**WHAT DID I FORGET IN MY DIVORCE?**

**BY: WILLIAM G. MORRIS, ESQ.**

Divorce is tough. The emotional minefield during divorce makes it hard to analyze all financial aspects of their financial situation. This column will provide some examples of things that are often forgotten and later remembered when problems arise.

Insurance is important. A life insurance policy can be a valuable asset and is often overlooked when it does not have cash value. A spouse usually designates the other spouse as the primary beneficiary. Most of the time that spouse does not want the other spouse to reap the benefit of a life insurance policy after a divorce starts, but changing beneficiary on a life insurance policy is not on top of mind.

Florida’s legislature addressed this problem by adopting a statute that states if a former spouse is beneficiary of a life insurance policy that designation is ended by divorce unless the former spouse is added as the beneficiary after the divorce or the court orders the former spouse to be maintained as the beneficiary. But as long as the parties are married, which means during a long drawn-out divorce, the beneficiary designation remains. That is not what a divorced spouse usually wants.

Retirement accounts are almost always considered as part of divorce because they are an asset. When the parties (or the judge) decide who gets what, retirement accounts have value. But when the parties decide who gets what, they often overlook the tax consequences of an early distribution or termination of a retirement account. The tax consequences are visited on the owner of the account and can be substantial.

Beneficiary of a retirement account can be changed. As with life insurance, many do not think about that aspect of retirement accounts. The same statute that ends a former spouse as beneficiary of a life insurance policy also ends the designation of beneficiary on retirement accounts. But, that does not happen until the divorce judgment is entered by the Judge.

The statute that ends a former spouse as beneficiary on retirement accounts and, life insurance does the same for payable on death accounts. But it does not end joint ownership of joint accounts. And, it is only effective after the court enters a divorce judgment. While the parties are litigating, status as a spouse and designation as a beneficiary remain. There are a lot of divorcing spouses who would change beneficiary designation on these accounts if they thought about it before their divorce was final.

Florida’s legislature also recognized many people forget to change their will or trust after a divorce and leave their former spouse as a beneficiary. Florida Statutes provide that divorce ends former spouse status as a beneficiary, unless the will or trust is executed after the divorce or otherwise ordered by the court. Again, the statute does not apply during the divorce. If they thought about it, many would change their will and trust no later than the date the divorce action was filed.

Mortgages can be a big problem. They are almost always considered as reducing the net value of property as the parties or the judge decide who gets what. But, the spouse who does not get the house frequently forgets that he or she is on the mortgage. Even when the divorce agreement states that the spouse getting the house will be solely responsible for the mortgage, it does not affect the mortgage holder. Contract between the former spouses is with the mortgage holder and their agreement does not affect who is liable for the debt.

Even if the spouse who gets the house makes timely payments, the mortgage is still listed as a debt on both former spouse’s credit and can make it hard or impossible for the spouse who did not get the house to get another mortgage to buy another house. Worse, if the spouse who gets the house does not pay the mortgage on time, credit of the other spouse is damaged.

Sometimes the spouse who is not getting the house sees the problem and demands the other spouse remove him or her from the mortgage. The spouse getting the house agrees, but later finds that lenders do not let that happen. Mortgages are sold in the secondary market and owned by investors and the investors do not want to fool around with revising the mortgage and having only one debtor instead of two.

That can mean refinance is required to meet terms of the settlement and the spouse who got the house might find they have insufficient income on their own to get a new mortgage. The result can be the house has to be sold and even though the spouse who got the house gets the proceeds from the sale, the spouse becomes a renter not an owner.

Car loans and other debt are in the same category as a mortgage. Spouses who are jointly on a loan or credit card remain joint debtors. The loans and credit card appear on their credit report and can impact credit score even if the spouse who is “keeping” the card or getting the car makes payments in a timely manner.

People often plan based on things going right. The parties may agree to permanent support payments. The parties may agree that one or both will pay for college education of the kids, even though that is not a legal requirement. They may agree on other financial arrangements, all of which assume continuation of their then current situation. Let’s not forget about health problems, car accidents, economic downturns and misfortune which means that one or both are later in a bind.

Sometimes this oversight can be fixed if changed circumstances allow a former spouse to go back to court for relief. But, if the spouse agreed their settlement is non-modifiable, the unforeseen problem won’t be avoided.

Almost all of these problems can be avoided, or at least considered, if a party is represented by a good attorney during the divorce. Sometimes people avoid hiring an attorney in an effort to save money. In the long run, if they forgot one of the items in this column, hiring an attorney could have been a bargain.

***William G. Morris is the principal of William G. Morris, P.A. William G. Morris and his firm have represented clients in Collier County for over 30 years. His practice includes litigation and divorce, business law, estate planning, associations and real estate. The information in this column is general in nature and not intended as legal advice.***