

Financial advisers help divorcing couples

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The fair division of assets and liabilities is one of the most difficult parts of a divorce.

This article focuses on resolving these financial issues using the collaborative law process, which is a nonadversarial, collaborative process to reach a fair and respectful resolution of the issues. The process employs a neutral financial expert to review a family's income, assets, liabilities and financial obligations.

The divorce financial adviser works as part of a team with the lawyers and the divorcing couple to assure that each party has a secure financial future.

The first task of the financial expert is to gather information about the couple's incomes, liabilities, assets and living expenses. Under Massachusetts law, all of the assets owned by both parties are considered part of the marital estate, and every part of a couple's financial history must be examined. Nothing is exempt from review.

As part of the collaborative process, the parties agree to bring all financial information to the table voluntarily. The financial professional then looks not only at the income, assets and liabilities, but at the living expenses and needs of each party, and projects the parties' needs for cash flow into the future.

The goal is for each party to leave the marriage with a healthy financial future and a realistic understanding of the financial situation.

Income includes wages, overtime, bonuses, tips, earnings from self-employment, interest, dividends, capital gains, pensions, and annuities. It also includes Social Security, disability income, unemployment compensation, welfare, rental income, passive income from royalties, trusts, partnerships and investments, and any other income from any other source, including child support and alimony.

Liabilities are debts - anything the parties owe - such as loans, credit card balances, mortgages, motor vehicle loans, and educational loans.

Assets are money market accounts, stocks, bonds, mutual funds and the cash value of whole life insurance policies, real estate and any business in which one party owns an interest or from which a party receives benefits of any kind. Real estate includes not only the home a couple lives in but vacation homes, the piece of land they planned to build on some day and rental property.

All real property has to be valued in a divorce.

A business is a marital asset, even if only one person started it and works in it. Even if neither party owns the business, if one person receives income or other benefits from the business, it will have to be considered. Questions that need to be answered in the divorce include whether the business has value, whether it should be appraised and what part of the business is a marital asset.

Other assets include retirement accounts, including Individual Retirement Accounts, 401(k) accounts, profit sharing and defined benefit pension plans. All must be appraised and divided equitably. Personal property, such as automobiles, boats, motorcycles, furniture and tools are part of the marital estate, as are collections that appreciate in value, such as art, coins and guns.

The marital estate includes assets owned by one of the parties before the marriage as well as gifted or inherited assets. Massachusetts law requires that assets and debts be divided equitably, which does not mean 50-50. But before there can be an equitable division, everything must be on the table.

The role of the divorce financial adviser is not to make decisions on how to divide the assets and liabilities in a divorce. Rather, the financial professional works with the collaborative team to obtain values for all of the assets, identify income and liabilities, and to generate options. The financial professional does not advocate for either party but looks for the best use of the assets and the fairest division of the liabilities.

How will the parties pay for their children's college education? Accumulate retirement assets so they can retire?

What property can they afford to keep?

With the financial professional's assistance, the parties search for a settlement that will stand the test of time, that will allow them to live and pay their bills after the divorce, and that will, as much as possible, allow them to maintain the standard of living they enjoyed.

Since most people spend most of the income they earn, when their incomes are divided to support two households, there is often a shortfall. In these cases, the parties and their collaborative teams search for ways to expand the pie.

The divorce financial adviser may present several scenarios and show with charts and graphs the present and projected cash flow, net worth and tax impact of each option. The pros and cons of each option are discussed by the

collaborative team, and together the parties reach an agreement. Usually a couple finds it easier to make a decision when they see their choices clearly illustrated with charts and graphs.

Every marriage is unique, and therefore every divorce is unique. Collaborative law allows the uniqueness to be part of the settlement. The parties end their marriage looking forward to a new future without the bitter taste that a litigated divorce often leaves. They also walk away knowing exactly where they stand financially and the steps they need to take to construct a sound financial future.

To participate in the collaborative process, lawyers, financial professionals, divorce coaches and child specialists must be trained in collaborative practice. The Western Massachusetts Collaborative Practice Group which consists of more than 40 trained professionals committed to collaborative practice, meets monthly to build practice skills, share problems and successes and discuss how to spread the word about collaborative practice.

To learn more, visit the Web site of the Massachusetts Collaborative Law Council at [www.MassCLC.org](http://www.MassCLC.org)

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