

WHY SEEK FINANCIAL EXPERTISE IN DIVORCE CASES?

by Steve McBride, CDFA

When should you consider using a financial professional to help with your divorce clients? Many times financial professionals are needed simply to help one or both of the parties to understand the basic financial issues and put together a budget. Seeking help from a financial expert can also help the parties slow down enough so their emotions don't get the best of them and end up being the criteria to jump into poor decisions that could affect them for many years to come. Other times, the issues are complex and need some focused time and expertise to provide sound analysis and advice to the parties.

The following is not meant as legal or tax advice, but just a brief overview of some of the more complex issues that can arise.

1. **Recapture of Alimony.** To prevent a property settlement from being disguised as alimony and thus being deducted as alimony, the Internal Revenue Service has rules that prevent excess front loading of alimony payments. If alimony payments decrease in excess of \$15,000 during any year during the first three calendar years, the excess is subject to tax and is not deductible by the payor. There are exceptions such as death of the spouse and payments fluctuating for reasons not in the control of the payor.
2. **Six Month Rule.** Care must be taken to ensure that alimony payments are not designed to be reduced with occurrences related to the children, or they may be considered child support for tax purposes, thus losing the deduction. If alimony payments are to be reduced less than six months before or after a child reaches 18, 21, or the age of majority in the state, these can be considered child support.
3. **Property Settlements.** If a property settlement is to be paid out over time, avoid mentioning an interest rate, as this could result in a tax charge on the interest income.
4. **Carry Forwards on Tax Returns.** With all the losses that were experienced in the stock market at the beginning of the decade, many couples will be carrying forward capital losses. These are divisible assets.
5. **Double Dipping.** If one spouse has a closely held business or practice, the temptation is to swap the house for the business. However, if maintenance payments are based on the income that is generated from the business, then dividing the asset that generates the income is considered by many to be unfair.
6. **Government Pensions.** Valuing government pensions can be tricky because some government employees will receive no or a reduced social security pension because they have not paid the full amount into FICA. Since social security is not a divisible asset, government pension valuations need to take into account the value of what would be the social security benefits that the employee will not be receiving.
7. **Division of Defined Benefit Pensions.** If it is decided that a pension will be divided, then it is important that the agreement of how it will be divided be specified in the settlement document. This usually requires a review of the pension documentation to see what is possible and to know what the options are for the division. A few of the issues to be aware of include:
 - a. If the participant dies before the QDRO has been written and accepted by the pension administrator, the alternate payee may have lost his/her pension rights.
 - b. Will it be separate interest or shared payment? In other words, will the duration of benefit payments be based on the alternative payee's life expectancy or the participant's life expectancy? If separate interest, and the alternate payee has a longer life expectancy, then his/her payments will likely be less per month than the participant's payments. Also, with separate interest, the alternative payee may elect to begin payments at the participant's earliest retirement date, even if the participant has decided not to retire. In a shared payment approach, the alternate payee simply shares in the participant's benefits when they go into pay status.
 - c. What happens if the participant dies before retirement or during retirement? It is almost always necessary to have both a pre-retirement survivor annuity, and on a shared payment approach, to always have a joint survivor annuity. Otherwise, the alternative payee may be without a pension.
 - d. How do you determine the marital portion of the pension? In most cases, true coverture is the only way to ensure that the two halves of the marital portion are the same when eventually paid. However, be aware that coverture does not work on some union plans (partial year credits), military plans (point system) and career average plans.

Conclusion

Using a qualified divorce financial analyst or CPA to support you and your clients on the financial issues of the divorce can help smooth this aspect of the negotiation and improve the chance that both parties will make more informed decisions. It is helpful to bring the financial analyst into the case early so that all the necessary data can be collected and analyzed before positions are taken and to help take some of the emotional heat out of the decision-making.

Steve McBride is a Certified Divorce Financial Analyst who can assist you and your clients with arriving at equitable financial solutions. In addition to holding certification with the [Institute for Divorce Financial Analysts](#), Steve is also a member of [Colorado Collaborative Family Law Professionals](#) and [Rocky Mountain Collaborative Law Professionals](#). For more information, you can contact Steve at 720-404-1607 or steve@stevemcbrideconsulting.com or visit his website at www.divorcefinancecolorado.com.