



CASE STUDY

Navigating Divorce With Limited Assets and Young Children

Prioritizing the Family Home and Stability During Divorce with Young Kids

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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.

Stability at Stake: Divorce Planning for a Young Family

These individuals were younger, firmly middle-class, and had two elementary school-aged children. They hadn't had the opportunity to accumulate a large estate, and their house and retirement were the only two real assets they had. The mother hoped to remain in the family home while their children were still in school. However, we quickly discovered underlying financial constraints that created an entirely different problem.

Each party had a competing and non-negotiable need:

- **For the Mother:** With no other assets to draw from, paying the father his share of the home's equity meant she would have to liquidate her entire retirement savings. Her entire financial safety net would be gone, something that was just not a viable option for her long-term survival.

- **For the Father:** His need was immediate and urgent. Describing the rent in his area as “ridiculous” and often far exceeding that of a mortgage payment, he needed liquid cash from the home’s equity to secure new housing for himself and his children during his scheduled parenting time. Accepting a retirement transfer, which he couldn’t access for years without severe penalties, would leave him unable to make ends meet.

This created an impasse. The mother’s ability to retire was pitted against the father’s immediate survival, leaving us with a single question: could any approach possibly satisfy two completely opposite and non-negotiable needs?

Strategy: Explore All Possible Solutions to Try to Satisfy Both Parties

We spent hours trying to find a way to use the retirement funds as a fulcrum point to reach some sort of balance for their needs. We looked at every angle, but unlike the first case, there were no other assets to leverage and no room for long-term investment plays.

The father would not accept a retirement transfer in lieu of cash, as it would not solve his immediate housing crisis. The mother was unable to assume their existing loan or qualify for a new refinance to pull cash out of the home's equity. We worked and worked, but we couldn't reach an agreement that would leave everyone happy.

Resolution: Core Needs Met, But With a Sacrifice

Ultimately, no amount of negotiation could manufacture the liquid cash needed to maintain two separate households without selling the house. This was clearly the worst-case scenario from an emotional standpoint, and a conclusion nobody wanted. However, it was the only outcome that didn't require the mother to give up any hope of future independence or the father to sacrifice his present well-being.

Key Results From This Case:

- **The Father's Housing Needs Were Met:** The sale of the home provided Dad with the cash necessary to secure new housing in a difficult rental market.
- **The Mother's Retirement Was Preserved:** Mom's entire retirement savings remained fully intact, securing her long-term financial independence.
- **Two Stable Households Were Established:** Although the family home was lost, the capital from the sale allowed both parents to move forward and establish separate, financially secure homes for themselves and their children.

Though an agreement was reached, this case is a reminder that mediation isn't magic. No matter how much experience or success a mediator has had in the past, we cannot create resources that don't exist.

While a court battle was avoided, the retirement funds just couldn't be used as a tool to get a better agreement on the table. In these situations, my focus is on forging a workable path forward. For this family, that meant sacrificing a piece of their past to secure what they needed for their future.

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.

In this case, mediation was limited by the harsh reality that no matter how creative we got, we could not create the liquid cash the family needed to survive out of thin air.

The takeaway here is that as a mediator, 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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