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First Annual

Year of Divorce Financial Tips for Attorneys and Their Clients

The wealth strategists and financial professionals at Wilmington Trust present key-themed monthly tips designed to help matrimonial and estate planning attorneys, accountants, and other financial professionals better serve their divorcing clients' financial and planning needs.

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Experienced Guidance for You and Your Clients

Hello and thank you for your interest in reading our insights about the complex financial issues surrounding divorce. The professionals in our National Matrimonial Advisory Practice, which I am proud to lead, seek to work in close collaboration with a client's attorneys and other trusted advisors to create fully coordinated service for those impacted by divorce. Our goal is to help clients maneuver through complexity and find financial stability and peace of mind.

As part of our ongoing efforts to share our knowledge and experience, I am so pleased to release our first annual edition of themed monthly financial tips for professional advisors and their clients, as featured in *Family Lawyer Magazine*. Using a thematic approach to tackle the many issues facing clients in transition, we highlight a monthly topic designed to propel action in a manageable yet disciplined way. By linking strategies to recognizable themes and breaking them down into 12 timely monthly subjects, our goal is to provide attorneys and their clients with a systematic roadmap for success as clients embark on their next chapter.

Contributions from my colleagues William T. Bennett, Senior Wealth Investment Advisor; Walter J. Dillingham Jr., Director of Endowments and Foundations; and Jerry Inglet, Ed.D, Family Legacy Advisor, exemplify the breadth and depth of experience we can bring to each client relationship. This year's compilation of monthly tips leverages the following themes to provide clear, actionable steps designed to position your clients for success:

- **January**: New Year's Resolutions
- **February**: Prenups are Romantic (Valentine's Day)
- **March**: Financial Spring Cleaning
- **April**: Tax Season
- **May**: Avoid Pet Custody Battles (Pet Month)
- **June**: Planning Tips for Same-Sex Couples (Pride Month)
- **July**: Financial Independence
- **August**: Back to School: When Children Enter College
- **September**: Tips for Remarriage (National Stepfamily Day)
- **October**: Ward off the Financial Ghouls (Halloween)
- **November**: Give Thanks and Give Back (Thanksgiving)
- **December**: Year-End Planning

I hope this serves as a valuable guide for you and your clients as you help them make important decisions before, during, and after a divorce. We look forward to collaborating with you to support your clients in transition.

Sincerely,

Sharon L. Klein
Executive Vice President & Head of National Matrimonial Advisory Practice
Wilmington Trust, N.A.

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6 Pivotal Financial New Year's Resolutions After Divorce

January is the ideal month for clients impacted by divorce to lay the groundwork for a successful year. Here are some foundational steps clients can take to begin the New Year – and this new chapter in their lives.

By Sharon L. Klein

1. Create a Sustainable Financial Plan

It's important for clients to have a clear picture of their finances and to implement a thoughtful long-term plan to help ensure that settlement proceeds and alimony funds will sustain their lifestyle. Some clients might not have been aware of all the assets/accounts or cash flow during the marriage that supported their lifestyle if they were more passive on the financial/investment front. They may feel overwhelmed and intimidated at the prospect of taking charge of their finances. A financial advisor can help organize finances, conduct an in-depth analysis, run cash flow and net worth projections, model projected rates of returns with inflation assumptions, and evaluate different lifestyle scenarios to create a sustainable financial plan that can instill client confidence.

2. Establish Bank Accounts & Build Credit

Has your client established their own individual banking accounts? Unless a settlement agreement or divorce decree provides otherwise, advise clients to close joint accounts they may have with their ex-spouse and establish accounts in their name. Remind them to change log-in identifications and passwords they may have used during the marriage to protect their assets and their privacy. Suggest clients open credit cards in their name, particularly if they have previously relied on their ex-spouse's credit, so they can start establishing their own credit history.

3. Update Estate Planning Documents

During times of transition, particularly involving a divorce, it's critical to review all estate planning documents and beneficiary designations to ensure they reflect a client's current wishes and that ex-spouses are removed, if that is the intent or part of the settlement agreement or divorce decree. If so, it will be important to remove ex-spouses not just from being beneficiaries of the estate, but also from acting in important roles under a will. Ask your clients: Are the people or institutions named to serve as executors and trustees in your will the

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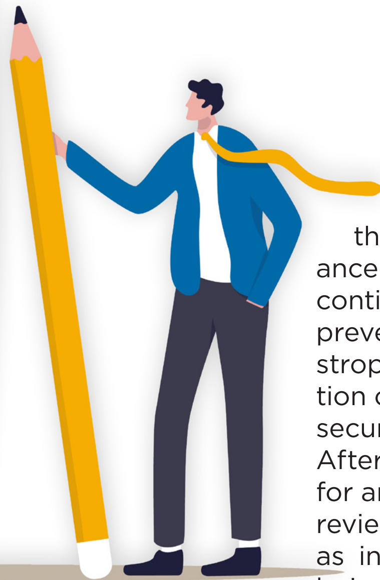

best choice for your family right now? If a client does not have a will, the laws of their state will dictate where their assets pass and who will administer their estate, which may not reflect their intent and will likely benefit a soon-to-be ex-spouse if the divorce is not final. Powers of attorney and health care directives should also be updated so that ex-spouses are removed if desired, and the right individuals are poised to make important financial and health care decisions on a client's behalf.

Some documents can be changed while divorce is pending, while others must wait until the divorce decree is issued. Documents to consider include:

- Will and trusts (usually can be changed while divorce is pending)
- Power of attorney and health care directive (usually can be changed while divorce is pending)
- Retirement accounts and plans (usually cannot be changed while divorce is pending)
- Jointly named real estate and financial accounts (usually cannot be changed while divorce is pending)
- Authorizations to access digital accounts, including financial accounts, email accounts, social media accounts, etc. (usually can be changed while the divorce is pending)

4. Revisit & Review Insurance Coverage

When significant life changes happen, it is important to review insurance policies – both life insurance and property & casualty/umbrella insurance – to make sure clients are adequately covered at a competitive cost, that the insurance is titled in the right names, that the beneficiary of the insurance proceeds is updated, and that the premiums continue to be paid by the responsible party. To prevent an ex-spouse's death from creating a catastrophic void in child support, alimony, higher education costs, or other obligations, it is often prudent to secure life insurance as part of the divorce settlement. After life insurance is purchased, it will be important for an independent insurance advisor to periodically review the policies to make sure they are performing as intended, and that the premium payments are being made on time to prevent a policy lapse.

5. Prevent the Death of a Family Business

If a client is a business owner, an inadequate buy-sell agreement or lack of liquidity could spell disaster for the business after divorce. To plan proactively, or even if a business has survived the divorce process, clients will be well-advised to ensure that their business has a thorough succession plan in place for the future, including provisions that protect the business against the claims of any business partner's ex-spouse. If a business owner suffers from a liquidity crunch during or after a divorce, a financial advisor can explore accessing personal credit to satisfy divorce obligations, which often can be an optimal solution that will not imperil business operations.

6. Engage the Right Team

During emotionally difficult times, the support of family members and friends can be invaluable. Despite being well-intentioned, however, friends and family members are often not equipped to deal with the complex tax, legal, and investment decisions that confront those impacted by divorce. Going it alone can also seem overwhelming, especially if a client did not manage the finances and left much of the financial decision making to their spouse. A team of seasoned professional advisors is generally best positioned to assist clients in navigating unfamiliar territory. A financial advisor, matrimonial lawyer, estate planning attorney, accountant, and insurance or other experts can provide guidance, education, and support to holistically position clients for a successful future. ♦

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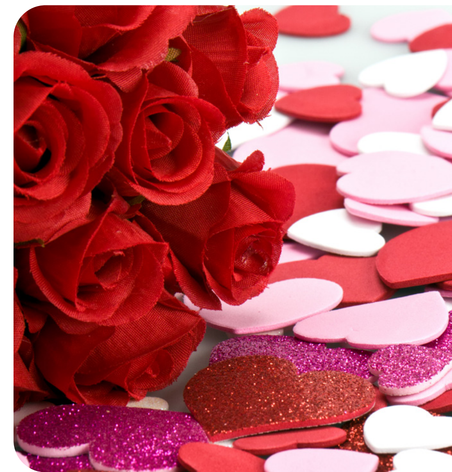
Candy, Flowers, and... Prenups?!

February may be the perfect time to show clients why prenups are not only responsible but also romantic!

By Sharon L. Klein

Believe it or not, the romance associated with Valentine's Day is not incompatible with prenuptial planning. In fact, a time when couples feel confident about their lives together can be a perfect time to cement the future if their paths diverge. It's incumbent on advisors to shift the negative perception of prenups as a declaration of uncertainty about the longevity of the marriage and allay possible unease about discussing financial situations with their future spouse. February may be the perfect time to show clients why prenups are not only responsible but romantic!



A prenup discussion can be the perfect setting for engaged couples to have a transparent and honest dialogue about their finances and spending habits. Having these discussions when the couple is in love can facilitate candid disclosures of all assets and liabilities, annual gross income, family trusts, and potential inheritances. Failure to fully disclose assets could result in the prenup being set aside in the event of divorce. In addition, full disclosure can help ensure each spouse understands what they are getting and giving up.

What is more romantic than entering a marriage with a mutual understanding about a couple's financial future? For those with substantial assets or couples with a difference in wealth, prenups can help eliminate the financial uncertainty associated with setting up a household together. The wealthier spouse may feel confident that their assets are secure, while the less wealthy spouse may be relieved to receive some property and/or alimony regardless of the success of the marriage.

At the end of the day, starting the marriage off with the right foundation of transparency and shared understanding can set couples up for success before, during, and (if it comes to it) after marriage. Consider encouraging your clients to show their future spouses how much they truly love them by agreeing to execute a prenup in the happiest of times. For that conversation, the roses and chocolate aura of February can be ideal. ♦

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Spring Forward with 7 Key Steps to Help Clients Update Their Financial Plans!

Leverage March's spring cleaning theme to help your clients embark on a financial spring cleaning!

By Sharon L. Klein

Spring is right around the corner and that means so is spring cleaning. While this time of year usually evokes thoughts of organizing closets, it is also the ideal time for those in the throes of divorce or recently divorced to organize their estate and financial plans. Leverage March's spring cleaning theme to help your clients embark on a financial spring cleaning!

7 Tips to Help Clients Update Their Financial Plans

Here are seven key steps for your clients to consider to keep their wealth plans in order. Clients should:

1. **Review their will for how property passes and their executor and trustee choices.** Is the will up to date in light of their divorce? Are the people or institutions named to serve as executor and trustee in their will the best choice for their family right now? While some planning might have to wait until the divorce decree is final, wills generally can and should be updated while the divorce is pending to leave a soon-to-be ex-spouse the minimum required under your state's laws or prior agreement.

2. **Update their power of attorney, health care proxy, and living will.** Is an ex-spouse or soon-to-be ex-spouse designated to make important health care and financial decisions for your client? These documents generally can and should be updated while the divorce is pending. Consider who they may want to entrust to act in those important roles.

3. **Ensure proper titling of assets.** This one often gets missed. Clients may have updated their will, but are their assets titled consistently with their new plan? Certain accounts pass outside a will, so it's important that accounts are titled consistently with the new plan.

4. **Confirm beneficiary designations.** For assets like retirement accounts and life insurance, do clients have the right beneficiaries named?

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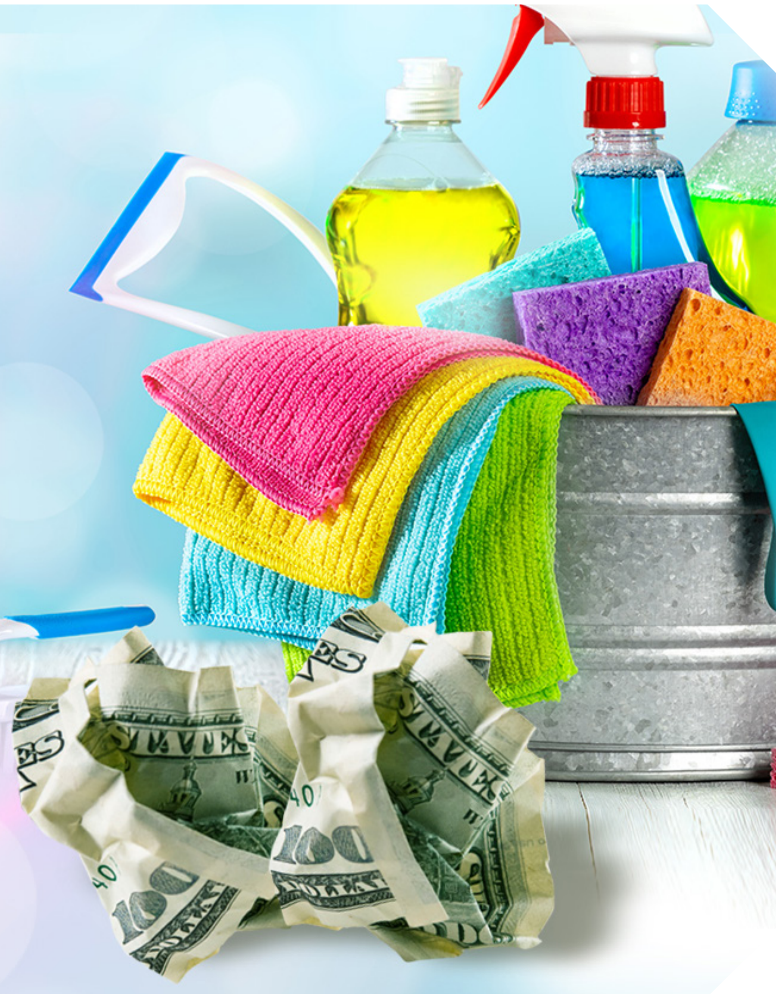

These assets also pass outside of a will, so while they may have updated their will, it is important to revisit beneficiary designations to make sure those designations dovetail with their new plan.

5. **Evaluate life insurance needs.** Is life insurance advisable to secure settlement obligations? The pandemic has certainly underscored the need to ensure payments will continue if the spouse obligated to make the payments dies. Is the spouse who will receive the proceeds in the event of an untimely death getting duplicate premium notices to ensure the premiums are being paid in a timely manner? Is new insurance now advisable to benefit heirs? If so, what is the proper amount of coverage? If clients have an existing policy, is it still sufficient and performing properly? Is that existing policy held in trust so that family members may avoid having to pay estate tax on the policy proceeds?

6. **Evaluate other insurance needs.** Health, life, disability, property & casualty, and long-term care insurance should all be reviewed to identify what actions might be recommended, including verifying policy ownership and beneficiary designations, and confirming who is responsible for making premium payments.

7. **Have a thoughtful financial plan.** An experienced financial advisory team can help get finances organized, assist with cash flow projections, stress test a proposed settlement sum for different investment landscapes and economic environments, model projected rates of returns, inflation assumptions, tax consequences, upcoming outlays, and evaluate different settlement options and support scenarios. Particularly if a lump sum settlement/alimony are likely to be the only major cash inflows, the spouse receiving those funds should have a thoughtful long-term plan in place to help ensure that the settlement proceeds can sustain a lifestyle.

For clients going through divorce, the process can feel overwhelming. However, the right team of advisors can help them take these important steps to secure their estate and financial plans and spring forward with confidence this season. ♦

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Tax Season Reminders to Save Your Clients Money and Stress

Tax season can be intimidating for anyone. Navigating a tax filing while maneuvering through divorce can add complexity – and stress. Here are four reminders to help your divorcing clients weather tax season.

By Sharon L. Klein

The tax filing deadline is fast approaching. If a client has been filing jointly with their ex-spouse, filing separately presents new challenges, and mistakes can be costly.

Here are four important tips for your clients to consider before they file their tax return this year.

Evaluate Filing Status

What was your client's marital status on December 31st? An individual's tax filing status is used to determine several factors on the tax return, including the tax rate. An individual's marital status on the last day of the tax year determines the filing status for that entire tax year. An individual will be considered divorced for the entire year if the divorce was finalized on or before December 31st. A divorced individual can use the Single or Head of Household filing status for the tax year in which the divorce was finalized.

Taxpayers not legally divorced or separated on December 31st are considered married for that tax year and will have the option to file their tax returns as Married Filing Jointly, Married Filing Separately, or Head of Household. The Married Filing Jointly filing status will usually result in a lower overall tax bill, but if the thought of sitting down with an ex-spouse to sort out taxes sounds less than appealing, individuals can file Married Filing Separately or Head of Household. Filing as Head of Household may reduce the tax bite but to be eligible for that filing status an individual must be unmarried or considered unmarried on the last day of the year. A person is considered unmarried if they paid more than half the cost of keeping up their home for the year, their spouse didn't live in their home during the last six months of the year, their home was their child's main home, and they claim the child as a dependent.

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Consider How to Divide Taxable Income

If your client has been filing a return jointly with their spouse since they were married, they reported all their income on the same tax return without having to determine what income belonged to each spouse. When divorcing, your client will need to figure out their income separately so that each spouse reports the proper amount of income.

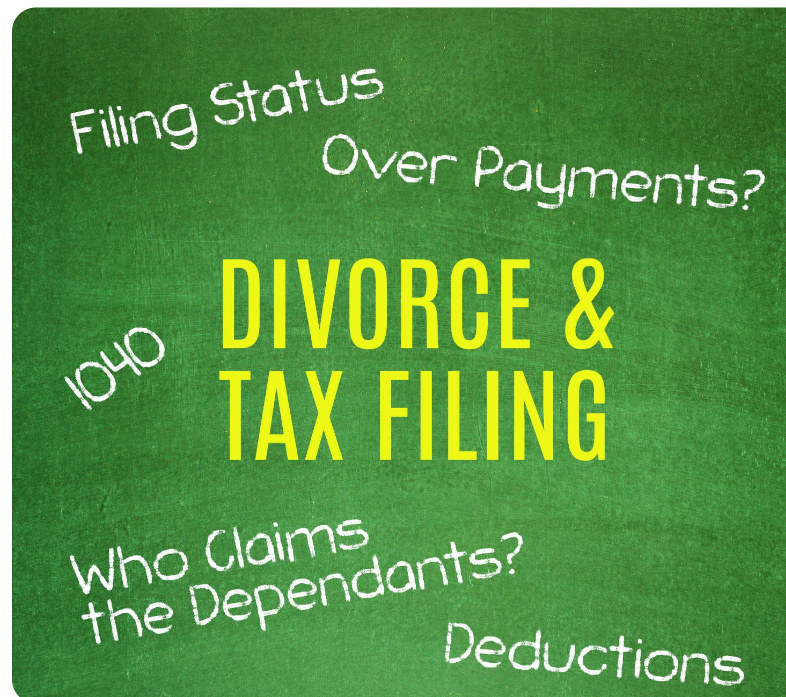
Keep in mind that determining the proper allocation of income and deductions in the tax year a divorce is finalized or when a divorcing couple chooses to file separately might be dependent on the distribution laws of the state where the divorce decree was issued. Clients in most community property states might be required to equally split all community income up to the date of the divorce decree. After the divorce has been finalized, all income from that date through the end of the tax year will likely be reported by the individual who earned it. Taxpayers divorcing in an equitable distribution state will probably report all income they earned individually, and any income received from property they personally own.

Determine Who Will Claim the Dependents

The IRS only allows a child to be claimed as a dependent by one spouse, generally the custodial parent. A client is the custodial parent if their child(ren) spent more time living with them than with their ex-spouse for the calendar year. However, a marital agreement can specify which parent can claim children as dependents, or the custodial parent can waive the right to take the credit. By claiming a dependent, your clients could be eligible for several federal tax breaks, including the child tax credit.

Review How Over-Payments Will Be Treated

An often-overlooked aspect of divorce during tax season is how an over-payment can be allocated



between spouses and how it will impact your client's current tax return. An over-payment on your client's prior-year tax return that has been applied to this year's estimated tax payment and payments that have been made during the tax year can be allocated between spouses. While the IRS allows taxpayers to allocate these payments in any agreed-upon manner, they also recommend attaching an explanation of the allocation to the tax return when it's filed. Note that the distribution laws in your state may dictate the allocation. The payments will likely have to be allocated equally to each spouse if the divorce is in a community property state and the tax payments were made with community funds. The laws for equitable distribution states may require that any estimated tax payments are divided between spouses in proportion to each spouse's separate tax liability.

Tax season can be intimidating for anyone. Navigating a tax filing while maneuvering through divorce can add complexity – and stress. Show clients how they can file with confidence this tax season and remind them that the right team of advisors can help them through every step. ♦

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Custody Battles Can Be Fierce... Over the Pets! Protect Pets in Marital Agreements

Not all states have pet custody laws. Proactive planning can help prevent heartache by ensuring that pets are properly cared for whether a couple stays together or not.

By Sharon L. Klein

Who Gets the Pet in Divorce?

In celebration of National Pet Month, let the month of May serve as a reminder to protect our beloved four-legged friends. It should come as no surprise to animal lovers that the majority of pet owners (85% of dog owners and 76% of cat owners according to an American Veterinary Medical Association Pet Ownership and Demographics Sourcebook[i]) consider their fuzzy friends to be members of the family. Unfortunately, disputes over who retains custody of the cherished pet can become contentious during divorce or separation proceedings. Will one spouse keep the pet exclusively or will ex-spouses share custody? Who will pay the vet bills? As you may know, state laws may be antiquated, and you don't want the fate of your client's pet to be left in the hands of the judge. Craft a plan with your clients to ensure that their beloved pets are well taken care of in the event of separation or divorce.

Pet Custody Is Real!

Recently, several states across the country made headlines by enacting pet custody laws, changing the standard for determining who gets the pet from a traditional strict property analysis to one that takes into consideration the well-being of the animal. This elevated standard can require courts to consider the best interest of the animal when awarding possession during divorce or separation proceedings. The "best interest" standard is the same standard used to determine child custody issues. Courts may inquire into who owned the animal first or whether it was purchased together, who spent the most time with and assumed most of the responsibility for the pet's care, the best living arrangement for the pet and, if children are involved in the care of the animal, the nature of their attachment to the pet. Currently, six states (Alaska, California, Illinois, Maine, New Hampshire, and

[i] Pet ownership stable, veterinary care variable.

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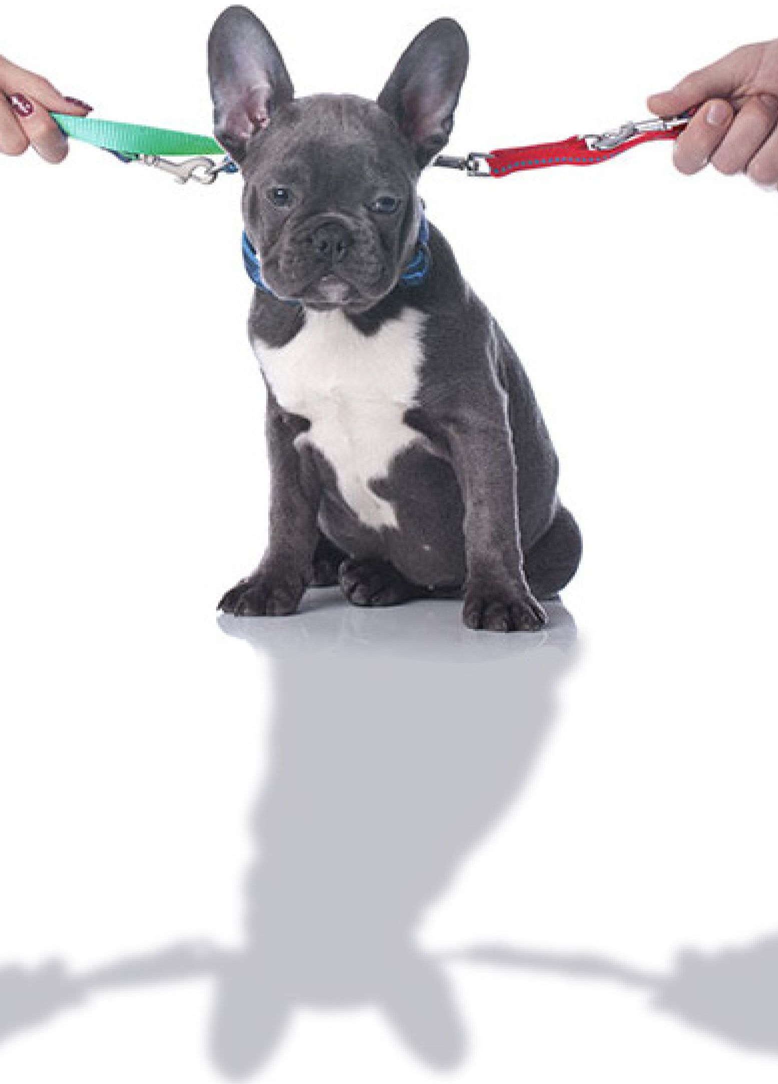

New York) have pet custody laws and one state (Rhode Island) introduced legislation that died in 2022.

Consider Documenting Intent in Prenuptials and Other Marital Agreements

However, the vast majority of states do not have pet custody laws, and oftentimes pets are treated as property during divorce or separation proceedings, although a more modern trend has been for courts to consider the special relationship between pet and owner. During such a tumultuous time, it can be heartbreaking for pet owners to learn that their precious pet will be treated the same way as a car or furniture in the court's eyes, but careful planning can help prevent this emotional anguish. If permissible under your state's laws, consider inserting pet custody designations into prenuptial, postnuptial, or settlement agreements. While the decision will likely ultimately turn on a judge's discretion, courts may consider written legal agreements in pet custody disputes. In addition to custody, consider including factors such as visitation and pet expenses in an agreement to address questions such as how vet and grooming expenses will be paid, and if the non-primary caretaker will have visitation rights with the pet after divorce.

Proactive Planning Can Be Key

Support animal lover clients through the difficult process of divorce by easing the added stress of potentially losing a beloved pet. Proactive planning can help prevent heartache by ensuring that pets are properly cared for, whether a couple stays together or not. ♦

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5 Considerations for Same-Sex Couples

June is Pride Month, so take the opportunity to inform or remind your same-sex clients about these top five planning tips.

By Sharon L. Klein

The landmark 2015 Supreme Court case, *Obergefell v. Hodges*, which legalized same-sex marriage nationwide, shifted the principle question of marriage for many same-sex couples from "Why can't we get married?" to "Should we get married?" Although planning is now essentially the same for all married couples, whether same or opposite sex, Pride Month is a great opportunity to:

- Remind your same-sex married clients to review their plans to ensure they take advantage of benefits that were once reserved for opposite-sex spouses; and
- Remind your same-sex clients, irrespective of marital status, about the following key planning considerations.

5 Planning Considerations for Same-Sex Couples

1. **Review Existing Estate Plans.**
   All couples should review their existing estate plans with a team of advisors to confirm that their planning reflects their current wishes. Married couples have the benefit of the unlimited marital deduction, which means that they can gift during their lifetime or bequeath at death an unlimited amount of assets to their U.S. citizen surviving spouse without any gift or estate tax. Unmarried couples will have to engage in different estate planning techniques to pass the maximum amount they can to their partners without the imposition of those taxes. Aside from tax consequences, if an individual does not have a will, their state's intestacy laws will typically provide for a minimum amount to pass to their surviving spouse, but if a couple is not married, their entire estates may pass away from the intended partner if they haven't proactively planned.

2. **Consider Establishing a Living Trust.**
   A revocable living trust, which is a trust set up during an individual's lifetime that may be changed or revoked at any time, can be used as an individual's main dispositive document instead of a will. Unlike a will, the provisions of a revocable trust kick in not only in the event of death but also in the event of incapacity. This means that a living trust can provide for the trust creator,

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the creator's partner, and their children during any period of incapacity prior to death. At death, the trust can have the same provisions that an individual would put in a will, but while wills are public documents, trust provisions may be kept confidential. Using a revocable trust may be particularly useful for couples who have concerns that family members may challenge their wishes in the event they become disabled, or challenge their will at death. Appointing an independent trustee on an individual's death or disability, particularly a neutral and experienced corporate trustee, can often defuse the acrimony that might otherwise arise between the trust creator's partner and other family members. Additionally, having assets pass via a revocable trust instead of under a will can also avoid the cost and potential delays associated with the probate process.

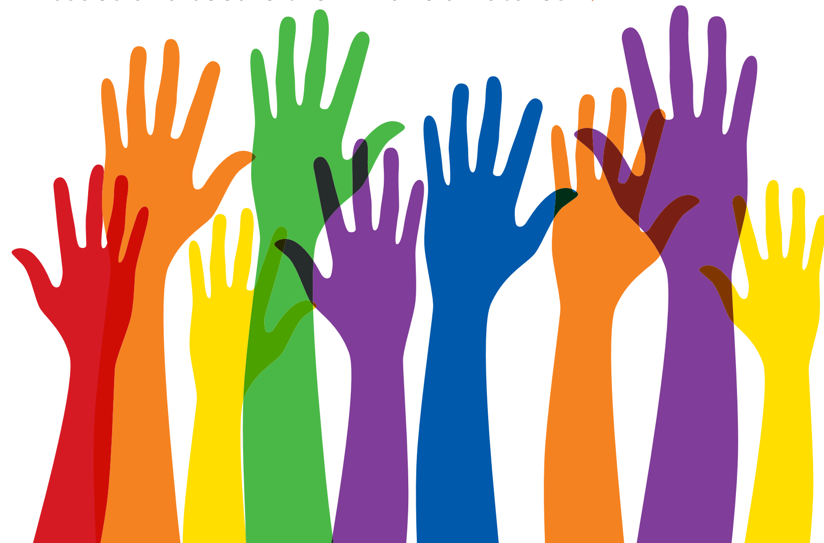
3. **Update Advanced Directives.**
   All couples should consider having advanced directives in place, including a health care proxy (which allows one partner to make medical decisions for the other in the event they are unable to do so), a power of attorney (which allows one partner to handle the other's financial affairs), a living will (which evidences an intent not to be kept alive in a vegetative state), and a Health Insurance Portability and Accountability Act (HIPAA) privacy authorization form (which allows health care professionals to disclose medical information). These documents are especially important for unmarried couples, who could face additional challenges to prove that they are authorized to make medical or financial decisions on behalf of their partners.

4. **Update Beneficiary Designations.**
   Remind all couples to periodically review (and update) their beneficiary designations. If a partner passes away, an outdated or blank beneficiary designation could spell disaster for the surviving partner, resulting in an unintended beneficiary receiving the funds. Similarly, if an ex-partner was named as a beneficiary of retirement or life insurance accounts, and that designation was not updated to remove them, their ex could inherit significant assets they were not intended to receive. While a surviving spouse may have some rights depending on the type of account, best practice is to keep beneficiary designations updated whether a couple is married or not.

5. **Protect the Children.**
   Same-sex couples with children oftentimes face a unique set of estate planning challenges if only one parent is biologically related to the children. Particularly for unmarried couples or spouses who bring existing children to the marriage, children who are adopted or biologically related to one partner should be clearly identified in all estate planning documents of both partners to provide for their financial future. The non-biologically related parent may consider adopting the child if there is no other biological parent to protect against a future potential custody battle with their partner's family if the biological parent dies or becomes incapacitated.

The Bottom Line? Have a Comprehensive Plan in Place for all Same-Sex Couples

Although lack of planning can have disastrous consequences for any individual, the potential pitfalls are particularly rife for unmarried partners. That said, the key takeaway is to have a comprehensive plan in place, whether an individual is married or not. Indeed, although married same-sex couples can now leverage spousal benefits once reserved for opposite-sex spouses, the considerations listed above are important for all. The right team of advisors can help your clients navigate these complex issues and secure their financial futures. ♦



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7 Tips to Help Your Clients Achieve Financial Independence

Leverage July's independence theme by discussing financial independence with your clients.

By Sharon L. Klein

Aside from being a huge life change, divorce can be an overwhelming and difficult undertaking from a planning and financial standpoint. Fortunately, there are several steps you can help your clients take to make the process less daunting.

7 Tips for Divorce Clients to Achieve Financial Independence

1. **Get Organized.**
   Clients should have a clear picture of the marital balance sheet and their cash flow needs before starting the divorce process, especially if they were not very involved in handling the finances during the marriage. Assembling and reviewing financial documents (bank statements, investment accounts, retirement accounts, tax returns, etc.) with a financial advisor will often be key in understanding current income, expenses, assets, and debts.

2. **Examine Current and Future Expenses – Including for Children – for Accurate Projections.**
   An important step in the divorce process is projecting how a proposed settlement will – or will not – sustain a client's lifestyle. An accurate lifestyle analysis includes accounting for additional expenses for children, such as summer camp, college tuition and future education funding, hobbies, etc. Financial advisors can help successfully position clients and their attorneys at the negotiating table and beyond with comprehensive financial planning and cash flow analysis.

3. **Review Existing Marital Agreements.**
   If clients have an existing prenuptial or postnuptial agreement, review the agreement with them to see what rights and obligations are incorporated.

4. **Update Planning and Other Important Documents.**
   During times of transition – especially divorce – it's key for clients to review all their estate planning documents and

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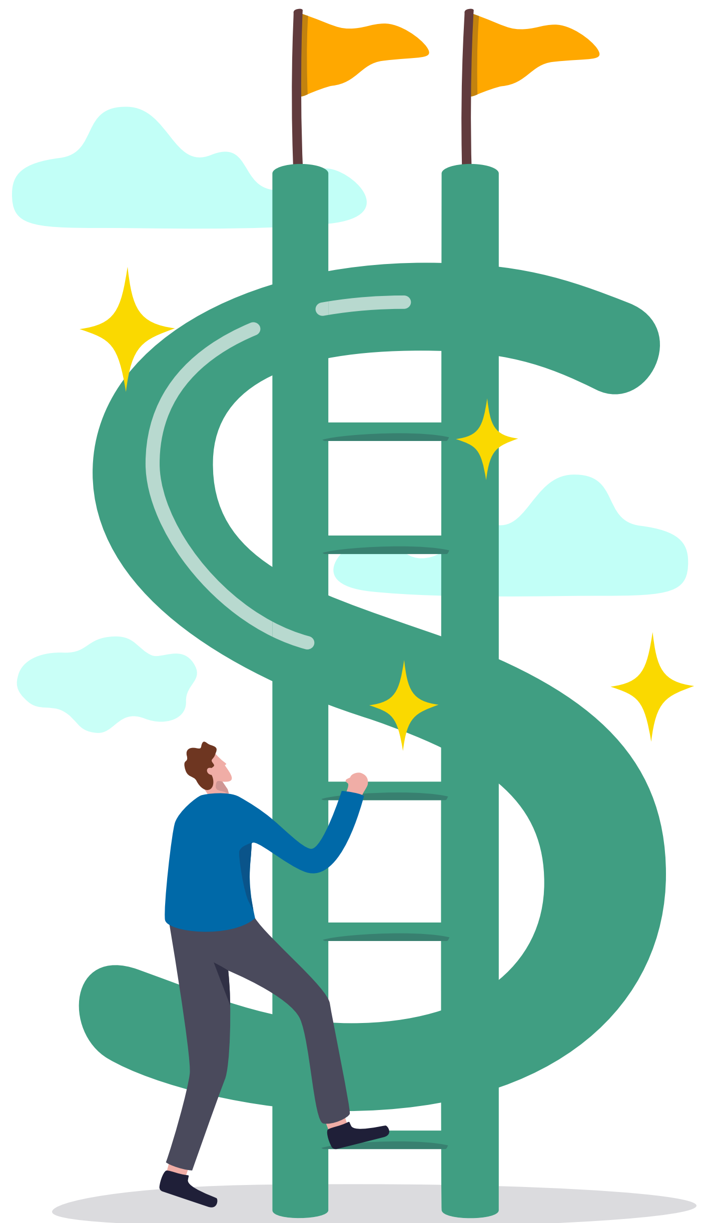
beneficiary designations to make sure the documents reflect their current wishes and heirs. While some planning might have to wait until the divorce decree is final, documents such as wills, powers of attorney, and health care directives, can and should generally be updated while divorce is pending so a soon-to-be ex-spouse inherits the minimum possible and is not able to make important financial and health care decisions for your client.

5. **Establish Individual Bank Accounts and Build Personal Credit History.**
   Encourage clients to open accounts in their own names so they have cash readily available. Clients should also examine their credit report to review their credit history – or lack thereof. Some clients may have been an additional cardholder on their spouse's credit cards and may not have their own credit history. If so, encourage those clients to apply for a credit card in their individual names to build their credit score.

6. **Create a Sustainable Financial Plan.**
   Clients should implement a thoughtful long-term financial plan so that a lump-sum settlement and/or alimony proceeds can sustain their desired lifestyle. Consult with a financial advisor for guidance on organizing a client's finances, running cash flow projections, stress testing a portfolio, and modeling projected rates of returns, inflation assumptions, and upcoming outlays to give your client peace of mind for the future.

7. **Engage A Trusted Team.**
   A trusted team of experts – which typically includes a matrimonial attorney, a trusts & estates attorney, a financial advisor, and an accountant – can make the divorce process less daunting for clients. Including cross-disciplinary experts from the outset can help family lawyers navigate the process for those dealing with divorce, provide holistic guidance and support, and position clients for a successful future.

Support your clients throughout the divorce process and help them secure their financial freedom. July is an ideal month to show clients how they can declare their financial independence and start a new chapter. ♦



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5 Tips to Offer Divorce Clients Before Their Kids Enter College

Starting college is an exciting time for parents and children alike, but there are many details to consider – especially for children of divorce.

By Jerry Inglet, Ed.D

When entering college as a freshman, the logistics and corresponding emotions attached to decisions can be overwhelming – not only for the student but the family at large. From choosing the college to settling in with roommates, from finalizing the inaugural class course load to adjusting to a new school setting, and then managing all the details attached to paying tuition and associated costs, entering the world of higher education requires you to devote a lot of attention and energy to decisions that impact this important life cycle moment. Because of the onslaught of choices presented during this process, some details during the college years can be overlooked in divorced households.

5 Important Tips for Divorced Parents as Their Children Enter College

1. **Talk to Your Kids About Signing Health Care and Financial Documents**
   Traditional-aged undergraduate students (ages 18-24) continue to represent a significant number of first year undergraduates. Since many of these students will cross over to the age of majority during college, there may be a fundamental shift from what a divorce decree or legal custody agreement dictates for minors regarding access to information, records, and decisions for the student. This change in legal status, when layered over the possibility that a student might become incapacitated or ill while at college, should prompt divorced co-parents and their children to discuss several documents the student can sign before arriving on campus. These documents include:
   - a health care proxy, which allows a parent to make health care decisions on a student's behalf when needed,
   - a Health Insurance Portability and Accountability Act (HIPPA) authorization, which allows a parent access to medical records,
   - a financial power of attorney to facilitate financial decisions, and
   - a Family Educational Rights and Privacy Act (FERPA) authorization to gain access to educational details and records.

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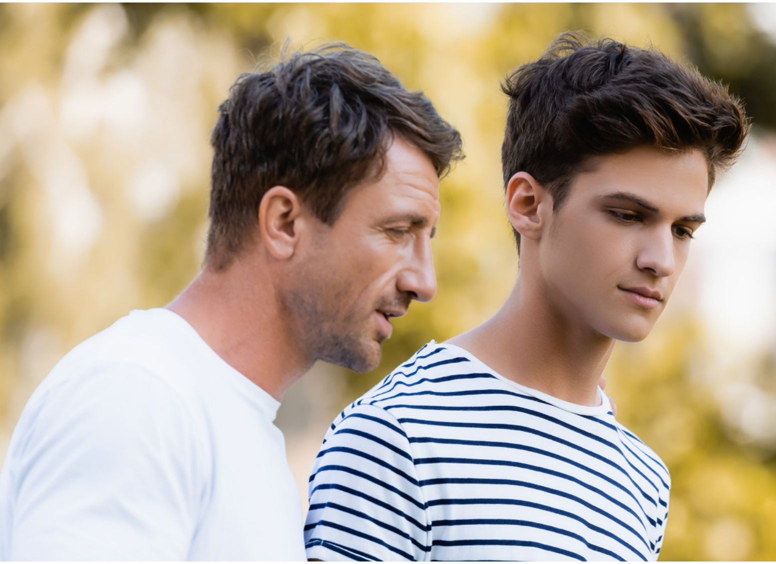

Divorce can complicate the choice of whether one or both parents should be designated in these documents. Discussing and agreeing to these decisions in advance can prevent conflict later.

2. **Pay Close Attention to the College Bill and the Financial Aid Process**
   Line-item items on the college bill can also get lost in the moment. For some colleges, there is an automatic opt-in for their health care insurance. Depending on the health insurance provided by the parents – which may be governed by terms of a settlement agreement or divorce decree – the college health insurance could be an unnecessary expense that requires an affirmative opt-out. It also pays to be alert to other potential overcharges. For example, there could be charges to meal plans over and above what the student will utilize, or parking permit fees, even though the student does not plan to bring an automobile to school. If the student has reached the age of majority, one or both parents will need a FERPA release from the student to discuss the particulars of the bill and financial information with the college.

   There have also been recent changes to the Free Application Form for Federal Student Aid (FAFSA) that impact divorced families. Previously, the parent with whom the child lived with most of the year (who could be the lower income parent) was responsible for filing the FAFSA. Starting with the 2023-2024 academic cycle (the FAFSA that opened October 1, 2022), the parent[i] who provided the most financial support to the child completes the FAFSA, irrespective of how much time the child spent living with that parent. This change in FAFSA filing could have financial aid and award implications if the income and assets of the parent providing the most financial support are greater than the parent with whom the child lived most of the year.

3. **Review Crime Statistics**
   Whether on-campus or off-campus, living away from home can be an exciting proposition for college students – but it can also be a source of worry for parents. Divorced parents should review the U.S. Department of Education's Campus Safety and Security database; they can also request a college's Annual Security Report or even review a crime mapping and analysis report from a municipality to prompt a conversation with their child about the importance of being aware of their surroundings.

4. **Follow Up with Children on Their Medications**
   Recent trends indicate that there are a growing number of college students who utilize prescription drugs. On occasion, students can misuse these drugs by sharing them with other students or deciding (without a physician's consultation) to stop taking them. Divorced parents should collaborate to convey consistent messaging to their children about the importance of following doctors' advice.

5. **Review Child Support Agreements for Minor Children Entering College**
   Unless built into settlement agreements or court decrees, for children who go away to college, the change in living situation may lead to conversations about modifying child support since the child is no longer living with the custodial parent full time. This is especially crucial for the parent receiving child support, who may receive a nasty shock if their support is reduced to a trickle on September 1st.

Even though the college life cycle for undergraduate students is such an exciting time for the whole family, it certainly requires an eye on many details, especially for children of divorce. ♦

[i] Who is considered a parent? Federal Student Aid

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6 Top Tips for Clients Who Remarry

If you have clients whose remarriage will create blended or stepfamilies, make sure their estate and financial plans are up-to-date with their evolving family dynamics.

By Sharon L. Klein

Did you know that September 16 is National Stepfamily Day? Often for the second, third, or further time around, one or both partners will have children from a prior union. There is perhaps no relationship as maligned as one prefaced by the word "step." An important part of your role as advisor is to counsel your clients to proactively address these new stepparent/stepchild relationships to help position your clients for a successful future.

Tips for Clients Whose Remarriage Will Create Step or Blended Families

Here are six key strategies to help blended or stepfamilies live in harmony for many years to come.

1. **Sign a Prenuptial Agreement**
   A prenuptial agreement can be particularly important in remarriage situations when each party typically brings their own assets – and perhaps their own children – to the new union. If one or both spouses have previously been divorced, it will be important to review prior divorce decrees or settlement agreements – which may contain child support, alimony, life insurance or other inheritance provisions – to ensure that the prenup takes all prior agreements into account. If the couple wishes to protect their premarital assets for their children from a prior marriage, documenting that intent in a prenuptial agreement can help ensure that the marriage begins with open communication and shared expectations. Furthermore, virtually every state's marital laws require that a certain percentage of each person's estate, commonly a half or a third, pass to a surviving spouse. If these marital rights are not waived in a prenuptial or other agreement, a surviving spouse can elect to receive their statutory entitlement, potentially wreaking havoc with an individual's intended estate plan.

2. **Establish Trusts**
   While a couple may share an understanding that the first-to-die will leave everything to the survivor, who will in turn split the

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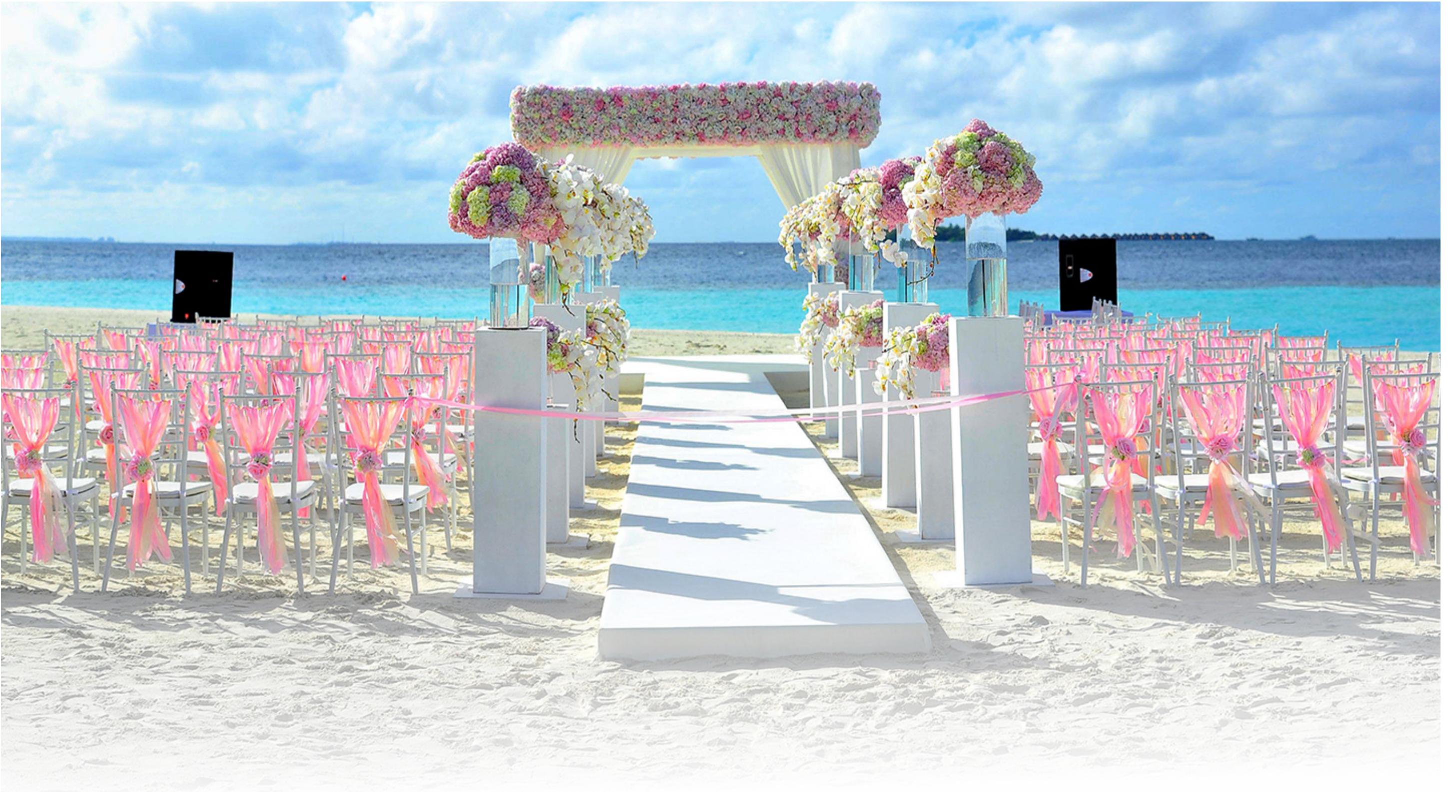

assets among all of the children, if there is no legal obligation to benefit the children of the first-to-die, the survivor is typically free to leave all of the assets to a new spouse or children of another marriage, possibly disinheriting their deceased spouse's children. Trusts can be an important estate planning technique for blended families because a trust can be structured to benefit their spouse during their spouse's lifetime, while providing that the trust assets pass to their own children at the spouse's death. The trust creator can also pick an independent trustee who can serve as a neutral independent third party to invest the trust assets in a way that balances the interests of the spouse and the children, minimizes friction among all the parties, and ensures that the trust is administered pursuant to the creator's intent.

3. **Consider Life Insurance**
   Life insurance can be a valuable mechanism to provide equalization funds for blended families. One concern with splitting an estate into a trust structure (with the surviving spouse benefiting during their lifetime and assets passing to children on the spouse's death), is that the surviving spouse and the children can be close in age, meaning that the children might have to wait until a very advanced age to receive the funds, if at all, before the spouse's death. Life insurance proceeds may be a solution to provide liquidity, either to the surviving spouse or to children of a prior marriage, if the estate assets are insufficient to provide for both sets of beneficiaries. Utilizing an Irrevocable Life Insurance Trust (ILIT) can be an advantageous way to purchase and maintain life insurance. To create an ILIT, an individual establishes a trust and transfers funds to the trust. The trustee then purchases a life insurance policy payable to the trust upon the insured's death. The primary benefit of using an ILIT, as opposed to the insured owning the policy, is that policy proceeds pass to heirs free of estate taxes upon the insured's death. Since estate assets that pass to a US citizen surviving spouse, outright or in an appropriately designed

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trust, pass free of estate taxes until the death of the second spouse, a common technique to maximize estate tax deferral is for the estate to pass to the surviving spouse in trust, to defer taxes until the death of that second spouse. Life insurance proceeds, which can pass free of estate taxes, can be left to children, either outright or in further trust, avoiding the imposition of estate taxes.

4. **Update Estate Planning Documents**
   All the client's planning documents, account titles, and beneficiary designations should be updated to be certain previously chosen heirs are still appropriate, as well as designees for healthcare and power of attorney documents.

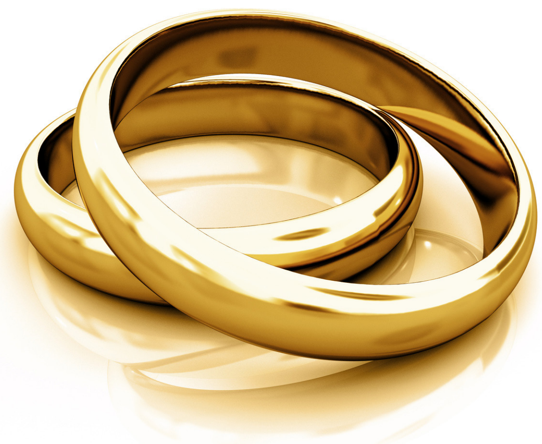
5. **Wills and Revocable Trusts**
   Wills and trusts should be reviewed immediately so a spouse from a previous marriage does not receive an unintended inheritance. Typically, unless a current spouse has waived marital rights in an agreement, an individual cannot disinherit a spouse, making it key to dovetail prenuptial planning with estate planning. When minor children are part of the blended family, a parent may want to include guardianship provisions to make sure minors are adequately taken care of in the event of their passing. From a financial perspective, specific bequests can be made in a will to chosen beneficiaries, such as children from a prior marriage. If a client wants to leave assets to their stepchildren, they need to specifically provide for them under their wills; stepchildren will not typically have any legal inheritance rights from their stepparent's estate, no matter how emotionally close they were.

6. **Powers of Attorney and Healthcare Directives**
   Carefully review powers of attorney, which allow a designated person to conduct financial transactions, and health care directives, which allow a designated person to make important health care and potentially end-of-life decisions. Reviewing these documents is key: both to ensure that an ex-spouse is removed from those roles, and to ensure that clients carefully consider the dynamics of their blended family situation when updating agents, particularly if there are tensions between a new spouse and the adult children of a previous marriage.

7. **Check Beneficiary Designations**
   Counsel clients to review beneficiary designations on 401(k) accounts, other retirement accounts, life insurance policies, or any account with a directly named beneficiary. These assets do not pass under a will and must be separately updated; a prior divorce does not necessarily revoke a designation of an ex-spouse as a beneficiary. Spousal rights in retirement plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) are subject to special rules and may require the new spouse to waive rights if the owner wishes those assets to pass to children of another marriage.

8. **Choose Trustees Wisely**
   Many estate planning techniques in blended family situations will involve the use of trusts. Appointing an experienced professional trustee can often prevent tensions within a blended family. Corporate trustees in particular are neutral, independent, and can eliminate suspicion – even perceived suspicion – that may attach to a friend or family member acting in that role, which can actually save expense and may prevent unnecessary and prolonged litigation.

As your clients' families grow and blend over time, it is important to make sure their estate and financial plans reflect their current family dynamics. Building a trusted team of advisors for your clients, including financial advisors and estate planning attorneys, can help you take a holistic approach that is foundational for blended families to build successful lives. ♦



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Divorce Does Not Have to Be Scary with the Right Financial Plan

Although ghouls and goblins are on the prowl at Halloween time, partnering with an experienced divorce financial advisor to plan for your clients' unique goals can make the next chapter of their lives a bit less frightening.

By William T. Bennett

Maneuvering through a divorce can be one of the most stressful events an individual can experience over the course of their life. The emotional toll associated with starting over is challenging enough, but when you pile the added burden of post-divorce financial planning on top – particularly for those facing the responsibility for the first time – it can push feelings of stress and being overwhelmed into new territory.

For your divorcing clients, planning for their future needs without having the proper tools at their disposal is a nearly impossible task. Imagine a child attempting to go trick-or-treating without any Halloween basket or loot bag to hold their candy – that's like your client trying to plan with no "container" or framework for their facts and figures!

To help secure your clients' financial futures, you and your clients should partner with a trusted advisor capable of providing knowledgeable projections tailored to each individual's circumstances before negotiations are finalized to ensure that any long-term plan captures and incorporates the various factors in play.

4 Foundational Steps for a Customed Financial Plan

Is your client's financial expert taking these foundational steps?

1. **Setting Plans Based on Future Expectations**
   Any financial projection should be built on expected future returns rather than assumptions centered around what has previously taken place. We often see financial forecasts based on historical figures, which can lead to overestimating or underestimating future value.

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For example, consider a forecast predicated on the underlying assumption that the returns we have experienced over the last 10+ years (outside of calendar year 2022) in equity markets will persist over the next decade. Although some investors might be delighted to see those kinds of returns, the reality could be quite different from the projections.

Basing decisions on backward-looking data can have a significant impact on a portfolio's long-term sustainability, which could lead to a multitude of issues down the road.

2. **Planning for an Array of Outcomes**
   If the last few years in markets have taught us anything, it is that markets are extremely unpredictable in the short-term. Following several years of muted volatility in both stocks and bonds, we have seen volatility work in both directions as investors have become accustomed to greater fluctuations in account values, irrespective of their allocation. Assuming a static rate of return when forecasting is perhaps the most perilous trap to be avoided. Through the use of sophisticated planning software, both clients and advisors can gain a better understanding of the range of returns they might expect, as well as the anticipated level of assumed risk, through analyzing a variety of statistical measures and stress tests.

3. **Considering the Likelihood of Rising Costs**
   Forget the ghosts – one of the most startling things this Halloween season for both investors and consumers has been this year's inflation numbers. Across nearly every measure of reading year-over-year inflation is the highest it has been in over 40 years, and people are feeling the impact. It is key to adjust projections for living expenses to account for the impact of inflation. We recommend creating a budget that incorporates higher future prices to avoid understating your client's future needs.

4. **Communicating and Performing Wellness Checks Along the Way**
   The plan is set – now what? For your client, collaborating with a trusted team of advisors is an ongoing process. Over time, it is inevitable that their specific goals and objectives will evolve. In other words, "life happens." Having the right planning tools can provide reassurance during turbulent times that a client's goals are still on track, and it can also help highlight the need to consider a new, more appropriate strategy should there be a material change in circumstances.

   Your clients should have a holistic understanding of their financial picture – especially when going through a major life event such as divorce. Partnering with a dedicated divorce financial advisory team who can tailor a plan around your client's unique goals and objectives can make the future less scary and the Halloween candy ever sweeter. ♦

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Help Clients Develop a New Philanthropic Identity After Divorce

Thanksgiving reminds us to be grateful for what we have – but it also reminds us to share some of our good fortune with deserving charities, nonprofits, and other entities. Here are eight key considerations for establishing new philanthropic plans for your clients after divorce.

By Walter J. Dillingham, Jr.

Thanksgiving is an opportune time to bring philanthropic plans to the forefront: to give back and express thanks to charities we support for their tireless efforts. Americans continue to be very philanthropic, even despite the pandemic, as the 2021 Giving USA Study[i] noted that Americans donated $485 billion in 2021 to nonprofit organizations.

While Americans continue to give, families who are going through a life change such as a divorce should be assessing their current and future philanthropy as they go through the separation process. These couples may have to make some key decisions as we approach year-end.

Fortunately, the divorce process usually involves working with experienced legal and financial professionals. One area that needs to be part of this process is the review of the couples' philanthropic plans. These could vary from a very simple philanthropic plan to a more complex plan where a family foundation is involved.

Developing a New Philanthropic Identity After Divorce

5 Key Considerations for Basic Giving Plans

Some couples have a basic charitable giving plan where they sit down and decide together which nonprofits to support. This process will change as a couple maneuvers through the divorce process, with each person needing to develop their own giving plan. Divorcing individuals should think about what causes they want to support now and develop their own philanthropic

[i] Giving USA Study 2022; The Giving Institute, Chicago, IL

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identities. Typically, this new plan will require tax planning and a review of any appreciated/low-basis securities.

Here are five key considerations during this transition time.

1. **Assess your clients' giving plan and giving budget.** Do they need to cut back in the short term? A sophisticated financial advisor can run financial projections to help clients answer questions related to their future budgetary and other financial needs, including their future philanthropic budget after a divorce.

2. **Clients should reach out to the charities they support** to provide a new address and contact information.

3. **Check to make sure any recurring giving programs are updated** since they are often connected to a specific credit card, and that card may have been canceled.

4. **Make sure clients have discussed any pledges they have made** and memorialize their agreement as to how the pledges will be satisfied after divorce.

5. **Volunteering:** it also may be an opportune time to reassess the charities clients would like to volunteer with.

3 Key Considerations for More Advanced Plans

Some couples may have been very engaged in their philanthropy and had a more formal philanthropic plan. Here are three key considerations that may apply to more sophisticated plans.

1. **Donor Advised Funds:** A couple may have set up a Donor Advised Fund (DAF), a very common technique that allows a donor to set up a personalized charitable account to streamline their annual charitable giving. Contributions to a DAF generally qualify for an immediate charitable income tax deduction and can grow tax-free until the donor recommends grants to

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the charities they want to support at a pace they determine. One option may be to split the DAF into two funds. If this is the solution, each spouse will need to decide on their own DAF giving plans.

2. **Family Foundations:** Some families have set up family foundations, which are more complex structures. A foundation is usually established for a family to have a more formal giving program, providing them with greater flexibility and control. Other family members are often involved, so determining how to proceed with a foundation after a divorce can be complex. If it is not practical for the couple to continue to work together, attorneys will have to consider other options, including:
    - negotiating for one of the spouses to maintain the foundation,
    - potentially splitting the foundation into two foundations, or
    - terminating the foundation by distributing its assets to one or more charities.

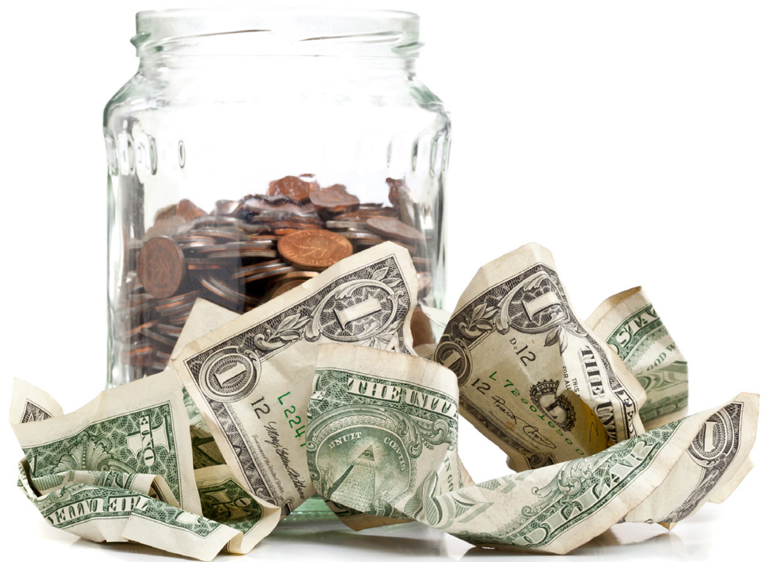
    When Bill and Melinda Gates announced their divorce in 2021, they also announced that they would continue to work together at the Gates Foundation. It was reported that Melinda agreed to resign as co-chair and trustee if, after two years, either one of them decides that they cannot continue to work together, in which case she will receive personal resources from Bill to continue her philanthropic work.[ii] For families that decide to split the foundation, it will be important to seek tax and legal advice.

3. **Planned Giving Commitments:** It is important to review any planned giving commitments. For example, clients may need to update charitable bequests in estate planning documents for named nonprofits. Even if bequests still reflect current intent, the nonprofit may need to be notified if, for example, the couple has been recognized in a legacy society, a named fund, or a named building, and they no longer wish to be recognized as a couple. Clients should also revisit charitable beneficiary designations in retirement plans, insurance, and other accounts to ensure they reflect each person's wishes post-divorce.

Establishing a New Philanthropic Identity Post-Divorce: The Bottom Line

Divorce is a very stressful time for couples, and the key focus is often the division of assets and liabilities. Make sure the philanthropic plan is on the list of items to take charge of for your clients. Sophisticated financial experts can help guide clients through these issues with the data and analytics that can be foundational to establishing their new philanthropic plans after their divorce is final. ♦

[ii] "Bill Gates Can Remove Melinda French Gates From Foundation in Two Years", *The New York Times* (July 7, 2021).



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6 Divorce Tax Considerations at Year-End and Beyond

Here are some key tax issues family lawyers should discuss with their clients before finalizing a divorce.

By Sharon L. Klein

1. Reevaluate Tax Filing Status

An individual's tax filing status is used to determine several factors on the tax return, including the tax rate. A person's marital status on the last day of the tax year determines the filing status for that entire tax year; an individual will be considered divorced for the entire year if the divorce was finalized on or before December 31 of the tax year. A divorced individual can use the Single or Head of Household filing status for the tax year in which the divorce was finalized.

Taxpayers not legally divorced or separated on December 31 are considered married for that tax year and will have the option to file their tax returns as Married Filing Jointly, Married Filing Separately, or Head of Household. The Married Filing Jointly filing status will usually result in a lower overall tax bill, but many individuals don't want to work with their spouse to get the return filed as they may disagree on factors that impact the return. If your client is in this situation, their next best option may be the Head of Household filing status. An individual is eligible to file as Head of Household if:

a. they are not married, or are legally separated at the end of the tax year, or did not live with their spouse for the last six months of the tax year;
b. they paid for more than one-half of the costs to maintain the household; and
c. the individual's children qualify as dependents and live with the taxpayer for more than one-half of the year.

A tax advisor can work with your client to determine the most advantageous filing status for their circumstances.

2. Determine How to Divide Taxable Income

If your client has been filing a return jointly with their spouse since they were married, they reported all their income on the same tax

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return *without* having to determine what income belonged to each spouse. When divorcing, your client will need to determine their income separately so that each spouse reports the appropriate amount of income.

Determining the proper allocation of income and deductions in the tax year a divorce is finalized – or when a divorcing couple chooses to file separately – is typically dependent on the distribution laws of the state where the divorce decree was issued. Taxpayers in most community property states are required to split all community income equally up to the date of the divorce decree. After the divorce has been finalized, all income from that date through the end of the tax year is reported by the individual who earned it. Taxpayers divorcing in an equitable distribution state will usually report all income they earned individually, and any income received from property they own personally.

3. Agree Who Gets a Tax Refund

An overpayment on your client's prior year tax return that has been applied to the following year's estimated tax and estimated tax payments that have been paid during the tax year can be allocated between spouses.

The IRS allows taxpayers to allocate these payments in any agreed upon manner if an explanation for the allocation is attached to the tax return when it is filed. The distribution laws in your client's state may dictate the allocation of these payments. The payments will likely have to be allocated equally to each spouse if the divorce is in a community property state and the tax payments were made with community funds. The laws for equitable distribution states may require that any estimated tax payments are divided between spouses in proportion to each spouse's separate tax liability.

4. Avoid a Surprise in Alimony Taxation

While most family lawyers are very cognizant that The *Tax Cuts and Jobs Act* legislation changed the tax treatment of alimony (which used to be includable in the income of the recipient and deductible by the payor), not all may be aware that there is a potential hidden trap for the unwary. Divorces and separation agreements completed by December 31, 2018 are grandfathered and alimony continues to be deductible by the payor. However, the new laws are keyed to the date of a divorce or separation agreement: if a *prenuptial agreement* was signed before 2019 – even if it was negotiated

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on the premise that alimony payments would be deductible to the payor – the parties will likely be subject to the new tax laws if they divorce after December 31, 2018. While pre-2019 prenuptial agreements can be reopened and renegotiated on this issue, that may also open the door to renegotiation on other issues.

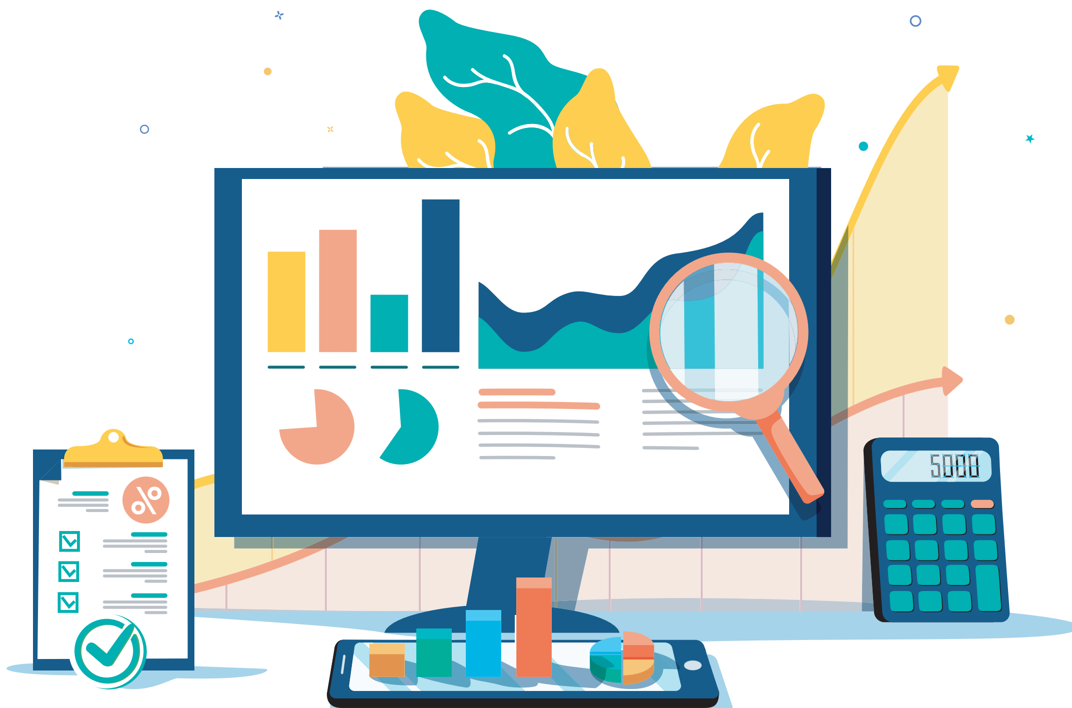
5. Understand Embedded Taxes

Assets can be taxed differently, even when they seem to be comparable assets. One example is the division of retirement assets such as a 401k or IRA. Traditional IRA and retirement plan assets are taxable when the assets are distributed to the beneficiary, but Roth IRA assets are distributed to the beneficiary tax-free – a huge difference. It is also important to consider the cost basis of assets received in divorce, like stocks or real estate, since some assets may have built-in gain that will be realized when the asset is sold. For example, it is important to know the cost basis of any real estate received along with any tax deductions that have been claimed on the real estate, such as depreciation, to determine the capital gains taxes consequences on sale. A financial advisor can help you model out and quantify tax impact, which can be key data to leverage in divorce negotiations.

6. Evaluate Your Client's Post-Divorce Cash Flow

Determining an individual's projected post-divorce cash flow can be essential in divorce planning. An analysis of projected cash flow enables you to determine if a proposed divorce settlement will allow your client to maintain their current lifestyle by considering their anticipated income, spending, and taxes. A sophisticated financial advisor can analyze simulated asset division scenarios to project estimates of your client's annual cash flow and the length of time that the client's assets will last based on their anticipated living expenses and tax exposure. Providing this type of cash flow analysis to your client can help to set you up for success at the negotiating table as well as help your clients to feel confident in their financial future.

These six key issues underscore how important it is for family lawyers to partner with the right team of advisors to navigate the tax issues associated with divorce, take advantage of opportunities, maneuver around potential traps, and generally position their clients for success. ♦



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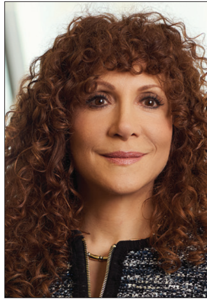

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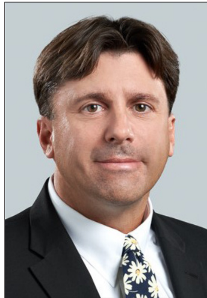

Jerry Inglet, Ed.D, Family Legacy Advisor of Wilmington Trust's Emerald Family Office & Advisory team, provides research-based information on the many financial and non-financial choices and paths available during the education selection process. Jerry is a Certified Financial Therapist-Level I Practitioner who works to help clients think, feel, and behave differently with money and improve overall well-being through evidence-based practices and interventions that aim to resolve underlying issues limiting self-growth, happiness, and financial wellness.

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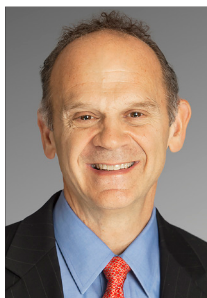

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