

# Gray Divorce: The Ultimate Boomer Divorce Guide

LEGAL MATTERS



By Jessica Bennett

If you're considering asking for a divorce after 50, you aren't alone. The divorce rate after the age of 50 has doubled since 1990 and has tripled for people over 65 according to a study by [Bowling Green State University](#). Couples who once felt they had to stay together for their children or to meet traditional expectations now feel able to leave unhappy marriages. The trend is so persistent, it has earned its own name, "Gray Divorce."

Leaving an unsatisfied marriage can be freeing; however, pursuing a divorce after 50 comes with its own unique challenges. Many couples considering a gray divorce have been married for decades and have built up a considerable amount of shared marital assets. People in their 50s and older are also at the tail end of saving for their retirement. Issues like Social Security benefits, pensions, and 401Ks can take on even more importance.

For these reasons, a gray divorce tends to be more complex than a divorce between younger couples. What can you expect when divorcing at an older age? Here are a few important points to consider, as well as a look at how you can recover both financially and emotionally from a divorce after 50.

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## Financial Challenges of Gray Divorce

Divorce at any age can be financially devastating, but it can be especially difficult on older couples who have accumulated significant wealth over many years together. These assets will have to be divided, leaving each partner with significantly reduced financial security as they enter their golden years.

Keep in mind that while some expenses may be cheaper when you are single, like your grocery bill, many other costs will be the same. Your rent or mortgage bill won't be cut in half just because you're living alone now. You may also need to pay more for health insurance if you were on your partner's plan and don't yet qualify for Medicare.

Women are especially vulnerable to financial trouble after a gray divorce. The [U.S. Census Bureau](#) found that 20% of women become impoverished after a divorce. Women often [earn less](#) than men and have a [longer life expectancy](#) than their male spouses (81 years for women compared to 76 years for men). That means women have to make their money last an average of five years longer than men.

## Asset Division in a Gray Divorce

When you decide to get a divorce, you'll need to divide your [marital assets](#) with your ex. Different states have [different rules](#) for asset division. Some states require couples to split assets 50/50 while others use a different formula that may reward the higher earner with a slightly larger share of the assets.

Couples can also determine their own asset split as long as a court will approve the eventual settlement. Divorce processes such as [divorce mediation](#) or collaborative divorce can help partners come to the table to figure out how to split their assets.

Older couples often have far more marital (shared) assets than younger couples, which can make asset division much more challenging. Older couples may not need to worry about child custody issues, so asset division could be the main point of contention during a late-life divorce.

If you have a lot of assets, it's a good idea to work with an experienced [divorce lawyer](#) who can help you put together a settlement strategy. You may also need to work with a [financial specialist](#) to help appraise all your assets or even hire a forensic accountant to look for hidden assets.

**Gray Divorce Preparation Tip:** One of the first things your divorce lawyer will ask for is a comprehensive list of all your shared assets. You can assist your lawyer by starting on the list now. Put together a list of every major thing you own, including:

- Share bank accounts
- Personal bank accounts
- Credit cards
- Your home
- Investment Properties
- Life insurance policies
- Stocks and bonds
- Retirement accounts
- Vehicles
- Recreational vehicles
- Home loans
- Personal loans
- Car loans
- Annuities
- Pensions
- Business documents and accounts
- Intellectual property
- Personal property, like art, jewelry, antiques



## Should You Keep the Home?

One of the most fought-over items during a divorce is often [the home](#). Couples over 50 may own their home outright, may be close to paying it off, or may have a significant amount of equity built up in their home. One partner may want to sell the home to access the equity while another partner may want to keep the house. Sometimes both partners want the house for themselves.

First, determine if you want to keep or sell the house and check to see if your partner is on the same page. If one partner wants to keep the house, they may be able to “buy out” the other partner by offering their spouse assets equal to their share of the house’s equity.

Example:

- A couple owns a home with \$500,000 of equity.
- Each spouse should be entitled to \$250,000 of that equity.
- If one partner wants to keep the house, they may be able to offer \$250,000 worth of investments to the other partner to “buy them out.”

(Here’s how to [get a house in your name](#) after a divorce.)

If you want to keep the house, be sure you can afford it. Making a mortgage payment on a single salary or using your reduced savings may be difficult. Even if your home is paid off, you’ll still need to cover property taxes, utilities, and repairs on your own.

## Alimony in a Gray Divorce

Alimony (or spousal support) is less common than it used to be, but a judge is more likely to approve an alimony petition (or request for alimony) in the case of a long-term marriage. This means alimony could be more likely in a late-life divorce, especially if a couple has been married for more than 10 years and one spouse earns far more than the other.

Alimony comes down to two things: need and ability to pay. First, one spouse has to show that they need financial support. If, for example, a spouse stayed at home to raise the children or didn't work because the other spouse earned enough to support the family, they may have a good case for an alimony petition.

In most cases, alimony is temporary. A spouse will be asked to pay "transitional support" or "short-term maintenance" for a specific amount of time to allow the lower-earning spouse the opportunity to undergo job training or learn to become self-sufficient. In some cases, however, a spouse may be ordered to pay "permanent alimony" when a judge believes the other spouse requires long-term financial support.

Of course, a spouse can only pay alimony if they have the means to afford it. If a spouse is retired and not earning a significant income, they may be able to argue that they can't afford to pay the alimony. You may also be able to [reduce your alimony](#) requirements in certain circumstances such as:



- You lose your job
- Your ex-spouse remarries
- You become disabled
- You face a financial crisis like an expensive health emergency
- Your ex-spouse begins to earn a significant amount of income

Your divorce attorney will be able to help you determine if you can make a strong case for or against alimony payments. Couples can also agree to their own alimony agreement as part of their divorce settlement. These agreements can take many forms. For example, a couple can agree on the amount and length of an alimony payment on their own or one spouse can offer additional assets in a settlement in exchange for not paying alimony. As long as both partners can agree and a judge approves the settlement, many different kinds of spousal support arrangements can work.

**Divorce Fact:** Alimony is not linked to gender. A husband may pay alimony to his wife. A wife may pay alimony to her husband. A husband may pay alimony to his husband, etc.

# Retirement and Gray Divorce

It's important to be realistic about how a gray divorce can affect your retirement plans. Individuals over 50 are nearing the end of their retirement savings journey or may have already reached retirement age and be living off their retirement investments. Divorce at this age can dramatically alter your retirement plans and make it more difficult to retire on time.

## 401ks and IRAs

Many Americans save for retirement using [401ks](#) and [IRAs](#). Any amount of money earned and saved in retirement accounts during the course of a marriage is considered marital property and will need to be split among the spouses. If both spouses have roughly the same amount of money saved for retirement, this asset division may be simple. However, if one partner has a much greater amount of retirement savings than the other, they may need to hand over a portion of their retirement funds.

Moving money out of certain retirement accounts, like 401Ks and IRAs before you reach the age of distribution, which is 59 1/2 years, can be complicated.

If you find you need to give your spouse a portion of your retirement accounts, one of the simplest options may be to offer them assets of a comparable value. This way, you don't have to take an early withdrawal and face expensive penalties.

Example:

- One spouse owes the other \$100,000 of retirement savings.
- They can try to offer \$100,000 from their portion of the home's equity instead.
- If the other partner wants to keep the house, this could be an even more preferable compromise.

If you do need to [move money from your 401k](#), you will need to request a special court order called a [Qualified Domestic Relations Order](#) (QDRO). The QDRO will be issued by the court and will allow you to take a one-time withdrawal from your 401k or 403b without paying a penalty or tax. It will specify exactly how you want the money in your account divided. (Note: QDROs don't apply to IRAs.)

If you are receiving money from a QDRO, you may want to roll those funds directly into your own retirement account, as this may help limit your tax liability. You may also be able to receive some of the funds for immediate expenses, though this could result in a higher tax liability.

In the case of [dividing an IRA](#), you can typically transfer funds without a penalty as long as you meet the requirements of a "transfer of account incident to divorce." A divorce judgment or divorce decree can be used to meet this requirement and save you from early withdrawal penalties.

**Divorce Tip:** The rules and regulations surrounding retirement accounts can be complex and may also change over time. Before making any decision about dividing your retirement account, it's a good idea to talk through your options with a financial or retirement specialist. Your accountant may also be able to provide you with some useful insight.

### **Pensions and Gray Divorce**

Many older Americans worked at a time when pensions were more common. If a spouse is a military veteran, worked for the government, or stayed at their job for many decades, they may have earned a pension. A [pension](#) is generally considered a joint marital asset and will need to be divided as part of a divorce settlement.

First, you'll need to look at the pension rules in your state to figure out how to divide the pension legally. You'll also want to look at how your plan works. For example, some plans offer lump sum payments while others offer a monthly annuity. Understanding how your plan works will affect how you divide the pension and how much your spouse is owed. Also, the spouse who wants a portion of the pension will need to file a request for a share of the pension.

Much like the 401k, you'll need to file a QDRO to divide your pension. If you don't want to touch your pension, you can also try and negotiate with your spouse to give them other assets equal to the amount they are owed from your pension. Again, it's best to discuss your options with a retirement specialist or financial advisor.



# Social Security and Gray Divorce

Social Security benefits are defined by the law and are typically not a big point of contention during a divorce. However, a lower-earning spouse may be able to earn a higher Social Security benefit based on their ex's earnings. In cases of a long-term marriage, a partner can earn half the value of their ex's Social Security benefit if that amount is higher than their own. This can be confusing at first blush, so let's look at an example.

Example:

- Spouse A earns \$3,000 in Social Security benefits
- Spouse B earns \$1,000 in benefits
- If Spouse B meets certain conditions, they could earn \$1,500 in benefits (half of Spouse A's benefits) instead of their own benefit.
- Best of all, whether or not Spouse B takes this special benefit won't affect Spouse A's benefit. Spouse A will still get \$3,000 every month even if they remarry.

In order for you to qualify for the ex-spousal benefit, you'll need to:

- Have been married to your spouse for at least 10 years
- Be unmarried
- Be age 62 or older



Many individuals divorcing after 50 have been married for 10 years or more, so this benefit could be a real possibility. This is such an overlooked benefit that we've written about [Social Security and divorce](#) extensively. If you think you may qualify for this benefit, contact the [Social Security Administration](#).

## Children and Gray Divorce

More and more couples are choosing to have children later in life, with [20% of women](#) in the US having their first child after age 35. That means some couples divorcing after 50 may need to address challenging topics like child custody. In other instances, a couple may have custody of grandchildren, may be caring for a disabled adult child, or may want to negotiate spending for their adult children.

### Child Custody in a Gray Divorce

Parents who initially had children in their mid to late 30s or later may still have minor children in the house when divorcing after the age of 50. In these cases, parents will need to determine [child custody](#) and develop a child custody plan.

Shared or joint child custody is often a popular choice for parents and for family court judges. In many cases, a judge will seek to have both parents be a part of the child's life in some capacity. It's usually a good idea to try and come to a child custody arrangement through mediation or other alternative forms of divorce negotiation before going to court. Litigation is almost always stressful and expensive and can further damage family relationships.

However, it's not always possible to agree with your spouse about child custody arrangements. If you believe your partner is an unfit parent, you can petition the court for primary or full custody of your child.

Once child custody is determined, you'll need to work with your spouse to determine a [child custody plan](#). Many different arrangements can work. You may decide that the children should switch households every week or spend several days per week at each household. Some parents allow their children to live with a single parent during the week to keep their routine stable and make it easier for them to attend school and stay near activities and friends. You may even want to include older children in the discussion to understand what type of arrangement they would prefer.

You'll also need to decide things like:

- Which holidays belong to which parents
- Who makes medical decisions for the children
- Where will the children go during time off school
- How will vacations work
- How will visitations with grandparents and other family members work

The better the relationship you can maintain with your ex, the easier these discussions will go. Even if you have strong negative emotions toward your spouse, it can still be a good idea to try and maintain a working relationship. Keep in mind that even though you aren't married to your spouse any longer, they are still the parent of your children and you'll need to work together for the near future.

## **Child Support and Gray Divorce**

If you still have a minor child at home or are the caregiver of an adult child with special needs, you may be eligible for child support or may need to [pay child support](#) to your spouse.

Every state has its own guidelines and formulas for calculating child support. Oftentimes, this is a complicated formula that takes into account many factors. The biggest deciders will typically be how much time each parent spends with the child and the difference in earnings between the parents. A higher amount a parent earns in comparison to their spouse and the less time the higher-earning parent spends with the children will typically increase the amount of child support owed.

Many states, like California, offer helpful [child support calculators](#) to help you determine how much you might owe.

Parents of older children likely won't be responsible for child support for long. Child support usually ends when the child turns 18 or 19 if the child is still in high school. However, if you have a disabled child, a court may require child support to continue if the adult child is incapable of supporting themselves and remains a dependent of the parents.

### **Other Child-Related Costs to Consider During a Gray Divorce**

Even if your children are legal adults and child support isn't on the table, you may want to negotiate other child-related costs with your ex as part of your divorce settlement. Questions to consider include:

- Who is going to pay for [college costs](#) for your children?
- Will you be paying for all or part of your children's weddings?
- Do you plan on giving your children money for a home down payment?
- Do you want to create a trust for your children or grandchildren?

As long as you and your ex can come to an agreement you can add any of these types of stipulations to your divorce settlement.

# Taxes and Gray Divorce

Always consider the tax implications of the decisions you make during your divorce settlement negotiations. Since couples over 50 are typically dealing with a larger number of assets and more overall money, the tax effects of each decision can be greater. Here are just a few things to consider.

## Selling the House After a Divorce

Selling the house or investment properties as part of your divorce can trigger [capital gains taxes](#) on your net profits. Many older couples have lived in their house for many years and enjoyed a high rate of real estate appreciation. This may mean you'll get a big profit on your home sale, but you could also pay a high tax bill. As of 2022, you can exempt \$250,000 of profit on your primary residence if you plan to file as a single at the end of the year. (These exemptions aren't allowed for rental properties).

## Receiving Alimony

Those receiving alimony must report the payments as income and pay taxes on it. This could affect whether you prefer to receive your alimony as a lump sum payment or as smaller payments over a longer course of time. A lump sum payment may push your income into a higher tax bracket for the year, increasing your tax bill.



## Selling Stocks

If you sell stocks as part of your divorce negotiation, you'll need to pay capital gains on your investment profits. That means it's important to know which stocks each spouse receives. For example, let's say each spouse receives 10 shares of Apple stock. Though the value of the stock will be the same for each spouse, their tax burden may be different. If one spouse receives older stocks (stocks purchased many years ago), they may have to pay more capital gains taxes, since those stocks would have earned a greater profit over time compared to newer stocks.

A financial advisor, such as a [certified divorce financial analyst](#) (CDFA) can help you determine the tax implications of your divorce decisions.

## How to Recover from a Gray Divorce

Divorce at any age is difficult, but it can be even tougher for those in their later years. A late-life divorce can mean leaving a lifestyle and a person you've known for decades. Building a new life can be exciting, but it can also be scary.

How can you recover from a gray divorce?

## **Work with a Financial Planner**

It's critical that you start your new life on the right financial footing. You may not be able to live in the same way you did before, and the earlier you understand your new limitations, the easier the transition will be.

Work with a knowledgeable financial planner with experience in divorce. Your planner can help you put together a new budget, rework your retirement timeline, and give you new financial goals to meet. Don't be surprised if you need to live on a tighter budget or if you have to push your retirement a few years or rethink what your retirement will look like.

It may also be a good idea to hire a tax specialist for your taxes even if you haven't used one in the past. If your divorce goes through before December 31st of the year, you'll need to file as a single. Divorce settlements often lead to large taxable events, like the sale of a house, shifting of property ownership, and sales of stocks. Don't get hit with a huge, surprise tax bill. Work with a tax professional early.

## **Consider Working with a Therapist**

If you are struggling with anxiety, depression, or negative emotions, you don't have to go it alone. Even when a divorce is the right choice that doesn't mean it's emotionally easy. Many older Americans have been married to their spouse for decades. They may have raised children with their spouse and shared many good memories together.

Leaving this life can be difficult and so can building a new, single life after so many years of marriage. Consider working with a therapist to help you address your emotional challenges. A therapist can give you tools to work through anxiety and other difficult emotions. They can also give you space to address the grief you may feel about your divorce and help you shift your emotions to a more positive mindset.

### **Tasks to Perform After Your Late-Life Divorce**

The work doesn't stop when your gray divorce is finalized. You'll need to begin rebuilding your new life one step at a time. A few post-divorce steps to perform include:

- Close all shared banking and investment accounts
- Open new banking and investment accounts in your name
- Close all shared credit card accounts
- Open new credit cards in your name
- Update your estate plan and change your beneficiaries
- Update your beneficiaries on your insurance plans
- Look into new health insurance if you previously received it through your spouse

### **Embrace Your Life After a Gray Divorce**

Divorce is never easy, especially for those over 50, but you can get through this and come out the other side a better version of yourself. At the end of the day, work toward embracing your new life after divorce. It may not be what you wanted or expected in your later years, but it is your reality.

A study by the [Brookings Institute](#) found that happiness tends to climb in our later years. That means your best years could be in front of you or happening right now. It's time for you to move forward with a new plan and begin building your new life.

If you are considering whether a divorce is right for you, get answers about the divorce process from local divorce professionals at a [Second Saturday Divorce Workshop](#) near you.

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