Reprinted from The Messenger, February 2013

Divorce basics for older couples

By Terry Lee, attorney at law

Editor's note: The purpose of this article is to discuss the principles of law that generally apply in Washington and to inform the reader as to the usual outcomes. This is general information and readers should consult an attorney for advice that relates to their unique needs.

The divorce rate among people 50 and older has doubled in the past 20 years, according to research conducted by Bowling Green State University sociologists in 2012.

At our law firm in Vancouver, we have witnessed this trend and have worked with numerous, long-married couples seeking divorce. We have found that it is important for these individuals, considering or in the process of divorce, to understand how the general principles and application of Washington divorce laws relate to older couples.

Before we take a look at some overarching considerations, we recommend that people in this situation seek legal counsel from an attorney. We want to underscore the wisdom of obtaining proper legal counsel because divorce for many is the greatest economic event in their lives.

By way of introduction to divorce in our state, most people are aware that in Washington we have community property laws. However, one of the great myths we often encounter is the notion that community property law means in a divorce that there is a 50/50 division of assets and debts. For a number of reasons, this simply is not always the case.

Because older individuals tend to have a number of assets, divorce proceedings often spend a great deal of effort realizing a fair division. Pensions, Social Security and other retirement benefits are considered assets and provide most people with their long term financial cash flow. They may also own other valuable assets such as automobiles, boats and 401k accounts. Other items we consider assets include business ownerships, pension benefits, airline mileage and real estate.

For purposes of the law, assets and liabilities are also broadly defined. Liabilities include but are not limited to home mortgage debt, business debts, tax liabilities, credit card debt and other debts owed by one or both spouses.

When talking about dividing the assets it is also important to understand the concept of separate property. It can be simply defined as property owned prior to marriage by a spouse, property acquired during the marriage by gift or inheritance to a spouse and which can be shown to have retained its separate nature.

An easy example of separate property is a pension value acquired before a marriage. It is the separate property of the person earning the pension. Pension value earned between the date of marriage and date of separation is community property.

Armed with these definitions, let us look at the often complex issues of property and debt characterization. One general principle is that all property and debt comes before the court and needs to be divided. Each party usually gets their separate property and debt. Any and all property and debt is divided fairly and equitably.

The marital share of a pension, IRA's, 401k's and other retirement benefits is defined as that amount earned or acquired between date of marriage and date of separation. It also includes any increase or decrease in the value of the asset due to market conditions.

It is usual for the marital share of pensions to get divided 50/50. The rest of the assets and debts are then divided to achieve an overall fair and equitable result.

Court-ordered maintenance is often a factor in longer marriages. In general, maintenance is a financial payment from one spouse to another so the lesser earning spouse can acquire training, education or experience to enhance their earnings. Court ordered maintenance payments are taxable income to the spouse receiving the maintenance while it is a deduction to the spouse paying the maintenance. Usually maintenance is paid monthly in an amount and for a duration that seems appropriate based upon a review of all factors.

When devising the financial result of a divorce, the court also considers each individual's future. This is especially true in long term marriages. It is likely the court will strive to achieve a result that has the parties "equal" financially after five years. This often means that one party will receive more than 50 percent of the assets at the time the marriage is dissolved.

Insurance costs that will be paid past divorce are one of the many factors considered when dividing assets and debts fairly and equitably and when determining maintenance. Health insurance issues are usually resolved by continuation of coverage the parties had during their marriage. There are federal laws that address this concern, however, as long as the party can pay their insurance premium, coverage will continue. Insurance providers can tell an individual what their premium would be if they divorced their insured spouse.

Terry Lee is a Vancouver attorney with more than 25 years experience in family law and estate planning. For information, call 360-891-1100.