

TALKING WEALTH

EXECUTIVE DIVORCE: DISSOLUTION IN TIMES OF UNCERTAINTY

Considering the global pandemic, the ongoing social unrest gripping our communities and the uncertainty of a momentous presidential election this fall, is now a good time to be pursuing a divorce?

In counseling a client whether to pursue a divorce under today's circumstances, one might be tempted to quote Benjamin Franklin, "Do not put off until tomorrow what can be done today." But I prefer our former mayor and Obama White House chief of staff Rahm Emanuel's assessment: "You never let a serious crisis go to waste. And what I mean by that, it's an opportunity to do things you think you could not do before."



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want to consider filing for divorce when their assets' values are at their low point, or at least can be argued to be at their low point. In the event a party is obligated to buy a spouse out of their marital interest in a business or investment, a buyout under the current circumstances of financial and social uncertainty will likely be to the financial benefit of the spouse retaining the underlying asset, assuming an eventual fiscal recovery.

Further, current support and maintenance obligations are based on current income and expenses. If 2020 is fiscally a bad year, when bonuses or commissions are down or below average, it's a good time to submit to the court for the setting of a support obligation.

And while many support obligations are subject to modification when financial circumstances improve, setting the bar low now creates an excellent precedent for support modification discussions that may take place in the future.

Another benefit of our current circumstances is the conversion of the court system to online or virtual court appearances, which has created a more efficient and cost-effective system. What once took attorneys hours to address in court can now be disposed of in a fraction of that time online. Document discovery and depositions have predominantly moved online as well, greatly reducing litigant processing costs. While some of these changes are here to stay, others may return to the norm once the pandemic lifts. And so now may be the time to best take advantage of these newfound efficiencies and move forward with a divorce.

In concept, divorce is market neutral. A couple dividing their estate equally will each take 50 percent of the value of that estate, regardless of market fluctuations at the time. For that reason, divorce rates tend to stay steady during times of both economic growth and recession. But in practice, market uncertainty begets market opportunity, in divorce as in finance. And the current uncertainty created by COVID-19 and the ongoing political upheaval creates doubt and uncertainty in the valuation of assets such as small businesses, real estate and investment portfolios. That doubt and uncertainty can be used to convince a court to reduce the valuation of those assets at the time of divorce.

Courts will value assets as of the date of dissolution of the marriage, or as close to that date as possible. As such, business owners, executives or investors with large portfolios affected by our current circumstances may

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