DIVORCE AND ESTATE PLANNING

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BEFORE, DURING AND AFTER ♥

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WE INDEPENDENT, FAMILY- FOCUSED WEALTH MANAGEMENT

OUTLINE FOR TODAY

1. The World We Live Today
    - Divorce in Numbers
    - Consequences of not Planning
2. BEFORE ♥
    - Pre-nups and DPTS
    - Case & updates
3. DURING ♥
    - Equitable Distribution
    - Case & updates
4. AFTER ♥
    - Inheritance and beneficiary updates
    - Case & updates

"The first order of business is to set a timetable to plan an outline for the agenda."

THE WORLD WE LIVE TODAY – DIVORCE IN NUMBERS

- **50%** of marriages end in divorce after and average of 11 years
- Divorce tends to reduce the standard of living of both by almost **50%**
- **70%** of second marriages that involve stepchildren fail
- Each year **1 million** American children experience divorce
- About **31%** of individuals aged 35 to 54 are in their second marriage

THE WORLD WE LIVE TODAY – CONSEQUENCES OF NOT PLANNING

- **Ex-spouse** inherits your house
- **Step-children** inherit your retirement account
- Bank accounts or retirement go to **ex-spouse**
- Father's state ends up in hands of **stepbrother**
- **Disinheritance** of your loved ones

"Mr. Frosty, it's March.
Time to talk estate planning."

BEFORE ♥…

<u>Now is the time to talk about :</u>

- The Prenuptial Agreement conversation (a family business view)
- The beneficiary conversation (life insurance)
- Maintain pre-marital investments in a separate account (i.e. retirement accounts)
- Evaluate consequences of converting separate assets to marital assets (i.e. house)
- Planning with irrevocable trusts to keep assets separate
- Outright gifts and inheritance disclaimers
- Asset Protection trusts for second marriages (case)

"I don't want a prenup.
I want a warranty!"

BEFORE ♥… TOM AND BARBARA

Thomas is a successful developer and manager of several commercial properties valued at approximately $50 million. Thomas is divorced with three children, and he is considering marrying Barbara. He is concerned about protecting his premarital assets and the income generated therefrom. He intends to continue to live off of a portion of the revenues from the real estate which he will continue to manage during the marriage. Barbara is a romantic and the idea of entering into a prenuptial agreement is completely offensive to her.

Solution: Thomas establishes an asset protection trust in Nevada. He contributes his real estate interests to the trust making an incomplete gift for gift tax purposes to the extent that he has insufficient exemption available. The trustee has discretion to make distributions back to Thomas for any purpose that the trustee deems advisable. The trust incorporates various spendthrift trust provisions to protect the trust assets from creditors. The Nevada trust should protect Thomas' contributed assets from division in the event of a divorce, and the income from the trust should, likewise, not be deemed available for Barbara's support

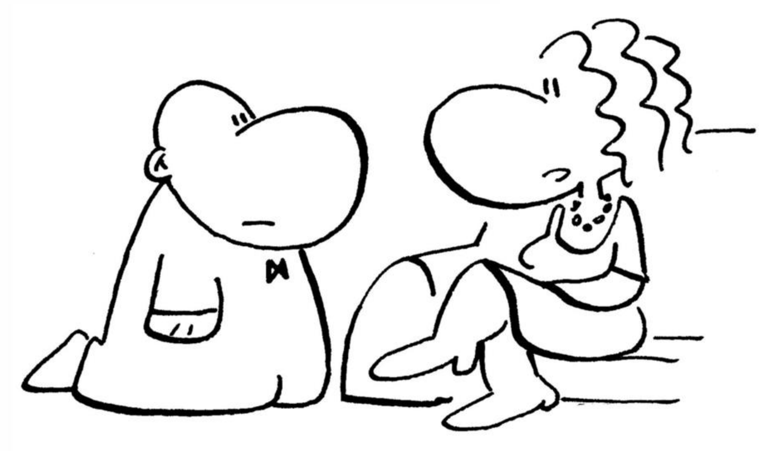
BEFORE ♥ … PLANNING RECOMENDATIONS

- **75%** of the divorces are due to financial disagreements, clear goals and understanding can increase the probability of success

- Have an **individual financial plan** that includes: own goals, own assets, a contingency plan

- Set **jointly clear expectations** and set a joint financial plan that includes: shared goals, shared assets and shared contingency plan

- Similar to Tom, if he had a Traditional 401K plan at his employer, he could stop contributing to it and start a **Roth 401K** to keep assets pre and post marital separate.



"Your marriage proposal sounds good, Arnie, but I'd like to hear about the retirement plan."

TOP 5 DOCUMENTS AND QUESTIONS NEEDED BEFORE…

DOCUMENTS

1. Financial Statements/Affidavits for both parties (if available)
2. Three years of income tax returns for both
3. Details regarding investments
4. Employee benefit/retirement information
5. Paycheck

QUESTIONS

1. Who gets to stay in the home? Mortgage?
2. How will you share assets?
3. What about the joint credit cards? Current debts?
4. File joint income-tax returns?
5. Spousal, Child, College, Legal support?

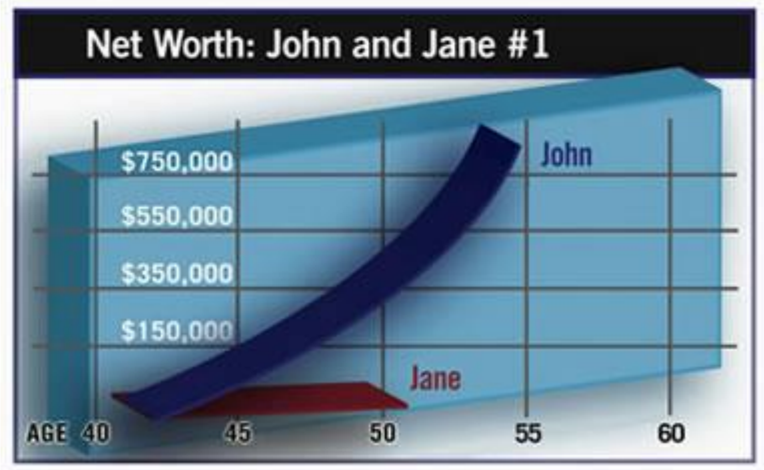
DURING ♥ DAISY AND DONALD

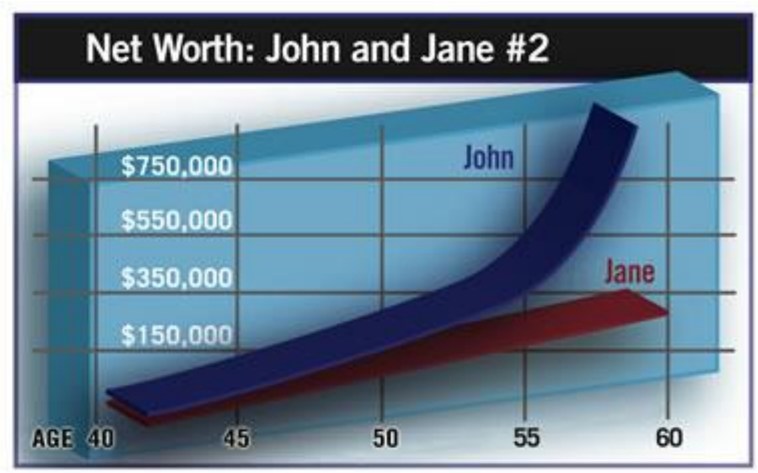
ASSETS & LIABILITIES	HIS	HERS	JOINT	MARITAL?
Checking – during marriage	20,000	50,000	100,000	x
Savings – during marriage	100,000			x
Investment Trust –her parents gifted both annual exclusion amount for 15 years			500,000	x
401K plan during marriage		250,000		
IRA rollover prior marriage contributing $5K annually during marriage		500,000		x
House – her parents bought house at $500K, renovations of $250K during marriage and paid taxes from joint account		1,000,000		x
Vacation Home – she bought home for $250,000 changed kitchen $50,000 and paid mortgage during marriage		500,000		x
Credit card debt	25,000	5,000	50,000	x

DURING ♥…EQUITABLE VS EQUAL?

Some of the factors that the court considers in equitable distribution include:

- **length** of the marriage (10 years)
- Individual **net worth**
- **ages, health, and income(s)**
- contribution to spouse's **increased earning potential**
- the **standard of living** established during the marriage
- the **tax consequences** of any award,
- **custodian** of children





AFTER ♥…. TIME TO UPDATE EVERYTHING!

- **Bank and brokerage firm accounts**. Transfer on death (TOD) or payable on death (POD)
- **Tax-favored retirement accounts**, employer-sponsored benefit plans, life insurance policies, and annuities.
- **529 college accounts**: **B**eneficiary change form to change the account beneficiary
- **A new will**, Health Care Proxies, Powers of Attorney, changing beneficiary designations
- A diversified **asset allocation** to meet living expenses and be in line with a safe withdrawal rate to conserve capital
- **Evaluate changes** in ILITS, Shareholder's Agreements, Buy Sell, Trusts and Trustees

Next, I remember looking down at my body, and my kids fighting over the will.

AFTER ♥… DONA & DAVID and MARY & BILL

CASE #1: David's wishes were for his son and daughter from an earlier marriage to receive proceeds from his retirement and life insurance policy but he **failed to change the beneficiary designations** after the divorce from his ex-wife. Two months later, David was killed in a car crash

- *The Supreme Court ruled that the beneficiary designations trumped state law that would have automatically disinherited Dona. The kids got the bills for the unsuccessful legal fight and Dona the money. (Source: Egelhoff v. Egelhoff, 532 US 141 (Supreme Court 2001).*

CASE #2: Bill thought that the **divorce agreement was the last word** on waiving any interest in the savings and investment plan, and he failed to turn in the form to officially change his plan beneficiary from Mary to his daughter. He died seven years after the divorce.

- *The Supreme Court ruled that the out-of-date beneficiary designation trumped the divorce agreement. So Mary got the $400,000 and the daughter got nothing. Source: Kennedy Estate v. Plan Administrator for the DuPont Saving and Investment Plan (Supreme Court 2008).*

DISSIPATION OF ASSETS… TED AND MARTHA

"Frank" is an alcoholic and gambler who gets into debt frequently. He drives intoxicated, exposing himself to unimaginable liabilities. "Martha" works hard, has built a business of her own, and has amassed individually titled assets – all subject to equitable distribution. The marriage has disintegrated. To preserve wealth to benefit the children, she establishes an irrevocable trust without Frank's consent or knowledge. After three years the trust is worth $1,000,000 and she files for divorce.

- Can Frank claim that these assets were unilaterally dissipated and be charged against Martha's share of equitable distribution?

Kothari v. Kothari, 255 N.J. Super. 500 (App. Div. 1992): *the Court cited to determination that the wife unilaterally dissipated marital assets: (i) the* ***proximity*** *of the expenditure to separation; (ii) whether the expenditure was* ***typical*** *of expenditures (iii) whether the expenditure* ***benefitted the joint marital*** *enterprise (iv) the* ***need*** *for, and amount of, the expenditure.*

"Your therapy helped me leave Frank. Frank wants to thank you personally."

DISSIPATION OF ASSETS IN FL. – DAVID, MARTHA & RHONDA

District Court of Appeal of Florida,
Fifth District.
David C. BEERS, Appellant/Cross-Appellee,
v.
Martha D. BEERS, Appellee/Cross-Appellant.
No. 97-1059.

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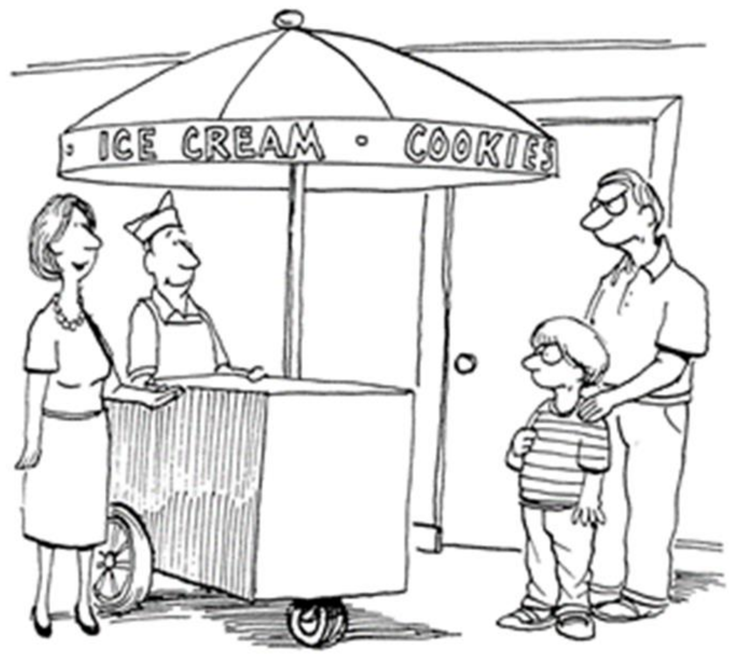
*In Florida, the legal concept that the intentional dissipation of marital assets by one spouse during the marriage is a factor for consideration by the trial judge in dividing marital property may have first been addressed in an appellate decision in Gentile v. Gentile, 565 So.2d 820 (Fla. 4th DCA 1990), where the Fourth District described the dissipation of assets as a situation "**where one spouse uses marital funds for his or her own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown**" (citing Hellwig v. Hellwig, 100 Ill.App.3d 452, 55 Ill.Dec. 762, 426 N.E.2d 1087 (Ill.App.Ct.1981)*



"Before you decide which parent to live with, look who's hanging out on my street, Bobby."

SUMMARY

1. Update your Estate and Financial Plan before marriage when communication is king

2. Evaluate a contingency plan before commingling pre-marital assets and consider a pre-nup

3. Review beneficiaries of contractual and non contractual assets annually

4. Consider DPT, Post Nuptial and Dissipation of Asset issues prior to filing for a divorce

5. During, before and after always update estate planning documents extensively (wills, POA, trusts, etc.)

6. Educate family members financially

WE FAMILY OFFICES

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