Retirement Strategy After a Divorce

Divorce is one of the most difficult things a person can go through, in my opinion. The emotional turmoil for yourself as well as any children you may have and other family members and friends, can be considerable. As if all of that wasn't hard enough, the divorce process can be made even more unpleasant by various financial issues and protracted battles over assets — which can include real estate, property, money and investments.

A recent *Investopedia* article, How to Protect Your Retirement After a Divorce, notes that crafting a workable plan for both spouses beforehand is possibly the best first step you can take. When you're planning a wedding, or are in the early days of your union, few people would want to bring up the topic that a future divorce is possible, but let's face it, it is.

As much as anything, an agreement that acknowledges a divorce is a possibility, comes down to open and consistent communication. You and your spouse should sit down together to examine your assets and, from there, you should come up with a plan that would divide those assets in a way that you can both live with. Remember, neither spouse is likely to get everything they want, so give and take is essential. Obviously, this process should include a keen examination of any and all retirement accounts.

Additionally, an agreement hammered out only between you and your spouse may not hold up in court if your divorce process becomes more hostile. Therefore, it may be a wise move to work with an attorney and a financial services professional to come up with a plan that you can both live with and that will survive the legal process.

You should also note that many retirement plans and accounts have language that strictly determines how retirement assets will be divvied up after a divorce. In some cases, breaking these rules may mean you end up losing some, and perhaps all, of that asset, even if it's an asset you ended up with during the divorce negotiation.

The Thrift Savings Plan, which is a defined-contribution plan available to federal employees and military personnel, is a good example. It mandates that a strategy for the plan's assets be clearly defined and labeled as "TSP balance" in any divorce process.

Per the article, an informal agreement between two divorcing spouses isn't legally binding enough for a rollover. The divorce decree must specifically state something along the lines of "the spouse is entitled to X-number percent of the account holder's TSP balance." If it doesn't make this statement, the account holder's spouse doesn't receive a dime, no matter what any other agreement may say.

Also, in most cases any debt that's sitting in a retirement account is considered a joint obligation.

Let's take a step back and provide an example of how you can have debt in a retirement account. For example, if the policy-holding spouse took out a $100,000 loan from their $200,000 401(k), a 50-50 split is likely to be calculated for the remaining balance in the plan. The only potential wrinkle to this is if the divorce decree spells out that the $100,000 loan must be repaid before the division occurs.

Next, let's look at pensions. Generally, the division of individual retirement accounts, or as we more commonly refer to them, IRAs, is a simple process. Specifically, a divorce decree or the Qualified Domestic Relations Order is used to transfer balances from one spouse to the other as a simple rollover.

Though the division of retirement funds is ultimately set by a court order, there are a number of factors that play into deciding how monthly benefits are split between spouses. As you've probably already guessed, any pension money that was earned during the marriage is most often considered joint property and is therefore most likely subject to division during a divorce.

When it comes to survivor benefits, in some cases, the non-working spouse may choose to keep the survivor benefit that they've been designated to receive. In other scenarios, the monthly benefit can be divided between non-working spouse and the account holder — with the survivor benefit retained, waived or even transferred, depending on the language of the divorce agreement.

This is an area where the non-working spouse is really going to want to do their homework on additional options they may have such as, the working spouse purchasing a life insurance policy that names them as the beneficiary.

Earlier in today's show, we talked about homework, so let's circle back to that for a few moments. When dealing with a divorce, it's critical to have a grasp of the rules about how your various accounts will be divided. Remember, the non-participating or non-owner spouse is entitled to all of the information regarding retirement plans and account balances.

Additionally, you should note that rules about dividing pensions and other retirement assets are different state to state. Your divorce in Arizona may look very different than a friend or family member's divorce in Florida.

As we mentioned earlier, relying on professionals to help you through the process is likely a smart play. In fact, that's probably something that can't be overemphasized. Why go through something as difficult and unpleasant as the divorce process alone if you don't have to?

Divorcing spouses who don't have a deep understanding of the many divorce rules and laws can end up losing out on some of the things they were entitled to. Why risk it? Working with an expert will ensure that both spouses don't overlook anything during the process. And remember, I'm not just talking about attorneys.

If you aren't currently working with a financial services professional, I'd strongly urge you to do so. A seasoned financial services professional has undoubtedly worked with clients who have gone through the divorce process. That understanding of the divorce process as it relates to personal finances, in combination with the fact they already have a deep understanding of financial rules and regulations, may make them a very valuable person to have in your corner.

Ultimately, a divorce is nothing to be ashamed of, it's just a part of life for millions of Americans. In fact, the divorce rate for people older than 50 has nearly doubled since the 1990s, according to the Pew Research Center. With the right strategy and allies, you can weather the financial realities of a divorce in a way that allows you to look to the future with confidence and optimism.