

Keeping Finances Afloat During a Divorce

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By Anna Prior

Jon and Kate calling it quits might be the news of the moment, but financial hardships brought on by the recession already have helped make separation or divorce a reality for couples across the country.

Yet the recession also is causing some unhappy couples to rethink their marital situation, since a costly divorce would only further deplete already-shrunken assets.

"People are staying in poor marriages because this would be the worst time to file for a divorce since they would get a much smaller piece" of a smaller pie, says Bob Adelman, a Los Angeles-based attorney and certified family-law specialist.

According to a survey by the Institute for Divorce Financial Analysts, 68% of the 270 certified divorce financial analysts who responded said they had seen clients who couldn't afford to get divorced because of recession-related financial problems.

To be sure, an uncontested divorce between a couple with no children and limited investments can be fairly simple. In many cases, hiring a lawyer may be a waste of time and money.

But for people with children, real estate and a more complicated financial situation -- and where waiting out the recession isn't in the cards -- here are some ways to salvage finances during a divorce:

Find the right legal aid. The legal side of a divorce alone can eat up waning financial resources. "The expense of litigation has not gone down," says Mr. Adelman.

He urges couples to be extremely educated consumers when it comes dealing with attorneys and to be in consistent communication with lawyers so "precious time and resources" aren't wasted.

Get a referral through word-of-mouth, from your local or state bar association or go online. Mr. Adelman suggests Martindale.com and FindLaw.com.

At the very least, couples should try to get a two- or three-hour consultation, he says. Some attorneys will give a free consultation.

Another option: a sliding-scale program, where a nonprofit group charges clients a fee based on their ability to pay. Check bar-association Web sites for programs in your area.

Mediation is another potentially money-saving option. Couples reach an agreement with the help of a divorce mediator. A lawyer then writes up the agreement for the couple to sign and take to court, says Lee Borden, a divorce mediator who runs DivorceInfo.com. To find a mediator, he says to consult the Association for Conflict Resolution (acenet.org).

Be cooperative and realistic. Now more than ever it could pay to compromise.

"The cheapest way to divorce is to be cooperative with each other," Mr. Borden says. A cooperative divorce likely will result in smaller legal fees -- and it allows for more creative solutions regarding the division of assets and child or spousal support.

One example where a compromise may be needed: private school for the children. "If money is limited, to come in and seek private school is just a waste of time and energy," says Mr. Adelman. "People need to be realistic about what the courts can and will order when there are limited finances."

Rethink living arrangements. Historically, the house has been the biggest asset for many couples. But the collapsed housing market has sunk property values and has left many people unable to sell their homes.

That has prompted some couples to continue living in the house together despite a separation or divorce. There are other options, however, especially for people with children.

One is the approach taken by Jon and Kate Gosselin, stars of the reality show "Jon and Kate Plus 8," who announced last week that they are divorcing. The plan: Keep the children in the house and have the parents rotate in and out. Instead of splitting up into two residences, a temporary second residence at a friend or relative's home or a short-term rental is set up for each parent to use while the other is in the home with the children.

For this to work, you need to outline everything -- where to put the keys, what chores each person is responsible for, who buys what, etc. "This should be put into a court order so the rules can be completely delineated and the court can enforce them if either party deviates," says Jennifer Smetters, a family law and divorce attorney in Chicago.

This approach, she says, may work for "parents who realize that they have no alternative and don't want to sink further into debt."

Hold off on cashing out assets. For many couples, it's not worth it to cash out their investments right now, says Marlene Eskind Moses, president-elect of the American Academy of Matrimonial Lawyers. Instead, they should consider dividing holdings in kind and waiting to regain some value.

One party might, say, agree to take the house in lieu of taking half of the pension or 401(k) plans of the other party, Ms. Smetters says.

But keep in mind that each state values assets at a different time -- at filing, at separation or on the date of the divorce -- so know when they are being valued and divided, Ms. Moses says.

Be flexible with spousal and child support. If one or both spouses are unemployed, see if it's possible to "leave the ability to have alimony and child support determined later," says Ms. Moses. "Have a review of the case in three or six months to see what the status of the parties is."

Also try to get a provision in a divorce agreement that allows you to revisit child or spousal support later on without having to file a new lawsuit, she says -- which will save time and money.

Also, be flexible in deciding who claims the children as a deduction on tax returns. In some cases, it might make sense for the noncustodial spouse to claim the children, especially if the custodial spouse is unemployed and has no income, says Amy Barrett, a certified divorce financial analyst in Rockford, Ill. The reasoning: If the custodial spouse has no tax burden, the deduction is wasted.