

COMMON FINANCIAL MISTAKES IN A DIVORCE

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1. The “20% rule”.

When valuing retirement benefits, depending on the tax bracket of the clients, it may not always be appropriate to do a standard 20% reduction. Same is true for a maintenance buyout. You need to conform the discount for the tax bracket the parties may be in.

2. Family Support.

When using family support, do you terminate maintenance or hold maintenance open? If a component of family support is maintenance, by terminating maintenance are you putting at risk the deductibility of the family support payments? By not terminating it, is it open forever (or at least seemingly forever)?

3. Retirement.

If one of the parties is retired and has a pension plan in pay status, is the pension treated as income or as property and what are the future implications for how it is treated upon retirement?

4. QDROs.

Contact the drafter for language before the divorce is finalized, instead of after. Carefully read any QDRO drafts in advance. Don't delay in processing or getting them completed.

5. Retirement benefits, 401k plans.

Should you use percentages or fixed sums when dividing? If using fixed sums, do you use plus or minus language in the MSA and in the QDRO? What if the MSA is silent on the issue, what should the QDRO say? Should there be language barring either party from borrowing or impairing the value from date of divorce to date of division?

6. Defined Benefit plans.

If you represent the alternate payee, carefully research survivor benefits. Get the QDRO drafted ahead of time. Consider elections made – or which can be made and whether they are revocable or irrevocable.

7. COBRA coverage.

Failing to secure information on insurance coverage for a non-employee client if dependent on their ex spouse's health insurance plan.

8. Maintenance.

Accrual of bonuses – are they income for support or property?

9. Business valuation.

Failure to value a small business or send a CYA letter to the client about the right to value a business. Or, spending your client's money on a worthless valuation (is it a business or a job?)

10. Child Support.

Is there a duty to consider college expenses? Student debts?

11. Perks.

Valuing or dividing perks and points such as airline miles, travel, hotel points, car rental points etc.

12. Asset valuation.

Failure to update assets where divorce takes longer than a year. Changes in the real estate market, stock market, etc. What is the duty to update the information. If assets are to be valued as of the date of the divorce, when do prior appraisals and asset updates become too old or improper to use?

13. Vocational valuation.

Failure to have a vocational examination where the other person isn't working or isn't working to their full capacity.