Transcript

Better conversations. Better outcomes.

Episode 37 – Happily never after: Advising clients through a divorce

Carol Lee Roberts - No financial professional is ever going to recommend somebody make a huge decision without all the facts and divorce is probably the largest financial decision your clients are ever going to encounter. So it makes sense for your clients, and it makes sense for you as a financial advisor to be aware of the numerous pitfalls in divorce financial planning.

Ben Jones - Welcome to Better conversations. Better outcomes. presented by BMO Global Asset Management. I'm Ben Jones.

Emily Larsen - And I'm Emily Larson. In each episode, we'll explore topics relevant to today's trusted financial advisors, interviewing experts and investigating the world of wealth advising from every angle. We'll also provide you with actionable ideas designed to improve outcomes for advisors and their clients.

Ben Jones - To access the resources we discuss in today's show or just to learn more about our guests, visit bmogam.com/betterconversations. Again, that's bmogam.com/betterconversations. Thanks for joining us.

Emily Larsen - Before we get started, one quick request. If you have enjoyed the show and found them of value, please take a moment to leave us a rating or a review on iTunes. It would really mean a lot to us.

Disclosure - The views expressed here are those of the participants and not those of BMO Global Asset Management, its affiliates, or subsidiaries.

Carol Lee Roberts - The idea of helping people understand the importance of financial planning and then helping financial planners be able to effectively communicate with individuals and to be able to teach consumers how to apply their resources to their goals was just a wonderful opportunity. And having had the experience at DePaul of working with the financial planning curriculum, I started looking at other interesting curriculums, and the divorce financial planning caught my eye. Although I've been married, and happily married, for over 30 years, both my sister and brother went through divorces. Both of them would have benefited for more with more knowledge on the financial complications that can arise when breaking up a long or a short-term marriage. So I got interested in the certified divorce financial analyst designation. And then after a few years an opportunity arose for me to actually work with the organization that provides that certification, and that's what I'm doing now.

Emily Larsen - As a financial advisor with all types of clients, you know that some portion of your clients are going to experience a divorce during their lifetime. During this life event and potentially difficult transition, how will you help them through all the nuanced and specialized financial choices to ensure a good outcome?

Ben Jones - Today we'll be discussing the many financial planning considerations related to divorce with our expert guest Carol Lee Roberts. Carol Lee is the general manager for the Institute for Divorce Financial Analysts. We're going to talk about key areas and approaches advisors should keep in mind while helping their clients navigate a divorce. We'll also discuss some of the messy emotional conversations around divorce and the client experience. And finally, we'll talk about how one might consider obtaining this specialized knowledge needed by going through the CDFA or Certified Divorce Financial Analyst Designation Program.

Emily Larsen - Ben talked with Carol Lee in Chicago. We were both surprised to learn about some of the demographic trends in the US regarding divorce rates.

Carol Lee Roberts - Well it's really interesting because I think everybody has at one time or another heard the adage that 50% of marriages end in divorce. Or divorce rates are climbing, divorce continues to increase, and that really isn't the case. And there's a lot of evidence that the 50% of marriages end in divorce was never the case. It was more a statistical anomaly because they weren't calculating divorce rates correctly. But now that there is a wealth of information on divorce rates and divorce trends, we're seeing that divorce has stabilized at less than 40% for those people 50 and under. However, the only area of the population that is experiencing increased divorce rates is in the category that's been labeled gray divorce, or those people that are 50 and older. And there's a few reasons for this. First of all, this is the baby boomer group and they have changed everything in society, every step along the way. This is the first group that married for love and personal fulfillment as opposed to societal norms. This is also the first group that at age 50 or 60 reasonably has a life expectancy of another 20 to 30 years. So prior to this if you were unhappily married at age 60, you could just hang in there and your spouse might die off on you and problem solved. That's not the case anymore.

Ben Jones - It's kind of a morbid thought, huh?

Carol Lee Roberts - Well that's -- I do have a dark side, yeah, it's kind of a morbid way of looking at things, but it is true. It is very different having an unsatisfactory marriage and thinking that you might be in this situation for five years as opposed to having an unsatisfactory marriage and thinking you might be in that situation for 25 to 30 years. It's just a different reality.

Ben Jones - Yeah, I can see that.

Carol Lee Roberts - One of the other things that has changed is, and I as much certain this is an unintended consequence, but with the affordable care act and the ability to get insurance even if you have preexisting conditions, people aren't required to stay in a marriage to keep their insurance. That changes. That provides flexibility for individuals. They have more options.

Ben Jones - So they married for love. They were staying for the insurance. The affordable care act comes along and up ends that. It's interesting to see how many different facets of life the affordable care act has influenced. We had a guest on recently, Rob Wimmel, talking about tax-free fixed income and the affordable care act is impacting the bonds of local hospitals as well. It's just fascinating how many places the affordable care act touches. Do you feel that it's necessary for an advisor to have experience with divorce personally in order to be really successful at guiding their clients through divorce?

Carol Lee Roberts - I don't think so. The reality is, if you are in this industry as an advisor for any length of time, you are going to encounter a situation where a client or clients are going through divorce. And because of that, I encourage every advisor to at least decide how they're going to approach that. Are they going to get the specialized knowledge to be able to help their clients through that situation? Or, and this is a perfectly reasonable point of view, are they going to say I'm really good at what I do. I don't want the training for a divorce financial analyst, but I do want my clients to benefit from having the knowledge they need for a divorce, so I'm going to refer my clients getting divorced out to somebody who has the specialized knowledge. And a lot of what is required during the divorce settlement, the knowledge of the tax code, the knowledge on restrictions on holding or selling a house, the ability to look at a pension or a retirement plan and know what it's current value is and what it's options are for dividing, are all things that someone facing divorce should have access to whether or not you want to be the one to provide that information. Divorce is for many, many people the single largest financial decision they will be making. And you don't approach other large financial decisions without professional advice, why would you approach divorce that way?

Ben Jones - Yeah, that makes a lot of sense and I can see some either solo practitioners or small practices that might either get that expertise and specialization or as you mentioned, refer it out to a specialist. I can also see the advantage of some of these larger teams where they might have a certified divorce analyst on staff. And when 30% of their clients have this life event, they can refer that to the expert so that it stays within their team and they have that expertise, but maybe they don't individually have to take the time and refresh the knowledge.

Carol Lee Roberts - Right. It makes perfect sense on a team just like a large team frequently has a retirement expert or someone whose expertise is in the various specialties of insurance. Having someone on your team that can help with those clients facing divorce makes perfect sense. And I think part of the stigma that IBFA has to overcome is we're not pro-divorce. I'm not saying there isn't any marriage anywhere that wouldn't benefit from a good divorce. That's not it at all. The reality is about 40% of marriages end in divorce and we should be able to provide intelligent financial support for those people facing that decision.

Ben Jones - So, maybe you could walk through kind of some of the key areas. You kind of highlighted a couple before. There's a lot of nuances when it comes to divorce and tax law, but maybe you could just walked through at a high level. What are some of the benefits of leveraging someone with this specialized expertise in divorce?

Carol Lee Roberts - Well sure. For example, if you're looking at a property settlement, having a financial professional that is able to both help you divide and help you understand the difference between property that will depreciate in value or property that will require additional capital to be maintained, such as the primary residence, or looking at property that gets to grow. And especially property that gets to grow in a tax deferred situation such as retirement plans or for those rare people that still are a part of pensions - defined benefit plans, having someone who can tell you how those can be divided can give you a current value on a future benefit such as a pension plan. There are specifics in the tax code to divorce. If you were to sell your home right now and had lived in your home for two to five years and hadn't sold another primary residence in less than two years, you as an individual could take a tax deduction of $250,000 on the capital gains and if you were married your spouse could take a tax deduction of $500,000 on capital gains. Well, if you were to get divorced and one of you remain in the home, the use period of that one spouse that remains in the home is also given to the ex-spouse as long as they're both on the mortgage and have an interest in the home. And that's only incident to divorce. There are other situations where assets can transfer between parties and because it was a marital situation, and now the assets are transferring incident to divorce, they have different tax implications. So although you may have the best family law attorney in the world, having someone who knows the numbers and the financial impacts of the decisions you're making, makes a great deal of sense. A long time ago, in about the 70s, there were studies done on what happened when people went through divorce and they realized within three years of a divorce, about 70% of women had a substantial decrease in their standard of living and it's because at that time women traditionally kept the home. Men kept the pension plans and the retirement assets. That isn't really the case anymore. There are many, many situations in which the man and woman are equals as far as what they bring to the marriage as far as compensation goes. There are many cases where the woman is the primary bread winner, but the reality is if you look at all of the assets a couple has and you simply divide them in half and don't take into account the growth rates or depreciation rates, that settlement that might have been exactly 50/50 at the time of the divorce can look very unequal three, five, or 10 years down the line.

Ben Jones - Yeah, that's a really interesting point because I mean you kind of -- if you take the house and they take the other assets, you take all of the capital expenditures and they take all the capital appreciation. That leads to really different results 10, 15, 20 years later.

Carol Lee Roberts - It doesn't even take 10 to 15 years. And it's one of those things that I don't think in these cases where something like that happens anyone would be mean spirited or disingenuous, it's just you need somebody to run out the numbers and go this is what it looks like now. This is what it's likely to look like in three years. This is what it's likely to look like in 10 years.

Ben Jones - So let's say we get to the kind of shifting gears to like how an advisor works through this process. I was very curious, so a client comes and says we've had this unfortunate life event and Jane and I are getting divorced. How does an advisor kind of approach the discovery process? And not to add a lot of questions on to this, but also related to that, do they only work with one spouse generally? Do they end up working with both if they were already their clients? Maybe provide some context around that or even maybe some examples of the discovery process.

Carol Lee Roberts - There are probably as many different ways to practice as a certified divorce financial analyst as there are people who have the designation. Just like every financial advisor practice is different based on the people involved in it, there are differences with CDFAs. We have some of our certificants who work with divorcing clients and only divorcing clients and that is the sole focus of their business. We have as many who primarily would consider themselves investment advisors, but they do provide the CDFA services for those investment clients they have that are faced with divorce. In the situation where you have a couple who now approaches you and the couple has been your client and they announce they're going through divorce, you can approach it in one or two ways. Many people faced with that situation will refer the clients out. They've been the advisor to both clients and they don't want to only service one. As a matter of fact, they don't want to run the risk of a conflict of interest by now helping just one party when both were your clients, so they refer the entire relationship out to another CDFA. Or in a collaborative process, the CDFA would function as a financial neutral. They're just going to show you if she gets this and he gets that, this is what it looks like. If you change it so he gets this and she gets this, this, and that, this is what it looks like. They don't advocate for any position. They're completely neutral. They're just showing you the financial impacts of the settlement. And then finally, there are some people who are very strong advocates for individuals going through divorce and they will recommend specific strategies and may of course only deal with one of the two parties in divorce. And again, are unlikely to take a husband or a wife from what was a joint relationship.

Ben Jones - That makes a lot of sense. So, when in any of these situations they show up and the Certified Divorce Analyst's office, how does the discovery process begin? What are the really impactful questions that getting to kind of the most important aspects of the divorce?

Carol Lee Roberts - Well normally in the discovery process, the first thing you do is you start out with a questionnaire very similar to what you would do in a traditional financial planning relationship. You ask to see several years of tax returns. One of the reasons for asking to see tax returns is to make sure you're not missing any assets. Tax returns can be a great source of information on accounts that one spouse may not have been as familiar with, or on loans, or any liabilities that one spouse is not as familiar with. There are several CDFAs who in addition to their practice as divorce financial analysts also are certified fraud specialists because all divorces are not amicable and sometimes people do attempt to hide money, and it's important to be able to look at tax returns to see if the information you're getting makes sense or if there is a fraudulent dissipation of assets by one or another party. So the discovery process actually is informed by the type of divorce it is. Again, if it's collaborative or at least non-adversarial, you're getting all of the information from both parties, it matches up, and you can work from there. If it's a case where it's what's referred to as an "out spouse" where one of the two parties made all of the financial decisions, no misrepresentation, but just the other spouse is not that aware of what they owe on the mortgage or what savings they have, or what investments they have. That complicates things and you ask for the information hopefully the information is forth coming in a way that moves the process along, but if it does become adversarial, then attorneys get involved and there are subpoenas and the whole discovery process can take a very long time.

Ben Jones - There's a lot of different ways to work with clients through divorce. Now you might finish this episode wanting to become a CDFA or you might walk away knowing that you'd rather refer those clients to someone who's more impartial. Maybe even another CDFA. Regardless, Carol Lee makes two really important points here. First, you have to listen to your client's goals and objectives. Now how do you do that? Well you ask a lot of open-ended questions. Second, you want to make sure that you aren't placing your own assumptions and opinions onto their situation.

Emily Larsen - We had a previous guest who gave similar advice on a different topic. Dr. Amy D'Aprix talked about estate planning in episode six. Listen to that episode for great resources on listening and acting on your client's goals and not your own assumptions.

Ben Jones - Another thing that was mentioned in my conversation with Carol Lee was how many of the laws haven't really caught up to the realities of today's marriages and divorces. And this is especially true when it comes to same-sex couples. Now we tackled this topic in more depth on episode 33 with Julia Peloso-Barnes. And if you want to learn more, I suggest listening to that show.

Emily Larsen - As far as how to fee for this service, there are two basic models. Some advisors charge a retainer and an hourly fee, while the other option is to provide the divorce financial analyst service for free in hopes that you will become or stay on as the client's financial advisor in the future. We'll talk about the pros and cons in each model in a little bit. But next, we'll turn to the details of setting yourself up as a divorce financial analyst, the benefits of having a CDFA and the client experience.

Carol Lee Roberts - One of the key things that I think a CDFA can bring to this situation and that is often overlooked is finishing the process. I'll give an example of my sister's divorce. When my sister and her husband got divorced, they split up the assets. They agreed how everything was going to be split up. She was going to keep the house. He signed over a quick claim. And he was going to pay off the second mortgage on the house. Five years later, she sells the house. The second mortgage has not been paid off. So it comes out of the proceeds of selling the house. She is surprised by this situation because they had agreed that would be his responsibility. And neither of them nor apparently the attorney that they jointly hired to do this divorce were aware that they can agree to anything they want on this debt. But unless they get the holder of the loan to agree to take a second mortgage and make it an uncollateralized debt of the husband's, their agreement isn't going to go anywhere. And we find often that people agree on how they're going to divide things without actually going through and doing the division and the paperwork, making sure that the lien holders will agree to their division. If someone's going to keep the house, can the mortgage be put in just their name? If you do all that, do they then have the credit rating they need to be able to insure those assets their keeping. There's a lot of moving parts. And unfortunately, without somebody making sure after the agreements are reached, everything that needs to be done is done, the divorce isn't finalized the way people think it would be. It's just like making sure you change beneficiaries. If you go through an entire divorce, but you don't get the change of beneficiary form, do you want your ex-spouse inheriting your IRA if something happens to you?

Ben Jones - Yeah, it's a really great point. And I think you kind of come to these agreements but if you don't actually execute all of the kind of project management steps for implementation after, you almost put yourself susceptible to selective remembrance. And so, I can see a situation where two or three years down the road, certain things weren't done. And you say, but we agreed to this and one person recalls it one way and the other another way, and there's not a lot you can do about it. And so, if you set up your practice, and you've gone, and you've become a Certified Divorce Financial Analyst, and you're building kind of a team to help service clients very well, what are the other specialists that kind of make up a team or a good team in advising a divorce client. And I'm just thinking you've already brought up a lawyer.

Carol Lee Roberts - Some of the other professionals that our CDFAs work with on regular basis are of course family law attorneys. There also are quite a few CFAs that are also trained in the mediation process or in the collaborative law process. So we're working with mediators, family law attorneys, sometimes social workers. There also are specific designations both in real estate and in mortgage as far as dealing with real estate and mortgage in divorce. In addition to that, insurance plays a part in the whole divorce process. I was unaware probably up until six months ago that, in addition to a credit score, people have insurance scores. And your insurance score as a single person is lower than your insurance score probably was when you were married. So being able to work with an insurance agent to make sure whatever the property settlement is, it is adequately protected, for risk is also someone we're working with. In unique cases, you might also be working in areas where there is somebody who has been or is potentially a victim of spousal abuse. And therefore, you're working with mandatory reporters. So there are many, many professionals that actually function within the divorce arena. And it's an excellent idea for the CDFA to make sure that they know these people and can refer out to these people as well as receive referrals from them.

Ben Jones - It sounds like there's both clients that are transactional in nature where CDFAs are experts for maybe many other financial advisor's existing clients. And they charge a retainer and fees. And then some work through the client’s divorce in the hopes that they'll remain their financial planner into the future. Those are two very different business models. Can you talk a little bit about, from the client's perspective, the advantages or disadvantages of both?

Carol Lee Roberts - I think from the client's perspective, the advantage of working with someone who is hourly based and has an engagement through the divorce process, and once the divorce is finalized, that engagement ends, and you no longer work with them, helps, A) If you don't have an investment portfolio that you need managed at the end of this. What you really need is just someone to get you through the divorce. But the other part of this is the emotional relationship part of it. Many clients, after dealing with the divorce process and the division of assets, don't want to see the same person that helped them do that on a monthly or quarterly basis while discussing their investment portfolio, just like, in my own experience, eight years ago, my husband was diagnosed with throat cancer, had chemo, had radiation. We came out on the other side of it. He is in full remission. His doctor was wonderful. And I hope never to see him again. His doctor was great and was always there for us. But even when I bump into him in public in our community, he is a living, breathing memory of one of the worst times in our life. And regardless of how nice or compassionate a CDFA might be, they can also represent that horrible time when I was going through a divorce. Now, there are other situations where the person who helped you through the divorce was your support system. You valued their advice then. You want to continue working with them. They're investing your assets. They're the one that took you from the dark back into the light, and they're helping you on your way. So it really depends on the client's emotional needs at the time and which of those two models best fits in with what they're going through.

Ben Jones - And that makes a lot of sense. And so, could you maybe provide a little bit more detail about IDFA and especially maybe even just what the accreditation process is.

Carol Lee Roberts - Gee, talk about my company and what I do for a living. No, I couldn't. The Institute for Divorce Financial Analysts was founded in 1993. And since that time, we have certified in excess of 5,000 CDFAs in the US and Canada. We currently offer the CDFA designation to those individuals who have three years or more experience in financial services or divorce-related work. We do require a bachelor of arts degree for those people pursuing the certification. The coursework is four modules. The first is Fundamentals of Divorce. The second is Financial Aspects of Divorce. The third is Tax Considerations in Divorce. And the fourth is a case study. Each module is followed by a proctored exam at Pearson. And upon completion of all four of the modules, you become a CDFA. To maintain your certification, there is an annual recertification fee, and there is also a requirement of 15 hours of divorce-specific continuing education every two years. In order to help our CDFAs maintain their certification, we do provide monthly webinars, and there will be a link provided to this portion of our website, but monthly webinars that qualify not only for CDFA continuing education, but we're also a registered sponsor with CFP Board. So those three webinars also count for one hour of CFP credit.

Ben Jones - For links to those webinars, as well as more information about the CDFA program, visit bmogam.com/betterconversations. And you can check out the show notes page for this episode.

Emily Larsen - In the end, this can be a challenging but rewarding area to specialize in. But it's important to keep in mind that these are difficult and stressful times for your clients. Ben asked Carol Lee what it feels like when clients are satisfied that their advisor has gotten all the financial needs right.

Carol Lee Roberts - I think everyone going through divorce, no matter how wealthy or middle-class or impoverished, there is what used to be referred to in literature as the bag lady syndrome, the oh my God, I'm going to go through this. And within a year, I'm going to be homeless and eating cat food, and life will never be the same. And having someone who can realistically look at the assets, the liability, what's going ahead and be able to assure you that this is the level of lifestyle you can maintain. I mean, CDFAs aren't magicians. We're not going to be able to take a retirement that was designed for two people living in the same house and make sure each goes their own way with no decrease in their standard of living. But what we can do is point out the reality and what is possible. And maybe you won't be spending three months a year in Europe after the divorce, but you're not going to be eating cat food either.

Ben Jones - And if you could put a warning label on your thoughts and advice today, what would that warning label say.

Carol Lee Roberts - Probably that every single divorce is as unique as the people that are pursuing the divorce. And you have to listen. You have to double check. You have to be aware of your state's guidelines. You have to be aware of the specifics of any pension or retirement plan you're thinking of dividing. It's just very important that there aren't any cookie cutter answers, and you have to take the time to do your homework and do it right.

Ben Jones - Carol Lee, thanks again for joining the show today and, most importantly, for sharing your expertise and the great advice to help advisors navigate what can be a very challenging topic. Be sure to check out our show notes page at bmogam.com/betterconversations for all the links and resources from this episode. And you can also see how to get in touch with the Institute for Divorce Financial Analysts. Thanks for listening to Better conversations. Better outcomes. This podcast is presented by BMO Global Asset Management. To learn more about what BMO can do for you, visit us as www.bmogam.com/betterconversations.

Emily Larsen - We value listener feedback and would love to hear about what you have thought about today's episode. Or, if you're willing to share your own experiences or insights related to today's topic, please e-mail us at betterconversations@bmo.com. And of course, the greatest compliment of all is if you tell your friends and co-workers to subscribe to the show. You can subscribe to our show on iTunes, Google Play, the Stitcher app, or your favorite podcast platform. Until next time, I'm Emily Larson.

Ben Jones - And I'm Ben Jones. From all of us at BMO Global Asset Management hoping you have a productive and wonderful week.

Emily Larsen - This show and resources are supported by a talented team of dedicated professionals at BMO, including Pat Bordak, Gayle Gipson and Matt Perry. The show is edited and produced by the team at Freedom Podcasting, specifically Jonah Geil-Neufeld and Annie Fassler.

Disclosure - The views expressed here are those of the participants and not those of BMO Global Asset Management, its affiliates, or subsidiaries. This is not intended to serve as a complete analysis of every material fact regarding any company, industry, or security. This presentation may contain forward-looking statements. Investors are cautioned not to place undue reliance on such statements, as actual results could vary. This presentation is for general information purposes only and does not constitute investment advice and is not intended as an endorsement of any specific investment product or service. Individual investors should consult

with an investment professional about their personal situation. Past performance is not indicative of future results. BMO Asset Management Corp is the investment advisor to the BMO funds. BMO Investment Distributors LLC is the distributor. Member FINRA/SIPC. BMO Asset Management Corp and BMO Investment Distributors are affiliated companies. Further information can be found at www.bmo.com.

C11: 6129029