

Business

DEALS, ANALYSIS AND PERSONAL FINANCE

GREY ABANDON

With divorce rates for older Australians soaring, many are being left in financial distress with little time left to rebuild wealth. Experts offer some tips on how to survive the baby boomer split.

BY MICHAEL LAURENCE

GREY DIVORCE is ravaging Australian marriages. Just as divorce among the general population has risen dramatically over the past 20 years, so too has the average age of couples splitting up. Australian Bureau of Statistics figures show that the average age of divorce in 1985 was 37 for men and 34 for women. By 2005, that had risen to 44 for men and 41 for women. Divorce rates among those aged 50-plus have jumped substantially. The 60-to-64 group appears to be hardest hit, with divorce rates between 1985 and 2005 climbing by 70% for men and 81% for women.

More older couples are heading for the Family Court after 25 year-plus marriages, says Dr Simon Kelly, principal of wealth-modelling consultancy Kelly Research in Queensland.

Apart from the prospect of a lonely old age, divorce is likely to hit older couples much harder financially than their younger counterparts. Older divorcees typically have little chance to rebuild wealth split by divorce, says Kelly, co-author of the report *Love can hurt, divorce will cost*, published by the National Centre for Social and Economic Modelling.

The peak earning days of these couples are generally over, their prospects of borrowing and repaying large loans to refinance their lives are almost non-existent, and their retirement savings are often destroyed. Women in their late 50s who have interrupted their working lives to care for children are also likely to have problems creating new careers after divorce, Kelly believes.

Family lawyer Stephen Bourke says the crunch time for the marriages of older couples often occurs when both retire and are suddenly spending much more time together. "This change of lifestyle can



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magnify irritations and differences between them,” says Bourke, a partner of Farrar Gesini & Dunn in Canberra. “One spouse might ask, ‘How can I spend the rest of my life with this person?’ “

There are, however, a number of ways for older couples to minimise the financial impact of divorce:

ASSET RICH, CASH POOR Older couples often have few assets beyond the suburban home and some super, says Bourke. People in this age group generally have not benefited from compulsory super for a large part of their working lives. “In many cases, it may be advisable [as part of a property settlement] for such couples to sell the home, share the proceeds from the sale, and split the super.” Otherwise, one spouse may be caught in the poverty trap of having a house and no cash to pay living expenses.

MARITAL FINANCES Older couples are often

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DR SIMON KELLY WEALTH CONSULTANT

in the position where one spouse had control of the finances throughout a long marriage, says Bourke. This one-sided control can cause big problems in break-ups. The spouse with financial control sometimes tries to hide assets, and to drain investment and bank accounts. Bourke says the other spouse should take urgent legal action – long before the matter is settled or reaches a court hearing – if this is occurring. Family lawyers often hire forensic accountants such as Nick Gaudion, a director of NSW accountancy firm Cutcher & Neale, to identify and value undisclosed assets. “It can be something as simple as one spouse being entitled to employee share options,” Gaudion says, “or it might be, for example, assets in complex investment structures.”

SUPER SAVINGS Gaudion suspects many

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SUPER PETER FREEMAN

Split incentive

Its tax-free status makes super an attractive element of a divorce settlement.

THE NEW SIMPLER superannuation system has delivered a range of benefits, most of which are now widely appreciated. One that has attracted little attention is the way the new, more generous tax treatment of superannuation payouts has made super an even more important consideration for divorcing couples. This comes from the fact that both lump sum and pension payments, when taken at 60 or later, are now tax-free. As well, much of the complexity surrounding these payments has been stripped away, removing some of the disincentive to taking part of a divorce settlement as super.

Jennifer Brookhouse, head of technical at Zurich Financial Services, says superannuation for many years wasn't even included as part of a divorce settlement. December 2002 legislation changed this. “All of your super entitlement, including that built up prior to your marriage, is now included,” she adds. The main exemptions are when de facto and same-sex couples separate, since the rules apply only to the legally married.

But the legislation doesn't require your super to be split when you divorce. Rather, its value simply has to be included as part of the divorce settlement calculations. The rules restricting access to super until retirement mean that for someone earning little or no income, and in immediate need of funds, the incentive has been to take their part of the settlement as cash or as a bigger share of the family home rather than as a share of their partner's accumulated superannuation.

The more generous treatment of super payouts may prompt more people to consider taking at least some of their entitlement as super. This is most likely to be the case for divorcing couples who have significant assets outside superannuation. They may be able to afford to take a large part of their divorce settlement in the form of super, in the process acquiring an asset that eventually delivers them a significant, and relatively uncomplicated, tax-free payout.

divorcees will increasingly place more value on savings within super than non-super savings when negotiating a family law settlement. This is because the new super regime places restrictions on annual super contributions and provides tax-free retirement benefits for those over 60. The Family Court can split super, along with the other assets, between spouses. (See “*Split incentive*” on page 53)

SUPER PENSIONS Patricia Hanna, a Sydney family law barrister, suggests that an older divorcee who has difficulty handling large amounts of money should consider electing to receive a super pension, if eligible. “Whether it is better to receive super or non-super assets, much depends on the personal circumstances,” she says. It may be appropriate to gain professional financial planning advice. Hanna emphasises that the decision to take a super pension is a personal one that has nothing to do with the Family Court.

CUTTING TAXES Older couples often accumulate valuable portfolios of investment properties and shares that may provide excellent tax breaks when divided between separating spouses. Gaudion says that if a spouse borrows to buy the other spouse’s share of an investment, interest on the loan should be deductible. This is because the loan is to acquire full ownership of an income-producing asset.

FINANCIAL AGREEMENTS Bourke typically advises older clients who are remarrying to enter such an agreement with their new spouses, stipulating how assets will be divided if the second marriage also fails. ABS figures show that second marriages are more likely to end in divorce than first ones, says Dr Kelly. Older people are also much more likely to enter a second marriage with substantial assets to protect. The Family Court can overturn these agreements only in exceptional circumstances.

ESTATE PLANNING Following a divorce, you should ensure that your estate is distributed as intended, advises Andrew Frankland, estate planning partner with The Argyle Partnership Lawyers in Sydney and Melbourne. Your will is automatically revoked by remarriage, but not by divorce or separation. This means your former or separated spouse could remain a beneficiary unless you remarry or make a new will. After a marriage breakdown, Frankland recommends reviewing the executors of your estate and the controllers of any discretionary family trust. You will probably want to make changes.

TESTAMENTARY TRUST These trusts, which are included in your will and triggered by your death, are often designed so that the young children of different marriages have enough tax-effective income throughout their childhood, and that capital is set aside for their adulthood. Testamentary trusts are becoming much more popular, particularly when an older person with substantial assets is remarrying, Frankland says. ●