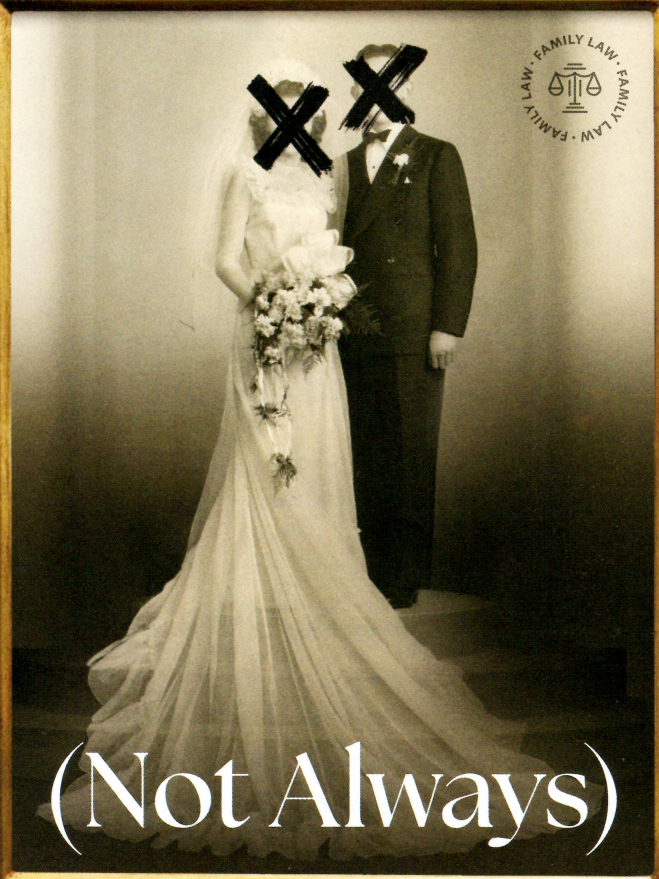
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DIVORCE TO DYNAMITE–
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(Not Always) Happily Ever After

THE RISE OF THE GRAY DIVORCE



The divorce rate in the United States still hovers at about 40%, and older married couples have become a significant part of this statistic. Those 50 and older are now divorcing at almost double the divorce rate in their age group since the mid-1990s.

Among those 65 and older, the divorce rate has nearly tripled since 1990. The term "gray divorce" has been assigned to this group, primarily Gen X through Baby Boomers. The reasons they divorce aren't that surprising—growing apart, empty nest syndrome, different priorities, and an opportunity for a fresh start among them. For the first time in their lives, divorce doesn't have such a negative stigma attached to it. Couples in a gray divorce typically agree that calling it quits is the best option for them, and their divorces are often amicable. They say their marriage was great—until it wasn't—and believe there is no reason to waste their retirement years in an unhappy marriage.

BY JENNIFER SANDER HAYES

"It's natural to want to enjoy the rest of your life once you get older. You don't have to live in a miserable marriage."

JIM MUELLER,
VERNER BRUMLEY
MUELLER PARKER



"GRAY DIVORCES AREN'T ALWAYS AMICABLE. SOME HAVE DECADES OF PENT-UP



RESENTMENT, WHICH CAN HAVE A NEGATIVE IMPACT ON THE ENTIRE FAMILY."

AIMEE PINGENOT KEY,
GORANSON BAIN AUSLEY

NO LONGER A HUSH-HUSH TOPIC, DIVORCE—whether its one's first or third—isn't widely viewed as a failure. Instead, divorce among older couples is often considered a new starting point in the pursuit of happiness—whatever that may look like for them—in their second half of life.

"You have to hand it to these folks who have the courage to take this on in their 60s, 70s, and even 80s, realizing they aren't happy and wanting to live the rest of their lives happy," says Robert Epstein, a family lawyer with Epstein Family Law PC. "I give credit to those in unhappy marriages who want better for themselves, especially if they haven't been treated well for decades. I think with so much focus on wellness and mental health, and with people living longer, couples in unhappy marriages are realizing they deserve better—not necessarily in a malicious way, but in a healthy way. Couples in decades-long marriages usually have so much wisdom, and know not to go after each other in court. They know it isn't wise to blow their life savings fighting over property. They are seeking serenity."

Abby Ewing, a family lawyer with Estes Thorne Ewing & Payne, says her firm has seen an uptick in gray divorces in recent years and cites an empty nest and enough money to live separately as the reasons couples finally make the call to separate. The kids are grown, there are usually more assets to divide, and because of their age, they don't need to make their assets stretch for as long as a younger divorcing couple would.

"Older couples are usually not as thrown off by divorce as those who are still juggling their careers and kids," Ewing says. "Many clients tell me they didn't even realize they were incompatible until they retired—their jobs and kids kept them busy and distracted for years. Once they started being together all the time, the problems they always had were magnified. Downsizing is actually a desirable option for many people in gray divorces, and most have reached an age where they no longer have to stay married just for health insurance—Medicare and social security are available. The idea of a home with less overhead and maintenance is appealing. So many of my clients in gray divorces realize they have spent two-thirds of their life doing things for others. They are finally ready to live for themselves."

Neda Garrett, a family lawyer with KoonsFuller, has observed an increase in gray divorces, particularly initiated by women. "Years ago, many women married for financial security," she says. "Today, more women are either in the workforce or returning to it. They realize they can financially support themselves and no longer feel obligated to stay in an unhappy marriage. Texas being a no-fault divorce state also simplifies the process."

Family lawyers find that older married couples want to get from filing their divorce to the signed decree quickly. Dragging out the divorce in court is a waste of time, money, and emotions. Esther Donald, a family lawyer with Goranson Bain Ausley, says most of her gray divorce clients benefit from a non-adversarial collaborative divorce which aims to reach a settlement amicably by involving neutral third-party professionals without having a judge or jury divide the lifetime of assets they've accumulated. She has even started involving adult child specialists in some of these divorces. While most older adults who divorce are empty nesters, Donald warns her clients that their grown children may be incredibly affected by the divorce.

"Divorce at any stage has a lot of ripples, and there are a lot of emotional needs and financial needs within a family, such as who is paying for college or for a child's wedding—even how that wedding might look after the parents are divorced," she says. "Then there are estate planning issues, which can carry a lot of expectations by many family members."

Not every couple's empty nest remains empty. Some adult children, either by choice or because of unemployment in a competitive job market, move back into their parents' home and need their financial support. Then there are late-in-life parents who are the same age as their empty-nester friends, but still have high school children at home. "A couple can be married for 30 years and still have kids that haven't fully launched," says Aubrey Connatser, a family lawyer with Connatser Family Law. "Once a child turns 18 or has graduated from high school, the court no longer has jurisdiction. If you think you have a divorce coming down the pike, make sure your adult children will be provided for, whether that is college tuition, the cost of a wedding, and financial support as they start to make it on their own. A gray divorce can be catastrophic if you don't have significant assets. Wealth isn't always enough to cover everything once it is split in half."

Connatser says one way to make sure older children are provided for is to set up trusts, as most estate plans don't adequately cover what happens in the event of a divorce. "Trust assets are not divisible in a divorce—they don't

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BABY BOOMERS ARE DIVORCING MORE THAN ANY OTHER GENERATION. *(AARP)*

"Late-in-life divorces are for second chances, where couples may have grown out of love, children have been raised, and the stakes are not as high."

NATALIE GREGG, THE LAW OFFICE OF NATALIE GREGG

belong to the community," she says. "You don't want to be completely in the dark with no control of assets in a divorce, so be mindful that you put what happens in the event of divorce into your estate plan, and that if a trust is created, make sure it is clear who has control of those assets as the trustee."

Through the years, many older adults have watched their friends go through divorces and have learned that one of the biggest mistakes in their own divorce would be to fight unnecessarily. A drawn-out court battle could quickly drain what remains of their estate. Carla Calabrese and Lee Budner, family lawyers with Calabrese Budner, believe gray divorces may be particularly well-suited for the Collaborative Divorce, which helps keep divorces out of court.

"Couples divorcing in their 50s and 60s often have a deep understanding of each other and are in a better position to work through their attorneys to negotiate settlement terms, allowing them to retain control over the outcome," Calabrese says. "They know what they want and are less inclined to leave key decisions up to a judge. While direct communication with their spouse may be difficult, older couples tend to be more effective in structured negotiations led by experienced attorneys and other collaborative professionals, where they can find solutions that address their needs. It makes sense for them to choose a process that plays to these strengths and respects their desire for control."

Budner adds, "There are some situations, such as disputes over business interests or property division where compromise seems impossible, when litigation may be the best, and sometimes only, option. However, even in gray, divorce litigation may still be less emotionally charged, as custody-related conflicts are not present."

Although family lawyers are in the business of divorce, they don't encourage their clients to go through with one. Although a couple who has lived together for decades may feel like they are sick of each other, big emotions can still come into play once they realize that life as they once knew it will soon be over. "I have real discussions with my older clients who are considering divorce," says Jim Mueller, a family lawyer with Verner Brumley Mueller Parker. "Sometimes, the best advice I can give a client who is unsure about divorce is to stay married, at least for now. The grass isn't always greener, and marriage isn't easy at any stage. Often, I'll

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"Gray divorces can be harder to settle, because the couple doesn't always have the time to earn back the money they are dividing."

KELLY MCCLURE, MCCLURE LAW GROUP

MOVING FORWARD

3 Ways to Protect Your Peace During Divorce

1. **Stay busy.** Make sure you have a therapist, look for or start a job, volunteer, and stay busy so you can find value in yourself. Find something that lifts your spirit and self-esteem. Wait until after the divorce is over before getting into a new relationship. Stay off social media and put together a strong network of friends for support.

2. **Information is powerful.** If you suspect a divorce is in your future, meet with a lawyer to understand what your divorce may look like. Gather all the information you can about finances. The more information you have, the better decisions you'll make.

3. **Remember that in a divorce, people aren't always at the same emotional stage.** Usually, one person has been thinking about it for years and the other just heard about it yesterday. Give grace to let each other's emotions catch up. When you do, you'll spend less money on lawyers because fighting is caught up in emotions. When emotions simmer, we can do our jobs in a way where no one feels like they are losing everything they have to the lawyers. We want you to keep as much of your estate as you can.

Source: Jessica Thorne Estes Thorne Ewing & Payne

"Don't make decisions based off emotions. Those are the divorces that can get really messy."

LACI BOWMAN, GODWIN BOWMAN PC

"IN SOME LONG-TERM MARRIAGES, COUPLES SIMPLY BECOME BAD ROOMMATES."

CHARLA BRADSHAW, KOONSFULLER P.C.



HEADED FOR A GRAY DIVORCE?

Prepare properly with these tips from Dallas family lawyers.

If you're in a long-term marriage or second marriage, consider a post-nup to protect your separate property so it stays with your children and grandchildren.

Update your pre-nup to include new family member, considerations for health and medical events, financial responsibilities for children's college and young adult support, and business valuations.

Learn as much as you can about your finances before you file for divorce.

Be involved in tax returns, and call the bank to make sure your name is on all the accounts.

Beware of "lifestyle creep." Know how much you'll have to live on after the divorce and adjust your lifestyle and spending while you can.

Manage your adult children's expectations about the divorce and property settlement.

If you are the non-earning spouse, think about what you want to do in your next chapter. Now is a great time to reinvent yourself and pursue your passions.

Start looking for work before the divorce. There is no alimony in Texas, so get a jump start on your financial future.

Get a thorough health check-up. Unexpected or high medical bills are a quick way to drain assets you get in a divorce. Make sure you are in good health before you file, especially if you won't have health insurance after the divorce.

Consult with tax professionals so you can understand the tax implications of selling your home or liquidating assets.

Consider gifting your children money or paying your children's or grandchildren's tuition prior to the divorce so any money intended for that purpose is out of the estate at the time of the divorce.

If you are the breadwinner in the marriage, make sure your estate plan is clearly lined out prior to filing.

"With gray divorces, you must be a couple of steps ahead and think strategically of your next move, like a game of chess. You should wait to file for divorce until you have a formulated plan in place."

KELLY MCCLURE, MCCLURE LAW GROUP

Source: Kelly McClure and Francesca Blackard, McClure Law Group



and marriage isn't easy at any stage. Often, I'll refer them to a therapist and let them know their money is better spent with this person rather than with me. Dividing a large estate or even a family business can feel overwhelming at this stage of life."

Donald says these complex issues are what may cause married couples to stick it out—to make things easier on everyone else. But then there are those who realize they want the rest of the years to be happier, even if that means going through a painful divorce.

"People are living longer," she says. "It's not unusual to live well into your 90s, so if you get a divorce at age 70—20 years is still 20 years of life left to live. When a married couple no longer connects emotionally or physically, it's no longer a satisfying marriage. Although affairs do happen with older couples, a gray divorce is often a slower death and more of an awakening within one or both people who finally ask themselves, 'What are we doing?' A lot of clients tell me that when they pull up in their driveway, they feel a sense of dread. They just don't want to go inside their own home anymore. Many couples have two separate bedrooms and live two separate lives. The question then changes from, 'Why are we staying?' to 'What are we missing?' These are good people who have lived a good life, worked hard, and raised great children—an uncoupling may provide them with the opportunity to figure that out and emerge from a stale marriage that has run its course."

Angel J. Berbarie, a family lawyer with Goranson Bain Ausley, says she represents older clients who are just as disappointed about their marriage ending as they are optimistic about what lies ahead for them. When reconciliation isn't an option, she immediately connects her clients with therapists and helps them navigate this unfamiliar territory.

"In most cases, something didn't happen last week or last year that led them to my office," Berbarie says. "I try to provide as much support as I can. Attorneys are called counselors at law for a reason. Divorce can wreak havoc on someone's psyche and confidence at any age. A skilled counselor can help them move forward in life, so they hopefully don't make the same mistakes in another relationship that led to divorce. For some clients, they simply grew apart in their marriage, and for others, they realize they married the wrong person in the beginning."

Many divorce lawyers in Dallas cite the pandemic as a reason for the increase in divorces among couples of all ages. In many households, couples were not only busy trying to stay healthy and free from COVID-19, they were also trying to keep their marriages healthy. "We are seeing folks 60 and older filing for divorce, and in recent months, I have had at least two clients in their 80s involved in highly contested divorces," says Chris Meuse, a family lawyer with KoonsFuller. "In each case, both parties were of very sound mind and sharp, but that isn't always the case. These divorces can escalate quickly when older adult children become involved in making decisions about the estate, taxes, and selling assets. The older people get, there is always the question to consider about what happens if someone dies in the middle of the divorce? In a growing number of cases, we are considering whether we need to seek guardianship for clients because the family is worried about their capacity to make sound legal decisions. Sometimes, older children are influencing their parents, which makes things especially challenging for the lawyers."

"An alternative to the gray divorce is to consider a postnuptial agreement to save the marriage. It's a great financial exercise to understand your estate and identify your assets often empowering the nonearning spouse."

FRANCESCA BLACKARD, MCCLURE LAW GROUP

For older adults seeking a divorce, Meuse advises planning for it before discussing it too much with children or other family members. Make sure estate planning is finalized, and your will is updated. "We always encourage a team approach involving an estate planning attorney to think out that structure," he says. "This would be the time to make changes if you are on the doorstep of retirement. It's also the time to bring in a wealth manager to work on budgets, short- and long-term perspectives, long-term care, and even cohabitation agreements if you are planning on moving in with someone else after the divorce. The goal is to have everything in place, so the process goes smoothly and as quickly to preserve as much of your estate as possible."

Charla Bradshaw, a family lawyer with KoonsFuller, says most gray divorce cases she has represented have been amicable and can be settled quickly—unless their adult children become involved by taking a side or expressing concern the estate they may inherit will be drained from the divorce. "I understand they usually mean well, but their involvement isn't helpful, mostly because they are in the middle," Bradshaw says. "Often, they generate more arguing, and if the divorcing couple stops acting or thinking for themselves, it's difficult for the lawyer to know who to take direction from. At a time when their parents just want peace, things can escalate. And time is clicking—no one is getting younger!"

When gray divorces are steered by the older children, particularly in a blended family, it becomes difficult for the attorneys and for each party to mediate a resolution that is fair simply because so many people are involved. Michael Wysocki, a family lawyer with OWLawyers, says he has represented clients in blended families

"Couples who divorce in their 50s and 60s realize that while they built an empire or family legacy together, it is time to move on emotionally, romantically, and financially."

NATALIE GREGG, THE LAW OFFICE OF NATALIE GREGG

adult children wanted it for them. "They sadly get forced into it and go along with it as a way to maintain the relationship with their children," he says. "I have seen a lot of gray divorce regret. When they realize the divorce was a mistake, it's too late. They have alienated their spouse. Gray divorces are different than a typical divorce; most often there is no adultery or financial malfeasance. Dementia can play a role. All of the sudden, one spouse starts behaving differently or even violently. An inexperienced lawyer may miss the signs of early onset dementia. I have been pulled into cases where once we look into this and it's determined to be the case, the divorce is called off because the couple would rather get medical treatment for dementia than go through a divorce."

While many gray divorces happen between couples who have been married to each other for most of their lives, family lawyers report that many of their older clients are on their second or third marriages. The steps to getting a divorce are the same no matter how old you are and no matter how many times you've been married. The difference between a divorce between younger and older couples, however, is in the division of property; in most cases there is more to divide, and the identification of separate and joint property can become complicated because lawyers on each side must go back much further in the discovery process.

"In Texas, divorce is divorce, but there are issues that are somewhat unique to gray divorces," says Joshua Northam, a family lawyer with Shackelford, McKinley & Norton, LLP. "These folks are typically at the end of their earning cycle, if not already in retirement. There isn't usually an opportunity to earn more income like those divorcing in middle age. Instead of dividing up current salaries, you often have federally protected retirement assets, and you can be more limited in how you can divide those. Many of these couples don't have premarital agreements, which tend to be more common among many younger married couples nowadays."

Texas is a community property state, so everything acquired during a marriage is presumed to be community property. Very few people have records from 50 or more years ago to prove separate property, as required by Texas law. "People have to take a hard look at their financial situation at this stage of life to determine what is best for them," he says. "Some couples decide to prioritize sticking with the marriage, rather than risk losing half of their assets in their golden years. I hate to think about people staying together for the money, but sometimes they do."

Northam says that in many gray divorces, their largest asset is their home. Many courts are usually reluctant to order the sale of a home in a divorce if there are other assets to divide. However, in most cases, one party cannot afford to keep the house and maintain it once the combined household income is gone. This can potentially become a financial strain on someone who all the sudden has a limited income.

"In a couple's younger years, often the biggest issue in divorce is how it will affect the kids, but in the later years, each party has to think about how it will affect them," Northam says. "There is usually no child support or spousal maintenance to rely on. The prospect of a divorce in your later years can be really sobering, particularly if you don't have a lot saved."

"I never want a client to think back and realize they didn't do enough to try to save their marriage."

MICHAEL WYSOCKI, OWLAWYERS

"IT TAKES TWO PEOPLE TO MARRY BUT ONLY ONE TO DIVORCE."

AUBREY CONNATSER, CONNATSER FAMILY LAW



"IF FINANCES ARE SECURE AND THE CHILDREN ARE GROWN, THERE TENDS TO BE LESS CONFLICT, MAKING A COLLABORATIVE DIVORCE AN ATTRACTIVE OPTION."

CARLA CALABRESE, CALABRESE BUDNER

Divorce at any age is going to create a lot of change, but changes in gray divorces are often much larger in magnitude. Daily and yearly routines and family traditions that took decades to create may no longer be something in which to take comfort, from holiday get-togethers and family friendships to how to spend free time. Decisions on how money is spent will also change. Natalie Webb, a family lawyer with The Webb Family Law Firm, says many of her clients feel "stuck," both before and after a gray divorce, just in different ways. This is why she connects her clients with financial advisors, therapists, and estate planners, so they have resources to call upon when navigating their new normal.

"For older couples considering a divorce, above all, I would recommend knowing your financial situation, and if you have kids, even adult kids, be nice to each other," Webb says. "You may not like that future ex-spouse right now, but judges don't like parents bad-mouthing each other, and those parents need to realize they will be connected by their children long after the divorce is over. I advise my clients to have a team of professionals in place who can help you rebuild your life as you get back to your new normal."

Mueller says many of his older clients are often surprised at the big emotions they grapple with during and after the divorce. "I try to prepare them for the emotional fallout and turmoil they—and their children—may experience," he says. "Selling the longtime family home, having to miss holidays with the kids or grandkids, and figuring out how to live within a more restricted budget are all things they will face. You are forced to press the reset button, and that can be extremely difficult. However, there is another side to this where you can move on and lead a happy, peaceful life. As a couple you have to make sure you are still growing throughout your marriage and if not, that's what we're here for." ■