

## Private Wealth

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### Untying The Knot-Feat-Sep/Oct09

*Falling asset values and income are pushing wealthy clients over the edge when it comes to filing for divorce*

By Caren Chesleer

It's a familiar story. A husband and wife in their 50s have been married for 25 years with grown children. They've always bickered and then one day, after an argument erupts, the wife blurts out, "I want a divorce."

What's not so familiar is the way the economy influences the outcome.

In this real-life scenario, the husband worked on Wall Street earning \$1 million a year, but he lost that job and his new position pays only \$300,000 a year. The wife never had more than a part-time job paying very little, something that's always been a sore point in the relationship. Now, money is tight, tempers are flaring, and the couple has had a fight. When the wife demanded a divorce, the husband did the math: Since his assets and income are down, he would take less of a monetary hit in a settlement. Divorce, he suddenly realized, wasn't such a bad idea. In fact, for the wealthier partner in a marriage, the timing couldn't have been better.

"After the initial shock and dismay wore off, the breadwinner began to see how advantageous the timing of the split would be," says his attorney, who preferred anonymity.

Then there's the husband who has been on the verge of divorcing his wife for years. He owns commercial real estate, which he's seen plummet in value. His wife has never worked. But because they've been married for a long time, he knows if they do divorce, she'll be entitled to 50% of everything. The down market has given him the opportunity to work out a divorce settlement where he can buy out his wife's interest at an affordable price and save millions. When he thought everything through, he commenced a divorce action the next day, his attorney says.

"People who have large estates are looking at the economic downturn as an opportunity," says Gary Nickelson, president of the American Association of Matrimonial Lawyers (AAML). "If they ever had any intentions of getting a divorce, this is a great business opportunity for them."

It's a matter of simple mathematics. If the breadwinner has a \$100 million estate, and it's now worth \$50 million, they can buy out their spouse for \$25 million and then wait for an economic recovery that, hopefully, brings the value closer to \$100 million.

The math isn't going unnoticed by the wealthy. The AAML represents 1,600 attorneys. Of those members Nickelson speaks with on a regular basis, most say they've seen a spike in divorce among the rich. Even in his own practice, in Fort Worth, Texas, Nickelson says he's seen divorces among his wealthy clients double in the last year.

"In a divorce, it's not what the property is worth later. It's what it's valued at today that matters," says Alan Plevy of SmolenPlevy in Vienna, Va.

Of course, if one side of the partnership is winning, it's because the other side is losing. For the non-wage-earner in a wealthy marriage, the timing couldn't be worse. They're likely to walk away with a lot less than they would have, say, two years ago or perhaps two years from now.

It is, in fact, a particularly bad time to get divorced for just about everyone—except the rich. That's because for most people, their biggest assets are their home and their 401(k). Right now, both of those types of assets are down substantially. Middle-class couples hoping to sell their home in order to split the proceeds might find themselves having to pay the bank money if they owe more than their home is currently worth. Divorce is actually down among middle-class clients, according to the AAML, because they simply can't afford it. Rather than get divorced, many are remaining together—sharing a house, but not a bed, until they can afford to leave each other.

"It's an odd situation because middle-class people, they're not doing anything. They're just terrified about being out in the street, being out of a job, and they worry about things like child support and alimony or maintenance," Plevy says. "For the people with significant assets, on the other hand, child support, maintenance and alimony are rarely a financial consideration of any

consequence."

The idea of market-timing a divorce is odd in itself, some attorneys say. Theodore Sternklar, who chairs the matrimonial practice at Buchanan Ingersoll & Rooney PC in New York, says he's been a divorce attorney for the wealthy for 35 years, and it's usually emotional or psychological factors that prompt a split. But with the market drop being so fast and so deep, people are timing their split accordingly.

"If you're going to market-time a divorce, now is about as good as you're going to get in your lifetime," Sternklar says.

"People are coming to me to discuss or initiate divorce, and they're saying, 'Do it quick before the market goes up.' I've never had that before."

Sometimes money is only part of the story. For some wealthy clients, attorneys say, the financial crisis turned out to be just a catalyst in breaking up unhealthy marriages.

Susan Reach Winters, an attorney with Budd Lerner, a law firm based in Short Hills, N.J., says she has seen an increase in divorce among wealthy couples where the breadwinner has lost his or her job, they've run through much of the assets and there's nothing keeping them together anymore. These are marriages that were held together by the big dollars and big lifestyle. When the money disappeared, she says, so did the relationship.

"The attitude is, 'If you're not going to provide me with the lifestyle I want, there's nothing else you have to offer me,'" Winters says. "It's predominantly women who married men who work on Wall Street. These were women who didn't mind lousy marriages because of the lifestyles their husbands provided them, and now that their husbands can't provide it anymore, they're leaving them."

On the flip side, Winters says, some men who lost their jobs are finding that when they need their spouses most, either emotionally or financially, they're not supportive.

Family court judges are also more sympathetic these days to breadwinners who cry poverty, attorneys say. Previously, if a husband with a six-figure salary reported a drastic decrease in pay during a divorce proceeding, he would be viewed suspiciously. Now, attorneys say, such a scenario is believable.

Indeed, 39% of divorce attorneys recently surveyed said they have seen an increase in modifications to child support payments, according to the AAML. And 42% of the members report a rise in alimony payment modifications.

Winters says she's struggling to settle a case in New Jersey where the husband earned \$1 million for two years in a row, but now will be lucky if he makes \$200,000. His wife continues to insist on child support and alimony based on the \$1 million salary—a demand the husband argues he is unable to comply with.

"I don't blame the spouses for wanting support that will maintain the lifestyle they had, but the reality is, they wouldn't have been able to maintain that lifestyle if their husband had stayed," Winters says.

Pamela Spence Murray, a New York City-based financial planner who helps negotiate divorce settlements, has seen a similar phenomenon.

"Before, if a couple was married for 30 years, and the guy made close to \$1 million for seven years, and he deliberately takes a job for \$125,000 a year and says he couldn't find anything better, the courts said 'tough,'" Murray says. "I think when someone now says 'I can only make this much,' they're going to get a much better calculation."

Murray, an advisor since 1980, has specialized in divorce planning the last ten years. Business has been booming since January, she says. Compared to last year, her inquiries and referrals have doubled.

While some of her wealthy clients have initiated divorces because of lower asset values, others are motivated by different factors, she says.

"Some people have lost so much, they're like, 'Screw it. I'm tired of this. I don't want to do this anymore. Let's get divorced.' It's a tipping point," she says.

Then there are the troubled marriages that have been pushed to the brink by the stress that finances have put on the relationship,

Murray says.

"These are people who were getting Wall Street bonuses. They never had to have budgets before," she says. "Some of them are out of work now."

Judith Poller of Pryor Cashman LLP in New York says she's not necessarily seeing more wealthy people divorce, but she is seeing people who are divorcing attempt to get through the process quickly to lock in low values.

"Those who own a business that has fallen in value are being more aggressive in terms of getting the divorce done as quickly as possible," Poller says.

But while the wealthier spouse may want to hammer the deal out quickly, the ever-changing landscape is making it hard to value assets and income. Someone might be earning \$500,000 one day and lose their job the next. Asset values have become a moving target, and it's made alimony and everything else in a divorce more difficult to negotiate, attorneys say.

"How do you value an apartment right now? You value it at what someone is willing to pay for it, but comparables are tough right now," Poller says.

Depending on the state and the type of assets, values are calculated either when the divorce is initiated or around the time of the trial. But it can be months or years before a divorce goes to trial, and with values falling so rapidly in the last year, some parties in a divorce are complaining that assets should be revalued. Poller has a case that began in 2007 and is only going to trial now. The assets have clearly changed in value. Another case was initiated just last summer and by November the parties were squawking for a revaluation.

"We were trying to get things down on paper, and everything had declined so much," she says. "We had these neutral appraisers appointed by the court, and we had to go back and give discounts to everything because they weren't worth what they had been appraised at."

The drop in values has also changed the way prenuptial agreements are hammered out. Attorneys, for example, are starting to use language that splits estates in terms of percentages, rather than whole numbers. That way, if the value of the estate declines substantially, the person who owns it won't be forced to hand over the whole thing.

"You'd have a hard time overturning a prenup if it was negotiated between two lawyers, with full disclosure, and not under any duress," Poller says. "If it turns out to be just unconscionable right now, because of the terms agreed to? I don't know. That's a tough one. You made a deal."