Divorce Protection

Why Divorce Can Be a Financial Nightmare

The Physician's Money Manual

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Of all the risks to Doctors, the most common threat to financial security may be divorce. According to Divorce Magazine's (www.divorcemag.com) statistics from 2014, 50% of all first marriages in the United States end in divorce. Undoubtedly an emotionally devastating experience, divorce can be a financially disastrous experience as well.

Divorce protection is not about hiding assets from a soon-to-be ex-spouse. Nor is it about cheating or lying to keep your wealth. Rather, it concerns resolving issues of property ownership and distribution before things go sour.

Divorce planning is also about shielding family assets from the potential divorces of children and grandchildren. Given the statistics enumerated above, it is almost a certainty that either a child or grandchild of yours will get divorced. Thus, for purposes of intergenerational financial planning. Wealthy families do have a secret to avoiding the financial losses that can be associated with inevitable divorces.

Why Divorce Can Be a Financial Nightmare

Most Doctors do not have to look far to see just how financially devastating a divorce can be. While high-profile divorces involving tens of millions of dollars illustrate the point dramatically, most of us need only look to family or friends to see how a divorce turns into financial upheaval.

Combine a fight for everything attitude with the terrible odds of facing a divorce, and you have a very serious threat to financial security. In fact, a divorce threatens not only former spouses, but also their families and possibly their business partners. To truly understand how a divorce affects the finances of the participants, you must first understand how property is divided when the marriage is dissolved.

Community Property States:

Many of the country's western states have Community Property law. Community Property law stipulates that if there is no valid pre- or post-marital agreement, the court will equally divide any property acquired during the marriage other than inheritances or gifts to one spouse. Even the appreciation of one spouse's separate property can be divided if the other spouse expended or subsequent to the effort so expanded. Based on these facts, it is obvious that how the asset is titled is not the controlling factor. Instead, when the asset was acquired and how it was treated are far more important factors in determining how the asset will be treated.

Equitable Distribution States:

Non-community property states are called "equitable distribution" states because courts in these states have total discretion to divide the property "equitably" or fairly. The court will normally consider a number of factors in deciding what is "equitable", including the length of the marriage, the age and conducts of the parties, and the present earnings and future earning potential of each former spouse. The danger of equitable divorces is that courts often distribute both non-marital assets (those acquired before the marriage) as well as marital assets (those acquired during marriage), in order to create a "fair" arrangement. In this way, courts often split-up property in ways that the ex-spouses never wanted or expected.

Can A “Pre-Nup” Protect You?

A premarital agreement is the foundation of any protection against divorce. The premarital agreement is a written contract between the spouses. It specifies the division of property and income upon divorce, including disposition of specific personal property, such are family heirlooms. It also states the responsibilities of each party with regard to their children after divorce. Finally, these agreements lay out the respective responsibilities during marriage, such as the financial support each spouse can expect or which religion will be used to raise future children. The agreement cannot limit child support because the right to child support lies with the child and not the parent.

Irrevocable Spendthrift Trusts: Ideal Tools to Keep Assets “In the Family”

As mentioned earlier, Irrevocable Trusts are very effective asset protection tools because the grantor no longer own the assets owned by the trust. In other words, the grantor has transferred the property with no strings attached. Because the grantor neither owns nor controls the property, future creditors, including an ex-spouse, cannot claim the property. Moreover, the grantor can make children, grandchildren and even future great grandchildren beneficiaries of an Irrevocable Trust. However, even though they can benefit from trust assets, the trust can be drafted so that their creditors, including divorcing ex-spouses, cannot get to trust assets.

Nonetheless, using an Irrevocable Trust should not be taken lightly. Giving away assets forever with no strings attached can prove to have serious consequences when protecting against divorce, lawsuit or other threats. When would such a strategy make sense? It would make sense in circumstances where you would have inevitably given away the assets to certain beneficiaries anyway. For example, the trust might be used for assets which (1) you will leave to your children or grandchildren when you die; and (2) you do not need for your financial security.

Protect Your Children from Divorce

When your children or grandchildren come to you, giddy with exciting news about their recent engagements, the last thing they want to hear you ask is “Are you going to sign a pre-nup?” In fact, if you weren’t paying for the wedding, you might lose you invitation for making such a statement.

As you learned earlier, the secret to protecting assets from divorce is keeping them as “separate property” and not commingling them with community or marital property. You can’t trust your children to do this, so you are going to do it for them- without requiring the consent of your children or the future (or existing) spouse.

By leaving assets to your children’s Irrevocable Trusts, with the appropriate spendthrift provisions, rather than to them personally, you can achieve this goal. Of course, if the children take money out of the trust and use it to buy a home or other property, that property will be subject to the rules of their state.

About Daktori:

Our Daktori team understands the unique challenges that physicians face. Through our Financial Fellowship designed specifically for physicians, we provide consultative advice for physicians who want to protect and grow their wealth. Our goal is to help you learn from the most successful practices in your specialty. Our multi-disciplinary approach can help you make more money, keep more of what you make, maximize tax efficiencies and engineer a successful exit strategy from medicine.

One of our Daktori clients sold his dermatology practice for $31 million. Contact us to learn how our team of experts can show you how to secure a superior financial future for you and your practice.

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