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The Alimony Buy-Out: Is It Right for Your Client?

In some cases it makes sense to pay a lump sum and be done with it

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By Jonathan H. Blonstein and Michael H. Karu

Perhaps the most dreaded word in the English language is "alimony." It can produce fear in even the strongest of individuals and has been known to reduce many to tears. In this article, we will be discussing the pros and cons of negotiating an alimony buy-out as an alternative to conventional alimony.

According to the dictionary, alimony is defined as money that someone pays to support a husband or wife to whom they are no longer married. The reality is that alimony will continue to tie one spouse to another for potentially their entire lives when their desire is to extricate themselves from each other as much as possible.

The subject of marital dissolution negotiations is money, and the aim is to agree on how much for how long. For both the supporting and supported spouse, ending a marriage is essentially bargaining for something they can live with—an acceptable portion of finite resources. As with every business decision, there are pros and cons to be considered, which we refer to as the cost/benefit rule. The intent is to come to a point where the benefits outweigh the costs. Of course, both sides are looking to satisfy their underlying and, at times, competing interests, so it can be a little tricky.

There are benefits that both the supporting and supported spouse will receive.

1. Finality: Once the payment is made, both parties never have to deal with the other;

2. Certainty: Both know exactly what has happened and don't have to deal with any potential future events; and

3. Potential savings in professional fees. We know this hurts, but we have to act in the best interest of our client.

There are benefits that have more meaning to the supporting spouse:

1. No need to maintain life insurance to secure alimony obligation;

2. No need to make monthly alimony payment through clenched teeth (as a result there is likely less acrimony and stress on the postdivorce relationship);

3. Assuming there were negative changes in circumstances prior to the filing for divorce (divorce planning) and positive changes in circumstances occurring afterwards, there can be no modifications; and

4. The supported spouse may elect to take a reduced amount today as opposed to periodic payments over a period of years.

Conversely, there are potential negatives to the supporting spouse:

1. No do-overs: This is a case of "you

Blonstein is a family law attorney with Weinstein, Lindemann & Weinstein in Roseland. Karu is a certified public accountant and member of the accounting firm of Levine, Jacobs & Company in Livingston.

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made your bed, now lie in it." Typically, periodic alimony will terminate if the supported spouse cohabitates, remarries or dies. If any of those occur, the monies are gone. Additionally, there are no modifications; and

2. Limited immediate resources: Since the supporting spouse has given up the lion's share of the assets, there may be limited resources available in the short term.

Of course, there are benefits to the supported spouse:

1. No worrying about the supporting spouse being late or noncompliant with monthly support obligations,

2. Immediate access to significant monies may enhance the supported spouse's ability to move on with his/her life—e.g., put down a more significant down payment to buy a home rather than renting; and

3. No do-overs: The supported spouse doesn't have to worry if the ex-spouse loses a job or retires.

With the benefits, there are also detriments to the supported spouse:

1. The supported spouse may have difficulty budgeting with a lump sum payment rather than a monthly payment; and

2. Given the choice, most people will elect to take $500 now rather than $100 per month for six months. It is extremely likely that something will have to be given up to receive something now rather than later.

As advisors, we are faced with a dilemma. We need to effectively manage client expectations by explaining every detail to them. At the same time, we need to make them understand that things can and will happen that are outside of everyone's control, especially ours. "Hope for the best, plan for the worst" needs to be the mantra. After all, we can negotiate what, on the surface, may be a great settlement, but a year or two later, may not be. Equally or more importantly, we must understand our client. More times than not, we will hear something like, "I want to be rid of that so-and-so permanently. Do whatever it takes and get me out of this [*fill in the blank*] marriage and away from that [*this one too*]." While that truly may be the case, other times the client is merely ranting. It is up to us to recognize the difference. We also cannot focus just on the financial aspects without delving into each litigant's history and general lifestyle. Let's look at a few examples where an alimony buy-out may be a possibility.

Example #1—Brad and Janet

The couple has been married for 30 years and both are 55 years old. They have two children, both emancipated, so child support is not an issue. Brad is self-employed and has a business valued at $3 million. Janet has a retail store with a value of $100,000. Neither Brad nor Janet has anything in retirement accounts. All other assets are held jointly, including the family home valued at $950,000; a vacation home, also valued at $950,000; and various investments totaling $2 million. There is no life insurance. Brad earns $1 million per year, and Janet earns $50,000 per year. After all expenses and taxes, they are able to save $100,000 per year. They already have agreed that each will keep his/her personalty, and they are willing to share the marital assets equally.

Here's the fun part. Brad says that he won't pay more than $200,000 per year in alimony and expects to stop paying alimony when he retires at age 62. Janet says that she needs $350,000 per year to maintain her existing lifestyle, including keeping both houses. To further complicate matters, there is a history of long life in Janet's family, while none of Brad's relatives has ever lived past 70.

Example #2—Napoleon and Josephine

The couple has been married for 20 years. Napoleon is 62 years old and Josephine is 42 years old. They have two college-aged children, Dante and Beatrice, with one and two years remaining in their respective college careers. It is expected that each will be deemed emancipated after finishing college. Napoleon currently is a government employee earning $200,000 per year with full benefits and a retirement package that is estimated to yield $50,000 per year. Napoleon will retire when he turns 65. Before turning to politics, he worked for a publicly traded corporation and, when he reached age 59, started to receive $200,000 per year in pension distributions from his defined benefit plan. During the entirety of the marriage, Josephine did not work and has always been treated like a queen. They rent separate apartments and have investments of $4 million.

Again, here's the fun part. Nappy caught Josie with another man and refuses to pay anything. He, begrudgingly, is paying for the remainder of their children's college costs, but has told her that he will not pay alimony and that she needs to get a job.

Example #3—Ross and Rachel

The couple has been married for 15 years. Both are in the entertainment business and met while filming a television show. Her career blossomed, while his did not. They have a house valued at $4 million and other assets valued at $16 million. They have two small children and he has been their primary caregiver. Neither is scheduled to work on any project for the near future, but it is likely that she will be cast. Over the past five years, she has averaged earning $2.5 million per year, while he has given up his career to be with the children.

Here's the argument. She feels that since he is getting 50 percent of everything, there should be no alimony. She will contribute 50 percent toward the child care expenses, but expects Ross to go back to work. He is willing to work, but after several years out of the industry, it is difficult to get cast.

Needless to say, there is no right or wrong answer and each scenario is different. It is important to recognize that, if the stars line up, an alimony buy-out is a viable alternative. When the discussion is broached, be sure that present value calculations are done, so you can properly compare the amounts, and that your client fully understands the ramifications. After all, as previously noted, there are no do-overs. ■