



CASE STUDY

Securing A Future: Retirement Planning After Divorce

**Working to Balance Business Ownership, Unequal Benefits,
and Long-Term Financial Security**

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As some of the most valuable property many couples own, retirement assets can be one of the greatest points of contention in a divorce. A misconception I hear all too often is that dividing these accounts will always trigger huge tax bills and penalties, but this isn't true. Through a legal process known as a [Qualified Domestic Relations Order \(QDRO\)](#), transferring funds between spouses can be a tax-free event. To make sure this is handled properly, I connect my clients with a specialist to manage the QDRO process, for which most financial institutions have ready-made templates.

The real trap isn't the transfer itself; it's that a retirement dollar is simply not worth the same as a cash dollar. This disparity creates a major problem when one party needs to withdraw the funds to cover immediate, necessary expenses after divorce, like rent or down payment on a new home. That withdrawal is a taxable event, and the value of retirement cash can plummet due to income taxes and potential penalties. To create an equitable trade that accounts for these events, the retirement funds must be "grossed-up".

How Does a Gross-Up Work?

Essentially, a gross-up involves adding a significant premium to a retirement fund transfer to cover the recipient's eventual tax bill.

Here is an example of your typical gross-up scenario:

Imagine one spouse is keeping the family home and, as part of the settlement agreement, needs to pay the other a \$250,000 cash buyout for their share of the equity. If the paying spouse uses retirement funds instead of cash, they can't just transfer \$250,000.

Because the recipient would lose a substantial portion to taxes upon withdrawal (let's say for this example, 40%), a much larger grossed-up amount would be required. To get the recipient the cash they are owed, the retirement transfer would need to be closer to \$430,000.

The concept is a bit confusing, but understanding it is foundational to fair property division. Without it, creating a durable settlement is incredibly challenging. It's an issue that many people, including attorneys, often struggle with. How a couple deals with this gross-up problem is often the deciding factor in their settlement's long-term success.

To see how this principle plays out in practice, we'll examine a case where a couple's difficult financial situation made a similar solution impossible, forcing the sale of a prized asset. Finally, we'll unpack a case where a high-risk, theoretical retirement plan created an unstable agreement that unraveled long after the divorce was final.

High Risk, Potentially No Reward

This case involves a couple in their late 30s who co-owned a business, but only the husband had access to a corporate retirement plan through an outside job. The goal here was to find a way to create a secure retirement for the wife, who had dedicated her career to their joint business.

This business, unfortunately, offered no retirement benefits, leaving her with nothing in the way of savings.

Strategy: Wait for Larger, Speculative Payout Later

The only solution that seemed viable was built around a unique and highly speculative asset: an incentive-based retirement plan offered to the husband. If he remained with his company for another 25 years, the plan would be worth an estimated \$650,000.

Today, however, it wasn't accessible, making its use entirely theoretical, contingent on his continued employment. The strategy we developed was a high-stakes trade driven by the wife's pressing need for a retirement nest egg.

- **For the Wife:** The potential \$650,000 payout was a powerful incentive, promising to solve her biggest financial problem in one fell swoop.
- **For the Husband:** He had no intention of leaving his high-paying job. From his perspective, giving away an asset that cost him nothing and that he wouldn't receive for decades was a reasonable concession to finalize the overall property division.

The agreement was structured almost as a gamble: in exchange for making other concessions in property division, the wife would receive 100% of the rights to this theoretical asset. The deal was based not on a guaranteed value, but on a shared assumption of the husband's career path and a significant degree of trust.

Resolution: Successful Mediation, But Unsuccessful Follow-through

Mediation concluded, and a judgment was formally entered by the court. A year later, the agreement began to unravel. The wife, no longer feeling secure in the deal, began to experience ongoing anxiety as a result of the immense risk she had accepted.

The theoretical nature of the asset stopped seeming like an opportunity and became more like a potential disaster. She wanted to negotiate, but a signed and filed judgment is incredibly difficult (if not impossible) to overturn, especially after a year has passed.

The situation devolved into a stressful and ongoing conflict with little chance of altering the final judgment. To use an old phrase, the problems that arose from this agreement “salted the earth.” Trust was permanently damaged between the parties, making cooperation a more challenging prospect moving forward.

Key Results From This Case:

- **A Final Judgment Was Reached:** The mediation successfully concluded, avoiding an initial court battle and resulting in a formally entered legal judgment.
- **The Wife Was Awarded a Speculative Asset:** Despite her regret, the wife still received the rights to a potentially high-value (if theoretical) future retirement asset to address her lack of savings.
- **Confidence Was Lost in the Agreement Post-judgment:** The high-risk nature of the deal led to a feeling of cold feet from the wife, who no longer felt confident in the agreement she had made.
- **The Post-Divorce Relationship Suffered:** The subsequent conflict over the agreement damaged trust between the parties, making a civil and cooperative post-divorce relationship more difficult to establish.

Overall, the case serves as a warning about the tentative nature of unconventional resolutions.

While creativity is valuable when structuring a settlement, agreements built on trust and speculative outcomes carry enormous risk. And once a judgment is entered, a change of heart cannot easily undo a deal. That's why it's so important to fully understand and accept the scope of an agreement before turning it into a binding legal judgment. It's always my goal that people don't leave this process hating each other, but if people don't voice concerns early or return to mediation when they encounter conflict, there is little we can do after an agreement is signed.

This was a case in which I strongly recommended that both parties secure consulting counsel so that they could here from an attorney who would analyze things with their individual client's best case success in mind. Unfortunately they did not take the opportunity to do that. Perhaps a different conversation could have been had with consulting counsel involved that may have changed the long-term outcome.

Why Mediation Succeeds When Handling Complex Assets Like Retirement Accounts

Given the complexity of these cases, it's easy to see why many people feel that litigation is inevitable. However, research shows that mediation has a significantly higher success rate than going to court. While our second case proves that some challenges are insurmountable, mediation still delivers more favorable and flexible outcomes than a court-imposed agreement. Many couples feel dissatisfied with the often dispassionate experience of family court, and as our final case showed, once a judgment is entered, it can be incredibly difficult to change.

The result in this case was down to an understanding (or lack thereof) of the true, practical value of an asset and concepts like the gross-up. This case is a cautionary tale on the immense risk one takes when building an agreement on a theoretical asset. While this was seemingly the only approach the couple was willing to take, it's important to acknowledge that even if mediation is a success, the follow-through is up to the couple themselves.

Why Choosing the Right Experts in Mediation Matters

Many newer mediators focus on honing core skills like active listening, reframing, and neutrality, but often overlook one of the most valuable tools for resolving stalled cases: outside consultants. However, **picking consultants isn't just about credentials.** It requires the ability to match each client with the right expert based on personality, communication style, and overall temperament.

A referral that's poorly matched can stall progress or damage trust, even if the expert is highly qualified. If a client is anxious or overwhelmed, pairing them with a cold or overly technical expert (even one with excellent credentials) can be disastrous. The same could be said of pairing no-nonsense clients with less analytical, more emotional professionals.

The most effective referrals happen when an expert's style aligns with the client's needs. Without the right consultants, this couple may have ended up in court for years, spending tens of thousands of dollars and further straining their relationship with each other and their children.

Why Consider Mediation

Avoiding court can lead to better outcomes

For high-conflict couples, mediation can prevent a lengthy, emotionally draining legal battle.

Focusing on the child's well-being is key

Even in volatile relationships, mediation can help parents find practical solutions that prioritize their child's needs.

Mediation saves time and money

Resolving disputes outside of court is often more efficient and cost-effective.

Ready for a Transparent and Peaceful Mediation?

If you are struggling with complicated property division or other family issues, Forester Family Law is here to help. Learn more about what mediation can do for you.

[**BOOK A CONSULTATION**](#)