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7 Key Factors When Negotiating Your Divorce Settlement

Divorce is often the most emotional time in a person's life. It is also when permanent, life-altering financial decisions must be made. If you are in this situation then, naturally, you may be experiencing fear of the unknown. Fortunately, education helps to alleviate that fear.

By Sharon Numerow

Here are the 7 most important factors to remember when negotiating a divorce settlement:

1. Money Will Almost Always Become an Issue in Divorce

You are probably thinking: "Is that supposed to be a secret? I knew that already!" Yes, that may be so – but you may also be underestimating how much of an issue it will be. Even with the promise of fairness from your ex-spouse, or of a deal that sounds too good to be true, you should still do your homework. Remember not to make offers during negotiations out of feelings of guilt and "give away the farm." Seek out the appropriate professional help and information, so that years from now you do not feel badly that you agreed to a settlement too quickly.

You also want to budget, budget, budget! You will be much more confident in your decisions if you prepare an estimate of a monthly budget (required in some provinces and states) to determine if you can afford to retain certain assets.

2. A 50/50 Division of Property is Not Always Equal

When I began to use this phrase, my teenage daughter reminded me that in school, when children are taught about fractions and things are divided 50/50, it is always equal!
I concurred, but explained that in the division of a couples' matrimonial property, this fact is not always the case.

For example, a $400,000 house does not always equal $400,000 in stocks, or $400,000 in rental or recreational property.

There are tax implications affecting many assets and their values very differently. Overlooking this fact may mean that you get less property than you actually should, or at the very least, you may end up with future tax hits that you were not prepared for or even aware of.

The housing market and stock market are just a couple of examples that in the future may affect the property you choose to retain and, in turn, your future personal net worth.

3. "Divorce the House before the Spouse"

Decisions about retaining the family's largest asset should not be an emotional one. As difficult as it sounds, this decision should be made strictly by considering the responsibility and the dollars and cents involved.

You must find out before signing the legal agreement whether you can qualify for a mortgage on your own. Many people believe that a lender will simply remove their ex-spouse's name – but that is usually not the case! Speak to a lender as soon as possible to find out if you can qualify and (if so) how much you can qualify for.

If you do qualify, make sure you ask yourself these questions:

- Can you afford the monthly cost to service this debt?
- What about the costs of maintaining the home? Things like utilities, property taxes, and unexpected maintenance (a new roof, for example)?
- Do you have the time and energy to maintain a home? Will you be left with 25 years of "stuff" to deal with on your own? Are you prepared to mow the lawn, and clean your home?

4. Understand the "True" Value of Your Investments and Retirement Assets

Get advice on the market risk of your investments. Will you be satisfied if you are the partner left with all of the high-risk investments, and then the market takes a turn for the worse? Will you be satisfied if you did not retain 50% of the private investment that today is worth little – but can be extremely lucrative down the road? If you are dividing a portfolio of investments, it is extremely crucial to understand the make-up of these assets, and the background on some of these stocks and funds, before making a decision.

There are hidden or unknown costs associated with many types of investments. If you decide to dispose of them, you must be aware of this fact. A surprise that you owe the 'tax man' money down the road will likely be very stressful.

You may also need to be educated on stock options and other types of employee incentive plans that you or your spouse may have. These types of plans have become more prominent in recent years, as more employers have chosen to offer them to employees instead of raises. Options that may be "under water" today may increase significantly in value down the road as the economy slowly improves.

Remember not to make offers during negotiations out of feelings of guilt and "give away the farm." Seek out the appropriate professional help and information, so that years from now you do not feel badly that you agreed to a settlement too quickly.

5. Ensure that Pensions and Businesses are Valued Properly

Next to your home, a pension – especially for an employee that has been with his or her company long term – can often be one of the most valuable assets that a couple has.

Certain types of pensions may need to be valued by a trained actuary in order to determine the true value. Failure to do this may mean that you miss out on a great deal of money being included in your matrimonial property total. Remember that the value on the annual statement of a pension is not always the correct one to use.

It is also necessary for the spouse with the pension to look into the regulations of that pension, in order to determine the amount that the spouse is entitled to receive, and in what manner. For self-employed spouses, the value of their business is often included in valuing a couples' matrimonial property. The valuation of a business can be very complicated, and for many it is absolutely necessary to consult with a Chartered Business Valuator.

6. Ensure that the Payor of Child and/or Spousal Support is Life Insured

In the event of a payor's untimely death, it is necessary to have life insurance in place to fulfill future support obligations. Imagine if you have young children and are receiving child support, or if you are in your 50s or 60s and receiving spousal support (or alimony), and something happens to your ex-spouse (the payor)? In such cases, you will suddenly be without that income, which may be financially devastating.

7. Many Divorce Decisions Have Significant Implications for Your Tax Return

There are many available claims on your tax return, especially with respect to children, which can save you significant tax dollars. The rules for most of these are complicated – especially as they apply to separated parents. However, when applicable, the tax savings can be significant.

Do your research before signing your legal agreement, and have a professional complete at least your first tax return after legalizing your financial settlement. These are the seven most important factors to remember when negotiating a settlement. Treat the financial decisions as a business deal, and educate yourself on the facts so that you will be an empowered decision-maker, and in control of your financial future.

Also keep in mind that divorce is one of the few times in life when we often do not listen to our intuition, although it is the most important time to do so!