**JONES – QUESTIONS TO BE ANSWERED**

**GREEN = attorneys recommend agreement**

**RED = legal information**

1. **What will we do with the farmhouse?**

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| **OPTIONS** | | **Dana** | **Matt** |
| 1 | Dana keeps the house and buys out Matt’s share of the equity. |  |  |
| 2 | Matt keeps the house and buys out Dana’s share of the equity. |  |  |
| 3 | The house is sold, and the parties equally divide any net proceeds. |  |  |
| 4 | Ownership of the house is transferred into a Trust in daughter’s name. (This will require working with a trusts & estates attorney and agreeing upon further details such as payment of the mortgage, repairs, maintenance, property taxes, etc.) |  |  |

1. **How will we divide our retirement accounts?**
   1. Dana: (two 401(k) accounts)
   2. Matt: TSP + FSPS

The marital shares (the amounts accumulating during the marriage—minus the outstanding loan balances) of Dana’s two 401(k) accounts and Matt’s TSP will be equalized, with a payment being made from Matt’s TSP.

Dana will receive 50% of the marital share of Matt’s FSPS pension (i.e., a percentage equal to 1/2 of the amount of creditable service accumulated during the marriage). A court order will be submitted to OPM so that when they begin making payments to Matt, they will automatically deduct Dana’s share and pay her directly.

1. *What about the FSPS survivor benefit*?

*Matt will have the option of electing the survivor annuity benefit associated with his pension when he retires. It is essentially a life insurance policy on his pension—so that if he predeceases Dana after his retirement, she will continue to receive her share of the pension until she dies. The cost for the maximum survivor annuity (which would result in no change to Dana’s payment in the event of Matt’s death) will be 10% of his monthly pension payment. It is deducted from the pension payment, and can be allocated between you, or one party can be solely responsible for the payment.*

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| **OPTIONS** | | **Dana** | **Matt** |
| 1 | Matt has no obligation to elect the survivor annuity benefit when he retires. |  |  |
| 2 | Matt must elect the survivor annuity benefit and name Dana as the beneficiary. The parties will equally share the cost of the benefit. |  |  |
| 3 | Matt must elect the survivor annuity benefit and name Dana as the beneficiary. The cost of the benefit will be shared pro rata, in proportion to the amount of the monthly pension benefit each is receiving at that time. |  |  |
| 4 | Matt must elect the survivor annuity benefit and name Dana as the beneficiary. The cost of the benefit will be paid from Matt’s share of the monthly pension payments. |  |  |
| 5 | Matt must elect the survivor annuity benefit and name Dana as the beneficiary. The cost of the benefit will be paid from Dana’s share of the monthly pension payments. |  |  |
| 6 | In lieu of the survivor annuity, use life insurance instead |  |  |
| 7 | Decide on option 1-5 but defer election until time of retirement |  |  |

1. **What will we do with the loans against our retirement accounts?**

Each party will be solely responsible for the repayment of the loan against his/her account.

1. **What will we do with Daughter’s 529 college savings account?**

The existing balance will be used for the sole purpose of paying daughter’s post-secondary education expenses. In the event that daughter does not attend college or the full amount of the existing balance has not been expended by the time daughter reaches the age of \_\_, the parties will equally divide the remainder, or the funds go to daughter

1. **How will Daughter’s college expenses be paid?**

*In Virginia, parents cannot be legally compelled to contribute to any expenses of an adult child, unless the child is disabled/unable to work.*

Neither party will have any contractual obligation to contribute to daughter’s college expenses, notwithstanding that either may intend to do so.

As an alternative, you could each commit to an annual contribution to a 529 in a set amount.

1. **What will happen with Dana’s rental condo?**

*Property that was owned prior to the marriage is presumed to be the separate property of the owning spouse. However, to the extent that income earned during the marriage was used to make mortgage payments or improvements on the property, the resulting increase in equity/value is considered marital and can be divided between the parties.*

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| **OPTIONS** | | **Dana** | **Matt** |
| 1 | Dana retains her condo as her separate property and there is no consideration to Matt for any accumulation of marital property. |  |  |
| 2 | Dana retains her condo as her separate property, but Matt will receive 50% of any marital interest in the equity (requires the attorneys to review bank and mortgage statements to determine the amount of marital interest). |  |  |
| 3 | Dana retains her condo as her separate property. Rather than calculate the amount of marital interest in the equity, Matt will receive an offset from another asset or debt payment that the parties agree is a fair recognition of the marital interest. |  |  |

1. **What will happen with the car?**

The person retaining ownership of the car will be solely responsible for all related expenses, including any lien payments, taxes, insurance, maintenance, repairs, etc. If the car has any value (determined by the NADA value minus any outstanding lien balance), the retaining party will pay the other party 50% of the value in the form of a credit offset against other assets.

1. **How will we divide our furniture and personal property?**

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

Each of you will retain any premarital furniture/furnishings and/or family heirlooms. For all other furniture/furnishings, Dana and Matt will each identify the items that he/she 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 Dana 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. **How will we divide our bank accounts?**

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| **OPTIONS** | | **Dana** | **Matt** |
| 1 | Each party keeps his/her own accounts with no offset. Joint accounts will be equally divided and closed, or remove one party’s name. |  |  |
| 2 | Each party keeps his/her own accounts, with an equalizing payment to the party with the lower total account balances. Joint accounts will be equally divided and closed, or remove one party’s name. |  |  |

1. **What will we do with our credit card debt?**

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| **OPTIONS** | | **Dana** | **Matt** |
| 1 | Use your mortgage refinance proceeds to pay off the marital credit card debt. |  |  |
| 2 | Each party will responsible for payment of ½ of the total credit card debt. |  |  |

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

*A former spouse who pays spousal support or child support can be compelled to maintain any existing life insurance policies naming the other spouse as a beneficiary for so long as a support obligation exists. The court can also allocate the cost of premiums between the parties.*

Option – Each of you elect and maintain any employer sponsored life insurance for so long as it is available to you for the benefit of your daughter (naming the other as trustee) until she is 22.

1. **How will health insurance be paid for Dana?**

Matt will continue to provide health insurance for Dana until a divorce is finalized.

1. **How will health insurance be paid for Daughter?**

*The cost of covering daughter’s insurance is included in Virginia’s statutory child support calculation (to the extent that Matt is providing coverage for her, his statutory child support obligation will be lower than if Dana were providing coverage for her).*

*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). But note—with coverage comes liability for unreimbursed medical expenses.*

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

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| **OPTIONS** | | **Dana** | **Matt** |
| 1 | Matt will continue providing coverage for daughter until she turns 18 & graduate from high school. |  |  |
| 2 | Matt will continue providing coverage for daughter for so long as she is eligible. |  |  |
| 3 | Matt will continue providing coverage for daughter for so long as she is eligible OR until she has an employer-sponsored policy, whichever is sooner |  |  |

A. *How will we pay for Daughter’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.*

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| **OPTIONS** | | **Dana** | **Matt** |
| 1 | Parties will share daughter’s unreimbursed medical expenses *pro rata* in proportion to their incomes until she turns 18 & graduates from high school. |  |  |
| 2 | Parties will share daughter’s unreimbursed medical expenses *pro rata* in proportion to their incomes for so long as daughter is covered under Matt’s policy |  |  |
| 3 | Parties will *equally* share daughter’s unreimbursed medical expenses until she turns 18 & graduates from high school\* |  |  |
| 4 | Parties will *equally* share the children’s unreimbursed medical expenses for so long as she is covered under Matt’s policy |  |  |
| 5 | Parties will share daughter’s unreimbursed medical expenses *pro rata* in proportion to their incomes until she turns 18 & graduates from high school—THEN the parties will share the expenses *equally* for so long as she is covered under Matt’s policy |  |  |

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

The parties will file joint returns for 2020. Any refund will be applied to their outstanding 2018 tax liability; any liability will be shared 50/50.

* + 1. *Child Dependency Deductions*.

The parties will alternate claiming daughter as a dependent on their taxes, with \_\_\_\_\_\_\_\_\_\_ claiming the first year. In the event that either party will not receive a financial benefit from claiming daughter in a given year, he/she will cooperate to allow the other person to make the claim.

* + 1. *Real Estate Interest Deduction*.

TBD depending on what is being done with the farmhouse.

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

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.

1. **How will we pay for Daughter’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.*

*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.*

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| **OPTIONS** | | **Dana** | **Matt** |
| 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 | Matt pays the cost of all agreed-upon extra-curricular activities, sports, lessons, school fees, etc., in exchange for Dana paying 50% of unreimbursed medical expenses. |  |  |

1. **How will we handle cash flow in the short term?**

We recommend that you continue the status quo and focus on reaching a long-term resolution on the issues of spousal support & child support.

1. **How will we pay our expenses in the long run?**

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 Dana’s needs, balanced against Matt’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 Dana 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., Matt 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. **When will we divide our accounts?**

When you have a final agreement on all issues / before Matt makes the first spousal support and child support payments to Dana.

1. **What will we do with our pet?**

Pets are considered “personal property”—generally the person retaining ownership/possession also assumes responsibility for the associated expenses. Sharing the dog is not advised.

1. **What is our date of separation?**

You can have two different dates—one for finalizing the divorce, one for identifying when the accumulation of marital assets ends.

1. **How will we pay for Process & divorce costs?**

Each party will be individually responsible for the payment of his/her attorney’s and coach’s fees incurred in the Process.