



CASE STUDY

Strategic Separation: Balancing Real Estate, Family, and Timing

Collaborative Planning for Co-Parenting and Property Decisions

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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 look at a successful mediation that avoided the gross-up entirely, allowing a mother to stay in the family home without financially crippling the father.

A High-Value Home, The Desire for Stability, and Five Years to Wait

This case centers around an upper-middle-class couple in their mid-40s. Their children were nearing high school, and both parents agreed that they would not sell the home until the kids graduated in approximately five years. They also agreed that the mother would remain in the family's home with the children, while the father would live elsewhere.

There were two main issues to address:

#1 The Home Value Dilemma: The couple's home was quite valuable and was expected to appreciate considerably over that time. The agreement couldn't wait five years, and by valuing the home at its current price, the father may be denied a substantial share of the expected equity growth.

At the same time, valuing the home at a later date was complicated by the question of who would have to pay the substantial carrying costs, such as mortgage and taxes, in the interim.

#2 The Retirement Offset Problem: On top of their home, the couple's marital estate included the father's substantial retirement assets. At first glance, it appeared the couple had a straightforward answer to their first problem: They could use their substantial retirement savings to handle the house buyout.

But to provide Mom with enough retirement funds to buy out Dad's current equity, he would have had to liquidate a prohibitively large portion of his retirement account to cover any future tax burden. Having to pay such a large gross-up was an unfavorable outcome for him, so we had to find a different solution.

With the father unwilling to accept the financial hit from a gross-up and the valuation terms unresolved, the negotiations were at a complete standstill. To keep both parties satisfied, traditional approaches wouldn't work; we had to get creative.

Strategy: Addressing Core Fears to Find Common Ground

Because an immediate buyout wasn't possible, my strategy to address these problems was to first address the primary fears driving each person. For the father, his greatest fear was the rapid depletion of his retirement savings that a standard grossed-up buyout would require, feeling this would threaten his long-term financial stability. The mother's fear was also based on security, but with the added pressure that as a stay-at-home parent, she had no retirement assets of her own. Her goal was to secure a dependable home for her child now and build a foundation for her own retirement later.

Recognizing that both parties were more concerned with long-term financial security than immediate cash, my strategy shifted. Instead of a zero-sum buyout, we focused on creating a multi-year joint investment plan where a present-day concession could be traded for a share of the asset's appreciation.

Resolution: Mutually Beneficial Growth without a Gross-up

The final agreement was built on a series of interlocking concessions that directly addressed the fears each party had.

Key Results From This Case:

- **Shared Future Growth:** The couple agreed to value the home both present-day and at the time of its eventual sale, five years down the road, which would capture an equalizing payment from husband to wife now plus each party receiving half of the increased equity five years in the future. This transformed the father's locked-up equity from a static asset into a passive investment, allowing him to benefit from the presumed 6-8% annual market growth.
- **A "No Gross-Up" Retirement Transfer:** To make this arrangement financially viable for the father, the mother agreed that her portion of the present-day equity payout could be made with retirement funds that were not grossed up. This meant the father transferred the exact dollar amount without adding the typical 30-40% premium, creating a sizable financial savings for him.

- **Split of All Carrying Costs:** To make the deal truly equitable, the parties agreed to share equally all the home's carrying costs, including the mortgage and property taxes, during the five-year period.

This outcome was a win for everyone. The father avoided the gross-up, instead seeing his assets grow. The mother secured a home for her and her child while receiving a much-needed infusion into her retirement savings.

By forgoing a conventional approach, they leveraged the home's anticipated appreciation to create a unique solution that provided stability for their child while setting each parent on the path to financial security.

Why Mediation Succeeds When Handling Complex Assets Like Retirement Accounts

Given the complexity of the case, 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.](#)

The result in this case was driven by an understanding (or lack thereof) of the true, practical value of an asset and concepts like the gross-up. Our solution worked because both parties were willing to trade a rigid, present-day valuation for a share in the home's appreciation.

The takeaway here is that as a mediator, you cannot be locked into a single strategy. You must be able to determine whether a problem is solvable and understand the difference between a novel strategy and a dangerous gamble. True equity isn't achieved by simply splitting an asset, but by understanding its practical worth and building a resolution that provides lasting satisfaction for two new households.

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.

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