

What's Mine Is Yours And What Yours Is Mine... Until Divorce Do Us Part



LEGAL PERSPECTIVES

By Julie J. Marburger, Esquire, Wolf, Baldwin & Associates, P.C.

Oftentimes in marriage people end up doing things they don't want to do for the sake of their partners' happiness. However, there are things a person *shouldn't* do in marriage for the sake of his or her partner's happiness. I frequently see problems in divorce cases when people, for the sake of making the other person happy, put their partner's name on a piece of property that isn't marital to begin with, or they put their partner's name on an account where it isn't necessary. Here is my piece of friendly advice – DON'T! There are three big areas where I can impart some wisdom on why it could possibly be a terrible decision to put someone else's name on your property: homes owned by one spouse prior to marriage, cars and credit cards.

In today's society it is common for one person entering a marriage to own a home in his or her own name prior to marriage. The parties get married and everyone is happy as a clam. Fast forward a few years and new spouse feels like the house isn't the spouse's home because it was brought into the marriage by the other party. The ever-obliging spouse that owned the home prior to marriage comes up with a brilliant idea. "Let's put your name on the house!" So the parties take themselves down to the bank and put the other spouse's name on the mortgage. Or, maybe, the obliging spouse decides just to put the other spouse's name on the deed and not make them a party to the mortgage. (This personally makes me cringe.) Personal notes aside, both parties are now owners of the house. Fantastic! Everyone is happy!

Fast-forward a couple more years. The marriage has fallen apart for one reason or another, and now the parties want to get divorced. The spouse that brought the house into the marriage naïvely thinks that it was their property before marriage and will remain their property after marriage. Wrong. Remember when that spouse was being sweet and loving and put the other person's name on the deed or mortgage? Well, that obliging spouse co-mingled the non-marital property and turned it into marital property. If the spouse that owned the house prior to marriage wants to keep the house he or she will have to buy the other spouse out of the equity. What does this mean in layman's terms? It means that the spouse that owned the house prior to marriage could have to pay the other spouse half of the value of the house or even possibly more. So that sweet and loving gesture can cost a person a lot of money. And it doesn't matter whether you put the other party's name on the mortgage and the deed or just the mortgage or just the deed. Anyway that you worked it so that the other party's name is anywhere on a mortgage or deed means that the property is co-mingled. My advice? If you own a home prior to marriage you may want to think twice about putting the other person's name on your house. Discuss the ramifications with a lawyer first!

The second instance in which putting someone else's name on your property may backfire is when you purchase a car.

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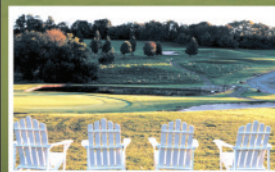
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LEGAL PERSPECTIVES

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A lot of people put their spouse's name on their vehicle when they purchase it for variety of reasons, but the most common is to get a better interest rate. Again, this works out well when everyone is getting along, but when it comes to divorce it can end up in a nightmare. Refinancing a vehicle loan is often a difficult and expensive process, if it is even possible to refinance the loan to begin with. If refinance isn't possible, the parties end up staying on each other's vehicle loans well after the divorce is finalized and until the vehicles are sold. In the divorce documents attorneys will often include a provision that releases the opposing party from liability for the vehicle owned by both spouses. That works well for the court, but the bank is a different story. The bank doesn't care what the court documents say. The bank wants its money and if the loan is not paid it is coming after whoever's name is on the loan. So unless you want your credit ruined you have one option: pay the loan, whether it's your car or not. Or you could spend money fighting in court and probably still have your credit ruined. My advice on this point is do not put your name on someone else's car loan no matter what the interest rate ends up being unless you are prepared to be responsible for that loan at some point.

any disproportion in retained debt through other transfers of assets. When people have joint credit cards, we have a few options. One is to find some way for each spouse to assume a portion of the debt, which is normally done through a balance transfer to another credit card or a loan to pay off the debt. However, this becomes an issue when there are credit problems with one or both spouses. It can be difficult for some people to obtain the means to pay off joint credit card debt. The dilemma then becomes how to deal with this debt. We can divide it in the divorce documents, but like banks, credit card companies do not care what the divorce documents say. If the credit card bill is not paid, they are coming after whoever's name is on the account. If the debt is not paid, they are going to report it to the credit agencies. This will affect whoever's name is on the account, whether both are responsible or not. So, again, my advice on credit cards is do not put your name on your spouse's credit cards.

Marriage is scary, but I assure you divorce is scarier. There are a whole host of issues that no normal person would consider during marriage that can become a nightmare in divorce. I have given you just three. Each circumstance in a divorce is unique, so while these statements might be generally good advice, there may be instances where it may be beneficial to do something different. If you have questions on how to best protect yourself, please seek the counsel of an experienced family law attorney.

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