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Breaking Up Without Breaking the Bank

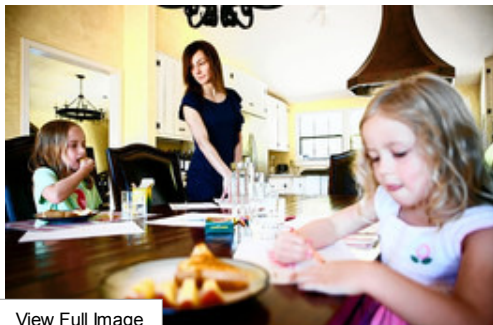
Dividing Assets Is Hard Enough Without Trying to Sell a Home, Business or Stock Portfolio in a Down Market. Here's How to Ease the Financial Pain

By [MARY PILON](#)

Breaking up is always hard to do. In the worst economic downturn most of us have ever lived through, it can be downright excruciating.

Plummeting home values, sagging investments, job worries and exploding college and health-care costs have made parting ways and splitting assets more difficult than ever.

Even for couples with fewer assets than, say, Tiger Woods and Elin Nordegren, that is a good recipe for frustration and anger. One St. Louis family lawyer, Marta Papa, has seen such a rise in client hostility that she purchased a Taser, which she places on a nearby end table when couples come in.



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Ramin Rahimian for The Wall Street Journal

Patricia Twomey shares custody of her daughters Kaelen, 7 years old, left, and Claire, 5, with her ex-husband Mick.

"The scarier part is that I've had to use it three times" by casting a red laser-beam light as a warning, Ms. Papa says. "I guess the chocolates and classical music weren't enough."

There are, however, a number of cheaper, less-stressful alternatives to the traditionally costly and acrimonious divorce proceeding. For couples willing to do some of the legwork themselves, options such as mediation and collaborative divorce can pay off financially. The key: working together, something most divorcing couples can't easily do.

Mick and Patricia Twomey, now 40 and 39 years old, respectively, have found it difficult to untie the knot. They decided to separate in 2007 after 10 years of marriage, but didn't finalize their divorce until last year. In the interim, they watched helplessly as the value of their business, house and investments tumbled.

The couple, who have two school-age daughters, own and operate three preschools in Frisco, Texas, a suburb of Dallas, the first two of which they purchased in 2004. Every week, their stress mounted as parents, clutching pink slips, would yank their kids from their programs.

The Juggle

When Home Prices, IRAs and Marriages Go South: Divorcing During a Downturn

Ms. Twomey's retirement accounts from her previous employer dropped 30% in value, she says, and the family home became encircled by "for sale" signs. Mr. Twomey, who now lives there alone—except when his kids are there—estimates it has lost 20% in value since the peak.

At one point, the Twomeys' finances were spiraling so rapidly that the couple began to argue about how often to update the values on their Excel charts while they worked with lawyers to draft a divorce agreement.

"We waited two years for the economy to turn around," Ms. Twomey says, "and especially toward the end, it was looking for sure like we were splitting up things when things were most bleak. It went from a scary change to a huge scary change."

The recession—the most brutal downturn since the Great Depression, by many measures—has pounded many families. Average home values were down almost 31% as of March 31 from their peak in mid-2006, according to the most-recent S&P/Case-Shiller national index. Many portfolios were pummeled as the Dow Jones Industrial Average fell 28% from Oct. 9, 2007, through Friday.

U.S. households owe a total of \$11.7 trillion in consumer debt, according to a report released this month by the Federal Reserve Bank of New York. That is 6.5% less than the peak in 2008, but still double the debt load of a decade ago. And some 6.6 million Americans are considered "long term" unemployed, having been jobless and actively seeking work for at least 27 weeks, according to the Bureau of Labor Statistics.


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Misty Keasler for The Wall Street Journal

Patricia and Mick Twomey split up in 2009.


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Ramin Rahimian for The Wall Street Journal

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What They Share

- A business: three preschools in Frisco, Texas.
- Day-to-day operation of the business.
- Custody of their two daughters
- An account used for expenses for their daughters.

What They Don't

- Mr. Twomey stayed in their original home and Ms. Twomey moved into a separate residence nearby.
- Retirement plans from their previous employers.
- Personal discretionary spending, which they have both reduced.

'Alternative' Divorce

The growth in so-called alternative divorce methods has helped trim costs. Only 1% of mediation cases cost couples more than \$15,000, compared with 11% of litigated cases, according to the Institute for Divorce Financial Analysts, a group of financial professionals who specialize in divorce.

In mediation, couples meet with lawyers outside of court to hash out a mutually acceptable agreement that is later brought before a judge. In collaborative divorce, couples typically engage a phalanx of experts—including lawyers, mental-health professionals and financial planners—to work out an agreement in a more-structured environment of negotiation.

The cheapest way is if a couple can strike an agreement by themselves and then take it to a lawyer to draw up the

Historically, the number of divorces filed decreases in weaker economies. The divorce rate for married women, which increased to 17.5 for every 1,000 people in 2007 from 17.3 in 2005, fell to 16.9 in 2008, according to the National Marriage Project at the University of Virginia.

While some experts claim the decline is rooted in a need to band together in tough times, many say that the reluctance to split devalued assets—and debts—is one big reason many couples put off breaking up.

Another reason: skyrocketing legal fees.

Litigation can cost tens of thousands of dollars, take several months or even years, and is likely to disclose more personal information than mediated or collaborative divorces would. In Texas, for example, divorces can be put forth as jury trials, with peers determining who owns what assets.

One couple spent two hours in court arguing over a leaf blower, Ms. Papa says. "I could have bought them each a new one for the amount it cost them."

Those billable hours add up fast. The average partner in a family-law firm charges \$360 an hour, according to a survey conducted this year by the National Law Journal and ALM Legal Intelligence, up from \$228 an hour a decade ago. That is an increase of 57.9%, compared with a 29.5% increase in the Consumer Price Index over the same period.

Tighter state budgets have compounded the situation by jam-packing court dockets, which causes delays that can ratchet up legal bills and other divorce costs, experts say. In response, some Arizona counties now provide self-service kiosks in their courts for couples seeking a cheaper divorce.

Rachael Davies of Aurora, Ill., who describes her divorce so far as being in a state of "stalemate" over the division of debts, has a temporary agreement with her ex that addresses child support, spousal support and some joint property. So far, she estimates the divorce has cost her at least \$8,000 in legal and other fees. "It's a work in progress," she says.

necessary documents, says Norma Levine Trusch, a marital lawyer and past president of the International Academy of Collaborative Professionals, a group of lawyers and mental-health and financial professionals who specialize in collaborative law.

Splitting Up in a Downturn

Couples are increasingly using 'alternative' methods to get divorces, such as mediation and collaborative law, both of which allow partners to minimize court time and work out an amicable agreement. Here are some pointers for parting ways effectively in difficult economic times:

Try to meet with a financial professional or a marriage therapist separate from a lawyer to reduce hourly billing legal costs, but don't sign anything without legal counsel.

If possible, consider a co-ownership agreement for a house or draft a strategy to sell it in different market conditions.

Be wary of a divorce settlement that weighs heavily on shares of family businesses or shares of company stock.

Include health-insurance plans and costs as part of the negotiations.

Many divorces provide for child support, but may not specifically address things like paying for college, summer camp, daycare or other extra expenses.

If you apply for a loan or credit card, be honest with the application and know that information on it could be used in a divorce proceeding.

If a divorce filing lasts for several months, consider a temporary agreement to address financial issues in the interim.

The more couples can agree on in advance, the smoother and cheaper the process will be.

The Twomeys decided to use the collaborative-divorce process, which is encouraged under Texas divorce laws. In a series of five meetings with two attorneys and mental-health and financial professionals, the couple mapped out their post-marriage lives.

"It's almost like Turbo Tax for divorce," Mr. Twomey says. "You just answer the questions and everything gets filled out."

Concerned about the price it would fetch, they decided not to sell their business. They were also worried that, with unemployment so high, neither of them would be able to find a new job. So they drafted a detailed agreement for how they would continue to manage the company, which stipulates specific job duties and what the other side can do to enforce them. If either spouse remarries, the new spouse isn't entitled to a share of the business.

Instead of putting their home on the market, the couple factored the remaining equity into their joint assets, which they divided 50-50. Mr. Twomey then took sole ownership of the home, while Ms. Twomey received an equal amount in cash and investments—and sole ownership of another home the couple had purchased earlier—to offset the difference.

The two share joint custody of their children, and each contributes funds into a joint account for expenses related to the kids. They also cut down on discretionary spending. "You take a 50% pay cut when you get divorced," Ms. Twomey says.

Some couples take even more initiative, buying divorce-settlement and planning software or representing themselves in court. But such an approach could backfire if an agreement doesn't conform to state laws, or could result in an unequal settlement requiring costly untangling down the line, says Laura C. Belleau, a family lawyer in Tucson, Ariz.

Devilish Details

Regardless of how a couple divorces, the small details of splitting up assets in a divorce are magnified immensely during a downturn.

Each spouse likely will be required to provide financial documentation, such as tax returns, brokerage statements and statements of debt. Generally, in "equitable distribution" states, judges look at what is "fair," so all marital property is considered before it is divided. In "community property" states, such as California, marital assets are typically split 50-50.

When dividing debts, judges generally look at the amount of debt and the reason it was incurred. If it was created separate from the marriage, it likely is to go to that party. If it was a marital debt, it likely would be split—but the court may have its own discretion in dividing property.

With home values low and properties difficult to unload, couples are increasingly buying out one of the parties, with the other partner remaining in the home, as the Twomeys have done. Or they are drafting terms for the

eventual sale, including a timeline and prices that would be acceptable for both parties, or how to split losses on the home.

Because of market volatility, many lawyers are drafting agreements so that assets, especially portfolios, are divided as a percentage of value versus concrete dollar amounts. Couples should consider the tax consequences, however, if different pieces of a portfolio are liquidated—specifically capital-gains taxes, which currently have a top rate of 15% for assets held more than one year, but which could rise in 2011. Some retirement plans and pensions may require additional paperwork in divorce.

But be wary of accepting shares of a company or family business, says Cary Carbonaro, a financial planner in Fair Lawn, N.J., especially if it puts your financial future in the hands of your ex. One client came to her with a great chunk of her divorce settlement wrapped up in stock from the company her husband worked at. "She couldn't sleep at night," Ms. Carbonaro says. "Her entire net worth was tied up in the fluctuating price of the stock."

Health-insurance plans, including Cobra coverage, are the type of asset that often is overlooked in good economic times but become more important during a downturn. In 2007, when Sarah Hanley of Helena, Ala., and her husband divorced, he paid her Cobra costs until she found a job and covered their two children's health care. In hindsight, she says, she wished she included child care, dance lessons and camp costs in the settlement. "The summertime kills me," she says.

If a couple is pursuing bankruptcy, then the legal process gets more complicated. Lawyers typically will send them to bankruptcy court and put the divorce proceedings on pause, since bankruptcy court has overriding jurisdiction over divorce court.

As for the Twomeys, they are planning on opening a fourth preschool next spring—together.

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