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Seeking a Divorce and Financial Independence in a Down Economy

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In the best of economic conditions, people may be concerned about how a divorce will affect their ability to take care of themselves. But when the economy is down and home values have fallen and debt loads are high, many may feel they simply cannot make it on their own without their spouse's income - despite how unhappy they may be in their marriage.

Many families have found themselves in a position where they owe more on their homes than they are actually worth. The housing market in Florida in particular has been hit hard and properties in some counties are severely undervalued. But it isn't only home values that have lost their worth in this economy; retirement accounts also have been hit and 401ks, mutual funds, bonds and other investments have lost considerable value.

Florida is an equitable distribution state. This means that, in a divorce, the assets and the debts of the husband and wife will be divided equitably - not equally - between the two. But for some couples, the only items they actually may have to divide is their late mortgage payment, credit card bills and other debt.

Options for Financial Independence:

As spouses considering separation take a hard look at their financial situation, they may be tempted to stay in a loveless marriage rather than face an uncertain economic future on their own. This is particularly true for spouses who have left their jobs to take care of the home and children and have not worked outside of the home for years, if ever. They may worry about their chance of finding sustainable employment and making a living wage in the current economy.

It does not have to be this way, however. Financial co-dependence is never a good reason to stay in a marriage that no longer works. There are always other options that can help ease the financial burden while helping you move on with your life in a positive direction.

Some of these options may include:

Credit counseling - before or after divorce, the spouses may want to consider meeting with a credit counseling service to see if they can negotiate a payment plan at a lower interest rate for any consumer debt they may have, like credit cards.

Mortgage refinancing - depending on your financial situation, if you have fallen behind on your mortgage payments, the bank or other lender holding your loan may be willing to work with you to refinance the loan. Many lenders, however, are only willing to do this after a homeowner is one or more month's delinquent on their mortgage payments.

Short-sale - if the couple has fallen behind on their mortgage payments and the bank is threatening foreclosure, the couple may want to explore their options for short-selling the home. In a short-sale, any money made from the sale of the house will go directly to the bank. In exchange, the bank will consider the couple's loan paid in full. This option, however, may have tax consequences that need to be considered.

Bankruptcy:

For couples who have significant debt and no foreseeable means to get ahead of their bills, bankruptcy may be the best option. The spouses can file jointly for bankruptcy prior to filing for divorce or they may file separately after the divorce has been finalized.

Chapter 13:

If there are late mortgage payments and the couple wants to keep the family home out of foreclosure, a Chapter 13 bankruptcy is the best option. In Chapter 13, the court will restructure the debt and set up a payment plan, usually spanning over 3-5 years. At the end of the repayment period if the debtor has made all the payments in accordance with the repayment plan, then any remaining debt will be forgiven.

Chapter 7:

In some cases, however, a payment plan may not be the best fit. If the person or couple has a high debt load and does not have the income to commit to a repayment plan, a Chapter 7 bankruptcy may be a better option. In Chapter 7, the court assigns a trustee to collect all of the assets of the debtor to satisfy some or all of their debts. However, most debtors only have exempt property and do not lose any of their assets. Exempt property includes items such as the family home, family car, household items and clothing, for example. After any non-exempt assets have been sold and some or all of the debts have been paid, the remaining debts are forgiven.

Some debts cannot be forgiven in bankruptcy, including support payments, student loans, personal injury judgments and income taxes.

Bankruptcy Myths:

Many people are under the impression that the recent changes in federal bankruptcy law mean fewer people can now file for bankruptcy. This is not true. Most people still will qualify for either a Chapter 13 or Chapter 7 bankruptcy.

There is also a misconception that filing for bankruptcy will ruin your credit score. This also is not true. Most people's credit scores actually improve after filing for bankruptcy and removing the bad debt from their records. After filing for bankruptcy, most also are able to secure home loans, car loans and other lines of credit.

Conclusion:

Whether you are concerned about paying your bills, getting out from underneath bad debt or keeping your home out of foreclosure, there are always options. Staying in a broken marriage doesn't have to be one of them. While it can be scary to file for divorce and only have yourself to rely on to take care of you, it is also an opportunity for a new beginning. It would be to your benefit to discuss your options with an attorney who is experienced in family and bankruptcy law.