

WHAT DO WE DO WITH OUR HOUSE?

If you and your spouse own a house and are going through a divorce, you have to make a decision as to what to do with the house post-divorce. There are several options you and your spouse will have to consider.

One option is for one of you to keep the house after the divorce. If you have a mortgage in both your names, it's easiest and cleanest for the spouse keeping the house to refinance the house in his or her own name. If that isn't an option, then the spouse giving up the house can sign a warranty deed and deed of trust to secure assumption for the house. What this does is give the spouse remaining in the house title to the house, but protects the other spouse in the event that he or she defaults on the mortgage. Essentially, you both will remain on the note and be liable for its payment, but the spouse remaining in the house will be primarily liable for payment of the mortgage. If that spouse defaults, then the other spouse can catch up the payments, foreclose on the non-paying spouse, and assume ownership of the house.

If neither of you can afford to keep the house, then it will have to be sold. Usually one spouse remains in the house until it sells. Both parties can agree to split the costs of preparing the house for sale. You both need to agree on a listing agent and a price at which to list the house for sale. Once a buyer is found and the house is sold, generally the parties will split the proceeds of sale after deducting all closing costs, property taxes and agent commissions. Unfortunately, with the economy the way it is, I've seen too many times parties having to come out of pocket with money at closing because they end up owing more than the house is worth. In that situation, there's no easy answer. Some parties agree for one of them to remain in the home for a certain number of years until the market gets better and the house can be sold without taking a loss.

Many spouses decide that they want their children to remain living in the home until they graduate from high school. You can put those terms in your divorce decree that the home will be listed and sold at a later date.

Some mortgage brokers specialize in financing people going through a divorce. One such broker is www.themortgageinstitute.com. It's imperative that you begin working with the mortgage broker at the very beginning of your divorce, if not before. The broker can look at your credit and help you start cleaning it up before the divorce is final so you will be able to refinance your home or purchase a new home. This is especially true for women who have not worked outside the home in years and are considering buying their own home. These types of mortgage brokers can work with them to generate acceptable income, usually via temporary spousal support and employment income, to help them finance the purchase of their own home post-divorce.