



1

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While great care was taken to prepare this course, it is not a substitute for legal, financial, medical or other professional advice based on your specific circumstances. Consult with an experienced Family Law Attorney, Mediator, Accountant, Certified Financial Planner® (CFP®), and Certified Divorce Financial Analyst™ (CDFA™) about your specific case. While the author of this course is a Certified Financial Planner® and a Certified Divorce Financial Analyst™, in this course, she is not dispensing financial advice based on your own situation, or legal advice either directly or indirectly. The intent of this course is to help you move through your divorce and avoid becoming a financial victim of your decisions and those of your spouse. Under no circumstances will Adrienne Rothstein Grace or any of her representatives be liable for any special or consequential damages that result from the use of, or the inability to use, the information or strategies communicated through these materials, or any services provided prior to or following the receipt of these materials, even if advised of the possibility of such damages. You alone are responsible and accountable for your decisions, actions and results in life. By your use of these materials, you agree not to attempt to hold Adrienne Rothstein Grace or her agents or employees liable for any such decisions, actions, or results, at any time, under any circumstances.

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2

KEY POINTS

WHAT WE'LL COVER IN THIS SESSION

- In this session, we'll cover:
 - Retirement plans and how they pertain to the division of assets
 - Defined Contribution Plans
 - Defined Benefit Plans
 - Social Security Benefits
 - Questions to ask when your agreement is being drafted

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RETIREMENT ACCOUNTS

- Why do so many women give up pension and retirement accounts in the division of assets?
- Because they just don't understand what these accounts represent, and how they work.
- And regret the decision afterwards!
- Let's give you all the information you need to make an informed, empowered decision that will serve you well.

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IT'S WORTH FIGHTING FOR!

- Giving up retirement accounts or sharing them, can generate fear and protective behavior in even the most stable of financial partners
- Why? Because they are so valuable to your financial future!
- You get to decide which of the assets of your marriage you're going to keep. The house vs his pension?
- Make this decision only after you have all the facts

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RETIREMENT PLANS

- A bewildering array of letters and numbers identify retirement accounts. See your worksheet for a summary of the most common plans.
- We'll break them down, so that you'll understand when your team talks about your retirement assets.
- If this all still sounds confusing, contact me for a private session focused on just what you own and what your best options are. We want you to make the best decisions for your future!

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YOU ARE ENTITLED

- Are the accounts titled in your name or your husband's? It doesn't matter.
- Did you work outside the home or spend your day as a homemaker? It doesn't matter.
- All assets earned during the marriage are marital property subject to division. The amount you can divide begins to accumulate on the day you are married and generally stops the day you file for divorce.

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RETIREMENT & TAXES

- There are so many financial decisions to make when it comes to dividing retirement funds.
 - Thorough knowledge of tax and financial rules
 - Complex mathematical computations
- Dividing retirement funds improperly can result in serious long-term consequences.
- Having a qualified divorce financial planner will not only keep you out of trouble, but also help secure your financial future.

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DEFINED CONTRIBUTION VS DEFINED BENEFIT

- Defined Contribution retirement accounts
 - (IRA, Roth IRA, SEP IRA, SIMPLE IRA)
 - Employer-sponsored plans: 401(k), 403(b), 457 plans, deferred compensation, employee stock options and ownership, profit sharing and other similar plans.
- Defined Benefit Plans
 - Traditional pensions and cash-balance plans



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DEFINED CONTRIBUTION PLAN: IT'S UP TO YOU

- The participant chooses the investments, either independently (IRA) or from a selection made available in the Plan (401(k))
 - Usually mutual funds, money market accounts, annuities, bank c/d's
- The amount available for retirement income is dependent upon the choices made:
 - How much contributed?
 - Investment choices
 - Investment performance
 - Age at retirement

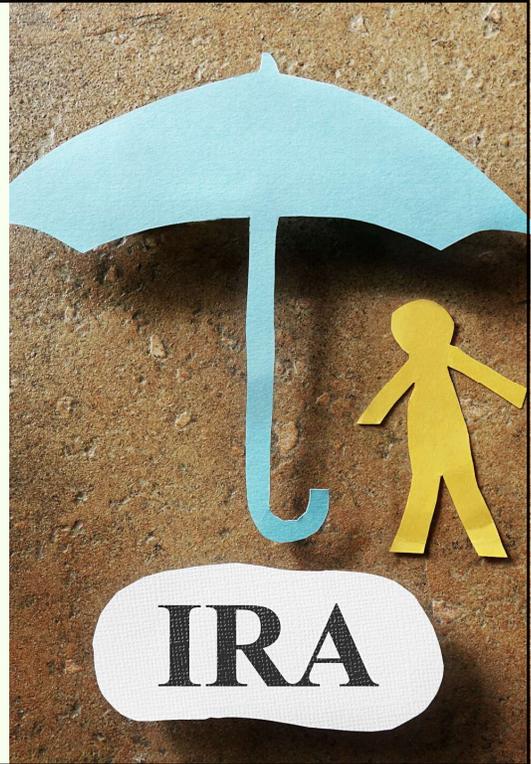
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TRADITIONAL IRA, ROTH IRA, SEP IRA, SIMPLE IRA

- IRA=Individual Retirement Account
- IRA, 401(k), and other retirement plans were designed to help you save for retirement
 - by giving a tax deduction when you contribute,
 - income taxes are due when funds are withdrawn.
- All money taken out is taxed as ordinary income, no consideration for capital gains or losses
- 10% additional tax penalty is charged on withdrawals made from your plan when you are under 59 ½ years old., considered an 'early withdrawal'

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ROTH IRA

- Roth IRA contributions are made with after-tax dollars
- No tax deduction for contributions
- You choose the investments
- Contributions and earnings in a Roth are never taxed again if you remain in the plan for at least five years without taking a withdrawal
- Before five years, income tax and 10% penalty due on the gains only
- There are no requirements for withdrawals in retirement

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SEP IRA

- A Simplified Employee Pension (SEP) IRA is a retirement plan that allows for much higher, tax-deductible contributions, tax-deferred growth, and a flexible contribution schedule.
- It's often used by small business owners and self-employed individuals
- Despite the name, it's not a defined benefit pension plan.

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HOW DO I GET MY SHARE?

- State laws control all types of IRAs
- To transfer funds from his IRA to your IRA you need:
 - Letter of Instruction to transfer IRA funds
 - Copy of the settlement agreement indicating how the funds are to be divided.
- Transferring IRA money from one spouse's IRA to the other is not a taxable event.

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WORKPLACE DEFINED CONTRIBUTION PLAN: 401(K)

- Employer-sponsored retirement account
- Participants fund it directly from their paycheck
- Contributions may be matched by the employer.
- Loans are available- Check if a loan has been in place.
 - If so, what was the money used for?
- Participant chooses the contribution amount
- Participant chooses the investments

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OTHER OTHER WORKPLACE BASED PLANS SIMILAR TO 401(K)S

- 403(b) plans offered to educators and nonprofit workers
- 457(b) plans offered to government employees
- These work substantially the same way

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ROTH 401K

- Combines features of the Roth IRA and 401(k) offered through employers.
- Contributions come from after-tax paycheck
- Roth 401(k)s do not have an income limit, so high-wage earners contribute
- Loans can be taken from a Roth 401(k)
- Required minimum distributions (RMDs) once you reach the age of 72

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WORKPLACE PLANS UNDER ERISA

- Federal guidelines under the **Employee Retirement Income Security Act of 1974 (ERISA)** control the division of funds in 401(k), 403(b), pensions and similar plans
- Require a **Qualified Domestic Relations Order (QDRO)** issued and signed by the judge, to give the administrator instructions on how to divide the money.
- A QDRO allows the funds to be separated into two different accounts-
 - one for the employee
 - and the other for the non-employee spouse.
- The money in the non-employee's account can be left there, withdrawn, or rolled over into a retirement account (typically your own IRA). Most people choose to roll it over into their own accounts, under their own control.

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18

WORKPLACE PLANS UNDER ERISA

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19

A LOOPHOLE FOR YOU

- While it's not good financial planning to use retirement money for any other purpose, when it's the only money available, you can get to it.
- Under section 72(t)(2)(c) of the Internal Revenue Code, the non-employee spouse can make a withdrawal from a Qualified Plan, without the 10% penalty, even if they are under age 59½.

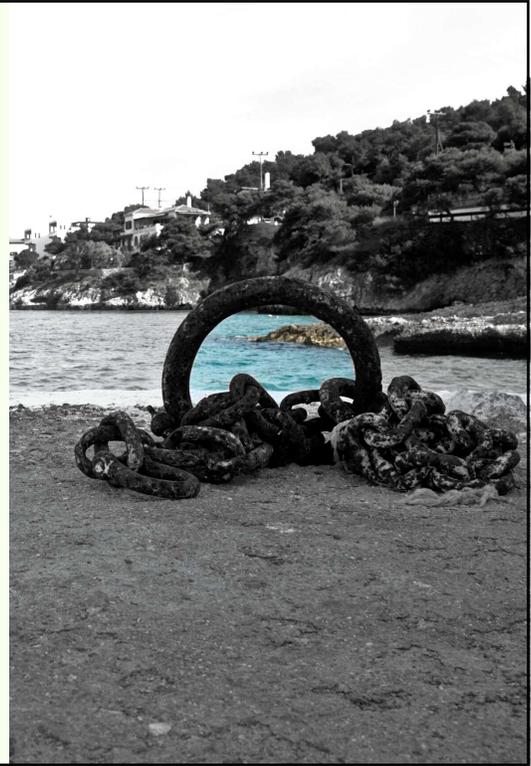
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LOOPHOLE #2

- To avoid the penalty, you need all three of the following:
 1. The retirement plan must be a qualified plan covered by ERISA (e.g. 401(k) and other retirement plans).
 2. The funds must be paid to the nonemployee spouse.
 3. A Qualified Domestic Relations Order (QDRO) must be submitted to divide the plan.

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21

BE AWARE IF YOU NEED CASH

- Cash paid out from these plans are taxable income
- Custodians required to withhold 20% of the distribution to prepay the tax.
- The amount you get will be 80% of what you take out.
- Money rolled over from your spouse's 401(k) to your IRAs is not taxed at transfer, but only when you withdraw it.

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CASE STUDY: IRA ROLLOVER

- Jane and Marcus are both age 55. Marcus has \$560,000 in his IRA to be divided by a Letter of Instruction, not a QDRO, transferring \$280,000 to Jane.
- Jane transfers the money directly to her new IRA; pays no income taxes now, she needs \$80,000 for a down payment on a new house. Jane withdraws \$100,000,
 - 20% is withheld for taxes, leaving \$80,000 to spend.
- No waiver of the 10% early withdrawal penalty so she will have a tax bill for the 10% when she files her taxes.
- Later, Jane finds that she needs \$25,000 to buy a used car and uses the same process.
- With these withdrawals, Jane has increased her taxable income by the \$125,000 she has withdrawn. This may put her in a higher tax bracket, with more tax due than she withheld.

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DEFINED BENEFITS PLAN

- Represents a safety net- guaranteed income for life!
- No investment risks
- A guaranteed amount you can't outlive
- Rare in the private sector
- Pension plans are still available in government jobs, including municipal, state, federal plans
- Two kinds: traditional pensions & cash-balance plans.

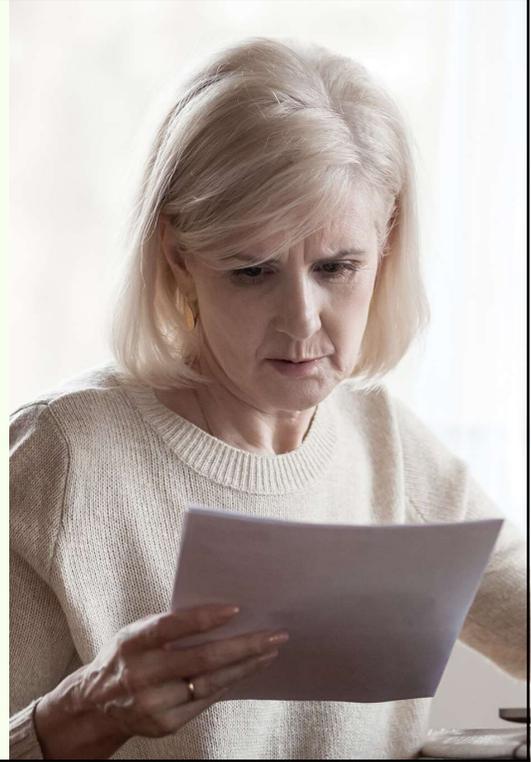
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PENSION PLANS: SECURITY FOR LIFE

- Benefits paid for life, by a formula based on the employee's earnings history, length of service, and age.
- Generally, after basic eligibility is met, participant is automatically enrolled in the plan.
- Employee will vest, or own, a certain percentage of their account in the plan each year. Often takes 3-5 years before the employee owns 100%

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25

DEFINED BENEFIT PLANS: CASH BALANCE PLAN

- Each participant has an account which grows annually in two ways:
 - First, a contribution usually a percentage of salary
 - Second, a guaranteed interest credit.
- Any vested account in a Cash Balance Plan can be paid as a lump-sum distribution or annuity.
- Lump sums are usually rolled over to an IRA.

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26



DEFINED BENEFIT PLANS: CASH BALANCE PLAN ALERT

- Many companies converted a previous traditional defined benefit plan into a conversion credit or froze the traditionally defined benefit pension plan and just started with a zero balance for the cash balance plan.
- Here's when you really need your CDFA to help you determine what to do from there

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DEFINED BENEFITS PLAN CAN BE DIFFICULT TO VALUE

- Your husband has a defined benefit plan which will pay benefits at 65, but he's only 50, What is it really worth?
- There is a 5-step process:
 - Determine the earliest date that the spouse can retire.
 - Determine his life expectancy at the date of separation to calculate how many months of benefits will be received.
 - Discount the value to the date of separation (figure out the future value and discount that value to the date of separation).
- Determine any contingencies that may occur and discount the value further.
- Don't give it up before the calculations are done!!!
- That's why you need your CDFA!

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WHY DO YOU WANT TO VALUE THE PENSION?

- There's a lot of value and lifetime security in that plan!
- Example:
 - Maurice and Anna married when they were just 20 years old. Maurice began a state job 4 years later. At 50, their marriage came to an end. What is his pension, estimated at \$4500 per month at 67, worth?
 - The pension is worth \$730,759 – At 50/50, that's \$305,379 for each of you
- Is that worth fighting for?

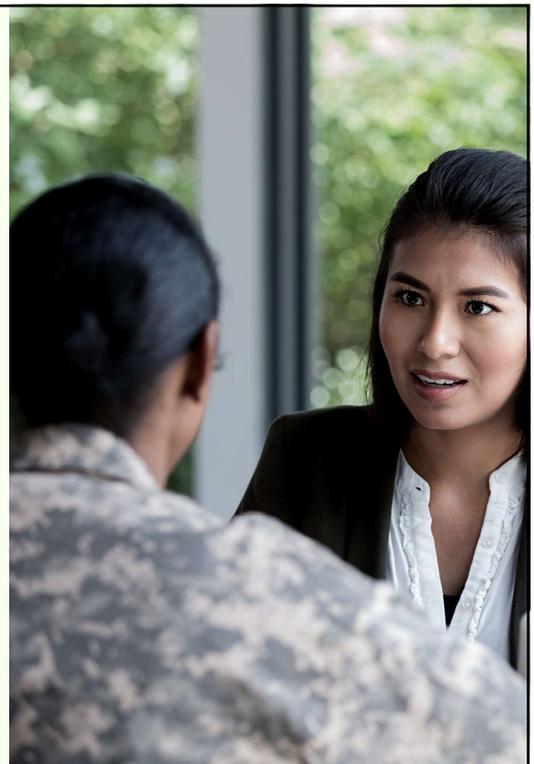
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OTHER PLANS

- The federal government offers a Thrift Savings Plan (TSP) like a 401(k) but requires a special order to be divided at divorce.
- Some state, county, city, town and firefighter retirement plans, all have their own rules about divorce.
- Some will not make direct payments to former spouses.
- If you are in the military or are married to an active duty serviceperson or veteran there are unique characteristics to retirement and other benefits in divorce.
- Be sure your team has expertise in military divorce matters.

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30



OTHER PLANS

- If you were married part or all of the time you were covered by these plans, formula used to determine the percentage of marital vs separate property,
 - Called coverture fraction
- Divide the length of time a spouse was simultaneously married and covered by the pension plan, by the total length of employment while the pension was earned
- One-half of that part of the Participant's pension earned during the marriage is considered marital.
- Contact me to calculate this for you, as well as estimate the value of that pension's lifetime benefit in today's dollars.

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31

HERE'S AN EXAMPLE

- Steve worked at Dynamics, Inc. for 5 years before he married Gretchen. They were married for 5 years when things fell apart. So he participated in the pension plan for 10 years; 5 years his separate property, 5 years marital property.
- 50% percent of the pension plan is marital property, subject to division.
- Gretchen would be entitled to 25% of the value of the plan (half of the marital portion).

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32

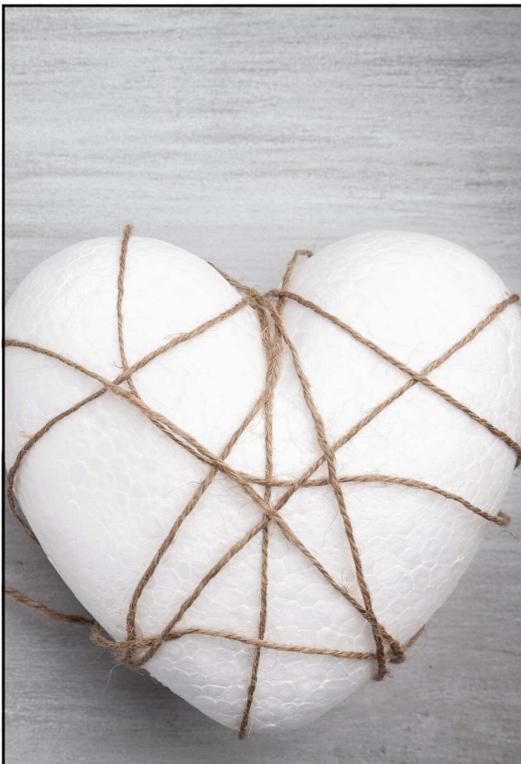


DIVORCE AGREEMENT

- It's critical that your divorce settlement agreement clearly spells out how the assets are split and when, how and where those funds will be transferred.
- Don't assume that just the divorce settlement agreement will protect your share of the retirement account.
- You need a properly prepared QDRO, done by specialist attorneys.
- Payment of the fee should be negotiated between you.
- Get a "pre-approval" of a QDRO before your divorce is finalized.

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DON'T DELAY

- Submit a court order (QDRO) to a retirement plan as soon as it is issued by the court, even if retirement is many years away.
- Sad stories
 - Retirement plan received a QDRO after the pension had already been distributed.
 - Husband ex dies before the plan has been notified how it should divide the benefits.
- It can get complicated!

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QUESTIONS TO ASK WHEN YOUR AGREEMENT IS BEING DRAFTED

- A. Valuation date to be used to determine your share? date of filing or date of separation?
- B. Get a clear agreement that neither of you withdraws from the funds while you are negotiating
- C. Make sure you have the value as of the date of marriage, and as of the date of separation or filing to avoid including separate property.
- D. Should you agree to a specific dollar amount now or when the plan is divided? Include investment gains/losses?
- E. How is the money currently invested? investment style will impact potential gains and losses.
- F. What withdrawals, distributions or loans have been made during your marriage? outstanding loan? Should the loan value be included in the total? What was the money used for?
- G. Have you factored in the taxes due on withdrawal, either now or in the future?

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SOCIAL SECURITY

- You may be eligible for benefits available to you through the Social Security Administration, as the divorced spouse of a worker who qualifies, even if you have never worked yourself.
 - **Not through a negotiation or divorce settlement.**
 - **You do not need your ex's permission to apply, nor does he/she even have to be aware of it.**
- Your benefit does not impact the amount of your spouse's benefit.
- All you need is your ex's social security number, date of birth, and proof of your marriage and divorce.

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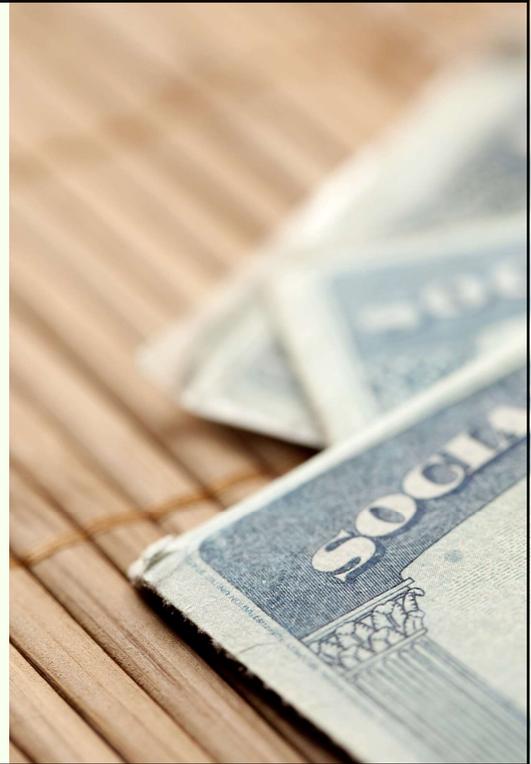


36

SOCIAL SECURITY

- To be eligible, your marriage has to have lasted 10 years or longer.
- If you are considering divorce and you're not quite at 10 years yet, it may be worth it to delay until you have reached this important anniversary.
- You may collect Social Security benefits on your ex's work record if:
 - You are not married;
 - You are age 62 or older;
 - Your ex-spouse worked
 - for at least 10 years
 - paid into the Social Security system
 - is entitled to Social Security retirement or disability benefits.

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SOCIAL SECURITY

- If you're eligible for retirement benefits on your own record, Social Security will pay that amount first.
- If half of the benefit on his/her record is more than yours, you may get a combination of benefits that equals that higher amount (reduced for age, if either of you is younger than full retirement age).
- So if his benefit is \$3000 per month and yours is \$1000, you may receive an additional \$500, to equal half of his.
- There is a lot more information available
- Please visit www.socialsecurity.gov for more details.

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THE BIG PICTURE

- Feelings of ownership regarding the retirement funds often come up.
- He may think, 'I earned this; I worked long hours (and still do!), endured an unpleasant boss, and paid all the bills. Why should I share the benefits?'
- You may even agree.
- But recognize, as the law does, that whether you worked outside the home or spent your day as a homemaker, your duties have value.
- You are part of the economic partnership that was your marriage and all benefits that accrued are marital property.

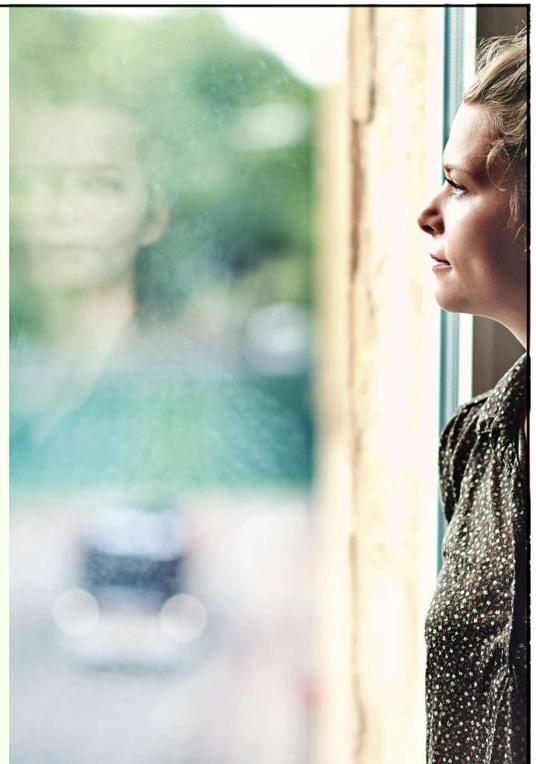
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THE BIG PICTURE

- Stress and anxiety during divorce can prevent you from looking at the 'Big Picture'.
- Don't make decisions without doing the proper research and getting competent financial and legal advice.
- Do review all the short- and long-term financial and tax implications of your decisions before you sign your Agreement.

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40



FEELING OVERWHELMED?

- Whew! That's a lot of information
- If you are overwhelmed, please contact me for a personal consultation to clarify your situation, so you can negotiate with knowledge and power and get through your divorce with confidence.

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41

IN REVIEW

WHAT WE COVERED IN THIS SESSION

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42