

Dealing with Insurance and Divorce [updated]

One of the most unfortunate questions asked today is: how do I handle my personal insurance coverages during a divorce? And for many, the question is asked much too late in the divorce process, if it is asked at all. Here is an illustration of its importance.

Q. An agency has an insured, Bill Smith and Mary Smith, who own several cars and a home. They are each properly listed as named insureds on all applicable insurance policies. Along comes a problem: Bill and Mary are getting a divorce. Bill tells his agent to remove Mary on everything except one auto (this could just as easily be Mary making the same request.) Though Bill subsequently provides titles that show all the autos are registered in his name alone, the eventual ownership of all the property is yet to be decided by the court. How should this be handled to keep all parties happy and to treat each equally in an ethical and legal manner?

A. Excerpts from Bill Wilson, "Big I" Virtual University: *"Well, unless the agent wants to risk getting legally involved in this as well, he must [try to] resolve it all with Mary as well as Bill. The fact that the vehicles are registered in Bill's name alone is probably immaterial, depending on applicable state laws ... Most important, since Mary is a named insured; she has equal rights under the contract which must be honored."*

"So, how the insurance will be restructured is a mutual decision ... The agent's challenge is to explain the potentially adverse legal and ethical ramifications of handling this unilaterally with Bill." If Bill is otherwise decent, then he should understand and comply with the agent's legal, professional and ethical obligations ... But, if Bill persists on doing this in a manner that is essentially illegal or unethical," ... then you have a potentially damaging stalemate from both a coverage and a legal point of view!

Many insurance change requests made by parties to a divorce are made in the emotional heat of the moment and, if made at the outset, would cause harm to either or both parties. Only when the divorce decree is final will the parties know their specific ownership rights and coverage requirements. Even the simple act of moving out of the home can, in certain circumstances, create a gap in covered perils or eliminate entire coverage. The reality of this situation must be discussed and understood by both parties; a most difficult task when negative emotions are running high. Because of this, more and more insurance carriers are no longer honoring certain policy change requests until the divorce is final.

For an agent to provide the best overall level of protection for each spouse, irrespective of a separation, a divorce, or a failed 'live-in arrangement', etc., the policy should list each as a named insured; something like the example above: Bill Smith and Mary Smith; or John Jones, individual and Jane Johnson, individual. Not all insurers will make this change without additional information. So, take a look at your personal policies and request that each of you be included as a named insured. The following pertains to the homeowner's policy.

In terms of the homeowner's policy, divorce can create the potential for a "where you reside" coverage gap involving non-residency (one spouse, or significant other moves out) when the home is insured in only one name. Current homeowner policy contractual language specifically defines "you" the insured. "You" is defined as the named insured and a resident spouse. When both parties are resident, the spouse is a resident of the named insured's house and an insured "you." All is well in this scenario.

Coverage problems can arise through several combinations of mismatched insureds and residency status which violate the definition of "you." Perhaps the best example occurs when the only named insured moves out. Since the named insured no longer resides there, the remaining spouse is no longer a resident of the named insured's household and is no longer an insured "you." The question for the courts is: if there is no insured, can there be coverage? The complex answer is both "yes" and "no", varying by state and court decision. The best defense against the general residency problem is to make sure both parties are named insureds.