

Creativity in Financial Elements of a Collaborative Divorce

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October 27, 2018

Collaborative Case Study

The Facts

- Husband & wife
- Grown children
- \$30 million marital estate
- Business/illiquid assets: 2 Family LLC/LPs with marketable securities and investments, real estate, ownership interests in 3 hotels
- Traditional collaborative team: 2 attorneys, financial neutral, coach

Initial Identified Items

- Real estate appraisals
- Business valuations
- Husband's brother is the financial advisor for the couple

Additional Items

Unintended Consequences

- Disadvantaged spouse
- Trust owners of LLC/LPs
- Disproportionate dividends/distributions from LLC/LPs



Additional Financial Professionals Consulted

- Trust attorneys
- Tax attorneys
- CPA tax partner
- Aligned financial advisor to wife
- Couple's children as beneficiaries to trust

Challenges/Items Addressed

- Participation/attendance of various members during team meetings
- Re-capitalizing & adjusting ownership of family LLC/LP
- Advising wife on options & education of wife on financial issues
- Specific order of tax liquidation events from trusts

Other Financial Professionals

- Mortgage broker
- Listing agent
- QDRO attorney and use of QDROs
- Child specialist

Financial Planner Advisor for Disadvantaged Spouse

- Address extreme financial knowledge imbalance to avoid impasse
 - Challenges of non-business owner spouse
 - Economic realities of separate living
- Avoid the appearance of partiality of the FN for the disadvantages spouse due to time

Use of Estate Planning Attorney

- Efficiency of jointly hiring one expert as neutral, if necessary
- Clients and team members hear the same information from the same source
- Ability to address taxation issues that could impact property division.
 - Possibility of decanting a trust
 - Possibility of revoking a trust

Real Estate Appraiser

- How is subject property zoned?
- Titling of property



Mortgage Broker and Real Estate Agent

- Allow clients to explore scenarios and expand possibilities for settlement
- “Real world” understanding of requirements of desired scenario(s):
 - Can the client refinance?
 - Financial requirements for refinancing
 - Timeline for refinancing
 - Exploring co-borrower options

QDROs

- Use of QDROs to “cash out”
 - Non-employee spouse can take a cash disbursement without penalty
 - Remember disbursement is still subject to income tax at the non-employee’s bracketed rates
 - Pay-off marital debt
 - Provide lump sum alimony
 - Provide down payment for home purchase
- Provide clear communication to the QDRO attorney as to requirements
 - Consider consulting QDRO attorney in drafting your settlement documents so appropriate language is used to achieve desired effect
 - Timing – does disbursement need to happen in a particular tax year?

Child Specialists

- Ability to consider practical and emotional needs of the children through a neutral lens rather than through the individual (and perhaps conflicting) filters of the parents.
- Can help overcome or avoid impasse.

Business Valuation Expert

- Education
- Balancing the table/playing field
- Use of business valuations even if sale is possible



Identifying the Need for Other Professionals

- During the assessment phase by the attorneys
- During the assessment phase by BOTH neutrals
- During the information gathering by the Financial Neutral
- Sharing of the Financial Neutral's reports with the Team
- As issues are discussed in Team meetings
- As a mechanism to overcome impasse

How to Use Financial Information in Creative/Problem Solving Ways

- Dividing Assets
 - Tax treatment of assets based on anticipated use
 - Will asset be retained, sold, or used by client?
 - Does tax treatment of asset or liability matter or not in 50/50 division of estate?
 - Does a particular tax attribute “go with” that asset?
 - What do the clients need financially to achieve their interests AND is there more than one way to get there?
- Cash flow planning during divorce process
 - How will clients pay for the process?
 - How will clients prioritize spending during the process?

Impact of TCJA 2017

- 529 Plans
 - May use for elementary and secondary school tuition up to \$10,000 annually for a particular beneficiary
 - College use is not capped and can include room and board and other non-tuition direct education expenses
- SUSPENSION of Personal Exemptions
 - Are they really gone?
 - Impact of sunseting
- Filing Status becomes more important to parents
 - Standard deduction and tax brackets
 - Child-related credits

Impact of TCJA 2017

Business Valuation

- Declining C Corporation tax rates and effect on value
- Personal Goodwill/QBI Deduction



How to Present in Collaborative Meeting

- Use of charts/graphs/flip charts/white boards
- Use of technology
- Formatting, highlighting, colors



Cheryl Panther, CPA/PFS, ADFA/CDFA

Cheryl Panther is President of Panther Financial Planning, LLC, a registered investment adviser (Tennessee). She began the firm in 2008 to address the need for creativity, practicality, and unparalleled client service in equal measure for financial planning clients. After working with a number of clients following their divorce who had encountered unexpected and unpleasant financial consequences for which they were not prepared, Cheryl wanted to find ways to help clients and their attorneys understand tax and financial considerations before committing to a divorce settlement. Thus, the practice area of services for divorcing clients was born. Cheryl provides creative, outside-the-box analytical skills to the often complex and confusing financial and taxation issues in divorce cases and settlements, providing a variety of specialized divorce financial services to clients and their attorneys.

Cheryl has been a CPA for more than 25 years and earned the prestigious Personal Financial Specialist designation from the American Institute of CPAs. She graduated from The University of Tennessee – Knoxville and received an Executive Certificate in Financial Planning from Belmont University. Cheryl often teaches and presents to other professionals on the tax and financial aspects of divorce. She also teaches alternative dispute resolution processes locally and nationally to other professionals through the Institute for Family Conflict Resolution. She has been on the board of directors for the Middle Tennessee Collaborative Alliance since 2014 and is committed to continue her board involvement through 2021.

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Scott A. Womack, ASA, MAFF

Scott A. Womack, Senior Vice President, concentrates his practice in family law litigation (traditional litigated divorce and collaborative divorce) and valuation matters involving a variety of industries. He assists estate planning attorneys in federal and state valuation matters, family law attorneys in divorce matters (including business valuation, forensic accounting, division of marital estate, etc.), and small business owners involving the potential sale of their businesses. Scott has testified in several jurisdictions involving family law matters. In addition, he has testified in tax court.

Specific valuation concentration includes:

- Gift, estate, and income tax planning and reporting (valuation of businesses and business interests)
- Financial Reporting under FASB ASC 350 (goodwill impairment testing- formerly FAS 142), FASB 718 (valuation of stock-based compensation including stock options, restricted stock, stock appreciation rights, etc.- formerly FAS 123R) » Holding company valuations (real estate/marketable securities) and fractional interests in real estate
- Automobile dealership valuations
- Scott is also a presenter of various valuation and family law topics to attorneys, accountants, and business professionals for the purpose of educating the public.

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Questions?

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