

When a Marriage Ends— What Happens to the House & Mortgage?

A home and a mortgage provide the basic framework in every couple's financial future.

So, it goes without saying that they play an equally important financial role when a couple plans to divorce.

When a marriage ends, most individuals are forced to deal with tough emotional and practical issues about how they will survive with a reduced income; where they will live and how much money will they have left over.

In order to address these issues, divorcing couples realize that their home and mortgage may still provide each of them with economic stability. A noted Certified Divorce Attorney advises, "In dealing with divorce, it's best to deal with the largest assets first—usually the home and the mortgage."

Divorcing couples need to address several issues:

- Who will retain possession of the home?
- How will the vacating spouse be compensated?
- What is the fair market value of the home?
- How can the equity be accessed?
- Do we need to refinance or sell the home?
- What difficulties are involved with selling or refinancing?

First, couples should determine how they hold title to the home? Is it "tenants by entirety" or "joint tenants"?

Secondly, most couples have both signed on the note and mortgage, making them both obligated to make the monthly payments. While the courts may ultimately decide if the home should be sold or if one person is permitted to keep the home, both are still obligated for the monthly payment—regardless of what the courts decree.

What happens if a spouse decides to keep the home?

Usually, the spouse who stays in the house will need to "buy" the equity from the other spouse. If there is no mortgage on the house, a home equity loan may be needed to payoff the other spouse's equity.

What if there is a mortgage on the house?

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Executing a quitclaim deed alone will not automatically eliminate the liability to pay the mortgage payment. While the deed will transfer ownership, it will not remove the payment responsibility nor will a deed transfer the debt to the spouse who decides to keep the house. Only the payoff of the mortgage or a refinance in the occupying spouse name will accomplish this.

What other issues could occur if you don't pay off the mortgage?

Not removing the other spouse from the mortgage may affect that person's ability to qualify for a consumer, auto or mortgage financing if they decide to buy another home. Damage can also be done if mortgage payments are delinquent because it will still appear on the credit report (if not paid off or refinanced).

What is involved in refinancing the mortgage?

The first step is to get an appraisal to determine the fair-market value. If there is a minimal amount of equity, it's best to refinance the current mortgage and consider the closing costs to refinance in the divorce settlement.

If there is equity in the home, the refinance will not only solve the payment liability question, it can also serve to pay the equity to the other spouse in the form of a check. Again, closing costs should be considered when determining the equity.

What difficulties can occur?

However, the most significant issue will be whether the remaining spouse can qualify for a new mortgage on his/her own. Other factors affecting qualifying for the refinance may be late payments, expended periods of being out the work force or relying on alimony or child support as income.

Remember that every situation is different.

A variety of professionals, including a tax accountant and mortgage loan officer can help ease the burden of coping with your largest asset during this stressful time.