

DECEMBER 2015 NEWSLETTER

**POZZUOLO RODDEN, P.C.
COUNSELORS AT LAW
THE BYE-BENSON HOUSE
2033 WALNUT STREET, PHILADELPHIA, PA 19103
215-977-8200
www.pozzuolo.com**



DIVORCE AFTER 50- THE GRAY DIVORCE

FIRM ANNOUNCEMENTS:

A. BLOGS

1. The following are a few of the business, tax and estate planning blogs posted on our main website www.pozzuolo.com during the past month:

- a. Business Law-LLCs, Corporations Subject To Same Veil-Piercing Test;
- b. Federal Estate Tax Closing Letters;
- c. Estate Planning- Do All Assets Go Through Probate; and,
- d. Estate Planning- Three Reasons To Choose A Non-Family Trustee

Please visit our website www.pozzuolo.com for more information on these and other relevant business, estates and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Wife's Petition For Enforcement Of A Judgment Of Divorce Barred By Doctrine Of Laches;
- b. Family Parts Order To Lower Alimony Was Not Supported By The Court Record;
- c. Husband's Transfer Of Marital Assets To His Brother As "Divorce Planning" Could Impose A Constructive Trust On The Concealed Assets Years After The Divorce Planning; and,
- d. Child Custody and Visitation- Children's Bill Of Rights In A Divorce

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

**Please visit our Facebook page to read all of our past and future blogs:
Pozzuolo Rodden, PC**

B. EDUCATIONAL SEMINARS ON YOU TUBE:

Pozzuolo Rodden, P.C. is pleased to announce you can view the following seminars taught by Joseph R. Pozzuolo and/or Jeffrey S. Pozzuolo at "Pozzuolo Rodden, P.C. - You Tube"

*The Negotiation and Documentation of Commercial Real Estate Loan Documents

*The Fundamentals of Starting a Business

*How Middle Income Families Should Plan for Retirement

QUESTION OF THE MONTH

How Can Tax-Favored ABLE Accounts Be Used For Disabled Individuals Without Losing Government Benefits?

Answer-See Page 6 of this Newsletter

DIVORCE AFTER 50- THE GRAY DIVORCE

The divorce rate in the United States is declining for every single age group except individuals over 50 known as the "Gray Divorce". The number of individuals divorcing after the age of fifty has doubled during the past 20 years as life expectancy grows and the stigma attached to ending a marriage fades. This article will provide a broad overview of the realities that divorcing couples after age 50 must face.

Sorting Out the Past

Couples divorcing after age 50 can face some very difficult choices when it comes time to divide up their accumulated property and equity. A long life spent together often results in numerous financial and physical holdings which need to be considered.

Shared Property

The primary difference in shared property between couples in their 50s and couples in their 30s is simple- volume. An additional twenty five years of marriage is a long time, and in that time couples tend to accumulate assets during the marriage such as a home, business, retirement accounts and artwork that they would not even have considered at a younger age. This accumulation can lead to a feeling of sticker-shock when the time comes to agree to a divorce settlement. It is also more likely that couples divorcing in their 50s have spent much more time as a married couple than they did as an adult single individual. Unlike a divorce within the first few years of marriage, the majority of assets in a late-life divorce are likely to be marital property with each party holding an equal claim.

The Home

When a couple divorces after age 50, the family home is often a much bigger issue than it would be for a younger couple. While couples in their 20s are likely renters or have newly moved into a starter home, couples after age 50 tend to be homeowners, many of whom have paid off or nearly paid off their entire mortgage. Further, couples who have raised a family or have older children likely own a larger and more spacious house than younger couples who have not had any children. This makes the family home an extremely valuable asset which can contribute greatly to a divorcing couple's ability to move on. However, due to the deep emotional attachments people form to their homes after a prolonged period of residence, it can also serve as a point of contention and liability

Thus, divorces late in life can lead to bitter disputes over who gets to keep the family home. Whether it is due to fond memories, wishes to maintain stability for older children, or simply stubbornness, divorcing parties will sometimes fight to keep the home past the point of rationality. The upkeep and taxes on a family home can be an enormous burden on a single income. It is important to attempt to keep emotion at arms length and wisely and reasonably assess your current living situation. If your children have moved on to college or careers of their own, do you really need a four bedroom with a large backyard and two and one-half bath home anymore? How much of your financial stability are you willing to risk by attempting to barter for the sake of sentimental value? Perhaps most importantly, what better uses could you put the proceeds from the sale of your home towards as you move onto the next stage in your life? Are you better off investing the money for your retirement years?

If you are the party who is leaving the house and your spouse stays behind, be aware that you are still obligated for any debt remaining on the note and mortgage if you were part of the original financing. This is an important issue to address when working out a settlement.

Retirement Plans

It is also more likely that older divorcees will have established 401(k), IRAs or employer sponsored retirement assets. While the actual percentage of the retirement assets that each spouse receives will vary depending on the situation, it is very likely they will be divided up. In order to avoid tax repercussions when dividing retirement assets outright, you will need a court ordered qualified domestic relations order ("QDRO"). The QDRO will instruct the administrator of the plans to pay non-participant, alternate payee spouse the designated share, at which point the spouse can deposit the amount

into a different tax-sheltered account.

Social Security Benefits

For divorcees in their 60s, social security becomes a very important issue in that you may be entitled to part of your ex-spouse Social Security Benefits. Starting at age 62, ex-spouses are entitled to half of their ex's benefit as long as they were: (1) married for at least 10 years; and, (2) did not remarry when they start collecting the benefit. If your former spouse dies you may be eligible to receive survivor benefits of 100% of your former spouse's Social Security Benefits. The basic requirements are: (1) your marriage lasted at least 10 years; (2) you are at least 60 years old; and, (3) you are not entitled to retirement benefits equal or greater than that of your former spouse's benefits.

Facing a New Present

Divorce represents a radical change for everyone, but especially divorcees who have become accustomed to being married after ten, twenty, or even thirty years. There are several new realities which can affect your life in addition to simply separating from your spouse.

Childcare and Custody

When a couple divorces after age 50, it is hard to make accurate guesses about their childcare scenario. They could have no children or half a dozen, children still in middle or high school or off working in careers of their own. The custodial arrangement the couple comes to will vary depending on the individual relationships with and needs of the children. However, it is important to remember that regardless of your age, you remain financially responsible for your unemancipated children.

It is important to be aware of your own financial situation when considering the needs of your children. Often in a divorce, especially in scenarios where there are older children more aware of the proceedings, parents will over extend themselves by attempting to support adult children or by offering more than is required. It is a wonderful thing to support your children in whatever ways you are able, but you should be careful not to do so at the expense of your own security and retirement.

It is also important not to overlook the effect that a divorce can have on older children. Adult children of divorce can have unexpectedly intense psychological reactions to their parents splitting up. It can challenge the child's perception of family and even make him or her question the strength and durability of their own relationships. Divorcees with adult children will often lean on their children for emotional support as they go through a difficult time, and it is important to remember that the child may be in need of support themselves as one of the foundational constants in their lives disappears.

Alimony

As in all divorces, there is a possibility that the Court may allow alimony to be paid by one ex-spouse to the other. Alimony is a payment required by a divorce or separation agreement which is paid to a spouse or ex-spouse from whom you are legally separated or divorced and do not file a joint tax return. The primary factor courts consider in determining alimony is the relative earnings, earning capacities of the parties and what is necessary to be paid to the spouse for a certain duration of time to "rehabilitate"

himself/herself financially post divorce.

For divorcing couples over 50, it is important to note that a court will not enter a support order which includes saving for retirement as a reasonable expense. Generally, ex-spouses are not entitled to additional alimony to assist them in accumulating funds for future expenses.

New Costs

No matter what age you are, it is a simple fact that it is easier to maintain a lifestyle with two incomes instead of one. A common mistake divorcees make is failing to adjust their budgets accordingly. Maintaining two households on the same income which used to maintain only one is a big adjustment, and it's important to plan ahead so you don't find yourself falling behind on payments and bills.

One of the most important new costs that divorcees after age 50 need to consider is health insurance. Many married people are covered under their spouse's health insurance policy. If you divorce at 55, that insurance is suddenly not available any longer, and Medicare is still ten years away. You will be obligated to obtain your own insurance either through your employer, the Affordable Care Act, or continue your ex's existing coverage for up to 36 months through COBRA- but be aware that the cost will likely substantially increase.

Where to Put Your Assets

This article is not an investment guide, but there is a recurring theme among older divorces that it is important to be wary of. Couples who divorce in their 50s tend to become much more conservative and risk averse in investing their money. There is nothing wrong with proceeding with caution when trying to put your money to work, but be careful not to fall into the too-common trap of being so conservative your gains don't keep up with inflation. This becomes especially apparent with divorcees who insist on keeping their assets in cash, which is a certain way to see your value drop with no hope of an increase.

Planning for the Future

Even though it may not feel like it in the middle of the process, you have your whole life ahead of you after a divorce. Still, it is important to move quickly and decisively to get your affairs in order once the decision to divorce has been made. It is likely that all of your estate planning to date has been focused on or around your spouse. Now that you are getting divorced it is time to re-evaluate your priorities and your plans for the future.

Estate Planning

The typical Will of a married couple will leave the entire estate to the surviving spouse, and then to the children only after the death of the surviving spouse. Similarly, spouses will generally name each other as their Agent for their Power of Attorney. Obviously, this set up is no longer ideal once the marriage is over. It is important to act quickly to name your new beneficiaries and Agent to avoid messy complications in the event of an unfortunate accident or illness.

You may also wish to work with an attorney to draft a Living Will, which outlines your wishes for health care in the event that you are incapacitated. While many couples in long lasting marriages will

have discussed these issues with their spouse, it is far less likely that they have been addressed with children or other relatives who may be in charge of making your healthcare decisions once your spouse is no longer around.

An experienced family law attorney should be consulted for all questions or concerns about an ongoing or upcoming divorce. It is also important to consult an experienced estate planning attorney when making any decisions about your Power of Attorney or Will. Please feel free to contact this office and meet with one of our experienced attorneys about any such questions or concerns.

QUESTION OF THE MONTH:

How Can Tax-Favored ABLE Accounts Be Used For Disabled Individuals Without Losing Government Benefits?

ABLE Accounts are tax advantaged savings accounts that can be used only by disabled individuals. A disabled individual is someone who is unable to take part in any “substantial gainful activity” due to a medically determinable condition or someone who is blind. Only one ABLE Account can be opened for a disabled individual.

ABLE Accounts are held in the name of the disabled individual but the existence of the account does not disqualify the individual for benefits such as SSI, SNAP (food stamps), and Medicaid. Eligibility for each of these programs is dependent upon the applicant having no more than \$2,000 in cash or items of significant value. However, having funds in an ABLE Account will not disqualify a disabled individual from continuing to receive these government benefits as long as the funds in the ABLE Account are used only for “qualified disability expenses”.

Qualified disability expenses include any expense incurred by the disabled individual as a result of living his or her life with a disability. This can include housing, education, transportation, assistive technology and personal support services, employment training and support, healthcare costs, and funeral and burial services. As long as the funds in the ABLE Account are used solely for these qualified disability expenses, the funds in the account can grow tax free and distributions are not subject to tax. If a distribution is made from an ABLE Account and the funds are not used for qualified disability expenses, the earnings portion of the distribution will be subject to tax and a 10% penalty.

Similar to Section 529 savings plans for college expenses, each state is responsible for setting up ABLE Account programs. A maximum of \$14,000 can be contributed to an ABLE account each year by all participating individuals including the disabled individual and his or her family and friends. This amount will be adjusted annually for inflation. Once the account has more than \$100,000 in funds, the disabled individual will become ineligible for government benefits, except for Medicaid, until the account balance has been reduced under \$100,000. At the death of the disabled individual, the funds in the account can be used to pay for funeral and burial expenses. Any remaining funds must be used to pay back Medicaid for benefits received by the disabled individual after the ABLE Account was established. Once that payback is complete, the funds can be distributed according to any designated beneficiaries or rolled over to other family members who are eligible to hold ABLE Accounts.

If you have questions about using an ABLÉ Account to help meet the needs of a disabled individual without losing government benefits, an experienced estate planning attorney should be consulted.

-
- If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.
-

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

CORPORATE/TAX ARTICLES

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

ESTATE PLANNING ARTICLES

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review

- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.