



THE GREY DIVORCE

*Divorcing After 50:
What it could mean for you & your spouse*



Known as "gray divorces," marital dissolution of couples over the age of fifty are on the rise in our country. While a divorce is an especially stressful and emotion laden time for any couple, it can be especially so for people over fifty.

During a life-stage where they had previously contemplated settling in and preparing for a post-retirement reward after years of working, a separating couple must now contemplate how to best prepare themselves for some hardships.



DIVORCE CONSIDERATION

Some of the considerations that divorcing couples over the age of 50 include:

1. What valuable or sentimental assets should they keep such as the family home.
2. The availability of retirement benefits or social security.
3. How should retirement accounts be divided.
4. Spousal Support & Alimony
5. Debts
6. Health Insurance
7. Updating or obtaining a will

Children

One difference in a gray divorce is that spouses generally do not have to worry about child custody and child support. However, there may be a greater focus on alimony and a just and right division of property.

In many cases, there is one spouse who earns less is very financially dependent on another spouse's income. In these case they will be facing a major lifestyle adjustment which often includes finding employment.

Property and Assets

It is the experience of the attorneys at the Law Office of Bryan Fagan that people, unfortunately, do not typically have all that much money saved even by time they are older than fifty years of age.

This is a troubling issue that only makes it more important to protect what a person does have and ensure what they receive (in terms of property and assets) in a divorce is fair and equitable.

The House

Starting with a basic necessity like a house- if the house a person shares with their spouse is not paid off then the parties have a decision to make. Whether one spouse or the other is able to refinance a mortgage into their name only is a primary factor in deciding who may remain in the house and who will need to find another place to lay their head at night. That's not to mention anything about the emotional attachment that usually exists between a longtime home and its occupants.

Retirement

With retirement either right around the corner or at least in sight, divorcing people over fifty need to be cognizant of how divorce can affect retirement accounts. Like other forms of community property, spouses are entitled to a share (read, fifty percent) of the others' retirement account.

Funds that were contributed and any losses and gains therein during the course of the marriage are fair game and in play during settlement negotiations. It is critical for an attorney to be aware of what was in a person's retirement account at the time the parties married, as anything contributed prior to the date of marriage is the separate property of the account owning spouse.

For many of our clients over 50, outside of the family home retirement accounts may be their most significant asset. That makes it very important these accounts are valued accurately. Retirement accounts true value may be less than their balance.

This is because many retirement accounts are taxed upon withdrawal, making the accounts value only about 65% of what the statement says. Once this is realized this may change how a property division should be negotiated. If one spouse gets the house and the other a the retirement account it may look even on paper when in reality it is very different.

Social Security

We are frequently asked about the effect of social security benefits in divorces. Social security benefits are not a divisible asset upon divorce. However, like other separate property assets social security benefits can be considered when dividing up community property assets in a divorce.

SPOUSAL SUPPORT, ALIMONY, AND DEBTS

SPOUSAL SUPPORT & ALIMONY

Spousal support is often an important issue in gray divorces. This is generally because one spouse has been out of the workforce for a number of years. This is a fact dependent issue where it will a court will consider:

1. In most cases the party asking for post-divorce spousal support will be required to have to have been married to you for at least 10 years or longer
2. The requesting party in most case needs to demonstrate they are unable to earn sufficient income to meet their minimal needs
3. The requesting party must demonstrate they have made a diligent effort to earn sufficient income or develop skills to do so

Other reason a spouse can ask for post-divorce spousal support include:

1. the other spouse has committed family violence; or
2. the requesting spouse has an incapacitating disability; or

a child of the marriage (of any age) has a physical or mental disability that prevents the spouse who cares for and supervises the child from earning sufficient income

DEBTS

Debts of post-fifty couples are very relevant in considering the full picture in a divorce. Debts don't just mean credit card, it can also mean mortgage debt and car note(s).

As mentioned previously if both spouse's names appear on a note then the home or vehicle will need to be:

1. refinanced into one spouse's name or
2. sold.

For the spouse who is getting their name off the debt-ridden item, it's all about minimizing liability. That person should not be responsible for the failure to make a payment on time or for depreciation in the item's value. There are specific legal mechanisms in place to ensure that this can occur and having an experienced family law attorney in your corner can help tremendously.

HEALTH INSURANCE, WILLS & OTHER IMPORTANT PAPERWORK

HEALTH INSURANCE

This can be one of the most difficult problems that divorcing spouses face between the ages of 55-65 years old. If both spouses work and have separate health insurance policies, there may not be a problem.

However, if a spouse is self-employed or unemployed this could be a difficult issue. COBRA insurance is generally available through your former spouse employer for 36 months after a divorce.

This may be an option but it often an expensive option. I generally bring up health insurance in our first consult and encourage my clients to start thinking about looking into their individual health insurance options policy early in the divorce process.

WILLS AND OTHER IMPORTANT PAPERWORK

Finally, clients going through a divorce may want to consider updating or getting a will. You should also update all the important legal paperwork that established during your marriage. This includes bank accounts and beneficiary designations.

If this is not done it is very likely with their current estate plan or lack of one their spouse will receive the majority of the remaining marital estate.

The attorneys with the Law Office of Bryan Fagan represent persons of all ages as they work through a divorce. While it is not a pleasant or fun process, it is vitally important to you and your life moving forward. Contact our office today to learn more about how our office can help you achieve a successful golden age divorce.

Have Questions?

**We would love to
speak with you!**

We offer Free consultations!

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