amounts withdrawn from Roth IRAs are not subject to income tax, whereas amounts withdrawn from traditional IRAs must be allocated based on the total amount contributed and the appreciation on it. While alimony may be for life, once the payer stops working, it is likely that it will be reduced. One of the best ways to protect yourself and supplement your income during yours golden years is with retirement accounts.

Social Security

This is one of the most complicated areas, even without getting divorced. There are over 2,700 rules governing retirement benefits and over 500 possible filing strategies available to a typical couple. For the divorced person, who did not work, claiming Social Security benefits through a former spouse's earnings is available given certain parameters. The couple needs to have been married for over 10 years, both spouses must be over age 62, and the applicant seeking benefits cannot be married at the time of the application. Of course, there are a lot of other rules and factors, but it is important to know that you still can collect against your former spouse's account without affecting the amount that he/she will receive.

Estate Plans

Draft a new will. You'd be surprised how many divorced individuals don't and, without realizing it, leave all of their worldly possessions to their former spouse. When we discuss estate planning with our clients, we explain that the most precious assets are their children. If minor children are involved, discuss the issue of guardianship with your attorney, especially if the noncustodial parent has moved out-of-state or has a new family. A codicil or affidavit to the new will also should be prepared so that any family court, needing to decide on future guardianship, is aided in its decision with the reasoning behind your appointment of the third party as the guardian of any child(ren) over the other biological parent.

Insurance

When it comes to insurance, a lot of people suffer from "ostrich syndrome," which is burying your head in the sand and hoping it will go away. It won't, so be diligent. There is a variety of different types of insurance, many beneficial and some mandatory. Obviously, you need health insurance. Even if you get coverage under COBRA through your former spouse, it will run out. While you may not need to do something immediately, recognize your short-term and long-term needs. You also should have homeowner's or renter's insurance and auto insurance. Every policy needs to be reviewed for appropriate coverage.

Two other types of insurance that should be explored are long-term care and life. For those with minor children, life insurance, while not mandatory, may be necessary. You must determine your insurance need, which is a combination of the amount needed to preserve the lifestyle for your children, including college costs, for as long as deemed appropriate and other amounts, such as weddings and funeral costs. It may be a morbid thought, but it is inevitable. For example, if your children are already in college, your insurance need would be smaller.

For existing policies, be sure to update your beneficiaries. If your existing policies name your ex-spouse as the beneficiary and you do nothing, the law in New Jersey and New York is that the insurance company will ignore the primary beneficiary and pay out the proceeds to the contingent beneficiaries. If no contingent beneficiaries are named, payment will be made to the estate. If the intent is to have your ex-spouse as the beneficiary, you must sign new beneficiary designation forms after the date of divorce. By doing so, the positive action of naming the beneficiary will be allowed, whereas doing nothing is a negative action and the beneficiary designation will be ignored. Also, it may be advisable to form a trust to own and be the beneficiary of the policy.

It is strongly encouraged to consider all options and to discuss those options with your professionals. As the cost of health care for seniors has spiraled upward, long-term care insurance has increasingly become more important. It is another way to preserve your assets. If you choose to purchase this sort of coverage, be sure to consult with an insurance advisor, who truly understands all of the nuances.

Cohabitation

New Jersey's alimony statute defines cohabitation as "involve[ing] a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household." N.J.S.A. 2A:34-23(n). Further, when evaluating whether cohabitation is occurring, the court shall consider the following seven factors:

1. Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
2. haring or joint responsibility for living expenses;
3. Recognition of the relationship in couple's social and family circle;
4. Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
5. Sharing household chores;
6. Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S. 25:1-5;
7. All other relevant evidence.

There are two important points a person should know regarding the amendment to New Jersey's alimony statute, which took place in September of 2014, especially if they are entering into a divorce agreement to receive or pay alimony. The first important part of the amendment is that "[a]limony may be suspended or terminated if the payee cohabits with another person." N.J.S.A. 2A:34-23(n). There seems to be no second step in the amended statute.

Prior to the amendment, the court would review the economic needs of a supported spouse upon a finding of cohabitation. The burden, once placed on a spouse challenging an alimony obligation, would create a two-step process and costly litigation. Upon a finding of cohabitation, the court would then move to the second step, shifting the burden to the dependent spouse, "to show that there is no actual economic benefit to the spouse or the cohabitant." *See Ozolins v. Ozolins*, 308 N.J. Super. 243, 245 (App. Div. 1998), and *Gayet v. Gayet*, 92 N.J. 149 (1983). The extent to which this amendment will affect cases and preclude further litigation must be further parsed out by New Jersey courts in case law.

However, the amended statute allows for a court to make a ruling without any further costly litigation based on the plain language of the statute. Furthermore, the amendment opens the door to the possibility of a court finding cohabitation without finding that the parties live together on a full-time basis, but based on only a part-time living arrangement. The New Jersey legislature outlines this in the amendment, stating that "[i]n evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship," and a "court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis." N.J.S.A. 2A-34-23(n). Therefore, the new language of the amended statute is set to act as a deterrent for those trying to scam payors by not moving in with their significant others and delaying the inevitable termination of the support obligation based on their marriage-like relationship with their significant other.■