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Protecting Seniors from Identity Theft and Scams

Steve Weisman, JD, Professor, Bentley University, Editor, scamicide.com

Editor's note: This article is an adaptation of the live webinar delivered by Steve Weisman, in 2022. His comments have been edited for clarity and length.

You can read the summary article here as part of the October 2022 Retirement InSight and Trends Newsletter, worth 1.0 CE when read in its entirety (after passing the online quiz.)

You may also choose to take the full length course Protecting Seniors from Identity Theft and Scams for 1.0 hour continuing education (CE) credit.

By Steve Weisman, JD, Professor, Bentley University, Editor, scamicide.com

Things are not as bad as you think. They are worse.

A congressional study showed that seniors are 12 percent of the population but 30 percent of the scam victims. A MetLife Mature Market Institute study showed that the cost is about $3 billion annually.

The Senate Special Committee on Aging also indicated that it is up to about $3 billion, and the figure is probably low because the federal government reports $40 billion in phone scams. Elderly people constitute the vast majority of those phone fraud victims. The Department of Justice estimated that one in 10 older adults is a victim of such financial abuse, and things are getting worse. The Consumer Sentinel Network Data Book, which the FTC publishes, shows a 47 percent increase in fraud and identity theft in the last two years.

Unfortunately, seniors are also less likely to report losing money to fraud, and to some extent, it may be that perhaps they are not familiar with the process for reporting. It is embarrassment out of maybe losing a little bit off the fastball. Any of us can be scammed, and it is not anything of which to be ashamed.

What are Today's Most Common Elder Fraud, Identity Theft, and Scams?

In 2018, the Justice Department did an extensive, coordinated sweep of elder fraud cases in history involving more than 250 defendants around the globe that victimized more than a million Americans, most of whom were elderly. The total amount of fraud was more than half $1 billion, and there were a variety of schemes that we were able to look see. We saw telemarketing, investment, and identity theft. Many of these involved transnational criminal organizations that defrauded hundreds of thousands of elderly victims.

One of the biggest for seniors is **lottery scams**. In particular, you hear about the Jamaican Lottery Scam. It is difficult to win a lottery and almost impossible to win one you have not even entered. Seniors would get a phone call, particularly from the Jamaican Lottery. Jamaican gangs purchase phone lists of American and Canadian seniors, call them up and tell them that they have won the lottery and need money for processing fees. Or maybe it is for income tax.

No legitimate lottery collects taxes for the IRS. They either will deduct the taxes from what they give you, or they give you the money, and you pay the taxes. The scammers tell a senior they

need to pay the lottery winning's taxes, and then they keep telling them until they do what they want. Seniors keep falling for this.

The Grandparent Scam. Seniors are called late at night and are told there is a problem with their grandchild. They have been arrested; there is a medical problem; they are out of the country and need money wired; they need a gift card to fix the problem. Gift cards are a big thing for scammers. They love to get paid in gift cards because they are quick, easy money, money they can launder, and impossible to trace.

Seniors get convinced that this is their grandchild, and boom, they act in the emergency and wire the money. The Grandparent Scam often is triggered by all of us putting too much information on social media. At some point, they mention what they call their grandparent on social media, such as "Here is a picture of Meemaw and me." Suddenly, that grandparent gets a call in the middle of the night. "Meemaw, it is me, Sheldon, and I am in trouble. I need some money." There is something called "deepfake technology." Through voice cloning technology, scammers can make videos or phone calls that sound the same as the grandchild. One way to protect themselves is to have a keyword. Unless this keyword is answered, you know it is not a grandchild.

Scammers often look at obituaries and get the names of grandchildren there. They also focus on a widow or widower who is particularly vulnerable.

Romance scams often prey on older women. They are primary victims and are lulled into believing their online paramour needs funds for various purposes. You might see the initial contact on a legitimate dating site because no matter how much these sites try to police, they cannot prevent it a hundred percent.

These scammers have knowledge of psychology that Freud would have envied. What happens is they will lure their victims into believing that someone is in love with them, but then, there is an emergency where they need money. They use online profiles and photos from other websites. One way you can often find out if someone is a scammer is by going into one of the online services, whereby you can see if a picture turns up someplace else.

Romance scammers often use military and fake military names or real military people. Romance scams have quadrupled in just the last few years, and the thing is, again, the victims, elderly people, particularly those over 70, lose the most money. Now, there is even a new development in this. Instead of asking for money, they will tell the victim, "I am going to wire you some money, and I need you to wire it somewhere else." What are they doing? They are turning their romance scam victim into a money mule.

Imposter scams are huge. Huge. They will call, email, or text message posing as the IRS or some other federal agency, Social Security, your bank, or the police. How do you know when you get a call that it is from the IRS? Let us look at your phone. Your caller ID may say "IRS." However, here is a very easy-to-use technique called spoofing whereby a scammer can make that phone call look like it comes from the IRS. So, how can you tell if it is really the IRS calling you, texting, or emailing you? The IRS does not initiate contact by phone, text, or email.

There are also **guardianship scams** where people act as guardians, but they then loot the senior's assets.

Social Security is a big part of seniors' income and assets, so they also are a big target of scammers. Contact the Social Security Administration directly if you think something could be legitimate. Sometimes scams will look good.

Another thing with Social Security is there is a great tool called My Social Security account online. I urge everyone to set this up. You can view your earnings history, estimates and benefits, and manage your benefits online, including changing your address and starting or changing direct electronic deposits of your checks into your bank account. Great service. Once it is set up, it will prevent a scammer from being able to set one up using your information.

Your password will be compromised, not may be compromised. It will be compromised in many ways. You must protect yourself whenever possible with dual-factor authentication, particularly with a sensitive account like Social Security or your bank account. You always want to have dual-factor authentication.

SIM swapping. SIM is the Subscriber Identity Module, your SIM card. It is the integrated circuit in your phone and the guts of your phone, and it has your number and is used to authenticate subscribers on multiple devices. When you get a new phone, your mobile service will switch the SIM card to your new phone.

Scammers have been calling mobile service providers. They pose as you, answer a security question where they generally get the information off the internet, and switch your SIM card to theirs so that that dual-factor authentication number comes to them. Whoa! So, how do you protect yourself? There are easy ways to do so, such as setting up a PIN or a unique password for your mobile service provider. That way, no one can swap your SIM card without providing that.

Even paranoids have enemies, and I am particularly paranoid. It comes from working in this for 10 to 15 years. I have an arrangement with my mobile service carrier may not switch my SIM card unless I do it in person.

Medicare scams used to be even worse back when your Social Security number was your Medicare number, but between 2018 and 2020, finally, Medicare phased that out. So, all cards have now changed. What you do find is that scammers will try and get the Medicare number, lure people into providing it, and they will be able to use that for medical identity theft, which can even be deadly. This form of identity theft can threaten your life because the scammers will sell your Medicare coverage to someone else, and their medical records will get mixed in with your medical records.

In a weird provision of the HIPAA privacy laws, you cannot have that information of the identity thief taken out of your folder that is corrupting medical records because it is considered a violation of the identity thief's privacy rights. You can indicate in your records that there is disputed information, but frankly, there can be instances where someone glances at the information and gives you the wrong blood type.

Charity scams. We have seen many charity scams since the Ukraine invasion, in particular. Many people wanted to donate to Ukraine, and scammers are everywhere. They always take advantage of what is in the public's interest and minds. Go to a terrific site called https://www.charitynavigator.org/. Sometimes there will be charities with names that are suspiciously close to that of a legitimate charity. Instead of the American Cancer Society, it is the National Cancer Society, which is a scam, and people may not recognize that right off.

Investment scams. Ponzi scams, popularized by Charles Ponzi and which Bernie Madoff turned into an art, should not be called "Ponzi scams." They should be called a "Howe" because, in blatant sexism, the first Ponzi scam can be traced back to 1879 in Boston, where a woman named Sarah Howe started the Ladies' Deposit Company. She said, "A woman needs to take care of the financial needs of other women." She promised, and this is 1879, 8 percent per month. What she, of course, was doing was taking in money from women who trusted her. Trust me, you cannot trust anybody. Then, when she made a payment, she would use the money from newer investors' depositors.

Eventually, like most Ponzi schemes, she was caught, went to jail, came out, and did the whole thing over again. She is also a good example, and Bernie Madoff is a good example of affinity fraud. We tend to trust people who are like us. Well, who is "like us?" It can be anyone with whom you identify. People trust other veterans and people from the same religion; they trust people from military backgrounds. It's called affinity fraud. You cannot trust anyone just because they are "like you."

Computer scams and robocalls. Robocalls are automated calls placed through computers, and they lure people into buying things and providing personal information. There are two good ways of preventing that. First, do not pick up the call unless you recognize the number. If it is legitimate, they will leave a message. Another is a service called Nomorobo. It is free, and it will block many robocalls.

Be sure you have good security software and keep it up to date. When Equifax had that major security breach and data breach, the criminals took advantage of a software vulnerability in a type of software called Apache. They used that vulnerability to get at the records of hundreds of millions of people in the Equifax files. The thing is, Apache had put out a patch months before that would have prevented this attack, but Equifax did not get around to downloading it in a timely fashion. No matter how good your security software is, it will always be about a month behind for the latest zero-day defects or vulnerabilities that have not yet been discovered. You always want to download updates as soon as possible, but recognize that they will never be perfect.

Another thing with your computer is your security question. What happens if you cannot remember your password? Well, you answer a simple security question. Security questions that you may have are things that people can find. Often, one is, "What is my mother's maiden name?" Scammers can quickly obtain this information. However, you do not have to use a valid answer. So, "What is your mother's maiden name?" Answer "fire truck" or "grapefruit." It is so ridiculous to pick something like that, you will remember, and yet, this security question is one that no hacker will ever be able to find online.

There are **tech-support scams**, and these are a huge problem. Many seniors fall for these. Suddenly, a pop-up on your screen says there is a problem with your computer, and it provides you with a phone number to call to get to Apple or Microsoft. They may want two things. One, they are going to scan, and they want you to give them remote access, and then, of course, you will have to pay for it. Never give anyone remote access to your computer. They are going to be able to take over your computer. As far as tech support goes, Apple and Microsoft will not give you a phone number and notify you if there is a tech problem.

The **Internet of Things**. This is a popular name for the technology of devices connected and controlled over the internet. There are about 10 billion devices connected to the internet of things: your cars, refrigerators, coffee makers, televisions, microwave ovens, thermostats, smartwatches, webcams, copy machines, medical devices, and your good friend Alexa. So, how do you protect yourself? First of all, the bad guys will hack through your internet of things device, get to your phone and computer, and get information that will make you a victim of identity theft. So, you do not want to store personally identifying information on your internet of things device, and you want to use a unique and complex password for each of your devices.

Read the fine print. Find out what information is gathered and stored by the device. Your cell phone is the entranceway to your car's connectivity. Make sure you have a strong password and antivirus and anti-malware security device. Change the default username and password on all of your home network devices, which is something that not enough people do. According to the FBI, the most significant vulnerability is the little thought we give our routers. The router is a networking device that transfers data between your computer, your internet of things devices, and the internet.

Unfortunately, many people do not change the default password so bad guys can hack into your router and computers. Several types of routers will automatically do security updates (this is really something you should set up), but others do not, and you have to do this on your own. So, you want to setup up a unique password for your router and keep the software updated.

Alexa. Siri. Google Home. These things will do all kinds of goodies for you, including, "Alexa, get me the tech support for so-and-so. Get me the customer service for so-and-so." Many companies do not have tech-support phone numbers, and they do not have customer service numbers. The bad guys will get websites that will be high in the search engines, either by buying their way through advertising or by being smart enough to manipulate the algorithms used together with high search. So when you ask Alexa or Siri, she will give you the scammer's number. You really must be careful.

Phishing, spear phishing, vishing, and smishing. The biggest security problem for individuals and companies are phishing and spear phishing. These are emails with phishing and spear phishing when they are specifically tailored to you with the information they have gathered, sometimes from too much that we put on social media, luring you into clicking on links and downloading malware or providing personal information. Please do not click on any links unless you have confirmed them and you do not provide personal information.

Social media. Seniors put too much information out there. One of the things you have probably seen is online quizzes. "What is your pet's name?" or "The first concert that you attended?" This is information scammers gather as part of their social engineering; they gather information to make you a victim.

Identity Theft is By Far the Number One Consumer Fraud

Identity theft costs $10 billion more than all other property crimes combined. Identity theft can result in you being hunted by debt collectors for debts you did not incur. It can make you unable to access your credit cards, bank accounts, or brokerage accounts. It can result in having your assets stolen, being arrested for crimes committed by people who have stolen your identity, or, as we talked about, medical identity theft, where you get improper medical care. It can ruin your credit rating, affecting your chances of getting a loan, a job, insurance, or renting a home.

So, **income tax identity theft** is a $6 billion-a-year problem. Bad guys can file a tax return using your Social Security number before you do, they create a dummied-up or counterfeit W-2, and they get a refund. Because of this, the IRS now allows anyone to obtain a PIN to file with their income tax return. If a scammer manages to get your Social Security number from the wide variety of data breaches, they will not be able to submit an income tax return in your name.

With **criminal identity theft**, people will commit a crime, use your name and identity, and jump bail. Eventually, you get stopped for a minor traffic infraction, and suddenly, you have difficulty trying to prove that it is really you.

Identity theft after death is when identity thieves will steal the identities of those who have died because family members are not monitoring it. One of the things that we want to do when a client dies is to notify the credit reporting agencies immediately.

What are the Dangers of Data Breaches?

We recently had a data breach with a company called Professional Finance Company, a collection and billing company for thousands of healthcare companies, hacked. Two million people were affected through their Social Security numbers and other important information.

There is a great website called https://haveibeenpwned.com/. Just enter your email address (it will scare the heck out of you), and it will show which breaches included leaking your information.

The best thing that you can do to protect yourself from data breaches is to have unique passwords for all of your accounts. You can use a password manager or, if you want to do it yourself, find a base password like "Idon'tlikepasswords." Capital letters, small letters, and apostrophes. Add three exclamation points after it, and then you have a good base password. Then, you can adapt that to individual accounts. For example, your Amazon password can be "idon'tlikepasswords!!!ama." This way, you can have a unique password for everything that you are going to recommend.

Freeze your credit and freeze your kids' credit because minor children are significant targets of identity theft. They often do not learn about it until they apply for a college or car loan after they are 18. It is the best thing you can do.

New Laws and Regulations to Protect Against Elder Fraud, Identity Theft, and Scams

A recent law is the Senior Safe Act, which allows a financial institution to report when they think there is financial abuse going on without the risk of being sued.

The Financial Industry Regulatory Authority (FINRA) is a regulator of securities firms. They allow brokers to place a hold on withdrawals from the client's account when they believe there is financial exploitation, and the hold can last up to 15 days. Another recent FINRA rule allows a trusted contact, such as a family member or friend, to whom the broker advisor can reach out if they think there is a problem. This past March, the federal government passed the Fraud and Scam Reduction Act, which will primarily gather information to create educational programs.

Steps to Take to Protect Against Elder Financial Abuse

What should you do if you have an elderly family member or client you want to monitor? It is essential to recognize that family members or caregivers do much financial exploitation.

You want to keep personal financial information and account information safe and secure. Monitor the accounts. You may want to place limits on access to funds, such as through a particular credit card. Some of the things you look for are unusual bank activity, large or frequent unexplained withdrawals, sudden insufficient funds in accounts, checks written as loans or gifts, changing the address of bank statements, and sudden changes in estate planning.

One of the things you can do is limit access to funds. You can set spending limits. You can get things like the True Link debit card. It is a prepaid Visa card that you register in the older adult's name and have it customized to allow certain kinds of payments and block others. For example, you can block the Home Shopping Channel. You can pick out limits on ATM cash withdrawals or even prevent ATM cash withdrawals.

EverSafe will monitor your bank and investment accounts, credit cards, and credit data for the senior. You set up the trusted advocate, someone who is to be notified as well. EverSafe looks for anomalies, unusual withdrawals, missing deposits, and irregular investment activity, and they will immediately contact the person you have on file.

Your Elder Abuse, Identity Theft, and Scams To Do List:

1. Tell all seniors not to click on links.
2. Do not provide personal information over the phone in response to an email or text message. Be skeptical all the time.
3. Freeze your credit. It is free to freeze. It is free to unfreeze.
4. Use dual-factor authentication whenever you can.
5. Use a complex and unique password. Maybe you want to use a password manager. Here again, the paranoia in me is that I do not use a password manager because I know they are a target for identity thieves. So far, their history has been good, but I prefer to use the adaptive passwords mentioned earlier.
6. Use a nonsensical security question. Your mother's maiden name can be "Grapefruit."
7. Shredded documents with personal information will be a problem if it falls in the wrong hands. There are dumpster diver identity thieves out there gathering this information. Believe it or not, when you shred it, get a cross shredder. In Arizona, in particular, there have been identity thieves who will hire methamphetamine addicts who stay up all night piecing together vertically shredded material. So, cross-shred.
8. Do not use your debit card for anything other than an ATM card. Use your credit card. The reason is that the debit card is tied to your bank account, no matter how much it looks like a credit card. You do not get the same protection that you do with a credit card from fraud.
9. If you do not correctly report a fraud on a debit card, you are in danger of losing your entire bank account. Federal law protects you from no more than $50 of fraudulent activity with a credit card.

10. Be wary of putting too much information up on social media. Do not be your own worst enemy.

11. Secure all of your devices. Make sure you have good security software on your phone and your computer.

12. Set up the My Social Security account.

13. Sign up for informed delivery from the U.S. Postal Service. This is a great service. You can go online and see the mail that will be delivered to you the next day. Maybe there is something in there you want to make sure you will get because there are identity thieves who will cruise neighborhoods and steal mail. If it is your credit card or if it is a check coming in, these are things that can hurt you. Worse are people who write a check, put it in an envelope, put it in their mailbox, and flip up the red flag to notify the postal carrier. They are also notifying the identity thieves to come and get it. So, use that informed delivery and do not put outgoing mail in your box.

14. You may want to use a virtual private network (VPN). With public Wi-Fi, you can never be sure who is using the real Wi-Fi and how secure it is. So, if you are using public Wi-Fi or even at home, a virtual private network encrypts all your communications and is easy to set up and use.

Ultimately, we want to do our best to protect ourselves from scams and identity theft. You can do many things to protect yourself from becoming the low-hanging fruit.

Protecting Seniors from Identity Theft and Scams – Steve Weisman

About Steve Weisman, JD, Professor, Bentley University, Editor, scamicide.com

Steve Weisman is a lawyer, college professor, author and one of the country's leading experts in cybersecurity, identity theft and scams.

He is a graduate of the University of Massachusetts and Boston College Law School. He is a member of the Massachusetts Bar and Federal Bar and is admitted to practice before the United States Supreme Court.

He is a Fellow of the Massachusetts Bar Foundation, an honorary organization of the Massachusetts Bar Association whose membership is limited to no more than 2% of the Massachusetts Bar.

He was awarded a Certificate of Merit from the American Bar Association for excellence in legal journalism for his newspaper column "You and the Law."

He has been a faculty member at Bentley University since 1998. Presently he is a senior lecturer. Steve teaches White Collar Crime. In 2013 he was awarded Bentley's highest teaching award, the Gregory H. Adamian Award for Excellence in teaching.

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Cryptocurrency Investments – What Financial Advisors and Planners Need Know to Avoid Legal Actions

Andrew Shedlock, Partner, Partner, Kutak Rock

Editor's note: This article is an adaptation of the live webinar delivered by Andrew Shedlock, in 2022. His comments have been edited for clarity and length.

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By Andrew Shedlock, Partner, Kutak Rock

My goal is to help planners and fiduciaries understand the basis of cryptocurrency investments, what a crypto token is, what Bitcoin is, and how they work. I want to inspire you to learn more about what I can trigger in your mind about cryptocurrency.

First, crypto is an alternative investment. Read everything you can about it, and you will understand that my advocacy is a little more realistic and more skeptical than people in the crypto space. I am a crypto realist, not a crypto bro or a crypto pumper. I don't necessarily think it will change the world and take over the financial system. That being said, I think there is real potential for these types of products, and that is what they are – products – to impact the financial space, to change our jobs, to fundamentally upend what we have done for so many years.

Second, I want to make this practical for planners and advisors to understand the main areas of risk and liabilities that planners and others face when they work with clients using cryptocurrency investments and how to discuss the intricacies and details of various types of cryptocurrencies with clients. I also want you to know the difference between a cryptocurrency and a crypto token. I want you to know the difference between Bitcoin and Ethereum. I want you to know the difference between a hot wallet and a cold wallet. So when your clients come in to discuss crypto with you – not if, but when – I want you at least to have a working knowledge, so you do not stare at them blankly and say, "I have no idea what you are talking about."

How can we as planners avoid and lessen the risks and potential liability when dealing with regulators when it comes to cryptocurrency investments? Here we'll talk about not only papering up the file but figuring out, "What do I need to have in my files? What documents do I need for crypto investments that I do not need when it comes to BTS, stocks, bonds, and everything else we work with our clients on to help them achieve their investment goals?"

This article will particularly emphasize the retirement space because it is crucial to understand the potential pitfalls of dealing with these products and issues in the retirement space, which is different than if we are dealing with it in a brokerage account or "fun" money.

What is cryptocurrency?

Cryptocurrencies start with a **blockchain**. The blockchain can be described in several ways, such as an immutable source of information that can be easily verified and never falsified.

We are all familiar with the process of buying a house. When we buy a house, we acquire a deed, we have to pay someone to do a title search for that deed, we have to figure out if there are any liens on the house, we have to figure out if the title is clean, if it is a good title, or if someone else has a claim to this house we are about to buy that is dangerous or could impact what we want to buy. Think of the blockchain as blocks of information that could form the parts of a title or a title chain analysis.

For example, say a house was sold in 1970; the sale is recorded in a book in a recorder's office in some county and tucked away neatly in their library. This would require someone to physically check those books and figure out the exact title chain before we can certify there is a clean title. Technology has improved that process, but in this example, the blockchain is entitled to make that process quick, simple, and completely verifiable. So, when I record the title of a house I buy, it goes on the blockchain and to everyone else on that blockchain. They are responsible for verifying that the information I put on the blockchain is correct.

It is instant verification, not from a bank, not from one person, not from a Fin Op department, but from 10,000 people, more or less, to verify exactly that information is correct. This is the basis of a blockchain. Now, is it far more complicated than that? Of course, the whole point of cryptocurrency and the blockchain is that it is immutable, can be traced back instantly, and is verified.

Now let's talk about **cryptocurrency**. This leads us to **Bitcoin**. Bitcoin is a cryptocurrency, Bitcoin has its own blockchain, and nothing else goes on that blockchain except Bitcoin. The price of Bitcoin is about $24,000 per Bitcoin now. It got as high as $69,000 a year ago, then it suffered a crash of about 50% over the next year. Bitcoin is placed on the Bitcoin blockchain, and every Bitcoin has a unique identifier that only one person can own that specific Bitcoin. When someone buys that Bitcoin, it goes on the blockchain, and other people on it validate that transaction occurred for that price.

How is a **crypto token** different than a cryptocurrency? The leading blockchain for crypto tokens is **Ethereum**. Many different crypto tokens can be placed on one blockchain, such as Ethereum, whereas a cryptocurrency is only attributed to one blockchain. Are they different in that respect? Yes. Are they different in terms of the investment options we will discuss today? Not necessarily.

But it is things like this, as we talk about going forward, that you need to educate yourself about because your client may come in and say, "I want to buy crypto." Your first question is, "What do you mean by that?" They may say, "I want to buy Bitcoin." "Okay, let us talk about the risks and benefits of Bitcoin." If they come in and say, "I want to buy a crypto token," that is an entirely different conversation.

You and I can create our own crypto token in an instant. For example, anyone can create a company. Say I create Joe's Hot Dog Stand and sell shares in Joe's Hot Dog Stand, provided I comply with pertinent security regulations that require me to register those securities or be exempt from registration when selling them. If you have the computing prowess and the technological background, you too can create your own crypto token, which is a very different discussion than Bitcoin. However, not all crypto tokens are legitimate or worthy of investment.

Crypto tokens are much riskier because they can spring up overnight and be the subject of pump-and-dump schemes. Your clients could be excited because someone mysteriously airdropped 100 crypto tokens into their wallet. Why would someone airdrop crypto tokens into wallets? To raise the profile of that crypto token and to create interest. What happens when someone airdrops a crypto token into a client's wallet? People start buying more and more of it because they are excited about its release. It is the next Dogecoin, Bitcoin, or Ether.

The promoter of those crypto tokens can pump the value up. Since they hold most of the tokens and sell at a higher price, guess who is left holding the bag? All those people who bought into the hype bought into the pump-and-dump scheme. This doesn't happen often, but what happens with crypto tokens is much different than what happens with Bitcoin.

There is far more risk for crypto tokens than for Bitcoin or Ethereum.

The logistics of helping clients invest in crypto

No crypto investment is appropriate or suitable for any client simply because it can potentially generate high returns. I am a crypto realist, and there are many problems in the space. There is a complete lack of regulation; the SEC's enforcement actions can damage this industry. An investor wanting to get into this space, especially if the space is not Bitcoin or Ethereum, could be damaged by crypto token pump-and-dump schemes or other issues. You must know what you are doing before you get into this space. As an advisor, planner, or fiduciary, you must know how these investments and products work.

A year ago on LinkedIn, a planner posted, "The target goal for any investor should be to have three percent of their investment holdings in crypto." Wait a minute. First, any fiduciary knows that no planner, no fiduciary, or broker should tell a client, much less publicly, that everyone should have at least three percent of their holdings in any investment, whether crypto or otherwise. The risk profile for an 80-year-old retiree is much different from a 40-year-old working, high-income earner. We are in for some enforcement actions and things that could be damaging to clients and lead to lots of lawsuits against advisors.

What have I seen about how planner and investment advisor clients invest in crypto in the past few years? You can buy Bitcoin, Ether, and crypto tokens through an exchange. And what does that mean? Let's talk about two that are like E*TRADE: Coinbase and Robinhood. A client can go into Coinbase, open an account, and fund that account. Then they say, "I want to buy $8,000 worth of Bitcoin and $2,000 worth of Ethereum." How does that happen? Coinbase would buy $8,000 worth of Bitcoin for you and put that into your account; the same with Ethereum. Robinhood does something similar where you can buy cryptocurrency investments through Robinhood, which targets a younger audience.

There are suitability aspects of investing in cryptocurrencies. Risk disclosures are important here. Advisors or planners should refrain from recommending that their clients invest in any crypto product. However, if your clients mention crypto investments, want to invest in crypto, if your firm allows it, and if you are comfortable with it, you need separate risk disclosures for clients investing in crypto. So, caveats galore.

What are the risks of crypto?

Cryptocurrencies and crypto tokens are alternative investment products with significant risks. Why?

First, there is a complete lack of regulation in this space. To those of you who have been following the news, and it is hard to miss at this point, you know that there is a deep battle going on between the Securities and Exchange Commission (SEC) and the CFTC (Commodity and Futures Trading Commission), about who regulate things like Bitcoin, cryptocurrency, crypto tokens. The only thing the SEC and CFTC agree on is that Bitcoin is not a security but a commodity. Even the SEC Chairman, Gary Gensler, agrees that Bitcoin is a commodity. Why is that important?

The SEC has less regulatory authority, if any, over commodities as compared to securities. The CFTC has regulatory authority over commodities, and Bitcoin is a commodity; it will be regulated as such and has been regulated as such. Now, that is not to be said that the SEC has not brought significant enforcement actions for

Bitcoin-related scams. Again, one of the significant risks of crypto is regulation because there is no regulation. There are no sets of rules. There are no FINRA rules, and there are no SEC rules.

Why is lack of regulation a risk? Because we do not know what will be allowed and not allowed in the future or now. Planners and investment advisors are playing the game at their own risk, so to speak. I do not know if, in five months, the SEC will come out with rules that say, "Planners and advisors cannot recommend these types of products, or if they do, they have to fill out this form or consider these factors." So, you are playing on shaky ground.

Regulations are constantly changing. We have seen that with cybersecurity rules that the SEC is putting out, with different ESG rules. The point here is that now there is only regulation through enforcement, which heightens the risk.

So the next great battle in crypto is who will regulate this? It matters because, as an advisor, I want to know the rules. The SEC and FINRA will be much harder on Bitcoin, on crypto and crypto tokens, compared to the CFTC, which is why so many crypto supporters and participants want the CFTC to regulate it. Gary Gensler does not have a good reputation as a Bitcoin or crypto supporter, and he is on record as saying that most crypto investments are worthless.

As an advisor, if you talk to clients about these products, help them invest, or give them any advice, you need to know that the current composition of the SEC and the current SEC chair views essentially all crypto products save for Bitcoin as worthless. This should influence your thinking, what you talk to clients about, and how careful you are.

Crypto and retirement accounts

Fidelity now allows its clients and employers to invest up to 20% of their accounts into Bitcoin. This was shocking to me. There is a burning desire for their clients to invest in these products. So, Fidelity said, "It is a great idea for us to allow them to invest in retirement accounts."

The Department of Labor had guidance before Fidelity's announcement, saying, "Not so fast." Under ERISA, the DOL noted that fiduciaries who run these retirement plans and 401Ks must act solely in the financial interest of plan participants and the exacting standard of professional care. So, a fiduciary's consideration of whether to include an option for participants to invest in cryptocurrencies is subject to these exacting responsibilities. This screams enforcement actions and lawsuits from the Department of Labor against these providers when the inevitable crash happens.

So, why would Fidelity do this? Because of the demand from clients. Demand is only sometimes the right answer, especially in ERISA-regulated plans. Who is driving this demand in Fidelity and others? Millennials, of course. Twenty-eight percent of Millennials said they expect to use crypto to support themselves in retirement. Fidelity has said, "We disagree with the DOL. We have different views than the Department of Labor regarding the guidance they issued. We believe they should withdraw that guidance." This might be litigated. I am sure they have had their attorneys back this down quite a bit to figure out an appropriate risk-reward, but that is an honest quote to me. "We just disagree and think it should be withdrawn." Let us see who wins that battle.

Should I wade into crypto versus dive?

There are people in this space who are fiduciary advisors that absolutely think that you should jump all in and get your clients in this and that you are violating your fiduciary duty if you do not do it.

Advisors should not dive into Bitcoin. These big, wild swings are very dangerous because on any swing up, you are bound to get a swing down, and you are bound to hurt some investors. Maybe you should not dive in, but what if you wade into the crypto pool? Take three simple steps

. The first and foremost thing you have to do is educate yourself. This is very easy to do. Take a couple of hours, Google some articles, and read resources. There are plenty out there for financial advisors who are getting into the crypto space or at least want to talk to their clients about it.

Why is this important? It is not because I think it is a good investment or appropriate for retirement. To be clear, it is generally not appropriate for retirement. However, your clients may ask you about it, and it is your duty to educate your clients and yourself about what that means. Here is a great Kitces article that highlights what advisors should do. This article talks about hot wallets and cold wallets, and it talks about hot storage and cold storage. These are the types of articles you, as fiduciary advisors, should be reading. Almost every day, a new article about Bitcoin, the blockchain, and advisors comes out.

I can tell you that more and more of your clients, if not many of your clients, will come to you to talk to you about crypto investments, or they will tell you, "Hey, I have invested in this crypto off to the side. I know you cannot hold it for me in your account and cannot custody it with TD Ameritrade, but I want you to know because this influences my financial plan. You need to know what that means when something is "held away"; you need to know if they have it in hot or cold storage. You need to know if they have cryptocurrency or a crypto token because then you could tell them more about the risks of each product.

Secondly, consider your fiduciary duty. A fiduciary is bound by law to consider their fiduciary duty. Here is a link to another article you should read when you get a chance. Some people in the crypto space for advisors, those who educate advisors on crypto, think that certain advisors are violating their fiduciary duty to clients by not investing their clients in crypto and not educating them about crypto.

This is the minority view. Advisors who think that crypto is an appropriate, suitable investment for many investors think that it could contain the key to your investing life or make huge, outsized returns that could secure your retirement. A couple of well-known names in this space are really pushing this and pushing advisors to become more educated. I am all for advisors getting more educated, but I do draw the line about whether or not you are violating your fiduciary duty by failing to get clients invested in this space.

Yes, educate your clients and be capable of discussion, but you are not violating your fiduciary duty if you are not helping clients get in here. These are suitable investments sometimes, maybe in limited circumstances for specific clients, but certainly only for some clients. Most firms will not allow advisors at this stage to certainly custody or even attempt to custody any assets or recommend any custody of crypto assets.

You need to know what your firm says about compliance with crypto. If your firm does not have training and manual sections on cryptocurrency investments, they should. Whether that means a blanket prohibition, "We do not discuss it. We will not do it," whatever it is, the time is past. It is time to get educated about these products. It is time for your firm to have a position, whether it is "Proceed with caution," "Proceed with extreme caution," or "Stop fully." If your firm does not have it, they need to figure it out and take a position on it.

What if the SEC and FINRA come calling?

You better believe that if you advise a client to invest in something or buy something that is a security without making appropriate disclosures, the SEC could come down on you.

Assume you have a client come in, and you say, "You have been with us 20 years, John Smith, and you have done great. Here are your holdings. You have two million dollars and are well on track for retirement." John Smith says, "Well, I know we have not met in six months, but Bitcoin crashed, and I saw an opportunity, so I took $100,000 from my 401K and cashed it out. Now I have a Coinbase account with four Bitcoin worth $100,000." I need you to stop right there and figure out a few things.

First, as an advisor, almost all cryptocurrency investments are being held away, whether it is Bitcoin or these tokens. That means that your firm cannot custody them, your custodian cannot custody them, and they are being held away at a Coinbase account, a Gemini account, or a Crypto.com account. Your fiduciary duty is to understand precisely how many of your clients are holding away assets in cryptocurrency and investments and why this is.

First, you need to know if your clients are holding money in separate accounts anyway because you need to be able to give them a precise financial plan and help them plan out their future. Second, the wild market swings and price of Bitcoin are very important for advisors to know about, and if John Smith says, "I have four Bitcoin today," in two months, he could still have four Bitcoin but have $20,000 less in his financial plan. That may not be a huge deal for John Smith. That may be fun money for John Smith, but you need to know that their fun money could go to zero and how that will affect their financial plan. You could start tracking. Check the price of Bitcoin once a day. I hope John Smith himself is tracking how much the price of Bitcoin is in his account.

You need to have written disclosures detailing how much these clients are holding away. I strongly recommend, and we have done this for some of our broker-dealer clients here at the law firm, you need to have separate risk disclosures for your clients if they are investing in Bitcoin or other cryptocurrency investments.

You need to have some sort of form. It does not have to be a complex form. If clients come to talk to you about crypto or if they want to invest in crypto, or if they want your advice on crypto, assuming you can even give advice, you need to have some sort of basic form that walks them through the risk disclosures of crypto. And why is that?

It is because there are these pump-and-dump schemes out there. It is because the price of Bitcoin has fluctuated violently and wildly for the past several years. It can impact their financial plan in ways mutual funds, ETFs, or single stocks like Microsoft cannot. Microsoft may drop 20% when the market drops 20%, but it is more than likely to go up again when the market goes up again. The same is different for Bitcoin. While there is little correlation between the price of Bitcoin and the general market, when the market goes up, Bitcoin will go up, but not always. When the market goes down, Bitcoin may go down a lot more.

You must educate your clients through written risk disclosures, whether simply checking the box, "Initial here understanding that there is extreme volatility, that this is not a normal, standard investment," or that the client is doing this of their own volition. You cannot put things in writing enough.

Document exactly how much cryptocurrency investments are being held away by the client. I recommend that you always paper the file with risk disclosures. You know the client is at risk investing in crypto; maybe you did not advise them to do that, or you advised them against that. Paper up the file. At least educate them on the risks. You are protecting yourself. All it takes is for one client to lose $200,000 to complain to the SEC, FINRA, or whoever else that "My advisor did not tell me A, B, and C," and then that is a whole other burden you do not want to have.

Key Takeaways

1. Educate yourself. Read the Kitces article I mentioned earlier, and read other articles written by some of the prominent names in crypto for financial advisors. You can never stop learning.

2. Follow the SEC's twists and turns. Look at what enforcement actions they are bringing in the crypto space. This is a new age of regulatory holdings and court cases changing the fundamental nature of securities regulation. These times are exciting as an attorney in the securities regulation and litigation field. It is rather interesting to know, "Hey, we can have a change in regulator, a change in approach." I would not be surprised that within the next few years, we get a new Supreme Court case, a new holding, about "What is a security? How do we evaluate a security? What is the nature of administrative regulation?" and things like that.

3. Protect yourself by documenting everything. Assets holding away and risk disclosures are two things you should do the second you hear "crypto" from a client. Please work with your firm to figure out what they are comfortable with, what they are willing to do, and what they are not willing to do.

This is all under the guise that there is a tidal wave here of crypto, and it is not going away. Whether it changes the world or not, who knows? But we are at a turning point. It is not going away, and it is not going to be a one-off. It is not necessarily an appropriate investment, but at the same time, when we consider retirement aspects and retirement accounts as the younger generation comes up, as those millennials turn into 40, 50-year-olds or inherit their parents' money, they might say, "Hey, I have $500,000 in fun money. What should I do with it?"

About Andrew Shedlock, Partner, Kutak Rock

Andrew Shedlock is a partner with the Kutak Rock law practice in Minneapolis. He is a litigator and attorney for financial advisors, financial planners, RIAs, and broker-dealers. Andrew advises on Non-Fungible Tokens ("NFTs"), cryptocurrency and Bitcoin, including securities and contract matters in those areas. Using his securities and regulatory background, he and his firm assist participants in the crypto, defi, blockchain and defi space to comply with laws and regulations, be proactive and drive development and investments in this developing space.

Andrew also provides legal and regulatory advice to businesses and individuals in the securities industry, including broker / dealer compliance, investment due diligence, regulatory compliance, SEC and FINRA investigations, Rule 8210 actions and CFP issues. His extensive background in securities litigation, investment fraud and general commercial litigation enables him to efficiently help clients when they are facing changes, challenges, investigations, lawsuits and other unpredictable events, including guiding and counseling advisors and brokers going independent through all stages of the process to avoid and lessen the risk of litigation where possible.

Gray Divorce: Today's Platinum Retirement Challenge

Lili Vasileff, CFP®, MAFF, CDFA®, President, Divorce and Money Matters, LLC and Wealth Protection Management
Editor's note: This article is an adaptation of the live webinar delivered by Lili Vasiloff in 2018. Her comments have been edited for clarity and length.

You can read the summary article here as part of the October 2022 Retirement InSight and Trends Newsletter, worth 1.0 CE when read in its entirety (after passing the online quiz.) worth 1.0 CE when read in its entirety (after passing the online quiz.)

You may also choose to take the full length course A Platinum Retirement Challenge: Gray Divorce for 1.0 hour continuing education (CE) credit.

By Lili Vasileff, CFP®, MAFF, CDFA, Wealth Protection Management

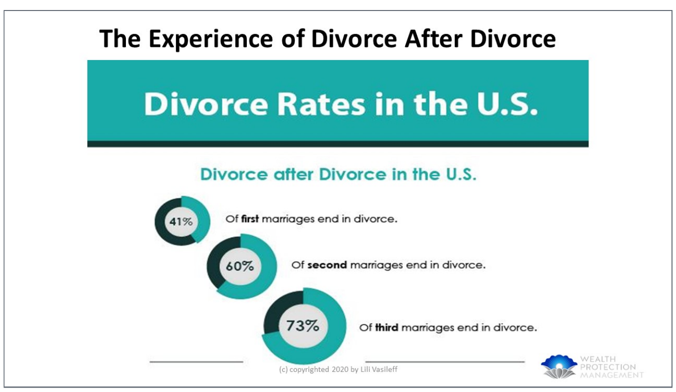
Conflicts over money happen to be the number one predictor of divorce. In 1960, we had an increase in divorce through the late 70s and 80s. Starting around 1990, it started to stabilize, then become stagnant, and even decline slightly. But what's interesting about this is that it parallels the marriage statistics. People are waiting longer to get married and want greater financial stability before making longer-term commitments to be together. Fewer people are getting married. Those who have been divorced may or may not be getting remarried but simply living together.

Fifty years ago, I didn't know any person, relative, or friend whose parents were divorced. Fifty years ago, less than 3 percent of people were divorced. Now, one in four people in their late 50s is divorced. A perspective on the generational divide: as older Americans divorce, younger people's divorce rates are slowing down.

Who is triggering a late-life divorce?

By a ratio of 2 to 1, it's women who are initiating divorce in late life. Even 15% of those over age 65 are filing for divorce. My oldest divorcing client was 97 years old. I'm sure I was brought in for competency reasons to determine why she was doing this. And her answer was, "I do not want to die being married to that."

There is a post-divorce echo effect. The remarriage statistics are challenging, which means that those individuals that come out of a divorce and then sometime down the road fall in love all over again and remarry, God bless them for being optimists, much higher and more significant divorce rate than first-timers.



In fact, it's 60 percent for second remarriages and for 3rd or 4th marriages, 73 percent. Why? There are many theories about it: perhaps there's just less glue holding you together; you don't have children together necessarily; maybe you have outside influences that are negative on a remarriage, meaning adult children or elder parents that you've been caregiving and distract you from your new primary spouse.

That doesn't make it any easier for us as advisors when we have clients looking forward to a new life – possibly remarrying – because now we need to focus on these risks as well.

Late-life divorce for adults who are over the age of 50 has an almost double rate of divorce than any other age population. There is an increase in the divorce of first-time marriages, with more than 50 percent occurring for marriages over 20 years. However, this varies given different demographics, different economics, and different social factors. This statistic has been reinforced by many different surveys and by the Bureau of Labor Statistics. At some point, there will be a confluence of events that we need to address with clients going through a divorce, addressing finite resources.

What do Boomers want in their marriage in retirement?

What do boomers want? It's nothing different than any other person going through a divorce. They want to be happier; they want to be more fulfilled; they want to have more opportunities to do what they think they're owed or entitled to. Remember, the boomer generation is the "me generation," "It's my time, my turn." These individuals have explored different opportunities since the sixties, or so that made them feel special. It's not a dissatisfaction of an empty nester or a career change, or a life transition that seems different; it's a general dissatisfaction with their marriage in its entirety.

You might call it the effect of the baby boom, but this was also the first generation that had women at work. This may be a very strong factor in how boomers now consider divorce; these were the women that pushed the boundaries to be viewed with parity in the workforce, the feminists. These are anti-establishment people who came out and worked hard to change the rules around what they wanted to do.

A key factor is an idea that this second chapter in their lives, meaning retirement or later years after they’ve worked so hard to accumulate what they have, should be what they want. To a large degree, there’s a diminished stigma associated with divorce. There’s also a financial opportunity because of their accumulated resources or work history that they may be able to be independent post-divorce. It stands to reason that if these people live longer, they have more years to think about becoming divorced.

What does it then mean if they decide to contemplate divorce and then move forward with this? What factors are important for us to know as advisors about their concerns, anxieties, and challenges are going to be? I remember a client in her late 50s who shared with me the following information. She said, “You know, I have never lived on my own. I graduated from college, became married, and worked for a little bit. Then I became a mother. Then I took care of my older parents. And then, one day, my husband walked in and said he wanted a divorce. And I went through this spectrum of different reactions; I’m angry because I’m out of control. It wasn’t within my doing. I also feel as if I’ve lost an entire identity. I used to be a married person. What am I now? Now I have newfound freedom. But what do I do with it? If I drive to the end of the earth, will anybody even care?”

It was a very interesting awakening that made me realize that there’s a mix of emotions that go through these individuals, whether they want it to be the divorcing person or are getting divorced in the sense that nothing is clear. They’re overwhelmed with many emotions. At the same time, they must make critical financial decisions.

The financial concerns are the following:

- Will there be sufficient income by dividing one household’s income into two?
- How much can they spend, and how do they project their spending going forward? They probably need to downsize their home.
- There’s always anxiety about when and if they have the financial wherewithal to plan for retirement at a certain age. What happens when they retire and no longer have earned income? Are they going to outlive their assets?
- There is apprehension about being financially independent when they’ve had no experience being so.

Many of these concerns are not unique to divorcing couples. Still, they’re heightened by the scarcity of resources for those individuals who were not necessarily experiencing scarce resources during a marriage.

What makes late-life divorce different?

If you are in your late 50s, you have a finite number of years left until your full retirement age. There’s a shorter time horizon, therefore, to replenish any savings that you’ve been accumulating over your entire career. It’s also more difficult to be able to plan or execute income that is higher than what you’ve been earning to date. You’re probably in your peak earning capacity already if you’re in the workforce, so there’s minimal upside opportunity to increase earned income. It’s also difficult for many individuals who have been out of the workforce for several years to go back and find any meaningful employment, even sufficient enough to cover health insurance.

The inexperience of those individuals who have managed day-to-day bill pay and day-to-day finances but not longer-term investments is a real detriment. Many of my female clients who have been out of the workforce feel they don’t know what to do for longer-term planning, whom to trust, or how to evaluate what their spouse has been doing with it. It’s a learning curve that they have to do unwillingly. Even if you are the person who initiated the divorce, there’s always an element of psychological or emotional depression in the closure of one chapter of your life and moving on to another one whether you want to or not. The transition piece is often sad, and we try as professionals to help individuals and couples acknowledge that it’s just the closure and the beginning of something new.

These are successful individuals at this stage in life; they’ve had good careers and home life; they’ve raised their children, they’ve been successful parents, and they face demanding jobs of up to 60, 80 hours a week. College tuition bills collectively cost more than what their house is worth. They have financial responsibility for caregiving for their elderly parents. Some of their adult children, sometimes whom we call boomerang children, are back home, and they’re unable to find a decent-paying job. Guess what? They’re spending down their parents’ assets. Some adult children conflict with your clients who may own family-owned businesses. Maybe they want to avoid going in and becoming a successor to that business. Maybe they don’t care about it. Maybe they’ve been doing nothing else to plan for their career.

Then, of course, there are blended family issues due to remarriage. There are also skyrocketing health insurance premiums and medical issues. Clients often want to say, “Can I now force my spouse to buy me long-term care insurance if I’m going to be divorced?” It’s easier to say what might be affordable when it has not been provided during the marriage.

Women are especially vulnerable for a few different reasons. Money ranks as the number one worry for women during a divorce, and it even tops their concerns for their children. “Will I have enough to live? Am I at risk that my spouse might just disappear or not?” The post-divorce decline in income hits women especially hard; women experience a 45 percent decline in their standard of living.

Nearly a third of all divorced women feel that the current quality of their financial lives post-divorce is worse than they ever expected. These are the same individuals who initiated the divorce. Gray divorced women have relatively low Social Security benefits and relatively high poverty rates. In a Nationwide survey, gray divorced women found that 62 percent of divorced women expect Social Security benefits to be their primary source of income.

Women who have not been in the workforce can choose to go on their divorced husbands’ record of Social Security or go on their own. If they meet the criteria and have been married longer than ten years, are at least 62 years old, have been divorced for two years, and have not remarried, they may be entitled to 50 percent of their ex-spouse’s retirement benefits. The maximum annual benefit was $45,480 in 2020, so cut it in half, and these women are living on $23,000 a year.

What should advisors be aware of with gray divorce and retirement?

Gray divorce hits every part of a person’s life. When you’re younger, you have more time to recoup, and you have more opportunity that lies ahead. When you’re on the cusp of retirement, you’re looking at the downward slope of what you’ve achieved and accumulated as your peak. You have competing demands; you’ve got conflicting goals; you’ve got limited resources stretched now between two households.

The strategy for working effectively with boomers is to involve them and help them find solutions. Let them brainstorm with you. They want to be a part of this, even though they may be kicking and screaming. Divorce is about making lifestyle changes; we must work with those clients to help them understand where they might be headed.

Divorcing on the cusp of retirement typically takes place in peak earning years, with a lifestyle reflecting wealth accumulation. It’s a powerful reckoning for clients to realize that their peak earnings funding a household’s mature lifestyle may not last longer than just a few years from retirement. Here’s the kicker: it might be insufficient to support two households at a comparable lifestyle standard post-divorce. This is the most challenging thing to get across to clients who feel guaranteed and entitled that their lifestyle should have no changes.

We must focus on all these areas at the same time with our divorcing clients because they all impact one another. There are work-life span considerations, retirement planning, estate planning, remarriage considerations, and Social Security claiming strategies. This is what makes Gray Divorce so challenging for advisors.

You've got different things happening at different times. Still, they all are interwoven to bring you to the point of ending a transition and starting a new life and hoping that your client has enough confidence and trust in you as their advisor that they can start listening and digesting the advice they need to hear.

What do you need to know? How does this impact your practice? Recognize that late-life divorce is the perfect storm that impacts your clients. Seize the opportunity to talk with them, discuss specific issues that should be brought up during the divorce process with their attorneys, and take advantage of certain financial strategies that are unique only to divorce.

So, let's talk about what happens in late-life divorce. Retirement assets are usually divided down the middle in a long-term marriage, regardless of who's earned or saved it. That's the first slap in the face for the wage earner. The second one is that, generally speaking, the impact of taxes can be significant and should be addressed during the divorce. And I don't mean transferring assets from one spouse to the other because those are non-taxable transfers. I mean, getting an asset and having it in your hand, signing the agreement, and then three minutes later liquidating that asset and not realizing it has a tax impact. That must be clear regarding the after-tax impact of dividing assets equally.

Some states have spousal support formulas; some do not. The trend is for less spousal support and fewer years of spousal support, which doesn't make these individuals very happy. If you say, "I've been married for 25 years, and maybe I'm looking at five years of spousal support," it seems very inequitable.

There are also issues of separate property, marital property, and valuing the family-owned business.

How are boomers prepared for divorce?

We are not a country of good savers, and many people need detailed financial plans. The general behavior of people could be saving better. According to the Government Accountability Office (GAO), one-third of households age 55 and older have neither a retirement account nor a pension.

Nearly 40 percent of married couples interviewed by NerdWallet just last year said that one partner was saving for retirement; one in five had yet to learn the retirement amount. A third rarely discuss personal finances with family members, and fewer than half make financial decisions in partnership with their spouse. We've got a dire situation of lack of communication in a marriage for financial planning, especially toward retirement.

Women, in general, feel much less comfortable than men planning for retirement, and yet only about 6 percent seek out professional help. Forty percent of couples disagree on when to retire and what their lifestyle will be during retirement together. These things bring the risk of divorce to a head; this is the key factor. So, when you add divorce to the mix of mismatched expectations for retirement years, lack of knowledge about retirement savings, what's been happening, or how you're going to live during retirement years, a lack of communication with your spouse or trust or even reliance on them for financial planning guidance, and maybe there's even a potential age disparity between the two spouses, well, guess what? It's just a ticking time bomb.

And we know that there's one thing that lies ahead: in every case I work with, there is sticker shock. People who walk through this process have no idea what has been saved, what they need, and what they can live on. Compared to singles, married people accumulate almost four times more savings and assets, and those who are divorced have assets 77 percent less than singles.

What happens if you do work past retirement age? A significant percentage of workers say that they plan to work past 70. But guess what? A growing number of seniors are declining or unable to retire because of financial needs. This trend is up 22 percent since 1994, which runs parallel to the divorce rate that has increased for late-life individuals. Health problems and layoffs, COVID-19, the need to take care of a loved one, discrimination, and the scarcity of jobs have diminished this opportunity even more for seniors who must work past normal retirement age.

How does working past the normal retirement age affect an alimony obligation? You would think that if you must fulfill an obligation and you have the reason and recourse to work, that would be a good thing. Some states are trying to legally terminate an alimony obligation past an individual's full normal retirement age. The downside risk of working past retirement age if you are divorced and have an outstanding alimony obligation is that it's very tough to go before a judge and request a modification of that alimony if you are working and have no significant change in your financial circumstances other than you want to reduce your alimony obligation. On the flip side, for the alimony recipient, if you file for Social Security while collecting alimony, your income may be subject to taxes.

If you're receiving Social Security benefits on your ex-spouse's record and you remarry, there's a suspension of your Social Security benefits for a whole year. You then have to apply on your new spouse's record. The age disparity between the two spouses or a gap between becoming eligible for Medicare and coming off of COBRA can push women into menial part-time jobs in the hopes of purchasing health insurance.

How can advisors identify opportunities to maximize outcomes for late divorce clients?

We have to be realistic about longevity. If our clients are contemplating cohabitation and or remarriage, we also have to be mindful of what they think they want to do about their joined finances in remarriage. Will they be separate? Will they be co-mingled? If they're co-mingled, are they at risk?

We focus on three key areas: cash flow, retirement assets, and dividing property. We have to plan how to maximize our cash flow from all sources and squeeze it from the assets. We must find out if our clients can continue to work and if there are other opportunities for producing income that has yet to be tapped. We must help them negotiate critical golden assets like annuities and pensions.

We must educate clients about Social Security claiming strategies and the risks of remarriage and working past retirement when receiving alimony. We also need to help our clients plan for health and long-term care insurance.

Cash flow sources for the divorce process.

1. Get cash out of a retirement plan penalty-free if it is addressed in a qualified domestic relations order (QDRO) as part of the divorce agreement. You can't do it after the fact. Pulling cash from one of these plans to give someone emergency funds liquidity to move to a new place or put as a down payment on a home is hugely important, and it could even be used as a buyout of another spouse.

2. Divide an annuity. There is a catch with annuities in divorce. Can it be divided and re-issued to ex-spouses? If so, do the terms change? Does it involve a new cost? Is it the same annuity, or is it a lesser-value annuity? Can it be transferred in ownership or converted to a different policy? I have spent hours talking to annuity companies during a divorce because attorneys do not know this, and clients do not know this.

3. A reverse mortgage can help a person stay in their home. What more does anyone now want from this pandemic than to stay safely in their home? A reverse mortgage can provide the cash flow for living expenses, and they can meet those, buy out their spouse, or facilitate an asset division. For divorce, this is a very important tool in our toolkit.

4. Consider taking out loans from retirement plans or even against the cash value in life insurance. When our clients are going through a divorce, make sure you find out if any loans are outstanding against these assets.

Dividing retirement assets.

1. Pay special attention to tracking deferred compensation assets. This can include long-term incentive awards, RS, restricted stock, performance shares, stock options, and deferred voluntary cash bonuses. All of these might not have value today but needs to be tracked to determine whether or not the risk is warranted for a spouse to assume them or if it can be offset with other assets that your client prefers.

2. The sequence of spending adds value to income. Only a few clients are well aware of what assets to tap into and when and what the withdrawal sequence can help them manage their taxes and manage and grow their retirement assets while tapping into them. I usually review this briefly because there's much overload during the divorce process and on the post-divorce side. Still, I point it out as a topic to discuss with their advisors.

3. Ensure direct transfer of the retirement accounts from one spouse to the other; anything in between could be deemed distribution and taxed.

4. It also helps to know that dividing IRAs does not require a QDRO, although some custodians will require a QDRO to divide an IRA, even though not required.

5. While the clients are still married and perhaps in a better position, determine whether or not they should convert certain IRAs to ROTH IRAs and share the tax impact of that version so that one party doesn't have to bear it alone after the fact.

6. Dividing pensions, qualified and non-qualified, knowing the election options and how to designate beneficiaries.

7. Is it important that you have the same amount of assets the minute you're divorced or that you project forward how much you will have in the future if one spouse continues to earn and can replenish those assets while the other doesn't? Defining goals is also helpful in helping them understand the equitable part of the distribution.

Dividing the property. There are other ways to get cash, right?

What exists that they may be able to benefit from and yet not have to come up with the cash? Sometimes we can squeeze cash from cash that doesn't exist, dividing properties that are productive in providing benefits to our clients and not using cash, such as reward points, mileage points, cash rewards, cash rebates, timeshare points, HSAs, tax refunds, tax loss carryforwards, depreciation recaptures leases that have been entered into on a long-term basis.

Some states force the decanting of trusts for assets or income and business owners. You should pull in a business valuation expert to get an appraisal of what is the businessperson's interest versus the value of the asset. This is also one of the most controversial in divorce because there's a concept called double-dipping. Double-dipping refers to using a business as an asset as well as a source of income. And it's not well understood by the courts.

It's very difficult to explain this concept, which is why outside professionals usually come in and do these appraisals. It does cost money, but it alleviates liability on your part and the attorney's part to have this expert report.

Key Takeaways

As a financial professional, you can clarify many topics that should be of key concern to our clients in late-life divorce. Most importantly, I want you to help your clients avoid having false expectations for divorce. The one derailing myth out there is that everyone will be the same after divorce as they were during the marriage in terms of financial capacity and resources and wherewithal, and that they have an entitlement to that and that the law guarantees it.

And more importantly, you want to ensure your clients do not make ignorant decisions. You're there as their backstop.

Here is how you educate:

1. *Cash flow* – you want to squeeze every asset, maximize every income source you possibly can, and identify how to replace irreplaceable cash flow and what to do about it.

2. *Risks* – are your clients at risk of underemployment? Maybe no earning potential, early retirement against their will, remarriage by choice, or cohabitation by choice? What about working past retirement age and having illiquid assets at risk that can't be squeezed for cash flow?

3. *Retirement assets* – can we cherry-pick what we get in the divorce? Sometimes, yes, sometimes no. The more knowledgeable you are, the more prepared you are, the better your chances are. And you need to know what's required to get those assets at the lowest risk cost possible.

4. *Social Security* – You must help your clients understand Social Security claiming strategies for alimony and working past retirement age.

5. *Healthcare* – if they fell short of health insurance, how will they get that coverage?

6. *Estate planning* – Revisit all their estate plans, beneficiary designations, and POAs. You don't want your ex-spouse as your POA in a situation, life or death.

With this information, you can help your clients focus better during the process. You'll give them clear guidance on how to help them implement all of the terms of that divorce agreement and give them some post-divorce financial planning. We are most relevant by playing a critical role in the transition for our clients. We're going to open a very personal and safe space for them to ask us any question and give them the most information we can to help them keep their financial negotiations on track.

The Platinum Retirement Challenge – Gray Divorce – Lili Vasileff

About [Lili Vasileff, CFP®, MAFF, CDFA], President, Divorce and Money Matters, LLC and [Wealth Protection Management]

Lili Vasileff, CFP®, MAFF, CDFA®, President of Wealth Protection Management, is a nationally recognized expert practitioner, leader, author, writer, and speaker about financial planning for wealth protection.

Lili is sought after for her seasoned experience and deep knowledge about complicated financial issues in wealth management and is called into cases that have national recognition. Lili is qualified as a testifying expert in courts.

Lili Vasileff is one of the distinguished trailblazers of divorce financial planning who has been a catalyst in developing a professional niche that has led to an international movement and thousands of practitioners today. A highly regarded educator, trainer, and speaker, she is sought after by international financial planning institutions and legal professionals.

Lili Vasileff serves as President Emeritus of the Board of Directors of the national Association of Divorce Financial Planners and holds active memberships with the Financial Planning Association, the Connecticut Council of Non-Adversarial Divorce (CCND), CT Bar Association, New Haven County Bar Association, Fairfield County Bar Association, New York Association of Collaborative Professionals, Collaborative Divorce Team of Connecticut, Institute of Divorce Financial Analysts, and International Academy of Collaborative Professionals. She is also a founding member of the Collaborative Divorce Team of CT, and currently serves as the Chair of the Finance Subcommittee of the New York County Law Association's Family Law and Child Welfare Committee.

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