





Silver Splitting: Six Key Gray Divorce Issues and Related Tax Law

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Gray Divorce

- **What is a gray divorce?**
- **Defined as over age 50**
 - **Between 50 – 59 doubled since 1990**
- **Over 65 tripled since 1990**

Examples of Gray Divorce

Bill and Melinda Gates (2021):

- Bill Gates: 65 years old
- Melinda Gates: 56 years old

Jeff and MacKenzie Bezos (2019):

- Jeff Bezos: 55 years old
- MacKenzie Bezos: 48 years old

Al and Tipper Gore (2010):

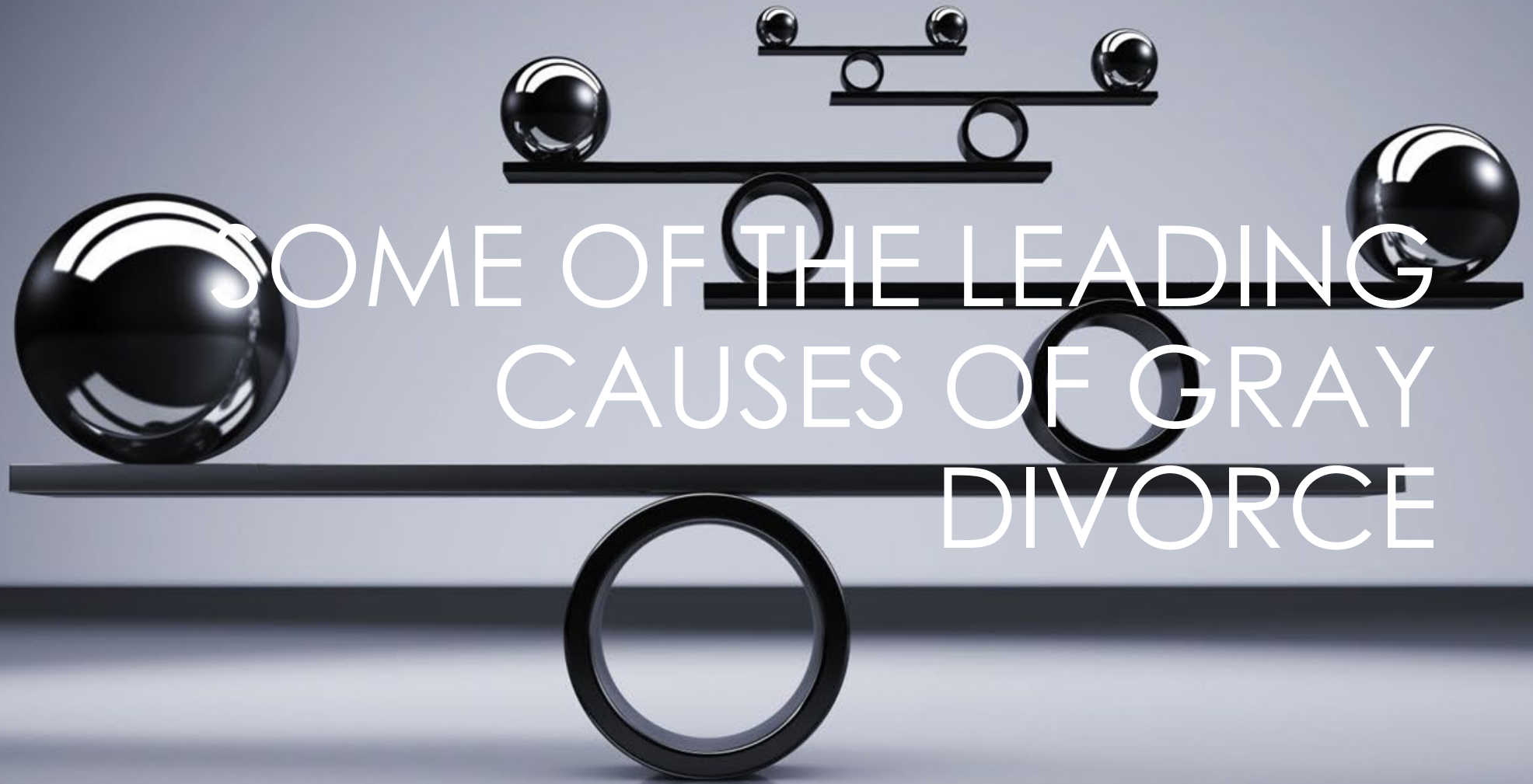
- Al Gore: 62 years old
- Tipper Gore: 61 years old

Robert De Niro and Grace Hightower (2018):

- Robert De Niro: 75 years old
- Grace Hightower: 63 years old

Rupert Murdoch and Wendi Deng (2013):

- Rupert Murdoch: 82 years old
- Wendi Deng: 44 years old



SOME OF THE LEADING CAUSES OF GRAY DIVORCE

Leading Causes of Gray Divorce

Growing Apart

Financial Independence

Health

Technology





Six Key Aspects of Gray Divorce

- **Property Division**
- **Spousal Support/Alimony**
- **Health Care Issues**
- **Estate Planning**
- **Tax Implications**
- **Financial Support of Child/Grandchild**





First Key: Property Division

- **Retirement**
- **Business Valuation and Family Issues**
- **Real Estate**



Key One - Property Division - Retirement

- **Frequently the Largest Asset –QDRO – Qualified Domestic Relations Order – (QDRO does not apply to IRA)**
 - **Requires a State Court Order pursuant to IRC 414p, which is very specific**
 - **Requires Plan Administrator to “QUALIFY”**
 - **Plan Participant (account owner); Alternate Payee (other spouse)**
 - **Delay in processing BY ATTORNEYS – WATCH THIS**
 - **DEATH BEFORE QUALIFICATION CAN DIVEST ALTERNATE PAYEE**



Key One - Property Division - Retirement

- **QDRO – 414(p) and NCGS 50-20.1 (2019 amendment)**
 - **Shared Interest**
 - **Life of Participant**
 - **Must Have: Survivor Benefits**
 - **Separate Interest – Preferred – presumption under NCGS 50-20.1**
 - **Alternate Payee's Life**
 - **Each Spouse Independent**



Key One - Property Division – Retirement QDRO – 414(p)

- ***Bernal – Brown v. California Ironworkers (2024)- Federal Court***
- ***A DRO awarded W one-half of pension earned during the marriage.***
- ***Plan qualified the DRO and it was thus a QDRO when H died.***
- ***W sought her half, and Plan said no because there were no survivor benefits.***
- ***Federal court said W had a separate interest (not shared interest) and W won.***



Key One - Property Division – Retirement continued

- **Roth IRAs – Make sure the attorney for your client is considering the tax status of a Roth in equalizing divisions.**
 - **COMMON ERROR . Most Family Lawyers have a weak understanding of retirement account differences. CPAs - These are your clients too!**
 - **Example: \$100,000 in a 401k and \$100,000 in a Roth owned by Wife. Both should be divided, not 401k to one spouse and Roth to the other. They are not equal.**



Key One - Property Division – Retirement *continued*

- **Social Security (SS) – also a spousal support consideration**
 - **If married ten (10) years, the spouse eligible for one-half of the other spouses' SS or their own, whichever is greater.**
 - **Common Error: Remarriage stops a former spouse from collecting on former spouse's SS.**
 - **Former spouse then only eligible on his/her SS work record.**

Key One - Property Division – Retirement *continued*

- **Social Security (SS) - continued**
 - **Example: Sally (did not work) and John divorce after 20 years of marriage. They are age 68. John gets \$4000 per month for SS. Upon divorce Sally will get \$2000 a month.**
 - **John was married to Lucy for 11 years before Sally, and Lucy did not remarry?**
 - **How much SS does Lucy get based upon John's earning record?**





Key One *continued* - Property Division – Business

- **Big Factor for Small and Closely-Held Business when an adult child or children are in the business**
 - **Valuation – can make property division impossible, at least in the sense of the business owner spouse retiring.**
 - **Continuity – Adult Child and Succession Planning with a Big Debt.**

FAMILY MESS IN TRANSFERRING THE KEYS TO ANOTHER GENERATION

Key One *continued* - Property Division – Business –tough case example



- Dad (65) started the business 40 years ago. Daughter (35) joined business 10 years ago.
- Dad and Mom had always planned to leave business to daughter, but divorce happened. 15 million marital estate.
- Business value is 66.67% of the marital estate and is worth 10 million.



Key One *continued* - Property Division – Home or Homes



- Problems
 - Displacement
 - IRC Section 121
 - \$500,000 joint return gain excluded
 - \$250,000 other returns



Key Two – Spousal Support

IRC 71 and 215 repealed

Effective Agreements/Orders
after 12-31-2018

Alimony taxable to the Payor

Alimony NOT taxable to Payee

Key Two – Spousal Support *continued*

IRC 71 and 215 repealed - *continued*

Modifications – new law applies only if Agreement/Order says so

Pre-2019 cases remain taxable to Payee unless a modification says new law applies

No tax court cases yet, but expect them on issue of whether there is a modification or a new order.



Key Two *continued* – Spousal Support

- **NCGS 50-16 *et seq***
 - **Amount and Duration – Length of marriage**
 - **Ages 50 to Retirement, but when can the breadwinner retire?**
 - **Retirement Age not defined under NC law.**
 - **Over mid-sixties to death – harder to get spousal support**
 - **Inheritances or Separate Assets that generate income**

Key Two – Spousal Support - Example

**Jane is 50 and a teacher making \$48,000 per year. (\$4000 before tax/mo.)
Trevor is 57 and is a physician making \$300,000 per year. (\$25,000 before tax/mo)**

The parties were married 25 years. Jane's typical expenses are \$6000.00 (AFTER TAX) a month.

How much spousal support should Jane receive? For how long?

What if Trevor has mandatory retirement at age 65?

Will Jane receive alimony if she had an affair with the gardener?

Key Two – Spousal Support – Example *continued* - modification

Let's say Jane didn't have the affair and gets \$3000 per month alimony for 8 years. Then after the alimony **order** of \$3000 in place for 2 years – Jane sells the marital residence for a million more than the value in the property settlement. (Same as if \$1,000,000 inheritance).

WHAT SHOULD Trevor do? Move for Modification.

Note: Difference between Court **Order** (modifiable on change of circumstances) and **Private Agreement** (modifiable ONLY under terms of Agreement and may not be modifiable).



Key Two – Spousal Support – Example *continued*

A final word about the Loss of the Alimony Deduction in 2019.

IT IS GONE FOLKS!!!

**2019 TAX CUTS AND JOBS ACTS ELIMINATED
DEDUCTIBILITY**



Key Three – Health Care

- **Loss of the Other Spouse's Health Care Before Medicare Age**
 - **COBRA – 36 MONTHS, BUT IF THAT DOES NOT TAKE A SPOUSE TO MEDICARE AGE?**
 - **Strategy – Could separate and delay divorce if close in time.**
 - **Example: Wife is 61 –**
 - **Strategy – Use an Agent to find health care insurance.**
 - **Strategy – Unequal factor in Property Division or Spousal Support issue.**



Key Three – Health Care, *continued* – Long Term Care Policies

- **Long Term Care Insurance**
 - **Many times, one spouse takes care of the other spouse until that spouse dies, and the surviving spouse is the one who ends up needing the long-term care policy**
 - **Policies linked for H and W**
 - **Best strategy: each has own policy with remainder to other spouse, but some policies have a total benefit for the two spouses together.**
 - **Study policies and get advice and understanding from the insurance company itself.**





Key Four – Estate Planning

- **THE DIVORCE LAWS OF PROPERTY DIVISION (EQUITABLE DISTRIBUTION) AND ALIMONY DO **NOT** CONSIDER ESTATE PLANNING**
- **Problems –**
 - **New relationships and “new” families**
 - **Unintended beneficiaries**
 - **Unless update wills, trusts, and all beneficiary designations**
 - **Retirement, insurance, bank accounts, etc.**



Key Four – Estate Planning *continued*

- **Update Powers of Attorney**
- **Update Health Care Directives**



Key Five – Tax Implications

Changes in Filing Status

- Post-Divorce no more joint filing, which likely results in a higher tax burden

Sale of the Marital Residence with gain of more than \$250,000

Capital Gain associated with the sale of the assets acquired in divorce

- Know the tax basis when the Asset is Transferred

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Key Six – Adult Children, Grandchildren, Blended Families

College Debt of Adult Children – 3.7 million parents, \$113.7 billion in loans

Disabled Adult Children – 6 million; cost 40k to 100k per year

Custody of Grandchildren – 2.7 million grandparents; drug addiction; mental health

Remarriage or Cohabitation

Key Six – Adult Children, Grandchildren, Blended Families

Dependency Exemption

Will be Restored January 1,
2026, absent Congressional
Action

Zero now, but it looks like it
will rise again.

With it goes the Tax Credit

Dependency Exemption and Grandparents

Grandparent must provide more than half the support of a US child.

Child's income cannot exceed \$4700.00.

Younger than 19 or a student younger than 24.

Child lives with Grandparent more than half the year.



Key Six – Grandchildren

For 2024, child tax credit is worth \$2000.00 per qualifying child IF

Modified AGI is \$400,000 or below (MFJ) or \$200,000 (other filers)

Phases out \$50 per \$1000 above threshold.

Additional Child Tax Credit is \$1700.

Form 8332 is NOT needed for a Grandparent for which the child is a qualified relative.

Children under 17 only.

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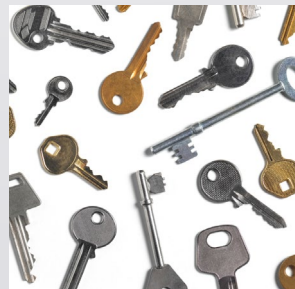


Summary of Keys to Gray Divorce

Key One – Retirement Plan divisions must be done to perfection. No room for error.

Housing requires careful consideration of gain under IRC Section 121.

Business division – best with succession planning for small business, but may be thwarted by one spouse who wants the “money” now.



Summary of Keys to Gray Divorce

Key Two – UNDERSTAND ALIMONY – TAXES, LENGTH, AND DURATION
UNDERSTAND SOCIAL SECURITY – 10-YEAR RULE; EFFECT OF REMARRIAGE

Key Three – UNDERSTAND HEALTH INSURANCE (INCLUDING MEDICARE); LONG TERM
CARE POLICIES

Key Four – UNDERSTAND DOCUMENTS SUCH AS WILLS, POAS, HEALTH DIRECTIVES
MUST BE UPDATED. BLENDED FAMILIES MAY HAVE DIFFICULTIES.



Summary of Keys to Gray Divorce

Key Five – TAX IMPLICATIONS. TAX FILING STATUS. CAPITAL GAINS IN TRANSFERS/BASIS.

Key Six - ADULT CHILDREN AND GRANDCHILDREN. MORE COMMON THAN YOU THINK. CONSIDER THE DEPENDENCY EXEMPTION AD CHILD TAX CREDIT.

FINALLY, “THE SECRET OF A HAPPY MARRIAGE REMAINS A SECRET.” Youngman

