

When Breaking Up Is Hard To Do . . . Due to the Economy

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Prior to the Recession of 2008, when people decided it was necessary to divorce, dividing one household into two financially was very difficult because we have been in the habit of living beyond our means. Add the economic crisis of 2008 and it is nearly impossible to help people divide one household into two financially because they cannot afford to support even one household. With shrunken investment accounts and less home equity, plus the costs associated with divorce, it is even more difficult for people to hire professionals to assist them with making informed decisions relative to their divorce. Though, the importance of these decisions cannot be overstated because financial decisions made at divorce time generally have a lifelong impact.

Because of the suppressed housing market, selling a home to get out from under a pricey mortgage has become a challenge, even if it is offered at a depressed price. And in many cases, the lack of equity in the marital residence forces a couple to come to the closing table with cash that they do not have.

When you couple the lack of liquidity with the sharp decline in the value of assets, and then add the uncertainty of continued gainful employment for one or both spouses, breaking up becomes very hard to do. But staying together because a couple “has to” for financial reasons, often results in an unhealthy emotional environment for the spouses and children.

The Collaborative divorce model, by its very nature, can offer some creative solutions to this phenomena that has been sparked by unprecedented economic times. In the traditional litigated divorce, property division and support awards (either modifiable or contractual and non-modifiable) are typically made at the time of divorce and the only way a property settlement can be modified is if there was a gross error that would change the outcome of the settlement or if fraud is suspected and can be proved.

This approach, with its lack of flexibility, could hamper a divorcing couple’s ability to rebuild financially post-divorce. For instance, envision a scenario where one of the spouses is self-employed and the economic decline has had a seriously negative impact on the revenue of the company and therefore, on the income to the owner and family.

In traditional litigated divorce, the approach to calculating the amount of child support and maintenance would either be based on the current level of income, which would impair the

lower wage earner's ability to support the family. Or, the approach would be to use the average of the income generated by the self employed individual over the past 3 or 5 years, which could grossly overstate the earning ability during the economic decline and make it very difficult for the self employed spouse to meet their support obligations and keep the business afloat.

Given the same set of circumstances in the Collaborative divorce setting, the spouses could agree to recalculate and adjust the amount of support paid at regular intervals throughout the economic decline and recovery. This would be accomplished by including a Certified Divorce Financial Analyst (CDFA) or a Certified Financial Planner (CFP) on their team. The parties would then meet with the financial professional periodically to reassess their financial situations. This approach allows both parties to share in the risks and benefits of the economic decline and recovery while being able to get divorced now rather than waiting until their financial situation improves.

Especially during times of economic distress, it is so important that the spouses surround themselves with the right team of professionals who can assist them with making sound decisions relative to their divorce, which will impact them and their families far into the future. It is also important to thoroughly assess which divorce model is best suited to helping them achieve the desired outcome of their divorce.

For more information on the Collaborative divorce model, visit the Colorado Collaborative Law website www.cclawp.org, and www.collaborativepractice.com which will introduce you to the practice of Collaboration on a national and international level.

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