**SMITH – QUESTIONS TO BE ANSWERED**

**BLUE = previously agreed**

**GREEN = attorneys recommend agreement**

**RED = legal information**

* 1. **What will we do with marital residence?**

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Mary keeps it and buys out John’s interest in the equity |  |  |
| 2 | John keeps it and buys out John’s interest in the equity |  |  |
| 3 | Sell it and split the proceeds |  |  |
| 4 | Continue to own it jointly until daughter graduates from high school |  |  |

1. *If there’s a buyout, what is the fair market value of the marital residence*?

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Use Zillow value |  |  |
| 2 | Use tax-assessed value (usually low) |  |  |
| 3 | Ask a broker for a CMA based on other nearby sales |  |  |
| 4 | Get an appraisal (approx. $600 cost) |  |  |
| 5 | Use John’s estimate of $1.25 mil |  |  |

1. *How should we decide what repairs/maintenance needs to be done*?

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Parties generate a list of agreed upon repairs that will be paid for with marital funds (any repairs that aren’t agreed upon will be the responsibility of the person who keeps the house, or left to the decision of the broker if the house is being sold) |  |  |
| 2 | Ask a broker to walk through and provide a list of recommended repairs to list it for sale |  |  |
| 3 | If one party is keeping the house, that party will use his/her share of the marital funds to make any repairs |  |  |

* 1. **What will we do with investment accounts?**

AGREED:Equally divide (approx. $59,310 to each party)

* 1. **What will we do with retirement accounts?**

AGREED: Equally divide (approx. $446,414 [plus or minus market gains or losses] will be transferred from John’s 401(k) to Mary’s IRA when the divorce is finalized)

* 1. **What will we do with bank accounts?**
		1. *Penfed share account*: JOHN KEEPS (negligible balance)
		2. *Penfed MM savings*: MARY KEEPS (negligible balance)
		3. *Schwab joint checking*:

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Close the account & equalize the funds with Mary’s business account (Mary receives approx. $20,620 / John receives approx. $34,435) |  |  |
| 2 | John keeps the account + pays Mary approx. $20,620 to equalize with her business account / Mary removes her name |  |  |
| 3 | Mary keeps the account + pays John approx. $34,435 to equalize with her business account / John removes his name |  |  |

* + 1. *Schwab savings (Mary’s business account)*:

MARY KEEPS (balance offset by joint Schwab account)

* + 1. *NFCU Checking and savings $50 each(?)*:

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Close the accounts & equally divide the contents |  |  |
| 2 | John keeps the accounts + pays Mary ½ the current balances / Mary removes her name |  |  |
| 3 | Mary keeps the accounts + pays John ½ the current balances / John removes his name |  |  |

* + 1. *Capital One UTMA accounts*:

MARY will remain the custodian for the accounts until the children reach age 18.

* + 1. *529 College Savings accounts*:

AGREED: Use for the kids’ college expenses, can transfer any unused amounts to other child. If there’s any excess after youngest child reaches age 25, parties will equally split the remainder.

* 1. **What will we do with cars / Mary to get new car?**

JOHN keeps the 1987 GMC Truck + responsibility for the Toyota Highlander lease.

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Mary trades in her 2012 Volvo C and purchases a new car with cash / advance from her share of the marital assets |  |  |
| 2 | Mary trades in her 2012 Volvo C and purchases a new car with financing  |  |  |
| 3 | Mary trades in her 2012 Volvo C and leases a new car  |  |  |

* 1. **What will we do with personal property?**

*The value of personal property/furniture is its resale value—not what you paid for it*.

JOHN and MARY will choose a day to walk through the house and identify the items that each wishes to keep. They will create a list of all items in dispute, then alternate choices for which party is keeping which disputed item, with MARY having the first choice. There will be no accounting for the monetary value of personal property items each is retaining as part of the 50/50 division of marital assets.

* 1. **What will we do with Mary’s LLC?**

MARY retains all ownership interest, with no monetary value attributed as part of the 50/50 division of marital assets.

* 1. **What do we do with our frequent flyer miles and hotel rewards points?**

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | If points can be transferred, transfer ½ of existing total to other party / split any resulting fees |  |  |
| 2 | Each party keeps the points in his/her name with no monetary value attributed as part of the 50/50 division of marital assets  |  |  |
| 3 | Each party keeps the points in his/her name with a value of $0.01 per point/mile attributed as part of the 50/50 division of marital assets  |  |  |
| 4 | Agree to use existing points/miles for children’s travel in the future |  |  |
| 5 | Agree that each party may use ½ of the other’s existing balance in the future |  |  |

* 1. **How will we cover Mary’s health insurance?**

JOHN will continue to provide the existing coverage for MARY until a divorce is finalized. Each party will be responsible for the payment of his/her own unreimbursed medical expenses when spousal support payments begin.

TBD: Will the divorce be postponed to allow a longer period of coverage for MARY?

* 1. **How will we cover the children’s health insurance?**

*The cost of covering the children is included in Virginia’s statutory child support calculation (to the extent that JOHN is providing coverage for them, his statutory child support obligation will be lower than if MARY were providing coverage for them).*

*There is no legal obligation to pay for children’s health insurance coverage after they turn 18 and graduate from high school, but many parents agree to maintain their coverage as long as possible under Federal regulations (currently until age 26).*

*The children’s health insurance coverage is also modifiable in the future—if MARY gets a job with a better policy than JOHN’s, you can always switch the children to her policy and re-calculate the statutory child support calculation.*

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | John will continue providing coverage for the children until they turn 18 & graduate from high school. |  |  |
| 2 | John will continue providing coverage for the children for so long as they are eligible. |  |  |
| 3 | John will continue providing coverage for the children for so long as they are eligible OR until they have an employer-sponsored policy, whichever is sooner  |  |  |

A. *How will we pay for the children’s unreimbursed medical expenses*?

*Virginia statute provides that parents must share unreimbursed medical expenses pro rata, in proportion to their incomes. However, the income percentage determination is made when the divorce order is entered—if one person is earning significantly more or less in the future, you would have to get a new court order entered to change the percentage, absent an agreement otherwise.*

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Parties will share the children’s unreimbursed medical expenses *pro rata* in proportion to their incomes until the children turn 18 & graduate from high school |  |  |
| 2 | Parties will *equally* share the children’s unreimbursed medical expenses until the children turn 18 & graduate from high school\* |  |  |

\*In exchange for MARY paying a larger share of the unreimbursed medical expenses, JOHN could pay a larger share (or all) of the children’s extra-curricular activities.\*\*

\*\**The cost of children’s extra-curricular activities are not included in the statutory child support calculation*.

* 1. **What will we do about life insurance?**

*The court has the authority to order JOHN to maintain any existing life insurance policies for so long as he has an obligation to pay spousal and/or child support (because in the event of his death, his estate has no obligation to pay child support or spousal support to MARY). The court can also allocate the cost of premiums between the parties.*

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | John will maintain Mary as the beneficiary of his existing policies until his child support obligation ends, or until his spousal support obligation ends, whichever is later. John will pay the premiums. |  |  |
| 2 | John will maintain Mary as the beneficiary of his existing policies until his child support obligation ends or until his spousal support obligation ends, whichever is later. John will pay the premiums until his child support obligation ends, and the parties will share the premiums thereafter. |  |  |
| 3 | John will maintain Mary as the beneficiary of his existing policies until his child support obligation ends or until his spousal support obligation ends, whichever is later. John will pay the premiums until his child support obligation ends, and Mary will pay the premiums thereafter. |  |  |

* 1. **How will we handle taxes?**
		1. *2020Filing*.

The parties will file joint returns for 2020, and will set aside marital funds to pay the capital gains tax owed on the marital stock sale.

* + 1. *Child Dependency Deductions*.

Each party will be entitled to claim one child as a dependent on his/her taxes to facilitate their ability to claim head of household.

At such time as only one child is eligible as a dependent for the purpose of claiming head of household, the parties will alternate claiming that child each year, with \_\_\_\_\_\_\_\_\_\_ claiming the first year.

* + 1. *Real Estate Interest Deduction*.

Whichever party pays the mortgage in 2021 shall be entitled to claim the mortgage interest deduction.

* + 1. *Future audits on joint returns*.

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | In the event of a future audit of a joint tax return filed by the parties, they will be equally responsible for the payment of any liability owed (because the marriage benefitted from having the extra funds that were not paid), and will equally share any refund. |  |  |
| 2 | In the event of a future audit of a joint tax return filed by the parties, they will each be responsible for any liability in proportion to their gross incomes for the audited year (because John will have a greater ability to pay, and the tax owed will likely be associated with his income), and will divide any refund in the same manner.  |  |  |

* 1. How will we handle credit cards?

Any existing balances on the parties’ credit cards will be paid with marital funds. JOHN will pay MARY an amount equal to ½ of his expenditures related to his relationship with SUSAN.

Any joint credit cards will be closed, and each party will remove the other as an authorized user on any cards in his/her name.

* 1. What will we decide about paying for college?

*There is no legal obligation in Virginia to contribute to post-secondary education expenses for adult children. Some parents decide not to include any contractual obligation for contributing to these expenses in their settlement agreement, even if they both intend on doing so, with the idea that they won’t know what their relative financial circumstances will be at that time. Some parents decide to include a contractual provision requiring both to contribute, but with a ceiling on the total dollars or percentage of income required to be contributed in a given year.*

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | In the event that the children’s 529 college savings accounts are depleted prior to their completion of a 4-year college or university program, the parties agree to equally contribute to the remaining costs for tuition, room & board, books, and other expenses; provided that neither party will be required to pay more than ½ the cost of tuition at the University of Virginia for that particular school year. |  |  |
| 2 | In the event that the children’s 529 college savings accounts are depleted prior to their completion of a 4-year college or university program, the parties agree to contribute to the remaining costs for tuition, room & board, books, and other expenses, pro rata, in proportion to their gross annual incomes for the prior calendar year; provided that neither party will be required to pay more than ½ the cost of tuition at the University of Virginia for that particular school year. |  |  |
| 3 | In the event that the children’s 529 college savings accounts are depleted prior to their completion of a 4-year college or university program, the parties agree to contribute to the remaining costs for tuition, room & board, books, and other expenses; provided that neither party will be required to pay more than \_\_\_% of his/her gross annual income in any calendar year. |  |  |
| 4 | The parties agree that they will both use their best efforts to contribute to the costs of the children’s college tuition and expenses, to the extent that their 529 accounts are insufficient to cover the same. (*This option is aspirational/not strictly enforceable*.) |  |  |

* 1. What will be our parenting plan (including decision-making, schedule, holidays, school vacations, travel, relocation, etc.)?

\*TBD with the coaches

* 1. How will we handle children’s expenses?

*We will have to calculate the statutory guideline amount of child support once the amount of spousal support is determined—the calculation contemplates both parties’ incomes, work-related childcare (summer camps), and the cost of the children’s health insurance coverage. This is in addition to the expenses described below.*

*Child support is intended to help the lower-earning spouse provide adequate housing, food, clothing, transportation, and their share of unreimbursed medical expenses. However, when parties share physical custody equally, there is no legal guidance as to who pays for extra-curricular activities, sports, lessons, school fees, etc. that are incurred during each parents’ custodial time.*

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | Parties share the cost of agreed-upon extra-curricular activities, sports, lessons, school fees, etc. *pro rata* in proportion to their incomes. |  |  |
| 2 | Parties *equally* share the cost of agreed-upon extra-curricular activities, sports, lessons, school fees, etc.  |  |  |
| 3 | John pays the cost of all agreed-upon extra-curricular activities, sports, lessons, school fees, etc., in exchange for Mary paying 50% of unreimbursed medical expenses. |  |  |

* 1. Will there be spousal support?

This is too complicated to give you options outside of a meeting. You will need to decide: i) the amount of support to be paid, ii) the duration of the payments, and iii) the circumstances under which the amount and/or the duration will be modifiable.

*There is no calculation for spousal support in Virginia. The analysis starts with MARY’s needs, balanced against JOHN’s ability to pay, and the court must consider the following factors:*

*1. The obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature;*

*2. The standard of living established during the marriage;*

*3. The duration of the marriage;*

*4. The age and physical and mental condition of the parties and any special circumstances of the family;*

*5. The extent to which the age, physical or mental condition or special circumstances of any child of the parties would make it appropriate that a party not seek employment outside of the home;*

*6. The contributions, monetary and nonmonetary, of each party to the well-being of the family;*

*7. The property interests of the parties, both real and personal, tangible and intangible;*

*8. The provisions made with regard to the marital property under §*[*20-107.3*](https://law.lis.virginia.gov/vacode/20-107.3/)*;*

*9. The earning capacity, including the skills, education and training of the parties and the present employment opportunities for persons possessing such earning capacity;*

*10. The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his or her earning ability;*

*11. The decisions regarding employment, career, economics, education and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential, including the length of time one or both of the parties have been absent from the job market;*

*12. The extent to which either party has contributed to the attainment of education, training, career position or profession of the other party; and*

*13. Such other factors, including the tax consequences to each party and the circumstances and factors that contributed to the dissolution, specifically including any ground for divorce, as are necessary to consider the equities between the parties.*

*There is no rule for the duration of spousal support, but many couples use ½ the length of the marriage as an objectively fair ballpark to begin evaluating.*

*By statutory law, spousal support is terminated if MARY remarries, or lives with another person in a relationship analogous to marriage for one year, or if either party dies.*

 *If a judge determines spousal support, the amount and duration are always modifiable in the event there is a future material change in circumstances that is beyond the parties’ control. I.e., JOHN cannot quit his job and decide to work at Starbucks to avoid paying spousal support. But if he has a stroke and can no longer perform his job duties, he could ask to reduce or terminate support. Most parties include language in their settlement agreement that specifies the circumstances under which spousal support would be modifiable in the future.*

* 1. What will be our date of separation [can have two dates—one for finalizing the divorce, one for identifying when the accumulation of marital assets ends]

The date of separation for the purpose of finalizing the divorce will be the date on which the parties first met with a mediator for the purpose of negotiating a divorce settlement. The date of separation for the purpose of dividing the marital assets will be the date that JOHN first begins making spousal support payments.

* 1. How will we pay Collaborative Process costs?

All costs incurred by the parties in the Collaborative Process, including the finalization of a divorce and the entry of any of any retirement benefits orders, will be paid equally from the parties’ marital funds.

* 1. How will we handle estate planning?

*Your final settlement agreement will have a provision stating that you each waive any interest in the other’s estate, so that if one if you were to die prior to the divorce being finalized, the survivor would not have any legal rights to any portion of the deceased party’s estate. So you do not immediately need to change your Wills—the settlement agreement will trump the existing provisions for the other spouse. However, you should both make sure that the designated beneficiaries on your cash and retirement accounts are changed so as not to name the other person*.

* 1. What will we do with the pool membership?

|  |  |  |
| --- | --- | --- |
| **OPTIONS** | **Mary** | **John** |
| 1 | The party who retains the membership will be entitled to keep the value in the event of a future sale, with no monetary value being attributed as part of the 50/50 division of marital assets.  |  |  |
| 2 | The value of the membership will be attributed to the party who retains it.  |  |  |
| 3 | One party retains ownership, but in the event of a future sale, the proceeds will be equally divided at that time. |  |  |