

# Divorce and Real Estate

When getting a divorce, the process itself and the emotions involved can be overwhelming. Besides dealing with the dissolution of the marriage itself, there is often one sticking point that causes additional logistical problems for the couple – the family home.



In many cases, the family home is the couple's largest asset. The home can be a point of contention for many couples, because there are several possible outcomes from the divorce settlement. When a couple has children, particularly school-aged children, it is not uncommon for the parent who retains custody of the children to stay in the family home. In some cases, the custodial parent is able to "buy out" the other partner's share of the home's value. In other cases, both parents continue to pay for the home as part of the settlement agreement, with only one partner remaining in the home. Sometimes both partners continue to live in the home and share expenses.

If the couple decides to keep the family home, the mortgage needs to become the responsibility of one partner, because otherwise both partners' credit history could be impacted in the event of a default. If you are not the responsible payer, you need to stay informed about the status of the mortgage. It may be best to have your name removed from the mortgage record in order to protect your credit history. The same holds true for any other joint assets that are secured with loan funds. Knowledge is your best defense, because you may need to purchase another home or other type of capital asset in the future.

## Questions You Need to Ask About the Family Home

- Should the home be sold in order to settle the divorce proceedings?
- When there are young children in the family, it may be much less disruptive for them to remain in the home. Is this possible?
- Can both partners afford to purchase a home on their own once the family home is sold? The condition of each partner's credit should be researched in order to determine creditworthiness.
- Can either partner afford to maintain and pay for the family home on his or her own if it is not sold as part of the divorce?

Sitting down to answer these questions with your partner can help you to make a decision about how to handle the family home. There may be additional factors to consider, so consult you're an attorney and/or tax professional. These professionals have significant experience handling property and asset distribution in divorces. Because the home is often the most valuable asset involved in a divorce settlement, it is also the most common cause of arguments for the couple.



The two major issues surrounding the family home during a divorce in which the home is sold are when the sale should take place and how the profits should be divided between the partners. Additionally, the couple may argue about the rights and responsibilities of each person involved in the sale. Planning ahead is the best way to keep these disputes from getting out of hand. However, for obvious reasons, planning for a divorce is not part of most marriages.

Contact an attorney who can advise you about your rights and responsibilities in the division of marital assets during a divorce. As with just about every aspect of a divorce proceeding, every location has its own laws about how real estate assets are to be divided between partners, and many areas give special considerations to the partner who retains custody of any children.

Prepare for the distribution of real estate assets in the divorce process by organizing your information about all the real estate in which either or both parties has an interest. This includes the family home and also any real estate (business or personal) in which either partner has a financial interest.

Once you have gathered all of the necessary information about your properties, Consider these five factors that, taken together, help determine the ultimate distribution of assets and sales proceeds.

## **The Property Type and Ownership Structure**

The type of property and ownership structure are important because, although most family homes are co-owned by the partners, there may be a vacation home, office buildings, commercial property or even rental properties that are owned by one partner alone. In a divorce, the person who holds the title will be considered first in the distribution of the asset. The family home is different, because the partners lived there together, and so the interest in the property is usually split equally between the partners.

## **The Property's Original Ownership**


The property's original ownership is often an issue when one partner alone purchased the family residence and subsequently added the other partner's name.

When preparing documents for divorce proceedings, you must prove the history of ownership for all properties. For example, if one partner singularly owned a rental property prior to the marriage, he or she would need to provide documentation about when the property was purchased, how much money was used as a down payment, and when the down payment was made. The original owner will also need to disclose information about any financing used to purchase the home and the remaining balance, if any, for which the owner is still responsible. A complete list of any upgrades to the property that may have increased the value will also be necessary. Finally, if an insurance claim has been made on the property, then the claimant will need to produce information about the amount of any money received from the insurance company and a description of how the money was used to repair the damages.

## **Pending Taxes**

The divorce proceedings will consider the amount of taxes due on each property. These include real estate taxes, income taxes and even capital gains taxes

If you get a divorce, in order to protect your interests you must be able to document and prove any property ownership rights and claims. Be prepared with the necessary information when you begin speaking with your divorce attorney.



## **Secured Debts**

The divorce proceedings will consider secured debts that are collateralized with the couple's property. This could include tax liens or loans.

## **Maintenance and Upkeep**

The couple will need to agree on how maintenance and financial upkeep will be handled for a particular property during the actual divorce proceedings.

Divorce is never an easy process, and owning real estate assets can greatly complicate the situation. Therefore, it is always a good idea to keep information about the items listed above. If you get a divorce, in order to protect your interests you must be able to document and prove any property ownership rights and claims. Be prepared with the necessary information when you begin speaking with your divorce attorney.