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FAMILYMONEY MARCH 23, 2011

Divorce Over 50: 3 Mistakes to Avoid

By CATEY HILL

Getty Images

Al and Tipper Gore announced their divorce last June. After 24 years of marriage, Tony and Tracy Danza recently called it quits. Nancy Wilson and Cameron Crowe are also reportedly splitsville. So it goes with boomers these days, who are divorcing at a historic pace. But whether in Hollywood or Hartford, getting divorced after 50 is plenty complicated, with rules and pitfalls that younger couples never have to consider.

While the overall divorce rate has decreased slightly over the past two decades, for those over 50 it has doubled, according to the latest data from the National Center for Family & Marriage Research at Bowling Green State University. That means some 300,000 couples over 50 divorced in 2008, and if the rate stays consistent, that number will balloon to more than 400,000 busted marriages in 2030. Paradoxically, experts chalk the increase up to boomers' affinity for marriage in the first place. More older people are on their second and third marriages by the time they hit 50, says Krista K. Payne, a data analyst for the center and those are marriages that are less likely to last.

Regardless of first, second or eighth, the stakes are higher for couples in their 50s, 60s and 70s. By the time most people are 50, they have a long work history, own some real estate, have a retirement account, life insurance and more in which case, it's critical to get the best settlement possible. "You have much less time to recover if mistakes are made," says Jeffrey A. Landers, president and founder of New York-based Bedrock Divorce Advisors, which consults divorcing women. "There are no do-overs."

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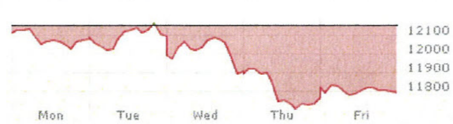
11,796.16	25.43	2,572.50	-15.49	1,215.65	-0.48



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Here are some mistakes particularly common to the over-50 set, all of which can lead to a lower-than-deserved settlement or make you pay your ex more than you should.

Mistake 1: Ignoring taxes on retirement funds

For those over 50, 401(k)s and other pre-tax retirement accounts may be the most significant asset other than the family home, says Landers. That makes it essential that both sides understand their true value, says Helen Hogan, a financial advisor at Sunset Financial Services which is actually considerably less than the balance. Because the money's taxed upon withdrawal, the real value of the account is only about 65% of what the statement says. This miscalculation can hurt, especially in community property states like California, Texas, Arizona and Nevada, where divorcing couples often split assets evenly: One spouse takes the house, the other takes the retirement fund and savings accounts, which may look equivalent on paper. Lawyers suggest negotiating for a larger portion of other shared savings to make the trade more equitable.

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Mistake 2: Overvaluing alimony, undervaluing Social Security

Whether a couple is retired or still working, monthly income may actually be more important than the division of hard assets. Alimony, which may be awarded to the spouse who earns less or has been out of the workforce for some time, is one of the most common ways divorce settlements compensate for discrepancies in a couple's income. But banking on monthly payments from an ex-spouse gets riskier every year after 50, as the chance of them dying increases. To protect yourself, get a life insurance policy on your ex, says Robert Nachshin, a partner at family law firm Nachshin & Langlois. It's not enough be the beneficiary on your former spouses' life insurance plan -- he or she can change that at any time. You want to own the policy outright.

On the other hand, Social Security is often undervalued in divorce negotiations, says Rick Salmeron, CFP, founder of Salmeron Financial. If the couple was married for at least 10 years, one spouse is entitled to the benefits of the other at age 62 as long she remains unmarried. A person who makes less than his or her spouse will want to claim the higher-earning spouses' Social Security, as it will be worth more. If your spouse has a claim to your benefits, remember to figure that amount into negotiations for alimony or other payments.

Mistake 3: Forgetting about the kids

Older couples have older children teenagers, college students, or even independent adults which means custody battles may not be as pitched, if they exist at all. That doesn't mean there aren't issues. To prevent conflagrations down the road, make a plan to ensure that the assets being passed along to the children are set up appropriately so that your children, rather than, say, your ex's future spouse or your kids' new wife, get the money. For starters, create a "lifetime asset protection trust" for your kids to protect the assets in case they, too, get divorced, says Jean Gillis, an estate planning attorney at Carolina Family Wealth Planning in Charlotte, N.C. (Children of divorced couples are more likely to divorce themselves, according to several studies (PDF)). The trust will keep your kid's ex-spouse - or anyone else - from receiving any of the money you leave behind for him.

Secondly, if you have children under age 18, "it's really important to have the guardian of the children be separate and distinct from the guardian of the money," she says. That may seem counter-intuitive, and in reality, each spouse will control some money, but both money and children can be manipulated in messy divorces. Splitting those responsibilities and obligations can create a system of checks and balances, Gillis says. "You never want to have one person holding the keys to the kingdom," she says.

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