



# Shades of gray

Couples over the age of 50 getting divorced present challenges for their lawyers.

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Jeffrey N. Greenblatt of Joseph, Greenwald & Laake P.A.

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More Americans older than 50 are getting divorced, presenting unique challenges for their lawyers



MAXIMILIAN FRANZ

'The baby boomers are sort of looking around, now that the kids have moved out, they're looking across the dining room table and saying, "Do I really want to spend the next 30 or so years with this person?"' says Jeffrey N. Greenblatt of Joseph, Greenwald & Laake P.A. in Greenbelt, who is handling more so-called "gray divorce" cases involving couples age 50 or older.

BY LAUREN KIRKWOOD  
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Between 1990 and 2010, the divorce rate for Americans age 50 and older doubled, according to a 2013 report by Bowling Green State University. A number of factors, including longer life expectancies, the reduced stigma attached to ending a marriage and women's greater participation in the workforce, have likely

contributed to the rapid increase in so-called "gray divorces," said Jeffrey N. Greenblatt, a family law attorney with Greenbelt-based Joseph, Greenwald & Laake P.A.

"The baby boomers are sort of looking around, now that the kids have moved out, they're looking across the dining room table and saying, 'Do I really want to spend the next 30 or so years with this person?'" Greenblatt said.

In these cases, where the parties' major

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concerns are more likely to involve division of retirement funds than child custody agreements, the practical consequences of divorce often differ significantly compared younger couples', attorneys said.

### Planning for retirement

Maryland's "equitable distribution" policy means that divorcing spouses must each receive a "fair" portion of the marital property, Greenblatt said, often resulting in each spouse being awarded half the marital assets — including the couple's nest egg for retirement.

"For some people who have planned their life around the ability to use the entire nest ... they're sort of in for a hiccup there, because now they're going to have to share it," Greenblatt said. "That can throw years and years of planning into the trash chute."

Some couples who've planned well for retirement may not encounter too many difficulties, while others who still have years to go before they reach retirement age could encounter some tension, said Kristine Howanski, a Towson family law attorney who said she has also seen a recent increase in gray divorces.

"The hard part is when you have a situation in which they want to be able to retire, and one side makes a lot of money while the other side does not and has not," said Howanski, of Howanski, Meadows & Erdman LLC.

The phenomenon of increased divorce rates among older generations has had a disproportionate economic impact on older women, Greenblatt said. According to another Bowling Green State University study,



FILE PHOTO

In 'gray divorce' cases, adult children sometimes make the process easier but can still voice their opinion, says Kristine Howanski, of Howanski, Meadows & Erdman LLC in Towson. 'A lot of them think it invalidates their childhood or youth, and they sometimes put their two cents in, often without really knowing all the facts, which is very tough,' she says.

Sometimes they're really struggling with losing their footing — you can imagine after a 30- or 40-year marriage, that may be worse in terms of getting their proverbial groove back.

KRISTINE HOWANSKI  
 TOWSON FAMILY LAW ATTORNEY

27 percent of "gray divorce" women live below the poverty level, compared with just 11 percent of men.

One way clients can protect themselves financially is to ensure the spouse with a pension has elected survivor's benefits that will extend to their former partner.

"[That election] has to be made at the time of retirement," Greenblatt said. "If it's not made at that time, that creates a huge problem, because when that spouse passes away, the retirement benefits also pass away."

Although many "gray divorce" couples don't have to worry about negotiating child support and custody, adult children often introduce new topics of contention into the divorce process, attorneys said.

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JEFFREY N. GREENBLATT, FAMILY LAW ATTORNEY WITH GREENBELT-BASED JOSEPH, GREENWALD & LAAKE P.A.

makes it easier," Howanski said. "But even though they're grown, it doesn't mean they don't have opinions. A lot of them think it invalidates their childhood or youth, and they sometimes put their two cents in, often without really knowing all the facts, which is very tough."

### Alimony considerations

While rehabilitative alimony — in which the former dominant spouse pays for her or her ex a certain amount of support for a set period of time, giving the spouse time get back on his or her feet and into the job market — is the norm in Maryland divorce cases, the practice isn't necessarily logical in cases involving older couples, Greenblatt said.

"When you have a 'traditional marriage' where the man has worked and the woman has been at home raising kids," he said, "and then all of a sudden at age 60, he decides, 'I'd rather be with my secretary,' the wife who has had no career other than at home for the last 30-odd years, that woman is going to be entitled to an award of indefinite alimony."

A number of factors influence the exact alimony award, including the length of the marriage, the health of both parties and which party contributed most to the accumulation of marital assets, he said. The final consideration not only includes financial contributions — the noneconomic contributions of a spouse who has spent decades as a homemaker are also taken into consideration.

For many older couples, one of the largest components of marital assets is their paid-off home, Howanski said. That can be a huge benefit to the spouse who would normally be liable for alimony but who is willing to move out of the home instead.

"If you can provide somebody with a mortgage-free residence, you've done a lot to get rid of alimony issues, or at least reduce them," Howanski said.

For the non-economically dominant spouse, it's important to carefully outline financial expenses during the divorce process, Greenblatt and Howanski said.

"I often will get my economically dependent spouse to go meet with a financial planner or someone like that to figure out the most cost effective way to work on beefing

up their savings and so forth," Howanski said. If you don't know what you spend, Greenblatt said, you also don't know how much alimony or support to request.

"We sit down and very carefully do a financial statement, going through canceled checks, credit card statements, receipts if they keep them," he said. "Most people have only a vague sense of what they spend, but going into a divorce you really want to know over the last couple of years, assuming those are typical years, what your expenses are, because that is the basis for the award of alimony."

### Mediating a split

While alternative forms of dispute resolution are often promoted by family law attorneys as effective alternatives to contentious litigation, it can be particularly difficult to come to an amicable agreement after decades of married life.

"People, when they're angry, are less likely to think with their heads, so they want to get even," Greenblatt said.

Even so, he said, mediation may not be the best solution if it means the parties will forego lawyers who will advocate for their interests.

"The mediator's goal is to settle the case," Greenblatt said. "The party who is not as knowledgeable about business, who's not as good a negotiator, may wind up with a settlement not nearly as good as the settlement that could have been negotiated by the attorney on behalf of that party."

Ultimately, Howanski said, her objective in handling divorce cases of older clients is the same as that in which the parties are younger — to help the client successfully move forward.

"Sometimes they're really struggling with losing their footing — you can imagine after a 30- or 40-year marriage, that may be worse in terms of getting their proverbial groove back," she said. "That's the biggest thing, to help them visualize a new future, so that after you've been working with them for six months to a year, they look back and realize they are a more capable person than they were at that time."

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