

A ROUNDTABLE DISCUSSION

WEALTH MANAGEMENT: THE EXECUTIVE DIVORCE

FINANCIAL CONSIDERATIONS FOR SPLITTING COUPLES

>>> As of Jan. 1, alimony is no longer deductible by the person paying, nor is it taxable as income to the person receiving it. It's just one aspect of the new tax code, which according to a recent survey of American Academy of Matrimonial Lawyers, is expected to make divorces more acrimonious, expensive and emotionally taxing for divorcing couples and their children.

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TIMOTHY M. DAW is a senior partner at **Schiller DuCanto & Fleck LLP**, a family law firm with offices in Chicago, Lake Forest and Wheaton. He has more than 30 years of experience litigating and negotiating complex family law cases, and has been recognized by his peers and the community for his trial and litigation skills. He has been listed among the **Best Lawyers in America** by Neifeh and Smith, is an **Illinois Super Lawyer**, and a member of the **Leading Lawyers Network**.

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>>>How does your firm assist divorcing couples?

Timothy M. Daw: We use a team approach to provide family law guidance, strategy and problem solving to high-net-worth individuals. We use different modes of conflict resolution including not only litigation, but also mediation and collaboration. Our teamwork extends to other professionals involved with the family, including accountants, financial and estate planners, business attorneys, therapists and the like. Our strength is that we avoid a one-size-fits-all approach, tailoring our representation to the needs of the client and the situation they find themselves in.

>>> What impact have the new tax laws had on your clients who are going through a divorce?

Daw: The taxes implicit in certain assets—such as retirement benefits, executive compensation and appreciated assets—as well as what remaining deductions can be preserved are now the central tax considerations. Limitations exist on how courts can or will deal with such issues, and the limitations don't exist in negotiated settlements. Parties can agree on issues that are different from what a court would ultimately determine. Attorneys familiar with the issues and who are willing to be creative in resolving issues can maximize positive tax results for clients, despite the changes in the tax laws.

>>>What are some common questions or concerns you're hearing from divorce clients?

Daw: The most common concern is the uncertainty

inherent in the process, given the issues and emotions at stake. Many clients and prospective clients voice frustration, especially at the beginning of the process. Several core unknowns add to the uncertainties, including how will the parties conduct themselves during this process, who are the attorneys and how will they conduct themselves, and finally, who will ultimately be the decision makers. The parties need quality, careful legal representation and guidance, creating as much predictability wherever and whenever possible.

>>>What are some suggested first steps for individuals contemplating a divorce?

Daw: Start interviewing and seeking attorney advice as early as possible. There are issues that need to be explored and things that can be done before anyone files a case that can help make the process less adversarial and more streamlined. Understanding what the potential issues may be and what will not be particularly relevant helps define how the matter will proceed. There's a great deal of misinformation and wrong information on the internet, and there are friends and other professionals not specializing in this type of proceedings who may try to provide advice. While well-intentioned, such individuals often create greater controversy and false expectations. In most instances, a divorce resolution is one of the most significant non-financial and financial events that will occur in the lives of the divorcing couple and their families. Finding the best counsel for these issues early on can only help all involved.

>>>What's the best way for a divorcing individual to select a legal and financial team?

Daw: Start by getting referrals from trusted advisers, other professionals and friends—not social media or the internet. The internet and peer reviews such as Best Lawyers in America can be helpful in researching the attorneys you're referred to, but that's not the best way to start. Meet with a few attorneys to get a feel for the them and their approaches to the controversies you're facing. For high-net-worth cases, it's important that the attorney has the necessary experience, capacity and staffing to appropriately handle complicated situations.

>>>What can couples do to minimize the length and expense of a divorce?

Daw: Obtaining and organizing the key financial information that everyone needs access to will save time and money. An attorney who focuses their practice in this area of the law should be able to provide an initial list of the necessary documentation. Withholding this creates distrust and extends the time and costs of the proceedings. Courts frown on this type of behavior and it adds a lot of costs for both parties.

>>>What are your views about prenuptial/premarital agreements for executives climbing the corporate ladder and contemplating marriage?

Daw: Premarital agreements can be very beneficial to the executive who has spent a considerable amount of time and effort before marriage creating his or her career and the benefits that have

been received and will likely be received in the future in the unfortunate event of a marriage not lasting. These agreements define the process of untangling the parties' finances, which could be dramatically different from what the laws provide or a judge might do. While these agreements can create significant emotional upheaval—planning on the possibility of failure before the marriage even starts—the reality is a significant number of marriages fail. For the executive, protecting oneself from this possibility makes a great degree of sense. This is especially true for the executive who has an established career. At the same time the executive's spouse will know before marriage what to expect if the marriage fails.

>>>What are some important legal or financial steps a newly divorced individual should consider?

Daw: Both parties should create a punch list of actions that need to take place, and the time periods in which the actions need to be completed. This leads to closure so that people can move forward with their lives, and decreases costs to execute the terms of the judgment. For example, joint financial accounts—bank and credit—need to be closed, user names and passwords need to be reset, deeds prepared and executed, forms or orders for the allocation of retirement interests need to be changed; estate planning and beneficiary changes may also be necessary. The divorcing individuals and their attorneys should start as soon as possible to complete all tasks, as delaying this can result in additional time and expense.