Transitioning From the Matrimonial Home Guide

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Step one in successfully handling the disposition of the family home in a divorce is to have a clear understanding of your financial standing.

Knowing your precise financial situation throughout the emotional turmoil of divorce will keep you from making snap decisions that could severely impact your financial position.

It is crucial to know who bears legal financial responsibility for making the mortgage payments. If both spouses are listed on the mortgage agreement, they are equally obligated to the lender, whether or not their name is listed on the property title. Removing a party from a property title does not relieve the financial obligation of that party. Two signatures on the mortgage means two responsible parties. This also includes the homeowner's insurance policy. It is important to know who is the beneficiary and if both parties are insured.

For the previously stated reasons, it is critical that you collect and immediately provide to your lawyer all information regarding your home insurance, property taxes and liens, mortgage and marital debts, and marital assets. The more prepared you are to face your financial future, the more secure you will be moving forward. Knowing where every dollar has to go will help you make better decisions and avoid adding undue additional stress to the already uncertain future that accompanies divorce.

Knowing where you stand financially greatly influences your decision to keep, sell, or buy out the family home. There are many considerations for each option, and they all require a significant amount of due diligence, financial planning, and difficult decisions.

Affordability and objective forethought are the keys to your decision-making process. Poor decisions can affect you and your former spouse, long after the divorce is finalized.

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KEEPING THE HOUSE

When divorcing couples have school-age children, they often decide to allow one spouse to remain in the home to avoid disrupting the children's routine, school attendance, and social relationships. This can be accomplished with written agreements between the spouses. Equitably allocating home expenses and mortgage payments by percentages or mutually agreeing on the delegation of financial responsibility will allow your family to focus on what matters most: the children.

A clear-cut, signed agreement drawn up by a mediator will help avoid contention surrounding responsibility for the maintenance, expenses, and future sale of the family home, whether it be to the spouse who remains in residence or an outside buyer. This is why it is important to know your financial position and how much each spouse can contribute. If one spouse fails to make their share of payments, it can negatively affect both parties' credit ratings and complicate the later sale of the home.

If each spouse has provided appropriate evidence that they have sufficient resources to maintain this type of arrangement and is willing to participate in the agreement, this may be the right path. Some couples choose to reside in the home as roommates for different reasons. It might be that neither spouse is able to afford both their share of the home and a new residence, or it could be to decrease the abruptness and difficulty of the children's transition. If, later, one leaves, that person will have increased financial obligations in finding a new place to live, so give serious thought before choosing this option.

Be aware, though, that some spouses are tied to the home, not only by their children but by their own emotional investment. The house represents stability and a happier time and provides shelter from the trauma of divorce. In keeping it, they may feel more in control of their situation. Some may think that keeping the home makes them the "winner," despite the financial hardship it can bring. It is difficult enough to deal with divorce without later learning that unforeseen or unbudgeted expenses have crept in and taken a big bite of an already tight budget. Be realistic about what is affordable.

SELLING THE HOUSE

For most couples going through a divorce, selling the house is the best solution. Selling a home under any circumstances takes a great deal of time and effort, so the addition of the emotional stress of divorce can make the task overwhelming.

LEGALITIES

The termination of a marriage requires the division of real property. Marital property belongs to both parties, regardless of whose name is on the title, and each party is entitled to their equitable share. Some couples have a legal agreement beforehand, which provides a simple solution to property division. Some couples are able to use mediation to divide assets, but others are unsuccessful in negotiating equitable terms and must turn to the courts to rule on the division of their real property. Again, this book is in no way a substitute for professional legal advice. Always consult your attorney regarding the division of real property.

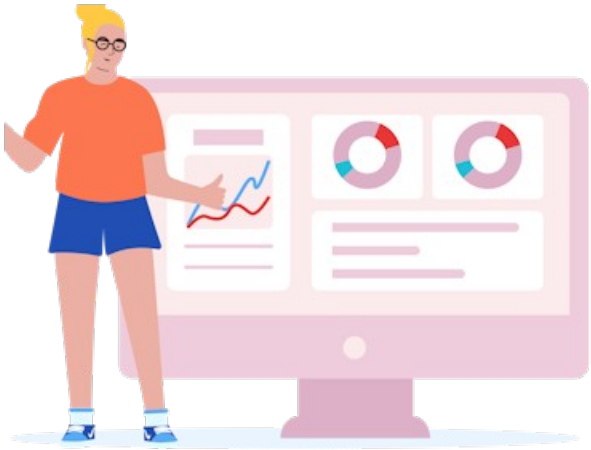
Many couples enter into a mortgage based upon the expectation of a two-salary income that generates enough money to cover the monthly mortgage payment, upkeep, utilities, and unexpected repair. It may be that neither spouse is in a financial position to singularly carry the full financial burden, and neither may be in a position to buy out the other. Preventing default on the mortgage is the most common reason divorcing couples choose to sell the family home. Monies budgeted for the upkeep of the home, property taxes, home insurance, home security, and house payments may or may not still be available when couples split. Couples who sell their homes before divorce have the advantage of the capital gains tax exclusion of $500,000. A divorced person selling a home receives 50% of the tax break. There are other tax benefits available when substantial equity growth has occurred over years of owning a home. These are best discussed with your lawyer or tax professional to ensure you make financially sound decisions about when to sell your home.

THE EMOTIONAL SIDE OF SELLING YOUR HOME

If the marital home has been the hub of happiness and family life, it may turn out to be a constant reminder of what once was and is no more. The good memories the home represents are now tainted by the unhappiness and pain of divorce. No matter how strong sentimental value may be, often the best option is to sell the house and move on. That way, both spouses get some money to make a clean break and start fresh. Once you've decided to sell, there is a long "to-do" list — a list that is difficult under the best of circumstances and only made more difficult with the added emotion of divorce.

LIABILITY

The liability of keeping a home may be the best reason to sell. There are various ways to keep a house with one spouse remaining and the other departing, but they all carry risks and challenges. An equity buyout occurs when one spouse keeps the asset, and, in exchange, compensates the other for his or her share of the equity.



THE BUYOUT

If one spouse is in a financial position to remain in the home, it may be easier to buy out the other's share of the property, which would entail refinancing the home. The real challenges come in working out the details. There could be disagreement about the selling price or the appraisal value. Or, the equitable division of the property may not meet expectations. Other questions that arise include the possibility of giving up marital property rights in exchange for other assets, like investments. The ex-spouse may lose out on future appreciation of the house. It is crucial to know that questions like these will arise when it comes to the division of property in a buyout situation and that you have to be prepared to address them.

Refinancing the home in one spouse's name means not only settling the previous loan but paying the selling spouse their portion of the buyout. As an example, if the principal balance owed is $100,000, and there's another $100,000 in equity, one-half of the equity ($50,000) would be due the selling spouse, and $100,000 would be required to pay off the principal. The refinanced loan would have to be at least $150,000. If the house value has appreciated, who is entitled to the equity? What if the property is appraised lower than the current loan? All scenarios must be considered before deciding on a buyout. Again, knowing your financial standing before filing for a divorce is paramount.

CO-OWNERSHIP

If you or your spouse want to keep the house and buy out the other, but need time before this can be accomplished, co-ownership is a possibility. However, maintaining a clear channel of communication with the ex-spouse is a major part of co-ownership and one of the most difficult to achieve because it requires a lot of mutual trust, something that is typically lacking in most divorce scenarios.

The goal is to move forward, so any concessions made between the spouses benefit not only both parties but especially the kids. Maintaining a civil, business-like relationship in front of your children will help them maintain stability and keep them from moving away from their home, when they're already adjusting to a lot of change. If one of the spouses can occupy the home with the children and make the mortgage payments until they can manage a buyout and become the sole owner, it's a win-win. The drawback to this type of arrangement is the negative consequences if the spouse in residence defaults on mortgage payments. Both parties are still responsible, and missed payments will affect both spouse's credit scores.

Moving forward with a new life can be tricky in a co-ownership agreement because consistent communication is necessary, and that isn't always (or even usually) easy for divorced couples. House payments, insurance premiums, utilities, and necessary repairs are guaranteed financial obligations. What if the utilities are shut off due to nonpayment? What if the home heating and air-conditioning system terminally fails? What if you moved two hours away and your ex-wife needs you to help with a fallen tree because she can't afford to pay someone to dispose of it? What if the resident spouse has to move out because s/he cannot afford to stay? What if the resident ex-spouse files bankruptcy and risks losing the house? These are all very real possibilities.

Co-ownership must be considered carefully, and a knowledgeable attorney dedicated to protecting your family's well-being will be your best source for guidance on the complexities that may arise. An agreement can be created to address all the obligations mentioned previously and protect both parties at the same time.

No matter the option you choose, the mortgage must still be paid. Selling is the only alternative if neither of the spouses can afford the home on a single income. A short sale is possible if the home is going into foreclosure. You can come to an agreement with your lender to sell the home for less than is owed. Divorcing couples with good credit may find more favor with their mortgagee to obtain permission for a short sale.

Walking away from your home and mortgage is not tolerated by the courts. The lender will add to the complications of your divorce by taking legal action to receive the remaining balance.

You can find yourself in court if you or your spouse is uncooperative or is demonstrating an obstructionist attitude, which will cost more time and more money. Many divorcing couples end up using up what equity they had in their marital property on legal and court fees. Refusing to sign papers to sell the home or refusing to help pay for the mortgage will give a judge no other option than to order the home sold on the court's terms.

When a divorce action is filed, an automatic temporary restraining order can be issued to prevent spouses from selling or borrowing against marital property. Discuss this option with your lawyer to make sure your stake in the marital property is protected. Less than one-third of divorces end up in court due to disagreements over property division, but if you're in that unfortunate one-third, going to trial doubles the cost of the divorce. An average divorce costs $11,000 if settled out of court. That amount will at least double if you have to go to court for resolution, which will take a serious bite out of your home's equity.

Many divorcing couples who want to limit legal fees as much as possible, as well as the time it takes to settle, choose to sell their home. Surveys show that couples who resolved their property issues without court intervention completed the divorce in under a year. Those who could not agree and went to trial had to wait an average of 15 to 16 months. Some states require divorces to be resolved within a year, but dockets are full in most states, which causes long wait times for a divorce trial. While you're waiting for the trial date, the mortgage still has to be paid, as well as utilities, insurance, and property taxes.

The rest of this book will expand upon the benefits of marital agreements that help sell the home, the importance of having realistic expectations regarding the value of your home, and how choosing a Realtor® who has experience working with divorcing couples may be your greatest asset in the sale of your home.

One of the most productive methods for couples to move forward with a divorce and on with their lives is to disconnect emotionally and handle the sale of the home in a businesslike manner. Because the marital home is usually the greatest asset in a marriage, it is also the greatest liability. You must give a lot of serious thought to securing settlement terms that protect both parties, especially the spouse who is departing the home. When you enter into

your marital settlement agreement, your lawyer should specify who is financially responsible for the mortgage, the homeowners insurance, utilities, and upkeep of the marital home.

If the spouse occupying the marital home is responsible for listing, showing, and selling the home, the other spouse may be obligated to pay part or all of the mortgage, as well as contribute to the upkeep of the home. If the occupying spouse shows little effort in getting the house sold, the marital agreement should provide a timetable for the sale of the home. It is important for the marital agreement to include provisions outlining the steps to be taken if the house cannot be sold within a specified time or if one spouse fails to meet any financial obligations.

Consult your legal adviser for contingencies that are specific to your situation. Additional expenses may include repainting, landscaping, or replacing appliances or carpeting. There should be clear direction on how to handle the unexpected while in the process of selling the home — for example, if a home inspection reveals a cracked foundation or termite infestation. Ex-spouses sometimes agree to a fixed amount of time to share expenses prior to the sale of the home. Quick decisions can be damaging, especially when it comes to co-ownership or one spouse occupying the home until it sells. By keeping emotions at bay while making important decisions and focusing on what needs to be done to sell your home, you and your ex-spouse can move on faster.

REASONABLE AND REALISTIC EXPECTATIONS

Since the home is one of the most valuable marital assets, dividing the property between a couple in the throes of divorce can be a major source of contention. If you have other properties, such as a vacation home or investment properties, those will also have to be assessed and assigned a monetary value. In order to divide equitably, or equally, as the case may be, you will need to know the precise value of your property.

When it comes to the marital home, there are several common valuation methods available to determine the value. These are used in property settlements and may differ from what you perceive as your home's worth.

COMPARATIVE MARKET ANALYSIS

Your real estate agent will provide you with a comparative market analysis, or CMA. This is an in-depth review of your home's worth in the current market, based on the recent sale prices of comparable homes. Any differences, such as the size of the lot or value-added items like a swimming pool, are taken into consideration and the value adjusted accordingly.

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BROKER PRICE OPINION

The broker price opinion (BPO) is another type of estimate, produced by a real estate agent in response to a request from a mortgage lender.

A few years ago, when real estate sales around the country were at their peak, lenders found it difficult to handle the staggering number of transactions. The BPO concept was born. It is less elaborate, and thus less costly, than an appraisal, but more involved than a CMA. There are two kinds of BPOs: drive-by and interior. If the agent has access to the interior of your home, you will obtain a more in-depth and accurate evaluation.

No matter your circumstances, you'll obviously want top dollar from the sale of your home. Therefore, it is crucial to get a reliable evaluation generated by a Realtor®, who will stand by his/her appraisal throughout the sale process.

THE COST APPROACH

The cost approach is based upon what it would cost to reproduce your home new, minus depreciation and obsolescence. Would any person buy the property for a cost greater than the value of the land and a structure with equal appeal?

PROFESSIONAL APPRAISAL

A professional appraisal for the valuation of marital property is required when a court is dividing the couple's assets. Some states require a judge to independently determine the fair market value. There are some circumstances in which a judge may consider information provided by a spouse.

You should understand that when a valuation is determined, it may not include latent cost-related issues. If there are plumbing problems under the foundation or the structure has been compromised by a termite infestation, these situations will affect the sale price. It is advisable to have a home inspection conducted in an all-encompassing examination of the condition of the home. It will be invaluable in discovering the universal condition of the home.

The inspection will cover electrical wiring, plumbing, roofing, insulation, as well as structural features and could uncover issues invisible on the surface. This will give you a realistic idea of what to expect when you sell your home. Most buyers require home inspections to eliminate any questions regarding your home's integrity.

Typically, a buyer will order and pay for a home inspection. However, doing this yourself in advance offers two advantages:

1. Both spouses are made aware of any underlying problems with the home, and arrangements can be made to split the cost of repairs.
2. Buyers who are interested in the home will have an additional layer of security in knowing the integrity of the home, without having to put out the money themselves for the inspection.

It may cost you a few hundred dollars upfront, but buyers appreciate having this information available, and that goes a long way toward building a relationship of trust and willingness to do business.

FINDING THE RIGHT REALTOR®

Choosing the right listing agent is important. As obvious as this might seem, selecting the best real estate agent for you can be difficult. Most people personally know a real estate agent, but don't jump headlong into working with friends who 1) may not be experienced at working with couples in the midst of divorce or 2) may not be impartial to both spouses.

There are Realtors® who focus specifically on helping people who are going through a divorce. They are known as Real Estate Divorce Specialists. These agents have been thoroughly trained in legal and tax aspects of divorce. If the house is handled improperly during the divorce, the result could be that one or both spouses end up ineligible to qualify for a mortgage for many years. A real estate professional experienced in the divorce niche can provide clients with step-by-step guidance to protect themselves legally and financially.

What defines a "good" real estate agent? That often depends on your particular circumstances. For someone selling a home during a divorce, it means finding someone with experience dealing with divorcing couples and who is an expert negotiator — not only between seller and buyer, but between seller and seller, who are not always on the same page or even on speaking terms with each other. Some Realtors® prefer not to take on listings with divorcing couples because the process is often more complex and labor-intensive than a standard real estate transaction. Not every real estate agent is equipped to handle the complexity of property issues that come with the division.

Most of all, you have to like your agent. You might be spending a lot of time with him or her over the next few months. This has to be a person who is calm, cool, and collected, is sensitive to the circumstances, and can move your home, no matter the current market. He or she must relate well with both spouses and cannot show any bias or judgment. You want someone whom you feel listens to your priorities, is patient with the situation, and can be trusted to deal fairly and communicate fully with both parties.

The best Realtor® is one who will work effectively with both parties, despite conflicts of interest and strong emotions coming from both sides. An experienced Realtor® won't run at the first sign of an emotional outburst, shy away from awkward meetings between soon-to-be exes, or hold exclusive meetings with one party over the other and will instead provide a neutral ground for interactions. Be sure your Realtor® keeps the details of your divorce out of

sales conversations, since some buyers equate divorce with “desperate to sell” and will attempt to leverage that information in negotiations to get a lower price.

You don’t have to seek out a certified Real Estate Divorce Specialist, but when you look for a Realtor®, don’t be shy about asking questions about their experience working with divorcing couples. You must be able to wholeheartedly trust your Realtor®. Listen to how they talk about previous clients. This is usually an accurate indicator of how you will be treated. Look for discretion and empathy. Most Realtors® work with buyers and sellers who don’t know each other, not with divorcing couples who may or may not be adversarial with one another.

The best Realtor® for you will be impartial and understand the complex nature of divorce. Make sure you pick a good listener.

No two divorces are alike, and your Realtor® should be able to help sell your home without taking sides. Some Realtors® are trained in mediation. Since you and your spouse will both be involved in the selling process, look for an exceptional communicator who knows how to keep everyone on the same wavelength. Suitable agents are focused on being objective and are unaffected by emotional outbursts from either party.

Not only do you want a Realtor® with divorce experience who is a good listener/communicator, you also want one who is genuinely concerned about your situation. They should show an interest in helping both parties experience a quick and strong rebound in their finances. They should also be knowledgeable about the local market, in order to price your home correctly from the start.

Here are some traits to look for when hiring an agent

- **Listing price to sale price ratio**— What is their success rate for sales?
- **Current**— Is the agent up-to-date with the latest housing trends so he/she can serve you effectively?
- **Connected**— Does the agent belong to a network with the necessary contacts to assist in every phase of the sales? This network should include home inspectors, quality service-people, other brokers, and county officials.
- **Knowledgeable**— Is the agent familiar with the current market and able to price your home strategically? Does s/he know the unique features of your neighborhood to distinguish your home from the competition? Does s/he know what to highlight in your area to attract buyers?
- **Organized**— An agent must pay close attention to your specific needs, communicate well, and be quick to follow leads.
- **Personable**— An agent who is sincerely interested in helping you will go the extra mile with a smile. They must be able to sell themselves to you, as well as sell your home to a buyer.
- **Passionate**— Some agents treat their job like a hobby or just a way to earn extra income. Find an agent who is passionate about what they do and loves their job.
- **Tenacious**— Successful agents possess a strong work ethic. They are efficient and take advantage of time-saving tools that help sell your home.
- **Honest**— Professional real estate agents build their reputation on high standards of business practices.
- **Self-motivated**— Real estate agents are commission-only business people. Successful agents work hard because what benefits their clients benefits them.
- **Creative**— Sometimes it takes creativity to properly showcase a home, develop engaging content, and negotiate a sale. An agent who can quickly address any marketing need is an asset to you.
- **Tech-savvy**— Agents well-versed in the latest technology for marketing homes should have a website, social media setup, user-friendly home search options, and quality presentations online with high-resolution images of homes, as well as videos and slideshows.

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A professional Realtor® has to wear many hats. They must be proficient in marketing, negotiation, consultation, the legalities of real estate, property taxes, and, most of all, gaining the trust of their clients. It is to your advantage to hire an agent who understands your unique needs while you work through your divorce.

Once you've selected your Realtor®, remember not to take out your stress and anger on him or her. He or she has nothing to do with the divorce and is trying to help you. Take his or her advice. They are the professionals and know more than you do about selling your home.

The following parts of the book are a helpful guide on how to present your home in the best light and how to avoid costly mistakes, especially when it comes to negotiating.