

Financial Duress and Divorce

by Tobi Elkin



Many couples seeking divorce are discovering they can't afford it.

Nine months ago, Rachel Gund (some names have been changed), 44, decided she wanted to divorce her husband of nearly 20 years. But nine months later, she continues living under the same roof with him and their two teenage daughters: Neither partner can afford to move out so they live like roommates, sharing the marital home and dividing the expenses.

Sound far-fetched? Not really, say attorneys and therapists who are seeing more couples delaying divorce filings and physical separation due to the economic recession. In many cases, couples can't sell their homes because of the soft real estate market. In others, one or both partners has suffered a job loss. Often, there's a mountain of shared debt that must be cleared before a split can occur.

"Cohabiting has spiked because people just can't afford to move out. They can't afford to buy themselves out [of the house]," notes Kathryn Dickerson, partner at Smolen Plevy in Vienna, Va. "You used to be able to refinance a mortgage more easily, but not any longer." In some cases, she says the value of a house is "under water" (when the value of the home falls beneath the value of the mortgage) and there's simply no equity to divide.

"The question is who will take what debt," Dickerson says. Gund and her husband signed a legal separation agreement in March (2008) and continue living together. The agreement details the percentage of the living and childcare expenses each partner must pay. The couple also agreed not to bring dates home. In the state of New York where Gund lives, the legal separation agreement becomes the divorce agreement so in March 2009, she will be divorced. She plans to put the house up for sale just prior to that.

Yael Lazar, a Long Island-based attorney, says she's handled more legal separation agreements in the last year – they cost about \$2,000. "I'm finding in my practice that divorce is a luxury in this economy I have some clients that have stopped the divorce process midway because of what it would cost them to live separate and apart."

Lazar points to a unique case of a couple with kids who've been married for 20 + years. They pursued a divorce but continued to live under the same roof. After spending thousands of dollars in legal fees, they found that the husband, who was taking home \$6,000 a month, would have to spend \$4,000 per month on spousal maintenance and child care expenses. "He decided it wasn't enough for him to have any sort of life until his kids were 18 so he reconciled with his wife."

In yet another case, Lazar cites a client who couldn't afford his own place so he moved into the computer server room at his workplace. He lived there for eight months rather than continuing to live with his spouse.

"A lot of people because of the rough economy are staying unhappily married," says Stacy Schneider, lawyer and author of *He Had It Coming: How to Outsmart Your Husband and Win Your Divorce* (Simon Schuster 2008). "The number one reason is the housing slump... the house is the primary marital asset and there's no money to finance separate lives." Schneider relates the story of one New York City couple that constructed a wall down the middle of their living room and lived with the line of demarcation for a year.

Dallas-based Rhonda Mitchell is unable to file for divorce because she can't afford an attorney. The 41-year-old self-employed hairdresser continues living with her son and husband in a rented house. "It sucks, we haven't shared a bedroom in months. It's beyond tension." She sought legal assistance from a non-profit organization and looked into mediation. Currently, she's saving up money to retain an attorney and file for divorce. Neither Mitchell, her husband or their seven-year-old son has health insurance.

Dickerson says women in different age groups have different considerations. For example, women who got hitched at 18 or 19 and have been married for 40 years or more decide to stay in troubled unions even though their husbands are having affairs. Often, she says the wives haven't held jobs outside the home, don't want to lose a relatively affluent standard of living or give up health insurance benefits. "So they'll put up with the infidelity, emotional distance, verbal abuse and even physical abuse because submitting to a lower standard of living isn't desirable," Dickerson notes. "People in their 30s and 40s are much more financially savvy and are more willing to negotiate."

Candace Holly, a 26-year-old communications manager who lives in southern Illinois, has been separated for more than two years. "The main reason I'm not divorced right now is I just can't afford it." Holly says she doesn't know where her estranged spouse is and would have to track him down, retain an attorney and send court-ordered documents. Bottom line: It all adds up.

"It started as very heavy verbal and emotional abuse and it escalated to physical violence on occasion. I knew that I had to get out because at the time I was struggling to finish college. I had a job but it didn't pay me enough to live." Holly continues to live paycheck to paycheck and has no health insurance.

Marilyn Barnicke Belleghem, a marriage and family therapist and a member of the American Association of Marriage and Family Therapy, contends that many people don't understand the

difference between a separation agreement and divorce: "You only need a divorce if you want to remarry."

The hard part is getting the separation agreement which is about who gets what stuff, who pays what money, how much equity did each bring in, etc." Belleghem recommends that couples evaluate what they need to do in their state to obtain a separation agreement.

As a therapist, Belleghem hammers out what's known as a cohabitation agreement, which is based on what a separation agreement will be when the couple decides to separate. "Good relationships come when there are good deals made. So what couples need to do is to make a deal with each other and nobody can tell them what's right for them," she says.

A cohabitation agreement includes an understanding of each partner's responsibilities for financial issues, a projected date of separation, the value of assets and debts, how much of each asset and debt each partner gets, a plan for living in the same house, custody arrangements, child care expenses and can even include issues about dating.

In Gund's case, her cohabitation situation is "sort of like being on a roller coaster because some days are better than others."

First published February 2010

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