Are Gray Divorces Exploding? ...
Important Divorce Financial Planning Opportunities for Boomers

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A New York Times story in 2006 called it the "37 year itch"; the Wall Street Journal went as far as calling it a "boom": and, the Associated Press called it a "growing legion" of older Americans untying the marital knot. Is there an epidemic of divorce among Baby Boomers?

Tipper Gore is a Baby Boomer woman. She and her husband have opted to divorce. Was she a good wife over turbulent years of marriage unbeknownst to the public, or, is she simply hitting her peak as a Baby Boomer woman looking for her own lasting happiness? Is she part of a growing trend for "gray" divorces? If this is a trend, the demographics of the Baby Boomer generation are simply too large to ignore.

Defining financial planning opportunities during divorce for Baby Boomers requires exploring:

- Demographics of this population
- Perceptions about this age group and debunking myths
- Economic realities and spheres of influence for Boomers
- Real statistics of divorce among Boomers
- Financial Planning opportunities which are distinctive for Boomers who are divorcing
    - What are the array of financial issues in divorce
    - What are distinctive strategies to consider for Boomers in divorce
    - What are common mistakes to avoid in divorce financial planning

Baby Boomers[1]:

First, let us explore who are the Baby Boomers? The Baby Boomer generation consists of adults born in 1946 to 1964. This is a 19 year span and actually covers two Baby Boomer groups: those turning 65 and those turning 45 in 2010. Baby Boomers represent 26.5% of total population in U.S., an all time record statistic for this age group. Every 10 seconds, a Boomer turns 60 yrs old.

What are Boomers like?

- Baby Boomers are generally healthier, wealthier, and better educated than their predecessors
- Boomers have worked more consistently over their lifetimes ("work ethic" / "yuppie")

[1] Selected Characteristics of Baby Boomers 42 to 60 Years Old in 2006; Age and Special Populations Branch Population Division, U.S. Census Bureau Washington D.C., 11/04/2009

- Estimated annual spending of Baby Boomers is more than $2 trillion
- Boomers do not consider retirement "cool"
- Baby Boomers are likely to extend midlife well into what used to be called "old age"
- They will remain actively engaged longer than any other prior generation; 91% of men and 84% of women intend to keep working beyond 65.[2]
- Older Boomers (born 1946 – 1955), many of whom are empty nesters, put their money into upgrading homes, buying second vacation homes, and on clothing
- It can't be said enough – Boomers just want to have fun
- Boomers' values are personal – they concern relationships among individuals

Boomer women were raised by stay-at-home moms with husbands who supported the entire family, however, they themselves have combined work and child rearing and contributed substantially to family incomes. With gender equality, parity pay, equal education, and advancement in the workplace, Boomer women are more likely to never marry, to divorce when married, and more likely to have children outside of marriage.

Boomers seem to respond more favorably to rewarding personal experience rather than to duty – a prime motivator for their parents – when it comes to work, volunteering, and play, and this outlook persists into later years. This is after all, the generation that established youth culture in the U.S. and gave us the "hippie culture". The shift in attitudes to a more "me" generation has changed the landscape of midlife and retirement.

Boomer "Gray" Divorces:

Has this shift in attitudes resulted in a trend of increasing rate of "gray" divorces? The surprising answer is no. The real divorce rates for seniors have been nearly steady since 1970[3]. ***The surge in divorced Boomers actually reflects that more divorced adults are becoming divorced seniors.*** More Boomer women initiate divorce (66%) and claim satisfaction (70%) for divorcing than men[4]. The biggest fear expressed about of divorce is the prospect of being alone. Surprisingly, the traditional moral taboo against divorce had little effect on holding together troubled marriages.

The number of men and women age 65 and older living together / cohabiting has nearly doubled in the last decade. What stops many from marrying is the prospect of financial loss. Remarriage may mean giving up a former spouse's medical insurance, pension, and social security.

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[2] Fast Facts: EBRI 2010 Retirement Confidence Survey: Gender Comparisons Among Workers, April 9,2010
[3] U.S. Census Bureau Study, 11/04/2009
[4] ibid

Most divorcing Boomers nearing retirement age will likely not have enough money to live as well as they had during their marriage years. Most advisors already face the disturbing prospect of telling their clients they may outlive retirement income. Dividing a marital estate just on the cusp of these years makes the primacy of the retirement income issue even greater. Adding to this the threat of "penalizing" divorced Boomers if they remarry or sometimes cohabit, makes divorce financial planning during divorce an imperative for creative problem solving.

Wealth clearly makes a difference to retirement preparedness and to planning opportunities. Nearly 70% of households in the lowest one third of income run the risk for running out of money. About 42% of the middle income group is at risk; and only 23% of the wealthiest households are at risk.[5]

Also, Boomers' expectations about latter years play a role. Men are more likely than women to say they are *very* confident about several of the various financial aspects of retirement. More so than women, men tend to feel *very* confident that they are doing a good job of preparing financially for retirement and are more likely to be confident that they will have saved enough to live comfortably through their retirement. Women are more often to say they do not know how much they need during retirement years; and, are more likely to predict that spending will be ***much lower*** during the first five years prior to retirement[6]. The reality for most Boomers is much different and this underscores unique planning opportunities for divorce financial planners to address during the divorce process.

Financial Planning Opportunities:

What we find now is about one third of Baby Boomers are moving into old age as singles, due to divorce, being widowed, or never having married. Health care and outliving one's assets in retirement are the two primary anxieties expressed by Baby Boomers. Divorce financial planners can help alleviate divorcing Boomers' fears in certain key areas *during the divorce process*.

There is no one size that fits all. Baby Boomers, especially those who are single, need expertise in financial planning to address:

- Longer life expectancies
- Intention/Requirement to work past normal retirement age (NRA)
- Health insurance and gaps in coverage
- Investment decisions for longer life expectancies

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[5] Jack VanDerhei and Craig Copeland, "The EBRI Retirement Readiness Rating™: Retirement Income Preparation and Future Prospects", July, 2010 Issue Brief; No. 344.

[6] Fast Facts: EBRI 2010 Retirement Confidence Survey: Gender Comparisons among Workers, 4/09/10

- Declining Social Security and Pension benefits (strains on social system)
- Estate planning for nontraditional (cohabiting) and blended families

Health Care:

During the divorce process, we should be encouraging our clients to look forward. Planning for future health care issues may be imperative, and includes, discussion about the cost, accessibility, quality of service, reputable service providers, and a cost-benefit analysis of going without health, disability, long term care, and / or umbrella liability insurances.

Men and women are equally likely to indicate that they expect to receive retiree health insurance through an employer[7]. In fact, nearly one quarter of workers report they have postponed retirement by a few years to retain or be eligible for an employer's health insurance plan. What health insurance options are there for divorcing Boomers? What happens in the long run to the divorced non-employee spouse?

Each year, many divorcing adults under the age of 65 lose their health insurance coverage for any number of reasons, with the most important being that they may not qualify for COBRA (their employer is ineligible or as an individual) or they run out of benefits.

The likelihood of an employee being uninsured is tied to the strength of the economy and the unemployment rate, but uninsured workers reported multiple reasons for not having coverage. Most workers reported that they did not have coverage because of cost, and those doing so ranged from 70% to 90% over the December 1995–March 2009 period. The percentage of uninsured workers based on lack of availability through an employer plan was roughly 24% in early 2009[8]. It is simply too expensive for individuals and families to buy insurance directly on the open market and impossible for many with pre-existing conditions.

Demographically, women in particular face a higher risk of being uninsured. In divorce, the risks of not being insured is one challenge; the risk of a divorced nonemployee spouse running out benefits under COBRA a few years shy of qualifying for Medicare is a separate risk. This latter risk calls for considering seriously the timing of divorce. It may even mean re-determining the legal nature of the agreement: a divorce judgment versus a legal separation as a strategy for retention of health insurance. In many cases, spouses' with medical histories may feel either held hostage in the existing relationship or thwarted from entering a new one.

What about the Obama - Biden plan to guarantee of affordable, accessible health care coverage for all Americans? Yes, there is hope for a new system and approach to health care issues for Americans. The Obama-Biden plan both builds on and improves our current insurance system,

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[7] EBRI: News from EBRI: 2010 Retirement Confidence Survey: "Americans' Confidence Stabilizing, But Preparations for Retirement Continue to Erode", 3/09/2010

[8] Fast Facts: EBRI: "Cost Key Reason Workers Give for Being Uninsured", June 2, 2010, #167

which most Americans continue to rely upon, and leaves Medicare intact for older and disabled Americans. The Obama-Biden plan provides new affordable health insurance options by:
(1) Guaranteeing eligibility for all health insurance plans;
(2) Creating a National Health Insurance Exchange to help Americans and businesses purchase private health insurance;
(3) Providing new tax credits to families who can't afford health insurance and to small businesses with a new Small Business Health Tax Credit;
(4) Requiring all large employers to contribute towards health coverage for their employees or towards the cost of the public plan;
(5) Requiring all children have health care coverage;
(6) Expanding eligibility for the Medicaid and SCHIP programs; and
(7) Allowing flexibility for state health reform plans[9].

The question is how soon will the federal, state and local governments put into place an insurance pool of comparable quality coverage at affordable costs with reduced bureaucracy? And, how soon will employers become compliant?

If health care is a priority for Boomers, whether stated overtly or not to their divorce attorney, based now on what we know, we should not allow it to be dismissed easily as a major point of negotiation for our clients. Assets subject to division during divorce should include also who retains and pays for health insurance, life insurance, disability insurance, long term care insurance, and unused sick pay.

Social Security:

Baby Boomers will retire with fundamentally different work and earnings histories than prior generations. Retirees also need to plan for longer life expectancies. Americans generally expect to retire later than age 65, increasing from a rate of 11% in 1991 to over 33% in 2010. While "Americans' attitudes toward retirement have tracked clearly the economy the last couple of years…unfortunately, while their attitudes are stabilizing, their preparation has not", said Jack VanDerhei, EBRI research director and co-author of the 2010 survey. Social Security continues to provide the largest share of income for older Americans.

Therefore, a married woman contemplating divorce today needs to think about extending the length of her marriage to 10 years, because chances are that her husband's lifetime earnings are greater than hers, and her benefits as an ex-spouse and divorced survivor may eventually be more valuable to her than those based on her own earnings record. Divorce financial planners should examine… "several possible scenarios, considering such variables as when benefits are first taken, which spouse takes benefits first, the role of spousal benefits, the potential impact of

[9] Census Bureau, "Census Bureau Revises 2004 and 2005 Health Insurance Coverage Estimates," March 23, 2007. http://www.census.gov/Press-Release/www/releases/archives/health_care_insurance/009789.html and Census Bureau (2008), *Income, Poverty, and Health Insurance Coverage in the United States: 2007*. Table C-1.

divorce and the implications of longevity ….to create a strategy that effectively maximizes the lifetime value of Social Security benefits"[10].

Pensions:

As Boomers divorce closer to their retirement years, these will be the years (generally) of highest earning capacity which typically result in larger pensions and annuities. Nearly 41% of Boomers age 65 plus receive some form of pensions and / or annuities[11]. If the employee spouse is in his/her peak earning years, some consideration should be made for the impact of these latter years on future pension payouts to benefit also the long term married spouse.

The more likely scenario is that many pensions are no longer defined benefit plans; hence, individuals are responsible for investing and managing their profit sharing accounts. The responsibility for investment risk is shifted from the employer to the employee and ex-spouse – leaving room for important planning advice on allocation, diversification, risk management and analysis of cash flow. Boomers who have seen recently the values of their homes and assets declined precipitously in 2008 – 2009, are likely to move out of equities approaching retirement.

The planning challenge is to project cash flows: (1) based on investment scenarios to replace earned income, as well as, (2) based on developing solutions for creating cash flow, which may include reverse mortgages, annuitizing assets, decreasing expenses, etc. A divorce financial planner may have to manage the ex-spouse's expectations surrounding receiving support, sustainable living expenses, and longevity of assets during retirement years.

If the ex-spouse has little familiarity with managing their finances for the long term, the divorce financial planner may recognize this fact early on in the process. Lack of experience with managing wealth, emotions surrounding money management and fear of the future, are obvious and frequent impediments to a smooth divorce process.

A divorce financial planner may sort out any unrealistic expectations about what the monies will provide for as well as help educate the party in such a manner that allows for reasonable decision-making, participation in the negotiations, and the final agreement. The value the divorce financial planner brings to the legal process is that the spouse with less money experience has productive assistance to better understand the financial options laid out and to grasp the value of each option to ultimately agree to a settlement.

[10] Frank M. Porcelli, "Income Emerges as a Top Priority", Investment News, July 11, 2010

[11] Jack VanDerhei and Craig Copeland, "The EBRI Retirement Readiness Rating™: Retirement Income Preparation and Future Prospects", July, 2010 Issue Brief; No. 344.

Estate Planning:

The average family lawyer often structures the divorce in a manner that maximizes the income tax savings, while ignoring the gift and estate tax savings. A divorce financial planner recognizes planning opportunities because special tax rules which apply to divorce allow estate tax savings not otherwise obtainable in the non-divorce setting. Boomers tend to participate in the transfer of money, care giving, and other types of assistance to and from, both older and younger generations in their own families. This generation is characterized by their plight as custodial grandparents; "perma"- parenting (boomerang adult children who live home); care giving for elder parents; and blended families with remarriages and cohabiting.

Protecting heirs may be an explicit or implicit goal during divorce and the parties of consideration include: the ex-spouse; one's own children; the new spouse or new partner; and estate taxes. If one wants to disinherit an ex-spouse, protect one's own children, and provide for a new spouse, one needs proper estate planning and it needs to be addressed during the divorce process. Lastly, the use of gift giving and trusts may be a blessing or a curse, depending on intent and timing. If executed to protect assets from dissipation, and ultimately from equitable division of assets during divorce, one must advise clients of the factors by which the court weighs the consequences.

Accidental gift tax consequences of alimony, child support and property settlements have special rules which apply:

- Deemed adequate consideration
- Court decree exemption
- Support rights are adequate consideration
- Release of an immediate right to a spouse's property is adequate consideration
- The educational and medical cost exemption.

To avoid traps, there must be a written agreement and payments are required by the agreement. There must be a designated time period for payments to be made. A final divorce decree is required but the agreement need not be incorporated by the decree. Only payments of specific obligations are covered.

Summary:

A divorce financial planner brings comprehensive expertise about personal finance to the process and analyzes the many dimensions of financial challenges facing Boomers who divorce. With an interdisciplinary knowledge of the legal context of divorce, a divorce financial planner provides Boomers going through divorce with forward looking analysis for not only transition to single life, but transition into older stage of life with different (more finite) opportunities for financial remuneration, savings, and lifestyle. While many Boomers never anticipated becoming divorced in later years, we can ease their anxieties and fears by carefully evaluating options during the divorce process to foster confidence about the future.

We, as divorce financial planners, have the skills to integrate our knowledge of budgeting, investments, taxes, estate tax and gift tax within the divorce process to arrive at sound, practical and enforceable financial decisions. In a power marriage like the Gore's, on the negotiating table are the assets they created together, including Al Gore's vice presidential pension, as well as income Gore will make as a result of his experience – book royalties, speaker fees, serving as a member of Boards of Directors, plus all that lies just ahead for Tipper's memoirs.

Bio:

Ms. Vasileff is the President of the national Association of Divorce Financial Planners. She is a fee-only Certified Financial Planner™ professional and a Certified Divorce Financial Analyst who manages her own private practice serving clients and professionals in CT and NY, with two offices in Greenwich and New Haven, CT. While providing comprehensive personal financial planning services, she specializes in divorce planning and investment advisory services for individuals and couples going through litigated divorces, mediation and collaborative divorce. She is a nationally recognized expert in financial planning for divorce as a practitioner, writer and speaker. Lili has many years of experience and an interdisciplinary knowledge of legal and financial issues. She brings clarity to complicated marital property and complex compensation issues in the divorce process. She is a qualified financial expert in CT, testifying to issues on lifestyle analysis, longevity of assets, and safe withdrawal rates. Her website is www.divorcematters.com.

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