

1-1-2009

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Recommended Citation

Sue K. Varon & Martin S. Varon, *Domino Effect of the Current Economic Crisis*, 12 RICH. J.L. & PUB. INT. 221 (2008).

Available at: <http://scholarship.richmond.edu/pilr/vol12/iss3/6>

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THE DOMINO EFFECT OF THE CURRENT ECONOMIC CRISIS

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The deepening recession, increased unemployment, and stalled housing market have negatively impacted the financial situation of most clients of the family lawyer.¹ Many clients' homes are underwater because of declining values.² Those divorcing couples fortunate enough to have equity in their most significant marital asset, their home, are unable to sell it.³ Combined with the plummeting value of retirement accounts,⁴ practitioners are looking at marital asset balance sheets that are nothing less than bleak.

Although, historically divorce rates tend to rise during a bad economy,⁵ divorce practitioners nationwide have noticed a decrease in divorce rates.⁶ Experts attribute the decline in divorce filings to the severity of the economic downturn.⁷ Typically, a recession results in decreased divorce

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1. See Kelly Evans, *Home Prices, Sentiment Keep Sliding*, WALL ST. J., Jan. 28, 2009, at A3.

2. See *id.*

3. See Kim Isaac Eisler & Leslie Milk, *Breaking Up Is Hard To Do*, WASHINGTONIAN, Feb. 2009, at 56-59, 115-17; Alex Johnson, *Wanting to Divorce, But Unable to Afford It*, MSNBC.com, Nov. 24, 2008, <http://www.msnbc.com/id/27808110>.

4. See David M. Dickson, *Spending Declines for Record Sixth Month; Manufacturing Also Shrinks*, WASH. TIMES, Feb. 3, 2009, at A9; Jennifer Levitz, *Investing in Funds: A Monthly Analysis—Reading the 401(k) Nest Egg—Amid Volatile Markets and a Possible Recession, Many Workers Are Anxious and Struggling to Pay Bills; The Result: Conservative Fund Choices, Less Invested and a Jump in "Hardship" Loans*, WALL ST. J., May 5, 2008, at R1.

5. See Johnson, *supra* note 3.

6. See Eisler & Milk, *supra* note 3; Johnson, *supra* note 3.

7. See Johnson, *supra* note 3.

rates for couples with limited financial resources, as the prospect of incurring expenses for two households seems overwhelming for those with limited resources.⁸ On the other hand, high net-worth clients may seek to take advantage of the diminished value of their homes, stock and investment portfolios, and businesses to decrease their overall financial liability to their soon-to-be ex-spouses.⁹

When the marital residence or small business is the most significant marital asset, the party able to retain the house or business may reap a significant benefit down the road, as opposed to the one who is compensated by cash or other assets, because the value of the house or business is likely to increase once the economy recovers.

The credit crisis has impacted practitioners as well. Clients tell their lawyers that their credit cards are maxed out and they cannot replenish their retainers. This could leave practitioners in a position where discovery has been completed but there are no additional funds to finance the litigation.

Instead of ending up in this position, perhaps practitioners should think of alternative ways to resolve the case in a more cost-effective manner, such as mediation¹⁰ or late case evaluation.¹¹ Arbitration is yet another alternative when impasse has positioned the parties and created a standstill.¹² An arbitration panel, comprised of professionals from various areas of expertise, may provide an insightful resolution that is far more productive than going to court.¹³ Further, bringing additional professionals into the picture may bring difficult issues into focus.¹⁴ Finally, the use of the interdisciplinary collaborative model is an alternative to litigation when

8. See Cynthia Grant Bowman & Ben Altman, *Wife Murder in Chicago: 1910–1930*, 92 J. CRIM. L. & CRIMINOLOGY 739, 770 & n.143 (2002); Tim Grant, *Ties That Bind: As Recession Deepens, Some Couples Find It's Cheaper to Ride It Out Than to Get a Divorce*, PITTSBURGH POST-GAZETTE, Feb. 3, 2009, at A9; Johnson, *supra* note 3.

9. See Eisler & Milk, *supra* note 3.

10. See generally Thomas E. Carbonneau, *A Consideration of Alternatives to Divorce Litigation*, 1986 U. ILL. L. REV. 1119, 1167–69 (1986) (describing the basic characteristics of mediation); Nancy A. Walsh, *The Place of Court-Connected Mediation in a Democratic Justice System*, 5 CARDOZO J. CONFLICT RESOL. 117, 135–36 (2004) (defining and describing mediation).

11. Posting of Meriwether & Tharp to Atlanta Divorce Attorney Blog, http://www.atlantadivorceattorneyblog.com/2008/12/alternative_dispute_resolution.html (Dec. 9, 2008).

12. See Carbonneau, *supra* note 10, at 1151–53 (describing arbitration).

13. See *id.* at 1155–56, 1163–64. In particular, a three-person arbitration panel provides substantial benefits with appropriate safeguards. *Id.* at 1163. The three members can consist of individuals from a variety of backgrounds such as a family law expert, a financial expert, or a mental health professional. See *id.*

14. See *id.* at 1153.

the case involves complex financial issues or child custody issues.¹⁵

If the main problems are financial in nature and involve marital asset division or support alternatives, introducing a financial neutral to work with the parties may move things in the right direction.¹⁶ One thing many practitioners have not considered is how valuable financial neutrals are during mediation.¹⁷ The presence of a financial expert during mediation working in conjunction with a mediator would provide answers to many of the financial issues that impede the settlement process.¹⁸ Issues such as the tax savings associated with different support options, the variations in pension values caused by using different interest rate assumptions, and the after tax versus before tax values of various assets could be resolved immediately.¹⁹ Child specialists or parent coordinators also prove invaluable when the primary sticking points center on custody issues.²⁰

Today's economy requires legal professionals to assemble a team that will serve clients in a cost-effective manner. Although some cases are destined to require litigation, practitioners should attempt to utilize alternative methods of resolution prior to taking that final leap. Mediation, arbitration, and a form of the collaborative law model are just a few possibilities. The legal community is fortunate to live in a community replete with knowledgeable and experienced experts who can provide clients with wonderful resources. It is up to practitioners to inform their clients of the availability of those options.

15. See generally L. Voegelé et al., *Collaborative Law: A Useful Tool for the Family Law Practitioner to Promote Better Outcomes*, 33 WM. MITCHELL L. REV. 971, 976-77 (2007) (describing interdisciplinary collaborative models consisting of divorce coaches, a financial neutral, and a child specialist in addition to lawyers).

16. See *id.* at 976, 986.

17. See *id.* at 1003.

18. See *id.*

19. See *id.*

20. See *id.*