

## **Divorce, Finance and Retirement**

By Arthur Rottenstein, General Securities Principal

Divorce can be emotionally devastating, and it may not be easy at such a time to concentrate on financial matters – but those who don't may wish they had done so once the proceedings are final.

First, if you decide to withdraw funds from your traditional 401(k) or 403(b) account, by cashing it out, you'll have to pay a 10% penalty (if you're not at least 59½) on the amount withdrawn as well as the income tax (the funds were accumulated with pre-tax income) due on the amount.

While obtaining skilled legal advice is vital, getting good financial advice can be critical, too. There are abundant stories of spouses acting quickly and quietly to hide or move property that was obtained during the marriage and is, in fact, joint property. You don't want that to be your story.

### **Separate Advisors**

It's common for couples to have received advice from the same financial advisor over the years. However, once the marriage is irreparably broken, it is vital that you secure your own advisor. He or she can help you make critical decisions that are entirely in your interest while guiding you toward a successful financial future.

Your attorney will take care of all the legal matters, from making any necessary changes in your will to getting court orders to guard your property rights. You might be advised to obtain a Qualified Domestic Relations Order (QDRO or "quod row"), a court order related to child support, alimony or your property rights. It can be used to instruct your spouse's pension plan administrator how to pay you your share of the plan's benefits.

Such orders only apply to IRS qualified plans, not to government pensions or military arrangements, which come under regulations from other laws. A QDRO will likely permit your former spouse to take his or her share of the retirement money and roll it over into his or her own IRA, then continue treating it as an IRA.

Without one, however, when qualified retirement account money goes to your ex, it is treated as though it were a taxable distribution to you – and you're liable for the taxes. If you're under 59½, you'll also get stuck with the 10% penalty the IRS assesses for premature distributions.

### **IRAs and Other Plans**

Retirement funds often constitute the largest single element of a couple's financial portfolio. No special arrangements are required to divide IRA accounts, but due diligence is always recommended. If your divorce property

Keep IRA funds out of the mix when settling divorce obligations. Not only will a withdrawal shortchange your retirement – unless done correctly, it will trigger a tax obligation.

settlement documents give you the responsibility of doing the rolling over, all you need to do is carefully set up a direct transfer into an IRA established for your ex, who can then manage the account and defer the taxes until the money is withdrawn. At that point, he or she will owe the taxes on the distributions.

The caution flag here is that divorce documents should be specific. You can't simply give your ex part of your IRA or SEP account, because if you do, it will look like a withdrawal, and you'll owe the taxes – as well as the 10% penalty if you're under 59½. Your ex might be happy with these arrangements, but you're unlikely to think it's a good deal.

### **Avoiding Complications**

Early on, take steps to protect your credit. Close joint accounts without a balance; freeze those that are active.

Keep a record of your calls to credit card companies, and make it clear that you will no longer be responsible for additional charges after the date of your call. Ask the companies to inform credit rating agencies of the new status of your credit card accounts. Close joint checking accounts.

Keep a chronicle of all matters related to your financial life – separating your finances from all the other issues you're likely to confront may help you maintain focus. You might want to assess how much you will need to live comfortably after the divorce, too. If you do, you're likely to better be able to evaluate a potential settlement agreement.

Divorce can be distressing. Taking measured steps to protect your financial well-being may provide you with a more comfortable future.

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