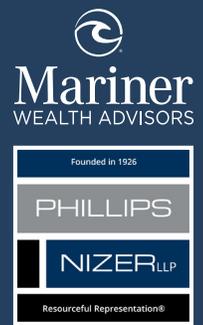




# NAVIGATING DIVORCE IN NEW JERSEY DURING A PANDEMIC:

Insights From Wealth Advisors and Family Law Attorneys

By: Megan Brozowski, Jan L. Bernstein, Esq. and Lindsey de Stefan, Esq.



With the COVID-19 pandemic impacting families and relationships across the country, now more than ever, working through the realities of divorce can be incredibly challenging. In addition to the multitude of difficult decisions to be made, families are forced to determine how best to proceed when economic and social norms have been turned upside down.

Due to the challenges facing us in these unprecedented times, individuals considering or going through a divorce should keep in mind several factors. In this article, various topics related to the COVID-19 pandemic will be explored from the different perspectives of New Jersey family law attorneys from Phillips Nizer and wealth advisors from Mariner Wealth Advisors.

## What should I do if I experience a reduction in compensation or furlough?

The April jobs report revealed a staggering US unemployment rate of 14.7%<sup>1</sup>: the worst since the Great Depression. For those fortunate enough to maintain their employment, reductions in compensation have become the norm. We weigh in on what to do if you or your former/soon-to-be former spouse experience a decrease in compensation.

### From the legal perspective:

In this time of serious economic downturn, you may be experiencing a heightened sense of financial uncertainty concerning your family finances. These circumstances are extremely stressful in the best of times and are even more unnerving if you are going through a divorce or separation. You or your spouse may suffer a decrease in compensation, a furlough from employment or may be laid off from your job. These changes in circumstances may directly affect any temporary or permanent alimony and/or child support agreements or orders under which you and your spouse are operating.



So, it is especially important to work as a team with your attorney and wealth advisor to craft a smart and creative way to address both short-term and possibly longer-term financial changes in circumstances.

If your change in circumstance might be more of a short-term issue, your lawyer and wealth advisor can provide various modified support scenarios, which could provide a basis for negotiation of a temporary change in alimony and/or child support. The attorneys for you and your spouse may be able to negotiate a consensual, short-term modification by way of a consent order. A consent order is an order that both parties sign and agree to and is then signed by the court and thereby given the full weight of an order of the court. However, no court appearance or court application is required.

A consent order can have a built-in review at a certain date (e.g., if a furlough terminates and you/your spouse is back to work); a built-in expiration period (no matter whether you or your spouse has returned to work or if your compensation has returned to its full amount); or the consent order can simply endure until there is a further written agreement or order of the court. A consent order also can address a longer-term modification, for example if you/your spouse lose your job. That consent order would require some good prior homework to be done for you by your wealth advisor to arrive at modified budgets after considering both the reduced ability to pay support and the ongoing financial need of the spouse receiving support. Your lawyer will want to include a variety of conditions in this longer-term consent order to help ensure that the unemployed spouse is diligently seeking new comparable employment, such as a requirement that there be a periodic production of documents reflecting the employment search. New Jersey law requires the unemployed spouse to make good-faith efforts to find comparable employment. The documents your attorney will request should reflect that good faith effort and any severance or temporary compensation the spouse is receiving. Modifications that require court applications can be expensive, so having a good strategy, with alternate proposals worked out by your attorney and your wealth advisor, might save thousands of dollars.

If you and your spouse/former spouse cannot agree on a short-term or longer-term modification, you can seek that modification from the court. If you are seeking a modification prior to the entry of your judgment of divorce (i.e., while you are still going through a divorce) the court has the power to grant a temporary reduction or, even in extreme circumstances, a suspension of support. This is because New Jersey family courts have broad equitable powers to change temporary support during the pendency of a divorce proceeding, and can do so retroactively.

#### **From the wealth management perspective:**

With pay decreases, furloughs and layoffs happening across the country, consider factoring in how a decrease in pay to one individual may impact alimony or child support paid to the other. These decreased payments may warrant adjusting your budget or better determining how aware you are of covering major expenses in the future. Additionally, if one individual is laid off, that may require higher payments to be made by the other party.

Mortgage and rental payments, in addition to home maintenance expenses, should be weighed heavily within the scope of what an individual can afford prior to or following a divorce. Contingent on whether or not those payments fit within a revised budget, it may make sense to downsize your living arrangement.

#### **How can I supplement my cash flow to get through the pandemic?**

During this particularly harsh crisis, there may be legislative and tax benefits that could be available to help you and your family bridge a short-term economic downturn. We explore cash flow considerations below.

#### **From the legal perspective:**

Especially at this time, you will want to work with your wealth advisor, who can provide information to you in regard to financial relief opportunities for you as an individual, family or business owner. In addition, your team could help you analyze your assets to discuss whether a change in your asset holdings can increase income to you and your family. Unearned income, such as interest and dividends, and noncash compensation, such as restricted stock or stock options, can be considered by a court in assessing the need for modification.

There are many aspects of cash flow to consider, especially during a time of economic downturn. Your wealth advisor and attorney can work together on these financial and tax issues to advise you as to whether a modification of alimony or child support is required, or whether a different financial bridge can be created for the time being.

### **From the wealth management perspective:**

With the passage of the CARES Act, the tax filing deadline for your 2019 return has been extended to July 15, 2020. While it may be tempting to put off filing, consider doing it as soon as possible. Roughly 73% of filers receive some amount of tax refund, which could be put to use covering short-term cash flow needs.<sup>2</sup> If you have excess cash, you can still make contributions to IRAs, HSAs and other tax advantaged accounts until that same July 15 deadline, so consider taking advantage of the extended deadline to help bolster your retirement savings as well.

Conversely, if you or your family has been affected by the COVID-19 crisis through a personal diagnosis, caring for a family member who has been diagnosed, or losing your job or being furloughed due to crisis, you may have some options if immediate cash flow is a concern. The CARES Act also authorized those affected to withdraw up to \$100,000 from their IRA or 401(k) penalty free regardless of their age.<sup>3</sup> While you will have to pay taxes on that withdrawal, you can space the tax payments out over three years and even pay back to your retirement accounts the amount withdrawn. If you're currently going through a divorce, cash flow problems can quickly be compounded, so this may serve as a viable option for those needing assistance in the short-term. While an IRA may seem like an attractive option, there may be more tax efficient ways to meet your short-term cash flow needs.

### **How should I divide my assets during this economic downturn?**

In times of severe economic downturn, moving forward with a divorce or separation seems ill-timed at best. However, if you receive legal and financial advice, you should not hesitate to move forward with your life. Your attorney and wealth advisor can help ensure that you are protected when dividing assets as a result of a divorce or separation.

### **From the legal perspective:**

Different types of assets are typically divided and separated during a divorce, including real property, securities, tax deferred/retirement accounts, deferred compensation and restricted stock, as well as professional practices and businesses, the value of which are divided. Different legal mechanisms can be used to divide various assets. The issues surrounding the division of complex assets is where law and the financial industry intersect. Thus, your attorney will want to work with a wealth advisor who has tax expertise to help ensure that the value you think you are getting is actually the value you are getting; and that what may be a seriously depreciated asset because of a crisis like COVID-19 is not overlooked, since its value may significantly rebound in the future.

From a legal perspective, you and your spouse do not have to sell and/or divide assets immediately upon divorce. You may decide to continue to hold certain assets together until the economic downturn subsides. For example, you and your spouse could continue to jointly own a primary and/or secondary home pending a rebound in the real estate market.

When to value an asset is important. Valuing a home, business or securities in a significantly depressed economy for division or buy-out in a divorce could result in significant prejudice to one spouse. However, each person has his/her own priorities that might creatively work well in this situation.

How to divide an asset is also important. For example, rather than dividing the value of a brokerage/securities account, the assets can be divided in-kind. In other words, each security held in the brokerage account can be divided equally, with an equal tax basis. For example, if the security at the time of division is depreciated due to the COVID-19 crisis, you each will have the same asset either to sell or hold as you deem fit.

Retirement assets can be divided as a result of a divorce without any tax consequences by using a special order, known as a Qualified Domestic Relations Order (“QDRO”). In addition, IRAs can be divided and rolled over into another tax-deferred account without any tax consequence.

Dividing assets in a divorce or separation is always a critical element in determining your future financial well-being. Your attorney should discuss with you the appropriate strategy to divide your assets. Your financial advisor is a critical player on this team. He or she will look at your assets individually and as part of your total financial picture. Weaving together the appropriate financial and legal advice might produce a positive result for you in your divorce or separation, even in these most difficult of economic times.

**From the wealth management perspective:**

Dividing assets between former spouses is one of the most emotionally fraught aspects of divorce. What many fail to take into account though, is that while certain material objects may have sentimental value and lead to disagreements, it’s ultimately critical to focus on appreciable assets like retirement funds, homes and other investments to help ensure you’re covered for the long term.

If a Qualified Domestic Relations Order (QDRO) is part of your divorce settlement, it’s important to consider how the terms of that order may need to be addressed in the event that one party is no longer able to perform due to a change in employment, assets or other circumstances.

In dividing investments between spouses, it’s important to distinguish between dividing as a percentage of total assets versus a fixed dollar amount. By dividing assets by a percentage (typically 50%), each spouse walks away with an equal amount of each asset.

Contrast that with dividing assets based on a fixed dollar amount, such as exchanging \$200,000 worth of stock for \$200,000 of home equity. With markets rapidly fluctuating, those two assets might end up with vastly different values a year from now. For that reason, it is important to keep in mind the risk and projected returns of all assets being divided to help ensure that an equitable split is made for both parties.

It is important to establish a legal and wealth management team to assist you with a divorce or separation even in the best of times. However, in the current circumstances, strategic partners may help guide you through the legal, economic and tax consequences of your divorce decision-making. For further information on wealth management planning during a divorce, contact your wealth advisor.

<sup>1</sup> “[The Employment Situation-April 2020](#)”

<sup>2</sup> “[The Data is in: More Americans Received Tax Refunds in 2019, but Checks Were Leaner.](#)”

<sup>3</sup> “[The CARES Act Will Allow People to Use Their 401\(k\) Savings Penalty-Free.](#)”

Megan Brozowski is a senior wealth advisor at Mariner Wealth Advisors in Madison and Chatham, New Jersey; Jan L. Bernstein chairs the NJ Family Law Practice at Phillips Nizer LLP, and Lindsey de Stefan is an associate in the NJ Family Law Practice at Phillips Nizer LLP in Hackensack, NJ.

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