DIVORCE FINANCIAL ADVISING UPDATE

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Read The Plan Document!!!!

Plan documents contain very valuable information. Very often, these are assumed to be boilerplate and are given only a cursory glance. However, information contained in these documents is often not found elsewhere and can be critical in analyzing the value or determining the apportionment between community and separate interests.

For the sake of brevity, I will limit my discussion to deferred compensation plans and equity compensation plans (stock options, restricted stock units, etc.) as those plan documents frequently contain interesting provisions.

- **Deferred Compensation Plans.** I have analyzed numerous deferred compensation plans and there is a wide variation in how they function. If you only rely on statements or earnings statements, some of the finer points can easily be missed. For example, many DCPs are set up to be distributed at retirement or a specific age. However, one plan I analyzed mandated distributions every 5 years with each allowed to be rolled over one time. That provision was only detailed in the plan document and greatly affected the apportionment between community and separate funds in the account.

- **Stock Options, Restricted Stock Units, Other Equity Compensation.** Plan documents for equity compensation are especially important. Relying only on the grant notices leaves one in the position of not understanding many crucial plan elements. A few examples:

  - **Some privately held companies** require the company **to buy back** the stocks upon exercise or are tied to particular company financing.
  - Some companies allow employees **who have attained a particular age (often age 55) and have a certain length of service (LOS)** (5 or 10 years), to leave the company with their unvested options or RSUs continuing to vest. That means, once they meet age and LOS requirements, there is no risk of forfeiture and they are effectively fully vested even though they have to wait until the original vest date to exercise or receive released shares. The practical effect is that the community interest accelerates. Without understanding this provision, the allocation between community and separate interests will be incorrect, sometimes greatly so.

Have Questions? Need help? Call or e-mail me!

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