Financial Issues of Late-Life Divorce

by Danielle Dresden

Maria Shriver and Arnold Schwarzenegger didn't invent late-life divorce, but they are the latest celebrity couple to draw attention to this growing trend.

Data from the U.S. Census Bureau, AARP surveys, and reports from divorce attorneys and therapists suggest older Americans are divorcing more frequently than ever.

From her perspective, Lili A. Vasileff, certified financial planner, certified divorce financial analyst, and president of the International Association of Divorce Financial Planners, Greenwich, Conn., does not see an increase in the rate of late-life divorce per se, but she has observed more individuals in later life who choose not to remarry.

Whatever is behind late-life divorce concerns, the financial implications vary considerably from more youthful separation.

That's "late-life"?

Late-life divorce is defined as a separation involving people age 50 or older.

Even though 50 scarcely seems like "late-life," couples divorcing after this age tend to have more intertwined lives and face different issues involving children, aging parents, health issues, houses, financial assets, accumulated possessions, memories, and retirement planning.

Older couples also have less of something else—time to recover from any financial setbacks resulting from a divorce.

That's why careful planning is important before untying the knot, whether it's done independently, with a divorce lawyer, or with a certified divorce financial analyst. Consider these key matters:

- Pension plans
- Houses and other property
- Stocks, retirement accounts, and other investments
- Social Security
- Health insurance
- Tax implications
- Estate planning

According to Vasileff, areas needing special attention for divorcing older couples are retirement expectations, potentially declining Social Security benefits, and the need to make investment decisions that reflect longer life expectancies.

Changing expectations

The general rule for divorce settlements is not to sign anything until everything is on the table. Rather than giving up valuable assets to keep a house that might not be affordable, review the totality of what's available and strive for a balanced mix of benefits.

"It may be prudent to execute a legal separation rather than a divorce," Vasileff explains. "A legal separation separates financial lives but allows for retention of key important benefits such as spousal rights to retirement and health insurance."

That's why some late-life couples choose separation and a post-marital agreement, rather than going through a full, legal divorce, particularly if they're waiting for one partner to qualify for Medicare, Social Security, military benefits, or to address other financial inequalities.

Couples divorcing after age 50 are likely to have less for retirement than they had planned—especially those earning from $100,000 to $500,000 a year—since they can't make individually what they could when their assets were combined. Splitting up does little for financial security.

Diverging retirement expectations are common for all couples, divorcing or not, and for all, retirement planning is a transition. But if you're divorcing, you're dividing households as well. That makes divorce even more complicated. "Dividing households when you're planning retirement puts a crisis on top of a transition," says Vasileff.

It's what you negotiate

Before starting negotiations, analyze joint assets and individual needs.

Calculating living expenses, present and future, gives individuals a clear sense of how much money they'll need. It also helps them evaluate the usefulness of assets whose value can change with time, such as alimony and property rights.

"Once you're divorced, it's rare to benefit from your spouse's future employer benefits, such as stock options," Vasileff says. "Pensions accrue based on your three highest years of pay, and those may be after the divorce."

This makes negotiating a percentage of a former spouse's retirement plan important in a late-life divorce settlement, particularly if one of the parties has a lot more money in his or her account.

This process usually requires a court order called a qualified domestic relations order, or QDRO—pronounced quadro. This means a court formalizes a legal order for how much of one partner's retirement plan the other receives. With a QDRO, neither party is penalized for the early distribution, and tax liabilities can be avoided if funds are kept in qualified plans.

Houses, health, and the government

Although a house might not feel like a home during a divorce, it's often a couple's most important asset and can be one of the most contentious. A house can supply potential tax benefits and rental income and serve as loan collateral. For couples with children, the family house can provide continuity in an unstable time.

However, homes are expensive to maintain. Estimate how much the mortgage, taxes, utilities, and general upkeep will cost. Make sure keeping it is affordable before giving up other assets to get it.

Vasileff says some couples choose to sell their homes and liquidate some assets before they divorce, so they can take advantage of the tax benefits married couples enjoy.

Social Security benefits rarely concern 20-somethings filing for divorce, but they're important for older couples. Those 62 and older who were married 10 years or more may be eligible for Social Security benefits based on their former spouse's records, even if their ex dies.

"It's a good idea to be sure that spouses remain married for at least 10 years in order to qualify for potential spousal benefits with Social Security," Vasileff says.

Health insurance gets more important as people age, and this complicates late-life divorces if one spouse depends on another for health insurance. Although some plans have clauses offering ex-spouses benefits for a period of time, not all do. Look for alternatives as soon as possible. Consider purchasing health insurance through your job or an individual policy. COBRA, which can extend access to an employer's health coverage, isn't only for those who get laid off. It can temporarily help divorced people maintain coverage.

"You may wish to consider a legal separation just to maintain health insurance benefits, especially if your eligibility for Medicare is just outside the COBRA window of 36 months," Vasileff says.

Late-life divorce also changes tax preparation, particularly with items like dependents and tuition expenses. Child support, alimony, exemption claims, and tax payments all can be negotiated in a divorce agreement.

Don't delay changing your wills to reflect the new circumstances. Divorcing couples frequently want to change their beneficiaries, as well as who will serve as their executors, implement health-care directives, and hold legal power of attorney.

Less tangible issues

People going through a late-life divorce may be more "mature" than their younger counterparts, but that doesn't make the emotional issues any easier to handle.

Acknowledging feelings can simplify financial negotiations. Likewise, taking a measured approach to finances can calm emotional turbulence. The important thing is not to blur the lines between finances and emotions. Don't let feelings color property division in a way that makes the process more painful and less fair.

People going through late-life divorce have many concerns, from wondering if they'll make it financially, to how they'll handle the laundry or mowing the lawn. Fear of loneliness is a big concern, and grief, depression, and anger can be part of the process, too. That's where friends, family, faith, and support groups come in. Don't hesitate to ask for help.

According to an AARP survey, 76% of those who divorced later in life feel it was the right decision. Remember, no matter how challenging a late-life divorce may be, it's also an opportunity for a new beginning.

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