

Fox Rothschild Podcast

Featuring New Jersey Family Law Attorneys Robert Epstein and Eliana Baer in Princeton

We are talking today about so-called “gray divorce” retirement planning with Robert Epstein and Eliana Baer on Fox Rothschild Podcast. Robert and Eliana are attorneys with the firm’s New Jersey Family Law Group. They are frequent contributors to the firm’s New Jersey Family Legal Blog and helped to develop the firm’s New Jersey Divorce app for mobile devices. Eliana, Robert, good morning.

Eliana Baer and Robert Epstein: Good morning. Thank you.

***Question:** Eliana, you recently authored a blog post about “The Gray Divorce” phenomenon that is sweeping the nation. As you highlighted in the post, whereas the divorce rate among couples age 50 and above was only 10 percent back in 1990, today it’s risen to a staggering 25 percent – that’s one in four “gray” couples.*

Eliana Baer: Yes, and while certainly an interesting statistic and perhaps even a telling sociological commentary on the baby boomer generation at large, it’s important to be mindful that a “Gray Divorce” may have other practical implications in terms of retirement planning. For instance, did you also know that your former spouse may be entitled to one-half of your Social Security benefit upon retirement?

Robert Epstein: This may actually impact one spouse’s overall retirement plan and therefore should be considered during the divorce process. As a result, it’s important to familiarize yourself with the regulations surrounding Social Security spousal benefits and carefully weigh all of the factors involved when even contemplating divorce at an advanced age, or even following any long-term marriage.

***Question:** Eliana, can you share some quick facts comprising most of what an individual in this circumstance would need to know?*

Eliana Baer: In terms of the length of the marriage, it’s important to know that a former spouse can collect Social Security retirement benefits from you as long as your marriage lasted 10 years or more.

***Question:** Robert, does a couple’s age factor into the issue?*

Robert Epstein: Yes. Both spouses must be eligible to receive Social Security benefits. The benefits may be elected as early as age 62 as long as the former spouse is also age 62 and the divorce has been final for two years or more.

Question: Eliana, what about eligibility for filing?

Eliana Baer: You actually don't have to have filed for Social Security for your former spouse to be eligible to receive benefits based on your wage earnings.

Question: Robert, how are these benefits calculated?

Robert Epstein: It's pretty straightforward. Retirement benefits for former spouses are calculated as if you were still married. At full retirement age, benefits are equal to 50 percent of what you would receive at retirement age. Starting benefits early can reduce benefits by as much as 30 percent for those born in 1960 or later.

Question: Eliana, what effect does one's remarriage have on the former spouse?

Eliana Baer: Your former spouse does not even have to be remarried. A second marriage will result in the waiver of his or her spousal benefit unless that marriage ends in divorce as well. If the second marriage lasted 10 years or more, the former spouse can be claimed via the spouse that produced the larger retirement benefit. If you are remarried, your former spouse's benefit will not impact your Social Security payment.

Question: Robert, what is the effect of death on the surviving ex?

Robert Epstein: When a former spouse dies, the ex's benefit then becomes a survivor benefit. And that's equal to 100 percent of your Social Security payments, rather than the 50 percent spousal amount.

Question: Eliana, what about a former spouse's work earnings?

Eliana Baer: Your former spouse must not be eligible for a higher benefit based on his or her own earnings. Of course, this is just the tip of the iceberg in terms of retirement planning, which requires a careful examination of all your income, assets and liabilities. However, this aspect should not be overlooked when attempting to paint a full picture of both spouses' retirement strategies.

Narrator: Well, thank you Eliana and Robert. Listeners, to confidentially discuss how a divorce at age 50 or above may impact your or your ex's employee benefits, please contact Robert Epstein in Roseland, New Jersey at 973.994.7526 or Eliana Baer in Princeton at 609.895.3344.

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