

DIVORCE TIPS

RESTRICTED STOCK

If a divorce is in your future, you have a lot on your mind — the household, mixed emotions, perhaps children. But now is not the time to overlook your finances. Each case is different, and there's no pat answer. To help reduce the likelihood that a divorce will disrupt your tax and investment strategies, you need to understand a few fundamentals.

The rules governing divorce are complicated and also vary by state. The following is intended to provide only an overview of the issues involved. Always consult your attorney and tax advisor about your specific situation.

STOCK OPTIONS AND RESTRICTED STOCK CREATE COMPLICATIONS

Stock options and restricted stock have become increasingly popular elements in many employees' compensation packages. Although these can be valuable benefits, they can add complexity to divorce proceedings. Dealing with stock options is complicated by a variety of factors, including whether:

- The options are vested or unvested
- You live in a community-property state
- You hold incentive stock options (ISOs) or nonqualified stock options (NSOs)

VESTED VS. UNVESTED OPTIONS

If you hold unvested stock options, you can claim they're worthless (because they cannot be exercised) and therefore should not be considered property acquired during the marriage. However, the court may rule your stock option became marital property on the grant date (when they were issued) rather than when they become vested.



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As a Certified Divorce Financial Analyst (CDFA®), I provide financial guidance to individuals facing divorce, and their attorney, through all stages of the divorce process. In addition to my investment planning background and CFP® designation, I've completed an intensive training program to become skilled in analyzing and providing knowledge regarding the financial issues of divorce.

“*Above all be the heroine of your life,
not the victim.*
— *Nora Ephron*

If your unvested options are deemed marital property, your divorce decree should include language stipulating what will happen when the options become exercisable. For example, the court may rule you hold the unvested options for the benefit of your spouse. When the options become vested, your ex-spouse would then have the right to exercise the options through you and receive their share of the proceeds. Some companies allow unvested nonqualified options to be transferred to the non-employee spouse and the recipient spouse would be responsible for taking steps to exercise the options.

If you hold vested options, the court could rule in a number of ways, for example:

- If your option program permits transfers, you could be required to transfer a portion of your options to your ex-spouse.
- If your program does not permit transfers, the court may:
 - Require you to exercise the options and deliver the proceeds to your ex-spouse (in accordance with decree or agreement)
 - Let you maintain ownership of the options after the divorce and exercise them at a time agreeable to you and your ex-spouse and divide the proceeds
 - Give your ex-spouse other assets of comparable value to the options in exchange for relinquishing any claim to the stock options

COMMUNITY-PROPERTY STATES VS. OTHER STATES

If you live in a community- property state, you and your spouse are each entitled to 50% of the stock options acquired during your marriage. In virtually all other states, stock options are treated like the rest of your property and are subject to equitable division by the divorce court.

ISOs VS. NSOs

ISOs provide tax advantages NSOs lack. However, if you transfer ISOs to your spouse, the options will become disqualified — in other words, they lose the tax advantages — which won't help either party. As a result, if you hold ISOs, it may be to your benefit to negotiate an agreement that will let you hold on to these options and, perhaps, provide your ex-spouse with other property of comparable value.

“*Stop wearing your wishbone where your backbone ought to be.*

— *Elizabeth Gilbert*

The IRS will let you keep the ISOs in your name while the legal and beneficial ownership goes to your ex-spouse, if subject to the divorce decree. You would then exercise them according to his or her direction and transfer the purchased shares to him or her. It would then be your ex-spouse's responsibility to pay the exercise costs and taxes, including the alternative minimum tax (AMT), if applicable.

RESTRICTED STOCK

A restricted stock award subject to a vesting schedule presents many of the same challenges as stock options. If the plan allows, unvested restricted stock awards can be transferred to your ex-spouse without incurring taxes. At vesting, your ex-spouse can sell the stock, and he or she would be responsible for paying any income taxes. If the plan does not permit transfers, your divorce decree can stipulate you give your ex-spouse other property of comparable value to the restricted stock, or you could agree to transfer the shares when they become vested.

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