ILLINOIS STATE BAR ASSOCIATION

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Family Law

The newsletter of the Illinois State Bar Association's Section on Family Law

Happy March, and almost spring! (Hopefully.)

BY HEATHER HURST

Winter has come and is nearly gone. And now, questions regarding spring break and summer break parenting time, as well as the Great Summer Camp Debate are plentiful. But, in addition to aptly servicing our clients, there are other important issues which impact our professional lives and should be considered. One of those items is the electing of our ISBA officials. So, in the midst of a historic Chicago mayoral runoff election, do not forget that we too have an election taking place within the ISBA.

The following are the contested races within the ISBA: Board of Governors - Cook County, Area 2, Area 7, and Under Age 37 (Outside of Cook County). Additionally, there are also contested races for Assembly seats in Circuit 3 and Circuit 4. All other races are uncontested.

Paper ballots will be mailed and e-ballots will be emailed on March 27, 2019. Voting concludes April 30, 2019. All members of the Illinois State Bar Association are eligible to vote for races in

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Is cryptocurrency the new Swiss bank account?

BY JANICE L. BOBACK AND STEPHANIE L. TANG

Imagine you have a coin that is worth thousands of U.S. Dollars. Except unlike the traditional coin that you can hold in your hand, this coin only exists digitally. This is the concept behind Bitcoin, the first and most well-established cryptocurrency. Cryptocurrency is a new class of assets that is becoming increasingly popular, not only in the United States, but across the world. Cryptocurrency defies the traditional notions of "currency", in the sense that there is no central issuing authority or governmental regulatory body. Exchanges and transfers of cryptocurrency are encrypted so that each exchange or transfer is anonymous, the data is decentralized, and no third party can control the currency.

Bitcoin historically has constituted the majority of the cryptocurrency market in terms of market capitalization. Its "high risk, high return" and unregulated nature have made bitcoin very popular for investors, traders, and, unfortunately, people trying to hide their money from their spouses. In addition to the problem of determining if a spouse has any bitcoins, there is a huge issue in valuation of bitcoin

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their respective area.

Rory T. Weiler of St. Charles is running unopposed for third vice president. Candidates for third vice president are chosen from Cook County and downstate (outside Cook) in alternating years and will eventually become President of the ISBA. Rory is a long standing member and contributor to the Family Law Section Council and his service to this Council has been invaluable. We look forward to Rory's leadership in the upcoming years.

In the Cook County Board race, there are eight candidates (Nora Devine, Mark L. Karno, Dennis M. Lynch, Pamela Sakowicz Menaker, Arlette G. Porter, Sarah E. Toney, Cory White, and E. Kenneth Wright, Jr.) vying for five open Board seats. Arlette Porter has been a contributing member of the Family Law Section Council for years and is also a member of the ISBA Assembly. Arlette has served diligently on many subcommittees within the Family Law Section Council and would be an excellent Board member.

In Area 2, there are four candidates (Michael J. Chmiel, Susan Brazas Goldberg, Mark Rouleau, and Tamika R. Walker) running for one open board seat. Tamika Walker is the Ex Officio of the Family Law Section Council and is also a member of the ISBA Assembly, Board of Governors and has served as a Board liaison to the Diversity Leadership Council and the Standing Committee on Racial and Ethnic Minorities. Tamika's dedication to the Family Law Section Council and to the ISBA is commendable and she would make an excellent Board member.

In Area 7, Ted Graham, Jr. and Morris Lane Harvey are running for one open Board seat. Morris Lane Harvey is a former Chair of the Family Law Section Council and has diligently worked to assist the ISBA in accomplishing its objectives, including testifying before the Illinois legislature on various legislation in Springfield and being honored with the ISBA CLE award. Lane would serve the ISBA well as one of its Board members.

In the race for Under Age 37 (Outside of Cook County), Amanda G. Highlander and Kaylan Huber are vying for the one board seat.

In the Assembly races the only contested circuits are the third and fourth circuits. In the third circuit there are five candidates (Melissa "Missy" Greathouse, Amanda G. Highlander, Jo Anna Pollock, Jennifer Shaw, and David A. Weder) vying for four Assembly seats. And in the fourth circuit, Dennis Berkbigler and Wesley A. Gozia are vying for one Assembly seat

The Board of Governors leads the ISBA by overseeing its operations and management. The Assembly helps to make the ISBA's policy. These positions are vital to the continued strength of the ISBA.

It is up to us, as members of the ISBA, to elect our leaders. It is our duty to choose leaders who will help to promote the values and goals of our profession. I encourage all members of the ISBA to vote in each and every election in which you are eligible to vote. Keep a look out for your ballots and be sure to vote before April 30, 2019!■

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during the pendency of divorce due to its high volatility. The value of certain types of cryptocurrency can also vary drastically from day to day. For example, in December 2017, Bitcoin hit a high of $20,000, but less than two months later, dropped to $6,000. As bitcoin only started gaining popularity over the past few years, there are very few legal opinions written on the subject. This article will address the basics of bitcoin trading and tips for lawyers to help protect and educate their clients.

How Do Bitcoin Exchanges Work?

In order to help clients or spouses of bitcoin holders, it is helpful for lawyers to have a basic understanding of how bitcoin is exchanged. Bitcoins are exchanged over a worldwide peer-to-peer network. Every time a bitcoin is exchanged or transferred, there is an "entry" on a global, decentralized ledger known as the "blockchain." A helpful analogy to explain the blockchain is thinking about it like a giant, worldwide poker game where the players left their chips and cash at home. In order to keep track of all the transactions, multiple players keep their own ledger on their own notebooks and compare their lists of transactions to catch any discrepancies. You can think of each "page" as a "block" of transactions "chained together" on a ledger, hence the name "blockchain." Therefore, for each proposed bitcoin transaction, the bitcoin holder will need to announce to the network their account number, the account number of the person they are sending bitcoins to, and how many bitcoins they want to send. This ensures the blockchain is updated with all bitcoin transactions.

To further protect user identities, when a user creates an account (a "wallet") on the bitcoin network, the account is linked to two "keys", unique to the given user. The user has one public key, and one private key. For each proposed bitcoin transaction, the user will "sign" the transaction using their private key, which only they have access to. The other members of the bitcoin network will then be able to use that user's public key to verify the transaction. Each user also has a unique "wallet address", which can be used to look up any cryptocurrency transactions for that given user.

Tax Consequences of Bitcoin Sales/ Exchanges

An often-overlooked issue when dealing with bitcoin and divorce are the potential tax consequences of bitcoin transfers. The IRS considers bitcoins as capital assets subject to capital gain or loss treatment on all sales and exchanges. In fact, earlier this year, the IRS specifically issued a statement warning that "taxpayers could be subject to criminal prosecution for failing to properly report the income tax consequences of virtual currency transactions." There are two recommended approaches for tax reporting for bitcoin sales/exchanges: (1) Convert Bitcoin to U.S. Dollars for each purchase and sale transaction using the Bitcoin market price that day in U.S. Dollars, or (2) Use Bitcoin as a functional currency, using an average Bitcoin vs. U.S. dollar conversion rate for the tax year. Regardless of the approach a bitcoin holder utilizes, the potential capital gains are substantial and should be contemplated in a couple's marital settlement agreement or final judgment.

An important distinction to note is that unlike sales of stocks or bonds where your typical brokerage firm or bank will send you a statement, Coinbase will only issue a statement if a spouse has realized over $20,000 in gains and had at least 200 transactions. Similarly, other global cryptocurrency exchange platforms have other specific reporting requirements (or lack thereof). Therefore, the burden falls on the bitcoin holder to accurately report gains and losses from bitcoin transfers for a particular tax year. When negotiating settlements, lawyers or professionals may consider using websites like BitcoinTax and Cointracking.info to help estimate how much tax may be owed in a given tax year.

Property Division for Cryptocurrency

Divorce is difficult and you often times have trust issues between the spouses when one believes the other is hiding money or property to gain an advantage during the proceedings. The difficulty is seeing another layer in this day and age of virtual currencies, such as Bitcoin, that are easy to hide and have values that extremely volatile and difficult or impossible to determine.

Parties have a duty to fully disclose their assets and liabilities. However, with the purchase and sale of virtual currencies being anonymous it may be a new way for a spouse to hide money during or in contemplation of a divorce. The lack of a paper trail lends itself to the potential for deceit. Specifically, one way of acquiring cryptocurrency is by moving monies from an account (i.e. a bank account) to a cryptocurrency exchange and subsequently acquiring cryptocurrency. This initial transfer of funds will in theory be traceable. However, the difficulty lies in once the funds are transferred to an exchange. This is where you need to ensure you have the required information to trace incoming and outgoing transactions.

There is also the potential to "mine" cryptocurrency. Mining is the terms used to describe the creation of new units. This needs some explanation:

Bitcoins are treated like cash but are mined like gold. There are three ways to obtain (1) buying them on an exchange; (2) accepting them for goods or services; and (3) mining new ones, like finding gold! In the virtual world of mining for cryptocurrency – it really means the verification of a bitcoin transaction, such as Joe buys a radio from Bob with bitcoin and in order to make sure Bobs bitcoin is genuine, he will have to verify or "mine" the transaction. And it is not just one transaction that Joe will have to verify. He will have to use computer program(s) to find the key to open the virtual padlock on many transactions that have been gathered

together in a block. Once the computer finds the correct combination that verifies and unlocks the box, it pops open which means the transactions are verified and the reward to the "miner" is 25 newly generated bitcoins. It is published that the current number of attempts it takes to find the correct key is approximately 1,789,546,951.05 (Blockchain.info—a top site for the latest real-time bitcoin transactions). Even with so many attempts necessary, the reward of the 25 mined bitcoins was given out about every 10 minutes in 2017 and in 2018 the reward for mining transactions will be cut in half to 12.5 and will continue to cut in half every four years. Why is this you ask? It gets even more interesting.

When this Bitcoin algorithm was created in 2009, it was under the pseudonym Satoshi Nakamoto—which I understand to be a very common Japanese name. This individual or group set a limit on the number of bitcoins that will ever exist at 21 million. Currently, 16.6 million are in circulation which means less than 5 million bitcoins are waiting to be mined. The way this system was set up was that it was easier to mine for cryptocurrency in the beginning and as we get closer to that 21 millionth bitcoin it gets much more difficult, exponentially more difficulty with a greatly reduced reward. At the current rate of creation, it is estimated that the final bitcoin will be mined in the year 2140. That 21 millionth bitcoin – it has a name, the smallest unit of currency possible for bitcoin is a Satoshi (named after guess who) which is 0.00000001.

How to "Find" and Transfer Cryptocurrency

To give you an idea of how the value of bitcoin has grown over time, the first retail purchase using bitcoin was on May 22, 2010 when a guy in Florida paid 10,000 bitcoins for two pizzas worth $25. At the time, bitcoin had an exchange rate of a few cents. Today one bitcoin is worth $11,390. Those pizza's in today's value $113,900.00.

So you suspect your spouse has been purchasing cryptocurrency and you want to know how to find it so that it can be properly valued and accounted for in a divorce proceedings. There are services and forensic experts available that trace Bitcoin transactions, but they are not yet widely available because this type of work is so specialized. You also want to keep in mind that you are not just looking for Bitcoin. Although Bitcoin is the most well-known of the cryptocurrencies, there is also Etherium, Litecoin, Ripple and Monero and over a thousand other cryptocurrencies available for purchase and there are more coming available to the open market almost every day.

It is important to formally request documentation concerning cryptocurrency as you would any other financial account. Initially you would look at all of the financial statements for signs of cryptocurrency transactions. Look for large, unexplained cash withdrawals and entries showing "localbitcoins.com" or other peer-to-peer sites on a bank statement and outgoing wire transfers could be a clue.

Include in your standard discovery a request for all information regarding bitcoin and cryptocurrency in general and when you start getting more specific you may want to define the terms such as "Virtual Currency" with a definition perhaps as "any medium of exchange that operates like a currency to some but does not have all of the attributes of legal tender, whether or not that medium of exchange is recognized as legal tender." A document request may continue like this:

- All documents regarding virtual currency in your possession, custody or control, including all documents relating to Virtual Currently wallets, and all documents evidencing any transfers of Virtual Currency made by You to and/or from any third party.
- All documents showing public addresses you have used to transact in Virtual Currency
- All documents relating to the person or entities you have transacted in Virtual Currency
- All documents related to your purchase of Virtual Currency including the source of funds used to purchase, the person or entity from whom purchased, and the time, date and manner of the purchase
- All documents and communications related to the purchase of equipment or software used to mine Virtual Currency (again you will need to define "mine")
- All documents and communications related to the amount of Virtual Currency you acquired, owned or held at any time through mining

Keeping in mind there may not being a document trail if the cryptocurrency is being kept in a web-based wallet or moved to a hardware wallet which is a USB memory stick that stores your private bitcoin key and requires you to use that USB to transact without exposing your "key" to the internet where it could be vulnerable to hackers. A private key is a secret, alphanumeric password/number used to spend/send bitcoins to another Bitcoin address. It is a 256-bit long randomly selected number which is generated as soon as you make a wallet. This is how the Bitcoin private key looks (it always starts with5):5Kb8kLf9zgWQnogidDA76MzPL6TsZZY36hWXMssSzNydYXYB9KF.[7] If you lose your private key, there is a 24-word "deterministic" seed phrase that you can use to unlock your account to still access your virtual wallet.

Bearing lack of documentation in mind, it is important, just as with any asset, to do your due diligence in considering the addition of targeted questions, either in the form of written interrogatories or in an oral deposition, along the lines of the following:

Do you own any form of cryptocurrency?

- Have you ever owned any form of cryptocurrency?
- Does anyone hold any cryptocurrency for you?
- Do you or have you ever had any form of an e-wallet?
- If you have cryptocurrency account, what exchange(s) do you use?
- What are your wallet addresses and private keys?
- Have your reported capital gains on

any virtual currency exchanges?

You may anticipate some pushback in terms of requesting a private key, as it is akin to asking for someone to give you the password for their bank account. For all practical discovery purposes, having the wallet address should be sufficient for purposes of determining what cryptocurrency exchanges the holder has performed. Once you have their wallet address, you can also look up the holder's incoming and outgoing transactions by typing the wallet address into the explorer for the specific currency.

Obtaining the wallet address is also the most critical piece of information in the event your client wants to divide the cryptocurrency in kind, rather than agreeing upon a cash buyout or offset against another asset based on a valuation date. Specifically, say you represent Wife (the spouse with no cryptocurrency) and she wants Husband to transfer coins to her. Your final divorce agreement would have to provide a process similar to the following:

1. Husband needs to provide either 1) an accounting of all cryptocurrency he holds or 2) his wallet address within x number of days to the non-holder spouse so Wife can verify all existing coins.
2. The Wife would need to obtain a wallet and the necessary hardware and provide the Husband with her wallet address.
3. Within x number of days of receiving the Wife's wallet address, Husband would transfer the coins to the Wife's wallet.

Alternatively, in this same example, if Wife wants to agree on a valuation date and buyout/offset for negotiation and balance sheet purposes, you can look at coinmarketcap.com, a website that calculates the average coin price based on all the exchanges. One important note is that there is no "open" or "close" time like in the stock market, so in addition to a valuation date, you should also consider specifying the time of day for valuation or agree to the average price for the day. This is critical given the amount of volatility a particular coin can have even on one day.

Conclusion

Many attorneys and people generally stray away from addressing cryptocurrency holdings because they are new and foreign concepts to them. However, at the end of the day, cryptocurrency holdings are very conceptually similar to stock or stock options, which family law attorneys deal with regularly. The question at the end of the day becomes if a spouse wants to ride out the risk of taking a coin "in kind", or if they want to just take a cash buyout/offset against other assets up front. The most important takeaways are to become knowledgeable about this new type of currency including its associated tax consequences, adjust your discovery requests accordingly, and understand how to transfer it or calculate a buyout in a final divorce settlement. ■

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Pro se may be a solution, but it's also a symptom: A response to *The Atlantic*'s 'The DIY Divorce'

BY MICHAEL G. BERGMANN

A contributing writer for The Atlantic recently wrote an article about how she represented herself in her divorce. PILI's Executive Director, Michael G. Bergmann, wrote the following response about why that is not always the answer when people cannot afford legal representation.a

Deborah Copaken's story in her article "The DIY Divorce" grossly oversimplifies and misrepresents the realities of those who have to face America's court system alone. Even with the financial difficulties she outlines in the article, Copaken does not represent the typical pro se litigant, mainly because she was able to avoid many of the expensive and sometimes dangerous consequences of a divorce. Not to mention, she did not actually have a "DIY Divorce" since she repeatedly received legal help from a friend who was a lawyer.

Copaken's lawyer-friend explained best why a pro se solution was the right one for her, mainly that she was educated, spoke English and the divorce itself was relatively amicable. Additionally, even with Copaken's real financial hardships, she described a situation closer to middle class than poor. Most people who face a legal problem alone are close to or well below the poverty line and are disproportionally people of color. Unlike Copaken, they cannot afford to keep missing work if the other party forces multiple hearings like her husband. They cannot afford to forego alimony or forfeit child support. And most don't have Copaken's education to help them work through the intricacies of the legal system.

In actuality, having to navigate a legal issue alone is a symptom of a complex and costly system. For low-income litigants, foregoing legal representation could cost them even more financially and could also prove dangerous, such as in situations where domestic abuse is involved. As outlined in the 2018 article, Access to Justice Through Limited Legal Assistance, those who have legal assistance achieve better outcomes. The article cites one study that found that women with lawyers were able to secure a protective order 83% of the time compared with only 32% of women who did not have a lawyer. Another study showed that those with representation are more likely to receive positive outcomes for child support and custody than those representing themselves. Over and over again, litigants achieve better results with legal help than those who go it alone. That said, in our current civil justice system, there are those that will be forced to proceed pro se because legal aid is stretched too thin and for many, paying for a lawyer is literally a choice between that and child care, food and other basic necessities.

Luckily for Copaken, she had legal help. Her lawyer-friend answered questions, assisted with forms and helped Copaken navigate the legal system. The relationship outlined in the article looks very similar to a relationship between a client and a lawyer working on a pro bono, limited scope basis. And if Copaken, as a white, educated English-speaker was unable to navigate her amicable divorce completely on her own, why should we expect anyone else to?

Right now, there is an army of lawyers and organizations working tirelessly to help make the justice system accessible for those who cannot afford a lawyer. Perpetually underfunded and understaffed, these programs are working on real solutions to assist pro se litigants and make sure everyone has access to justice. In Illinois, where I'm from, Illinois Legal Aid Online provides online tools and resources curated and written by lawyers to help guide people through the legal system. The Illinois Supreme Court Commission on Access to Justice is also working to improve the system for pro se litigants by doing things like simplifying forms and making them available in multiple languages. Additionally, a large network of legal aid organizations and pro bono volunteers provide legal assistance for free to those whose problems are too complex to go pro se. At the Public Interest Law Initiative (PILI), where I am the Executive Director, we are working to both increase pro bono service across the state by developing innovative pro bono opportunities, while also opening courthouse-based Self-Represented Litigant Help Desks to assist pro se litigants.

Instead of encouraging people to DIY their legal issues like a fun home improvement project, we should be encouraging more lawyers to do, or to do more, pro bono. According to the most recent annual report available from the Illinois Attorney Registration and Disciplinary Commission (2017), 32,446 lawyers performed 1,913,322 hours of pro bono legal services. That is a terrific start, but as of that report, there were 64,449 licensed lawyers in Illinois. That means that only about half of Illinois lawyers are doing pro bono. Legal aid programs across Illinois (and around the country) need the skills, training

and experience of all lawyers to take on full representation, to perform limited scope representation, and to help at help desks and clinics.

Rather than expecting people to represent themselves, we should be focused on fixing a justice system that leads people to consider that as, or for it to be, their only option. We should be providing resources for those that need it, while also building a system that actually provides equal and accessible justice for all. More than anything else, we should not be forcing people to face what is often the worst moments of their lives, be it divorce, domestic violence, eviction or any other civil legal issue, alone. ■

Unintended consequences

BY WILLIAM SCOTT

The case is over. The arguments, posturing and bad feelings are over, the Judgment is entered, and the parties are now free from each other. What should you do?

Write a letter to your client outlining what needs to be done. Such things as quitclaim deeds, refinancing, making sure both parties have adequate past tax records, QILDROS and QDROS are entered. There is, however, one more thing in connection with ERISA plans that needs to be accomplished. Remove the ex-spouse as the beneficiary. Tell your client, in your closing letter, that it is his/her obligation to remove the ex as beneficiary or bad things can happen after the client is deceased. What follows is a discussion of some of the cases demonstrating the problem.

Kennedy v. Plan Administrator for DuPont Savings & Investment Plan, 555 U.S. 285, 129 S.Ct. 865 (2009).

Husband was a long-time employee of DuPont and participated in its Savings and Investment Plan. He and his wife divorced in 1974 and, pursuant to the decree she was "divested of all right, title, interest and claim in and to . . . any and all sums and any other rights related to any retirement plan, pension plan, or like benefit program existing by reason of Husband's past or present or future employment . . ."

The Husband never executed documents removing the ex-wife as the SIP beneficiary. He dies. His ex-wife says the SIP is hers, but the estate says that the waiver in the Judgment operates to defeat her interest and the money should go to the estate.

The court found that ERISA provides no exception to the plan administrator's duty to act in accordance with the plan documents. In this case the plan documents named the ex-wife as beneficiary and a procedure to disclaim her interest, which never occurred. Ex-wife gets the money. (about $400,000)

Boggs v. Boggs, 520 U.S. 833, 117 S.Ct. 1754 (1997).

Isaac Boggs worked for almost forty years for South Central Bell. He was married to Dorothy during this period of time. She died in 1979. Isaac married Sandra the next year. He retired in 1985 and died in 1989. When Dorothy died she left her interest in the retirement accounts to her three sons. The dispute lies between the three sons and their right, if any, to Dorothy's bequeath as against Isaac's second wife.

The Supreme Court predictably held that ERISA preempts state law and that, therefore, the conveyance by Dorothy to her sons cannot be upheld. Accordingly, Sandra, the second wife, was awarded the retirement accounts, annuity and ESOP from Isaac.

Conclusion

The point of this discussion is that your client must remove his or her spouse as the beneficiary of retirement plans governed by ERISA. Failing to do so can result in the benefits going to the former wife or husband.

There isn't much that the lawyer can do to accomplish this. A list of things to do after the Judgment and properly filed in the file can both be helpful to the client and protect the lawyer. So as one of your final acts, send the client a list of things to do. The client will appreciate you. ■

Does the decree provide for long-term success and stability?

BY WILLIAM SCOTT

When you resolve a divorce for your client and the decree is finalized, are you confident that your client is now properly positioned for the next stage? Surely the decree has laid out plans for the jointly-owned home to be sold and assets split, or for the home to be refinanced into the name of only one party, with some cash extracted to pay the other party their fair portion of the equity. Does this always work out as planned? Is this a smooth process for your client (or now-former client)? Are they going to refer their similarly situated friends to you due to their satisfaction with the aftermath of the services you provided?

As a long-time mortgage professional and business banker, I have on many occasions been asked by newly-divorced folks if I would please assist them in the process of providing them with a refinance that would: 1) extract cash from the equity in the home, 2) remove an ex-spouse from the existing title, or 3) help them obtain a loan to purchase a new home and begin the next stage in their post-divorce lives. I have been amazed over the years at the disparity in the preparedness (or unpreparedness in some cases) of each of these individuals for the next stage. Some were in no financial position to qualify for such a loan. Others needed to wait until the spousal support had a six-month history. A few had destroyed their credit during the process and would need another year of credit repair. There were also a select few who were perfectly aligned to move forward and complete the final step in the process.

Unfortunately, those select folks were in the minority. What I wish to convey here is that in almost all divorce cases, the client should engage in a conversation with a qualified mortgage professional prior to the finalization of the decree to determine if the long-term hypothesis laid out in the decree draft is feasible, desirable, and workable.

From the perspective of the attorney, what is the goal of the divorce representation process? I'll take a stab. There are, I assume, at least three goals:

1. Maximize client financial settlement.
2. Ensure client financial and family stability into the future.
3. Client satisfaction (i.e., "I want this client to refer his/her friends to me in the future.")

There may be other goals, but these three strike me as an absolute must. A mortgage professional should be an important factor in the achieving of goals two and three. Minimally, a good mortgage professional will do the following with your client: order and review client credit report, advise client about proper use of credit and positioning of debt in order to maximize opportunity to complete refinance loan or new purchase loan, run your client's "planned" loan scenario through an automated underwriting engine to ensure approval and loan viability, advise the client about how appraisals work, and, lastly, the mortgage professional should build in a little wiggle room for the potential for rates rising, taxes increasing, and credit scores falling. We home lenders spend a significant portion of our time pre-qualifying homebuyers. We help them discern if they have enough income, too much debt, good enough credit, a large enough down payment, and a variety of other factors. Why not pre-qualify your client to be able to execute the terms of the decree, especially as they apply to how to handle the real estate asset? See our blog at www.tworoadslending.com/blog/ for additional elaboration on this topic.

True story: I was recently rendered unable to provide a $450,000 mortgage loan for a client whose divorce settled with her holding $3.5 million in investment assets and $15,000 a month in maintenance that would decline and eventually disappear upon the sale and proceeds-splitting of three jointly-owned investment properties. Granted, she had the funds in place to pay cash for the home, but she truly wanted for those assets to remain invested. Because the mandated regulatory guidelines for calculating income couldn't technically accept the $15k/month as "recurring," I was unable to demonstrate that she had the kind of reliable income to service the monthly debt obligation. Crazy? Yes! Absolutely! And yet, this was avoidable with a 5-10 min conversation with a talented mortgage professional without altering the net financial effect of the decree. Did the client receive good service from her attorney? From the sounds of her settlement, yes, she did. However, she was disappointed to hear she would have to liquidate a large portion of her portfolio to complete her purchase and seemed to wish they had structured the monthly income to last for a more specific length of time. This is an extreme example, but it makes the point nicely that since she knew what she wanted to do post-decree, a mortgage professional could easily have helped advise her or her attorney about how to accomplish that by just altering the timing of the payments.

Loan underwriting guidelines are very distinctive and objectively predetermined. The use of child support, spousal maintenance, and alimony are all applicable as income in a very structured and mandated way, subject to several requirements that include establishing a six-month contiguous history and demonstrating that said payments are guaranteed forward for at least three years after the six-month establishment period is completed. This is common knowledge for any mortgage lender and for many

attorneys but is something that ought to be examined in detail pre-decree. The mortgage professional will not only do this free of charge but will do it enthusiastically! We mortgage folks really just hope that your client will remember us when it's time to tackle the long-term plan of doing the refi or buying the next home. During this process, I occasionally need to ask some questions of the attorney, or have the attorney provide me with some decree specifics. In those cases, it becomes a collaborative process that ensures that your client walks away believing their best interests were under full consideration.

Along with protecting your client's financial and familial interests to the fullest extent, you want them to have a positive overall experience with you. Do not send them out into the post-divorce wilderness without having encouraged them to spend quality time speaking with a mortgage professional about the viability of their plans. We will calculate the applicable qualifying ratios, assess their income, their credit report, their debt, the value of their home and let them (and you) know if they fall inside or outside of the established regulatory guidelines for loan approval. Your client will walk away from the process knowing where they will live or, more importantly, where their kids will live. That is a very big step toward creating a satisfied client. ■

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