

> > > >
> > > > Shawn,
> > > >
> > > > Will get back to you on this after I speak to my wife.
> > > >
> > > > Two points for the Agreement:
> > > >
> > > > 1. Since I will own community property Washington Mutual Stock
and
> separate
> > > > property Washington Mutual stock, we should put something in to
deal with
> the
> > > > possibility that I might sell some but not all of the shares
> > > >
> > > > I am concerned that I might be found to have some kind of
fiduciary duty
> > > > towards
> > > > my wife, so that I cannot sell the separate property shares
before selling
> > the
> > > > community shares, or if I sell the community shares first and
the stock
> goes
> > > up
> > > > higher, benefitting the separate shares that were not sold, I
could be
> found
> > > > liable for something. It could work either way, with hindsight,
that is,
> the
> > > > stock could go up (and I could be criticized for selling my
wife's shares
> > but
> > > > not my own, or it could go down, and I could be criticized for
not selling
> > her
> > > > shares if I previously sold my separate property shares.
> > > >
> > > > We need to put something in about this--an acknowledgement that
there may
> be
> > > > some kind of conflict of interest and an exoneration from
possible
> liability
> > > for
> > > > it. As always, we need to be delicate on the drafting. Do you
agree that
> > this
> > > > might be an issue?
> > > >
> > > > 2. We need to put a mechanism in to determine the valuation
date from
> > > > calculating the Washington Mutual value guarantee.
> > > >
> > > > It might be possible for a divorce action to be gamed and to be
filed at a
> > > time
> > > > when the stock happens to be down on a particular day, so that
the
> guarantee
> > > is
> > > > maximized. I suggest something like this: The guarantee amount
is
> > calculated
> > > by

✓
Important
for 3rd pt

✓
✓

...ing the Washington Mutual Community property shares at the

average of

> > its

> > > > closing price on the New York Stock Exchange, for the ten business days

> > > > following the fifteenth calendar day after the divorce action is stamped

> > filed

> > > > by the court. The idea is that neither of us can game a filing of the

> > divorce

> > > > case to affect the guarantee, since we will not know the guarantee amount

> on

> > > the

> > > > date when the divorce is filed. Is 15 days after filing to begin the

> > > measurement

> > > > period too long or too short? What is your opinion about this?

> > > >

> > > > Thanks,

> > > >

> > > > Andy Furer

> > > >

> > > >

> > > >

