

Insights

Gray Divorce: What to Consider When You're Divorcing Later in Life

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Divorce rates for those over 50 are the highest they've ever been, having more than doubled since 1990. Divorce among middle-aged and older adults is so popular now that researchers have a term for it: gray divorce. According to a recent *NBC News* article, today more than 1 in 4 people getting divorced in the U.S. are over the age of 50.

For couples facing a "gray divorce," especially those in long-term marriages (more than 17 years) or where there is no prenuptial agreement, the spouses will probably need to take several complex issues into consideration, including:

1. **Division of assets**

Couples who have been married for many years have often built a substantial and complicated marital estate. All the assets accumulated during the marriage will now have to be untangled. Identifying marital versus non-marital assets can be especially difficult for couples married a long time. Further, a decision will have to be made about what to do with the marital home, and any businesses that were created and cultivated during the marriage may require valuation. The distribution of retirement benefits, including pensions, will also need to be determined.

2. **Alimony (spousal support)**

Depending on a spouse's need and the other spouse's ability to pay, alimony may need to be determined. Prior to Florida's sweeping alimony reform, effective as of July 1, 2023, couples who had been married for decades were often presumed to be in a "permanent" alimony situation. Now that "permanent" alimony has been eliminated in Florida, and limitations put in place as to the amount and length of time for durational alimony, the determination of spousal support for a spouse who has been dependent upon their spouse may now be a challenging question. Additionally, the new alimony changes have codified a spouse's ability to modify (reduce or terminate) alimony based upon reasonable retirement. In a "gray" divorce, where both parties are nearing the end of their

professional careers, this is likely to be a factor in the discussion of alimony.

3. **Children's issues**

Since children in gray divorces are often older, child custody, visitation and support may be non-factors if the children are adults. However, with older minors (such as high schoolers), parties will still need to establish a Parenting Plan. Parties to a "gray" divorce may now be navigating making determinations about timesharing for children who, given their age and preferences, have their own opinions about where they want to spend their time. There may also be questions as to school selection (including ongoing payment for private school), as well as regarding the payment of various expenses for the benefit of the children, including expensive items unique to teenagers such as car payments and auto insurance.

4. **Additional issues**

When couples divorce after decades of marriage, there can be additional issues not often thought to be a part of a divorce, but which are very much affected, such as trusts, taxes and like matters.

Given the unique complications and potential financial consequences of gray divorce, it's important to work with an attorney who can help you understand your rights and assist you in achieving a fair settlement.