

Planners can help with divorce, but beware the landmines

Straying into the territory of lawyers, even unintentionally, can bring serious repercussions from lawyers and regulators

By Maureen Halushak | Dec 01, 2008 10:25

Linda Cartier has one piece of advice for financial advisors working with divorcing clients.

“Learn to shut your mouth,” says Cartier, the president of both Sudbury-based **Financial Decisions Inc.** and the **Academy of Financial Divorce Specialists**, which confers the financial divorce specialist designation. “Advisors are comfortable telling people what to do — but, in this case, that would be legal advice.”

Here’s how to avoid giving advice you shouldn’t:

> **Know Your Role.** Collaborative practice — a form of alternative dispute resolution in which the financial professional serves as neutral counsel to both spouses, who are each represented by a collaborative lawyer — is the most common type of divorce work for advisors.

“It’s a huge resource that we are just starting to mine,” says Judith Huddart, a collaborative lawyer with **Dranoff & Huddart** in Toronto.

“We can add real value,” adds Debbie Hartzman, an advisor with **Professional Investments (Kingston) Inc.** in Kingston, Ont., who also teaches courses for the certified divorce financial analyst designation conferred by the Institute for Divorce Financial Analysts, a Michigan-based competitor of Cartier’s AFDS. “However, a lawyer’s nemesis is a financial advisor who doesn’t understand the process and then screws it up.”

Indeed, this is an area in which it is wise to tread with great care. Advisors who give advice that can be construed as legal in nature can run afoul of the provincial bodies that regulate lawyers and the practice of law. In Ontario, for instance, the Law Society of Upper Canada investigates all complaints about the unauthorized practice of law. While most are settled, the Law Society has the power to prosecute offenders under the Provincial Offences Act or to obtain an injunction under the Law Society Act.

Hartzman admits there are not a lot of resources for advisors wanting to learn more about divorce work. That should change soon. This month, Hartzman is self-publishing a handbook for advisors entitled *Divorce Is Not Easy, But It Can Be Fair*.

As well, in early 2009, the AFDS plans to release an online divorce overview that will be eligible for continuing education credits.

Otherwise, a good first step for advisors is obtaining a divorce designation, be it the CDFA or FDS. Huddart also suggests joining a local collaborative practice group in order to learn more about your role in the divorce process. As a member of Collaborative Practice Toronto, Huddart meets every month with a small group of collaborative professionals, including lawyers, advisors and mental health workers, to share information.

“In order to understand what the other professionals bring to the table, we’ve had them talk to us as though we were clients and walk us through what they do,” she says. “It was a real eye-opener for everyone.”

Huddart recommends that once you’re the financial advisor in a divorce, ask lots of questions: “Advisors need to say, ‘Let’s talk about exactly what you expect of me.’”

Huddart’s firm outlines its general expectations in a financial professional agreement — developed with the Ontario Collaborative Law Federation — that is signed by the advisor at the onset of a case. It permits you, as an advisor, to:

- > help clients gather relevant financial information;
- > help clients identify needs;
- > help clients understand the financial information and various options;
- > develop realistic budgets that reflect accurate future needs;
- > provide long-term cash-flow analyses;
- > illustrate potential long-term consequences of various settlement options.

The agreement states that you won’t take any of the divorcing partners’ assets under administration or sell them any financial products during the collaborative process or post-settlement.

“If the advisor is assuming the role of neutral in a collaborative relationship,” says Huddart, “that advisor can’t be neutral if he or she is expecting to make income down the road from one client.”

However, spelling out your responsibilities doesn’t mean the occasional faux pas isn’t made. Huddart stresses that getting your feet wet and learning from mistakes is part of the process. “When advisors start doing this type of work, there’s a learning curve — and lawyers need to be prepared to accommodate that,” she says. “Most of the time, people don’t learn from their successes.”

> **Mind Your Language.** Advisors studying for the FDS designation constantly tell Cartier that this realm of financial planning requires a whole new vocabulary.

“We’re really comfortable with telling people what to do,” says Cartier. “But with divorce work, you can’t say things like ‘These are the strategies to follow’ or ‘These are my recommendations’ or ‘This is the advice I am giving.’ As soon as you’ve used that type of language, you are crossing the line.”

Instead, your role is to take the lawyer’s recommendations regarding matters such as equalization payments and support, and incorporate those recommendations into your calculations.

Even the most clear-cut numbers must come from the lawyer. “The child-support [guideline] tables are published on the Internet and anyone can figure them out,” says Hartzman. “But I would never, ever tell a client what he or she is entitled to. Similarly, I would never estimate how much spousal support a client might receive.”

Instead, Hartzman bases all projections on figures provided by the client’s legal counsel. If there is any doubt, she says, always send the client back to his or her lawyer. “I never make assumptions,” says Hartzman. “The lawyers I work with know that I would never cross that line.”

To that end, the first thing Hartzman does when taking on a new client is to have the client sign a contract that clearly states she doesn’t give legal advice and also specifies that the client must retain a lawyer if they are to work together. Hartzman also keeps detailed notes on all client meetings.

> **Keep Lawyers In The Loop.** While there haven't been any cases of advisors being taken to court for overstepping their bounds in divorce work, not keeping lawyers up to date on all client interactions is unwise.

"If you want to alienate a lawyer, not filling the lawyer in about any offside client/advisor meetings is the quickest way to do it," says Huddart. "I don't need a blow-by-blow report, but I do expect an e-mail saying, 'I met with Joe and Sally; I'm helping Sally with her budget.' It's really important for advisors to keep checking back to ensure they're not assuming someone else's role."