



# Thoughts on Practicing Family Law in a DEPRESSED MARKET

by David M. Lederman

**IN TIMES OF CRISIS** some people have a tendency to shut down or shut out. It is easier to do nothing than deal with negative facts. As our clients contend with the current economic depression (and yes, I believe we are in a depression), they are acting in increasingly desperate ways. This article will explore some of those actions and methods for dealing with them.

## WHAT IS A DEPRESSION?

Understand before reading any further: *I am not an economist* (other than armchair). I am merely a family law attorney. Regardless, as stated above, I believe we are in an economic depression.

Economists tend to distinguish recessions and depressions based on quarterly economic data. *The Economist* magazine defines depression as “A bad, depressingly prolonged RECESSION in economic activity. The textbook definition of a recession is two consecutive quarters of declining output. A slump is where output falls by at least 10%; a depression is an even deeper and more prolonged slump [emphasis in the original].”<sup>1</sup>

One problem with the above definition? The information comes too slow to use as an analytical tool. We often do not know the quarterly economic data until long after the quarter is over. This is not helpful. I prefer Saul Eslake’s approach. Mr. Eslake, chief economist at ANZ bank, believes “that the difference between a recession and a depression is more than simply one of size or duration. The cause of the downturn also matters. A standard recession usually follows a period of tight monetary policy, but a depression is the result of a bursting asset and credit bubble, a contraction in credit, and

a decline in the general price level.”<sup>2</sup> Does this sound familiar? Housing prices crashing, stock market crashing, and the standard responses to a recession are not working.

## WHY SHOULD WE CARE?

The short answer? Strategy. If you adjust your thinking to deal with a depression after the depression has started, it is too late. We should think about responses to a depression both with regard to our business strategy (not the subject of this article) and client management strategy.

## WHAT IS THE IMPACT OF THIS DEPRESSION ON OUR CLIENTS?

First, although divorce itself can be a depressing business, there is an increase in clients coming into our offices with an absolute sense of helplessness. My practice is in East Contra Costa County, where the housing price collapse was the worst. It is now “normal” in my practice for divorcing parties to have a negative equity estate. For those readers who do not practice family law, this means that it is now “normal” for a family’s debts to exceed the value of all of its assets, including real estate, pensions and investments.

In short, almost everything the parties have worked for throughout their lives is undone. In this economic depression, it is frequently not possible for any of the parties to live anywhere near their old marital standard of living. The marital standard of living probably contributed heavily to the parties’ current economic woes. In the past, a house could be sold and the proceeds used to give the parties seed money to start anew. Now the big

question is often, “Who gets the albatross?” ... or do they just walk away from the house and allow it foreclose?

This is the Morton’s Fork. There is no good answer and no clear road to a happy resolution. People in these circumstances frequently cannot make decisions. They are swallowed by the psychological depression that follows from having multiple choices — none of which leads to a favorable outcome. In the safety of our offices, we can help people understand their objective choices and help them accept their predicament, but we do not live with them and cannot step in when they feel the most depressed. Worse, it seems the psychological depression is self-perpetuating.

Sometimes the client just breaks. In a recent case, it appeared that the parties were making progress towards an amicable dissolution. The other party, the father of three minor children, was making progress towards a joint custodial schedule (and seeing the children on an ever increasingly longer and consistent schedule). The family residence was sold and the parties were to receive some proceeds from its sale. Although the objective professionals saw progress in the parties’ circumstance, this party did not. He quit his job and simply left the country. No goodbyes — he simply walked out abandoning his children and his support obligations to his wife. The most troubling aspect of this pattern is that it is not isolated.

In the past, clients complained about paying spousal support, but largely understood the concept and paid grudgingly, if not willingly. Now, more and more are talking about just giving up. Immigrants from foreign nations who worked hard to

come to the United States are asking, “why bother?” As in the example above, now some are deciding that it is much easier for them to start fresh and to hell with the ex-spouse and kids.

We are attorneys, not psychologists. While our clients need our objective guidance and input, we cannot give them psychological assistance. We try to tether our clients to the objective reality of their circumstance—just because circumstances are bad does not mean they can be ignored. Explain their options, as you understand them, and refer them to professionals who can complete areas that exceed our experience and expertise. This helps allay their fears of the unknown and will help a majority of clients.

#### FINAL WORDS OF CAUTION

*Know your limitations.* A family law attorney should not give tax advice or psychological counseling. We cannot fix everything and should not try, even though the temptation is there.

*Make referrals.* If clients are exhibiting signs of depression or despondency, immediately refer them to a mental health professional (and/or if tax advice is needed, refer them to an accountant or tax attorney).

*Do not make your client's decisions.* Very frequently a client will ask, “What should I do?” Clearly tell your clients that you can advise and evaluate, but that you, as their attorney, do not need to live with the result of *their* decisions. They must take ownership of their own decisions. ♦

— David M. Lederman is a Family Law Specialist, certified by the State Bar of California, Board of Legal Specialization. He is the principle attorney for the Law Offices of David M. Lederman ([www.ledermanlaw.net](http://www.ledermanlaw.net)), located in Antioch and Walnut Creek. David was the 2008 CCCBA Family Law Section President.



<sup>1</sup><http://www.economist.com/research/Economics/searchactionterms.cfm?query=depression>

<sup>2</sup>The Economist (print edition), Vol. 390, Number 8612, January 3, 2009, page 57, *Economic Focus: Diagnosing depression.*

## The Law Offices of David M. Lederman



**DAVID M. LEDERMAN**  
Certified Family Law Specialist  
State Bar Board of Legal Specialization



**TOM SMITH**  
Associate Attorney

Practicing exclusively in all aspects of Family Law  
in Walnut Creek and Antioch

3432 Hillcrest Avenue • Suite 100 • Antioch, California 94531  
309 Lennon Lane • Suite 102 • Walnut Creek, California 94598  
Phone 925.522-8889 • Fax 925.522-8877  
[www.ledermanlaw.net](http://www.ledermanlaw.net)

## MULLIN LAW FIRM AND MEDIATION CENTER

“A unique and effective style -  
a great mediator”

Candice Stoddard



Ron Mullin

One Corporate Centre ▲ 1320 Willow Pass Road, Suite 420  
Concord, California 94520  
Telephone (925) 798-3413 ▲ Facsimile (925) 798-3118  
Email [ronald@mullinlaw.com](mailto:ronald@mullinlaw.com)