What happens to the family home in a divorce?

By Patricia Barrett, CFP, CDFA

The question of what happens to the house in a divorce is often one that requires careful consideration. In my experience, this issue is often clouded by the emotions of one spouse or the other, and can prevent them from making the smartest financial decision. I advise my clients to set aside emotions and consider all the significant, interrelated factors before deciding on what happens to the house.

Consider the following:

> **First, is there equity in the home, and if so, how much?**
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> If there is substantial equity in a home acquired during the marriage (present value minus amount owed on any loans) it is typically divided or allocated between the parties. Home values can be determined by getting an appraisal of the property by a qualified appraisal company, or securing a "comparative market analysis" from an experienced real estate agent familiar with current market values in the area. The appraisal is preferred in family law cases.
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> If there is significant equity in the home, one spouse may decide to keep the home while the other receives different assets of comparable value. If the parties don't own other sufficient assets, it may be necessary to devise another way to buy out the person not retaining the home. Or, the couple may need to sell the home to equitably divide the marital assets.
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> **Second, can either party realistically afford to keep the house?**
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> The answer to this question depends on a number of interrelated issues, only one of which is whether either spouse can afford the monthly payments. Time and again, I see women initially insist on keeping the family home until I flesh out a budget and show them the real costs of this decision -- short- and long-term. Maintenance and repair expenses, utilities, homeowners' association fees, as well as property taxes and insurance costs can push home ownership beyond a newly single, wage earner.
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> If the couple would like to keep the children in the same schools, compare what it might cost to rent an apartment or house in the area. Also, I try to demonstrate to the couple the long-term financial impact of this decision by projecting the above numbers out 10, 15, 20 years, and illustrating how not keeping the home may place them in a much better financial position in the future. Quite often, this is a major wake up call, especially for women, to see how keeping the home in lieu of investments can be financially unwise.

Third, consider selling the home to pay down debt or yield cash

> In some cases, the home will need to be sold, potentially before the divorce is final. After payment of the real estate commission, mortgage balance, and other costs of the sale, the proceeds may be used to pay down or pay off marital debts, if any, or may be split between the parties. Divorcing couples are sometimes surprised to learn that monies invested in renovations or remodeling may not bring a dollar-for-dollar increase in a home value/sales price.

If the home is to be sold, both parties will typically be equally affected by the costs of the sale and both will share the risks and benefits of a sale for less or more than expected. However, if one party retains the home, he or she will typically bear the entire cost of any post-divorce sale, including paying the real estate commission. That person also would have the sole risk or benefit relating to the ultimate selling price. As a result, keeping the house may not be a wise financial move in the long run if the plan is to sell it a year or two after the divorce.

If one party decides to keep the home, an appraisal may be necessary to determine the current market value, unless both parties can agree on a present value. In many areas of the country, the assessed value of a home for property tax purposes is not a reliable measure of its current market value in a sale. Hire a home appraisal professional to determine the home's value.

What about the mortgage loan?

Most people who own a home have a mortgage in the names of both parties. Though transferring a home into the name of only one party can be done quite simply post-divorce, that transfer does not change who is obligated on the mortgage.

Typically, removing a name from the mortgage requires that the loan be refinanced, which involves an application and qualification process. Even though both parties were on the original loan, it isn't automatic that the party who wants to keep the house will qualify for a new loan, especially since his or her income and assets will change post-divorce. As well, new interest rates or other terms may not be as favorable as on the existing loan.

Couples divorcing are not required to refinance their mortgage loan, but this loan remains on the credit report of both parties until paid off. The mortgage loan could prevent the non-owner from obtaining a mortgage on a new home until the original joint loan is paid off, or refinanced by the other party. However, an attorney can draft a "deed of trust to secure assumption" that will enable the non-occupant to move forward with a new loan, since he would have a lien against the old home.

Ultimately, keeping the family home should be primarily a business decision and not one based on emotions alone. Be sure to consult with a divorce financial analyst to be sure you can manage it and that you aren't giving up too much of the more liquid financial assets just to keep the house.

This article is designed to provide readers with a general overview of the issues discussed.