

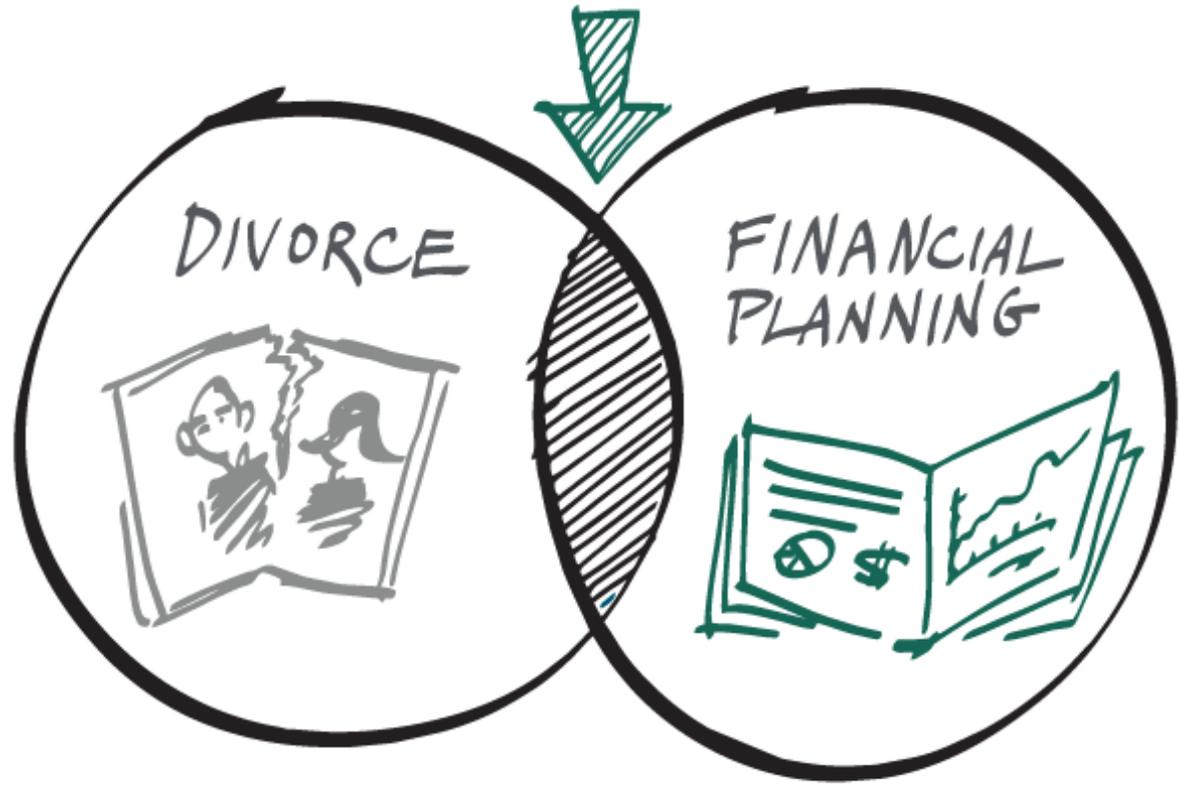
# Advising Clients Before, During and After Divorce

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THE MOST DIFFICULT AND IMPORTANT  
FINANCIAL DECISIONS YOU WILL  
EVER MAKE



# What is a CDFA?

Our role is to assist the client and his/her attorney to understand the complete financial picture and how the financial decisions made today will impact their financial future.

# What is a CDFA?

Facilitate understanding:

- Financial intricacies of divorce
- Overall financial picture
- Short and long-term impacts of decisions
- Tax ramifications
- Level the playing field

**Provide clarity for our clients' financial future**

# A CDFA: Answers the Big Question

***CAN I AFFORD MY LIFE?***



# CDFA Tasks: During Divorce

- Financial education
- Due diligence - Discovery
- Comprehensive analysis
- Consultation
- Financial review of Separation Agreement

# CDFA Tasks: After Divorce

- Facilitate property division
- Update beneficiaries & estate documents
- Financial planning
- Investment management

# Considering Becoming a CDFA?

- Current work situation
- Time
- Desire
- Ability to handle emotional clients

# Divorce Options

- Do it Yourself (Kitchen table)
- Mediation
- Attorney representation
- Collaborative
- Litigation

# Kitchen Table

- Do-it-yourself divorce
- Parties fill out and file court forms themselves (no attorneys)
- Failure to identify assets and properly value/divide them



# Mediation

- Parties work with a trained neutral to come to an agreement
- Provides information and guidance
- Mediator cannot give advice to a party

# Who Can Be a Mediator

- Attorneys
- Mental Health Professionals
- Financial Professionals
- Others

# Mediator

- No credentialing requirement in CO.
- Think carefully about whom you refer as a mediator – what are the issues?

# When to Use a Mediator

Both parties must be:

- Willing to work toward a fair outcome
- Open to compromise on some issues
- Financially transparent

# All About the Kids

When children are involved, both parties are more focused on the child's best interest than on their own agenda.



# Attorney Representation

- Attorneys are not required to file
- Provides individual advice and support
- Should be a family law expert

# Attorney Representation

The personality of the attorney can have a significant impact on the outcome of the case.

Select and refer wisely!

# Attorney Representation

What are unbundled legal services?

- Some attorneys offer unbundled or consultant services

# When to Use an Attorney

- Complex financial issues
- Hiding assets or being financially secretive
- Financially uninformed or unsophisticated

# When to Use an Attorney

- Power imbalance between parties
- Mental health, domestic violence or addiction issues
- A party has unrealistic expectations

# Believe it or Not!

A case can still settle outside of court even if both parties have attorneys.

# The Collaborative Process: Nuts and Bolts Common Challenges Ethical Considerations

David Littman, Esq.  
Level One Collaborative Law Training

With substantial credit to  
Cyndi Brewster, Esq.  
Terri Harrington, Esq.

## The Need for the Collaborative Process

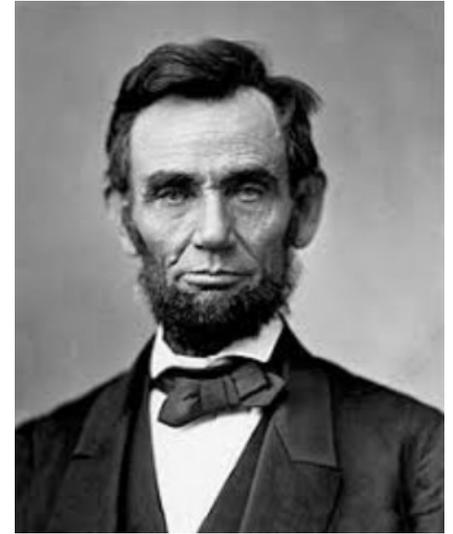
Research indicates that how a couple behaves during and after the divorce has a greater impact on their children than the divorce itself.

Attorneys and Financial Professionals can have a tremendous impact on how a client behaves. Be a role model for problem solving.

# Collaborative Law is Growing

- The Uniform Collaborative Law Act has been adopted in 14 states and introduced in 4 others.
- The number of collaborative professionals is increasing 20 fold each year.
- It is practiced all over the world.
- Websites:
  - Colorado <https://ccdp-law.org/>
  - International Academy of Collaborative Professionals [www.collaborativepractice.com](http://www.collaborativepractice.com)

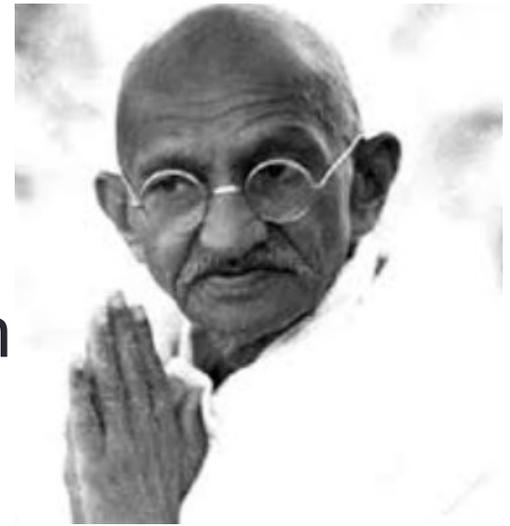
# Inspiration



“Discourage litigation. Persuade your neighbor to compromise wherever you can. Point out to them how the nominal winner is often the real loser, in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man (or woman). There will still be business enough.”

- ***Abraham Lincoln***

# Inspiration



“I became disgusted with the profession  
As lawyers the counsels on both sides  
were bound to rake up points of law in  
support of their clients; the winning party never  
recovered all the costs; I felt it was my duty to  
befriend both parties and bring them together. I  
realized that the true function of a lawyer was to  
unite parties riven asunder.”

***-Mahatma Gandhi***

# Inspiration

“The entire legal profession....has become so mesmerized with the stimulation of the courtroom contest, that we tend to forget that we ought to be healers of conflict...Trial by adversarial contest must in time go the way of the ancient trial by battle and blood...Our system has become too costly, too painful, too destructive, too inefficient for truly civilized people.”

*-Warren Burger, Chief Justice of the Supreme Court*

# What Makes Collaborative Practice Different from Litigation?

- Collaboration starts with a meeting and communication between the lawyers...not a process server.
- The process starts with an agreement to collaborate which contains expectations of conduct. The parties agree that the attorneys will not go to Court.
- Immediate problems are addressed immediately and efficiently.
- Unlike court, there is a short wait to deal with issues.

## Collaborative Practice vs. Litigation (con't)

- Both lawyers gain the trust of both clients by listening to and respecting both perspectives. A paradigm shift is required.
- Financial information is informally provided pursuant to the participation agreement.
- Only neutral experts are used. Including a neutral facilitator, usually a mental health professional.
- Clients are encouraged to come from their highest self.
- The attorneys and experts help the parties determine their big picture goals.
- Goal is to come closest to meeting the needs of both parties.

## Collaborative Practice vs. Litigation (con't.)

- The parties learn problem solving skills, develop creative solutions and focus on interest based negotiation.
- Attorneys model cooperative behavior.
- It is a private process with no public courtroom appearances.
- Most divorce cases settle without court anyway
- In 180+ successful collaborative cases, never had parties go to court later on. They learned how to resolve problems with one another.

# The Paradigm Shift: What is it?

- A shift of skills from adversarial advocacy of the client's position (I need 50/50) to collaborative problem solving based on underlying needs.
- What is best for both of us and the children?

## The Paradigm Shift (continued)

- No depositions, motions, or restraining orders. Just meetings with agendas, respectful communications, and neutral experts.
- Each party is expected to assert reasonable positions.
- Two Collaborative Lawyers, one facilitator/child specialist, sometimes a financial neutral.
- Contrast with litigation where you can have dueling financial experts, two evaluators, etc.

# Role of the Financial Professional

- Trusted advisor with significant information
- Substantial cost savings for the parties
- Need consent of both parties to share
- Might not need financial neutral if FP maintains neutrality
- Retain both parties with separate accounts after the divorce
- If CL is of interest, become trained!

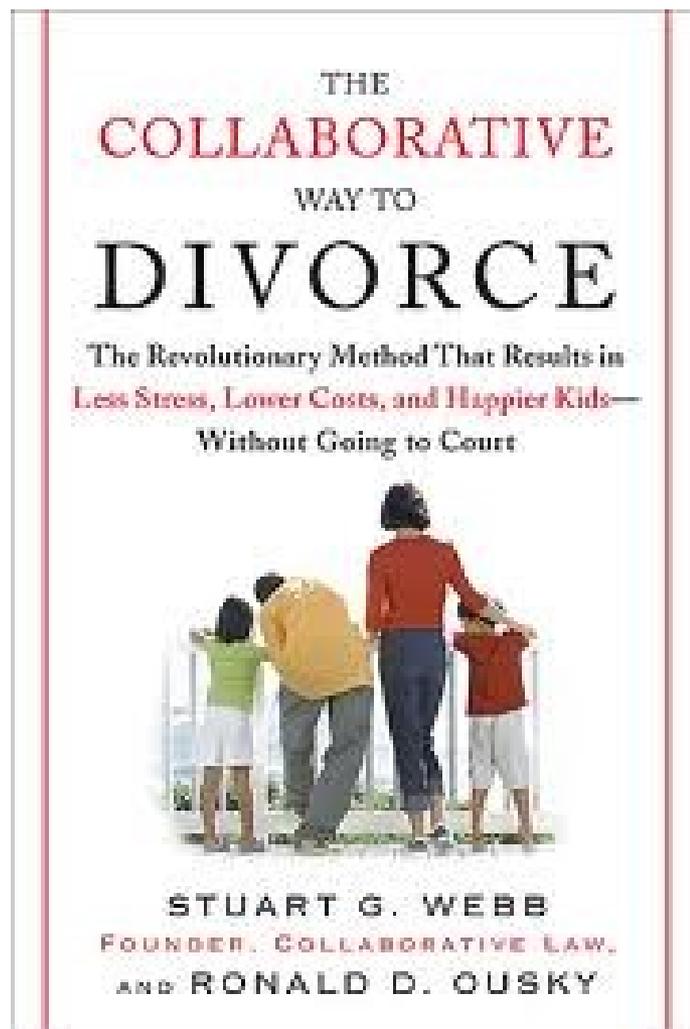
# Advantages

- Clients learn to be better co-parents
- All team members model effective problem solving and conflict resolution
- Can save costs in contrast to litigation
- Litigation cases often settle on the courthouse steps under extreme pressure on both parties.
- Post-decree issues arise as agreements are hastily made and drafted

# Client Focused

- Clients drive the issues
- Lawyers help identify issues clients don't see
- Creative approaches are encouraged- no “one size fits all” approach
- Clients set the pace
- The ‘leavor’ and ‘leavee’ are usually not moving on the same timeline

# Suggested reading material



# Litigation



- People have the right to go to court.
- What does going to court look like?

# Litigation

What is the role of a Financial Professional in a litigated case?

- Expert for one party
- Need to have clear written agreement defining your role
- Expectation of costs to prepare your report and for testimony
- Joint expert- same need for clear written agreement defining role
- Expectations for payment

# Litigation

## Reports:

A report can be short and focused or lengthy with multiple explanatory tables attached.

Be sure to define what is expected before you begin work.

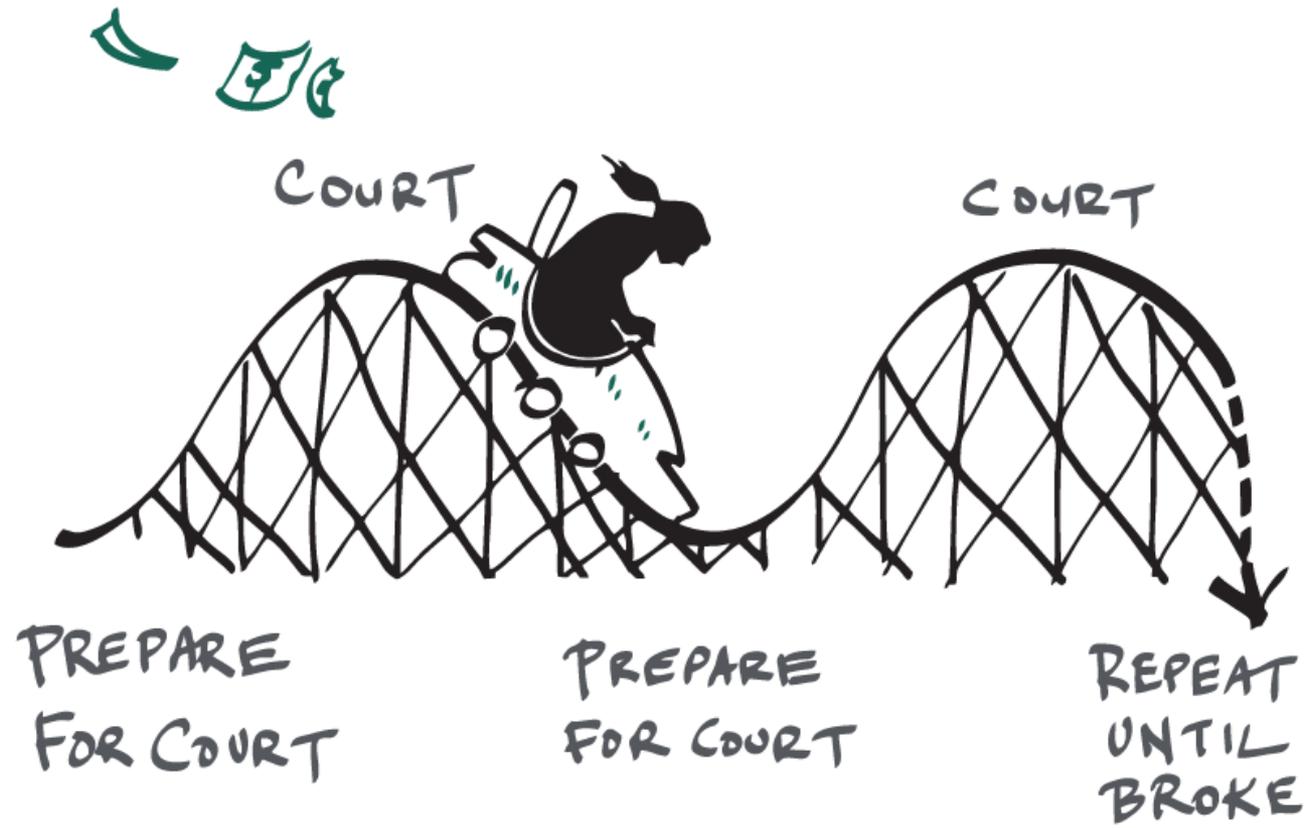
# Subpoenas:

- What is a subpoena?
- Who can issue a subpoena?
- What do I do if I get served with a subpoena?
- What happens if I fail to appear?

# Subpoenas (Con't.)

- Types of Subpoenas:
  - Produce Records
  - Testify in court
  - Testify at a deposition
- Deposition – What is it?

# Litigation: How Much Does it Cost?



# Divorce Law 101: What Should You Know?

- 1 91-day Minimum Waiting Period for Divorce
- 2 Once a divorce is filed, a temporary injunction goes into effect.
  - Temporary injunction prohibits a party from selling, transferring, or liquidating marital assets without consent or court order

# Divorce Law 101: What Should You Know?

## 3. Divorce vs. Legal Separation:

- The process and the paperwork are the same.
- The only difference is, at the end, the parties are still technically married.
- However, they are now living separate financial and parenting lives.
- After six months, a legal separation can be converted to a divorce simply by filing paperwork.

# Divorce Law 101: What Should You Know?

## 4. Common Law Marriage:

- “We’ve lived together for seven years. That means that we’re common-law married, right?”

**WRONG!**

- No magic number – The issue is, have they held themselves out as a married couple to the world?

# Divorce Law 101: What Should You Know?

## 4. Common Law Marriage (continued)

### Examples:

- Filing joint married income tax returns
  - Referring as husband and wife
  - Listing each as spouses on insurance
  - Wearing wedding rings
- 
- What happens when people disagree?

# Divorce Law 101: What Should You Know?

## 5. Child Support

- Colorado's formula is based on the *Income Shares Model*

# Divorce Law 101: What Should You Know?

## 6. Maintenance

- Advisory formula for amount and duration went into effect in 2014.
- Colorado defines “income” for child support and maintenance very broadly

# Divorce Law 101: What Should You Know?

Examples of Income:

Salary  
Net Rental Income  
Dividends  
Interest  
Trust Disbursements  
Capital Gain  
Commission  
Bonuses

# Divorce Law 101: What Should You Know?

Self-employment income for child support and maintenance are not calculated the same as it is for the IRS.

# Divorce Law 101: What Should You Know?

New Federal Tax Laws will impact Maintenance:

Maintenance is no longer tax deductible or taxable for agreements signed on 1/1/19 or later.

# Divorce Law 101: What Should You Know?

## Per section 11051 REPEAL OF DEDUCTION FOR ALIMONY PAYMENTS:

The amendments made by this section shall apply to

1. Any divorce or separation instrument (as defined in [section 71\(b\)\(2\)](#) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) **executed after December 31, 2018**
2. Any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.

# Divorce Law 101: What Should You Know?

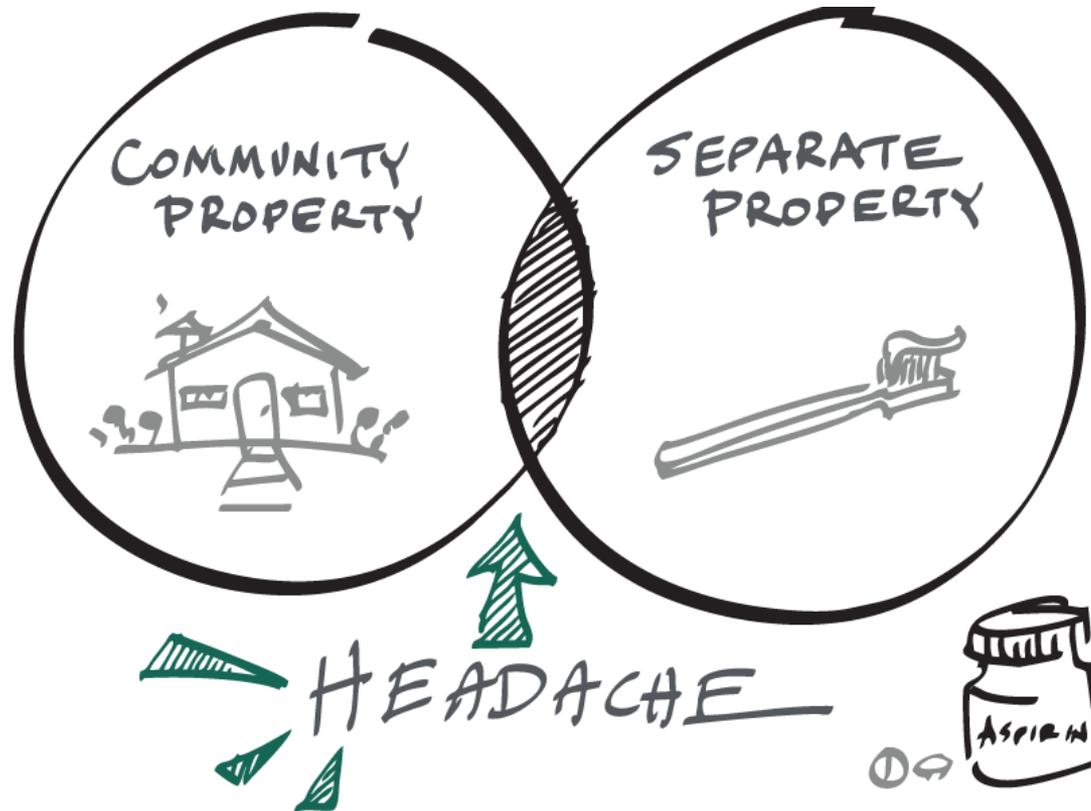
What does this mean for your clients?

- More money goes to the IRS
- When should I get divorced?



# Divorce Law 101: What Should You Know?

## 7. Separate vs. Marital Property



# Divorce Law 101: What Should You Know?

- Colorado is an “equitable” division state  
(not an automatic 50/50 division)
- Separate property = value/equity of property owned prior to marriage as of date of marriage SO LONG AS property remained in sole name
- Also applies to property gifted/inherited during the marriage

# Divorce Law 101: What Should You Know?

- Marital property = Everything else
  - Anything acquired during marriage regardless of title
  - Increase in value/equity during the marriage
  - Separate property put into joint names

# Divorce Law 101: What Should You Know?

- Tracing Issues
  - Trying to identify separate property that has changed its character during the marriage
  - You may be asked to help with tracing separate property

# Asset Selection

- Apples to Apples – if not, assets must be tax effected
- Equal is not equitable



# Asset Selection

## What about the house?

- Can I afford it?
- Refinancing challenges
- Affording it long term
- Capital Gains
- Emotions



# Asset Selection

- Stocks – Consider cost basis
- Equity Compensation (asset or income or both?)
- Miscellaneous Assets
  - Reward Miles
- Tax loss as an asset

# Taxes

Consider Strategic Ways to keep more money in the “couples” pocket and less to the IRS!

- Strategic use of Head of Household filing status
- Child Tax Credits - \$2,000 per child – higher phase outs
- Dependency Exemptions (gone for now)
- Maintenance
- Standard Deductions

# Social Security

- Spousal benefit – eligible after 10 years of marriage
- $\frac{1}{2}$  of spouses benefit – or your full benefit
- Have to be divorced for 2 years to receive benefit
- Can take without other party knowing
- Social Security is not divisible but is an economic circumstance

# Pensions

- Pensions are assets – Origin of why it is an asset
  - Is it marital or not?
- Valuation – Not what statement says
- Options to divide
  - Present Value and offset with other assets
  - Deferred Distribution – Divide the payment. Courts can not mandate this option. The pensioner has to agree.

# Pensions

- Use an expert to understand the ins and outs of the plan
- Military Pensions are a whole different animal – hire an expert who specializes in Military
- How to divide?
  - QDRO or DRO
  - Some are not divisible
- Must follow through with actual division or face serious consequences (Beth's example)

# Retirement

- Account title does not matter if it was earned or grew during the marriage. I hear a lot of people say “my retirement.” It is not an accurate statement.

- How to value?

Roth ≠ Traditional IRA

- How to divide?
- QDROs
- Make sure to actually divide it!

# Retirement

- IRS Rule 72(t) – hardship clause
  - Can be used to create liquidity
  - Allows penalty free withdrawal from retirement assets.
  - Must pay taxes – save the 10% penalty
  - Must be in accordance with the divorce – timing is important – discuss and plan for a withdrawal as part of the divorce process

# Business Valuations

- When is it needed?
  - Professional degrees
  - Professional practices
- Other options to value?
- Complications
  - Family Interests

# Post - Divorce

As an advisor, how can you help?

1. Asset Transfers – Post divorce
2. Financial Planning as a single person
3. Changes in lifestyle
4. Cash flow management
5. **BUDGET, BUDGET, BUDGET!**

# Questions/Comments

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