

Divorce After 50 – Older Couples Face Unique Issues

**By Matthew Crider, JD
Family Protection Attorney**

Arizona divorce attorney Scott D Stewart recently published an article on the issues faced by older couples, usually where one or both of the spouses are over 50. He notes that Al and Tipper Gore's divorce has caused many Baby Boomers to examine their own marriages and has many of them wondering how this could happen. But it does happen, and for many different reasons. As a Sacramento divorce lawyer, I have also seen an increase in the number of my cases involving Baby Boomers.

Aside from the emotional aspects of a divorce, an older couple should also analyze various problems that affect them solely as a result of their age and stage of life. The years in which they earn the majority of their income usually behind them, so careful attention must be paid to in evaluating and dividing their assets, which typically include their home as their primary residence, retirement accounts, investment portfolios and the like. If the divorcing couple is retired, dividing up the retirement assets can be complex. Typically they will need to have a Qualified Domestic Relations Order (QDRO), which is a separate court order that covers the division of retirement benefits.

Mr. Stewart also points out those other decisions must often be made, including:

Can one spouse receive survivor benefits if the other spouse dies?

When can each spouse receive benefits and how can they avoid tax penalties?

Who is entitled to retirement plan contributions made following the divorce?

If any loans have been taken out against a retirement plan, how that should be repaid before assets are divided?

Social Security benefits cannot be divided in a divorce, but rules about them can affect post-divorce income and standard of living. For example, if a wife is over age 62, and the couple's marriage lasted for over 10 years, she can collect benefits after the divorce on her former husband's earnings record without a reduction in benefits to the husband.

If the former husband dies, the wife may be entitled to survivor benefits – 100 percent of the former husband's Social Security benefit. To qualify, the marriage must have lasted 10 years, the surviving spouse must be at least 60, and that spouse cannot already be entitled to benefits that are equal to or greater than those of the former spouse.

In our Sacramento divorce practice, I've seen that the question of who gets the house also takes on greater significance when our clients are older. If your home has lots of

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equity, you could use that equity for a reverse mortgage when you reach age 62. Reverse mortgages are popular vehicles for older Americans to generate income.

Eligibility for tax benefits, exemptions and waivers also have greater significance for older clients in divorce cases.

Not 65 yet and not qualified for Medicare? Getting individual health insurance will likely be another issue you will face. Are you covered under your spouse's employer-provided insurance? COBRA laws will allow you to stay covered for up to 36 months following a divorce, but you will usually be responsible for paying those premiums. There are national organizations for seniors which offer individual health insurance coverage for members, and those groups may be a good place to start if you need to look for new individual coverage.

If you are older (over 50) and facing a divorce with these issues and others, we are here to consult with you and guide you through the process. We are happy to help couples of any age face a divorce with dignity and grace, in deference to all those years you shared a life together. Because many such clients are parents and grandparent together, we also urge those clients to take a careful look at collaborative law and mediation as a better means than litigation to resolve these issues

About Matthew Crider, J.D.

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals through the California divorce process by providing creative solutions as their trusted advisor and legal counselor. His divorce and family law practice focuses on assisting people in dissolution matters, including divorce, child custody and visitation, child and spousal support, spousal support and alimony, and parental rights.

