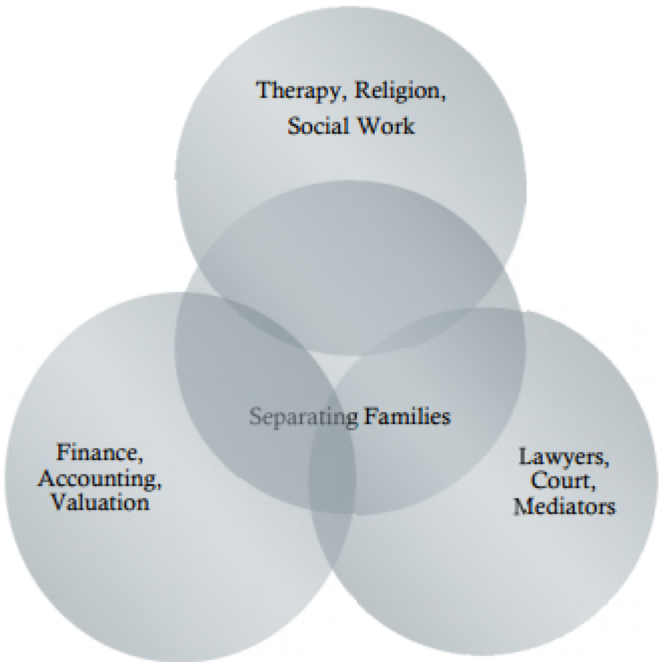
Sensible Separation

This issue of *Sensible Separation* will focus on the marital home.

Editor, Greg Kincaid

July, 2016



Sensible Separation is an interdisciplinary newsletter for professionals assisting families with divorce or separation. If you would like to contribute an article, please submit to GKincaid@hrkklaw.com. For more information about divorce mediation, please visit www.SensibleSeparation.com. Another opportunity to share helpful thoughts or insights about our work exists on the Sensible Separation FACEBOOK page, which is located at www.facebook.com/sensibleseparation. Please visit our site. We appreciate the traffic and any helpful information that you would like to share.

Keep it or leave it: a Therapist's view ***By Bryan Vignery***	**The home, keep it or leave it: A Mortgage Lender's perspective** ***By Joe Flaherty***	**Don't Make "Home" a Four Letter Word** ***By Loren Machina Financial Planner***

The marital residence—keep it or leave it? One of the most difficult decisions for divorcing families is the disposition of the marital residence. It's a concern that triggers a host of emotional, financial and legal issues. For many families, it is one of the most important agreements that must be reached before their family can move on with their post-divorce life. For this reason, it is often the very first issue that must be addressed by professionals. As professionals assisting divorcing families, we need a myriad of skills to assist families in making the best possible decisions concerning their home. These decisions can't be legal alone. They include financial and emotional factors as well. This edition of *Sensible Separation* focuses on helping families to make good decisions concerning their marital home. I've asked a therapist, a financial planner and mortgage lender for their insights. What follows is their written responses and some of my own thoughts, as a legal mediator, offered to tie it all together.

It's hard to separate the emotional "I wants" or "I have to have" from the practical concerns of home ownership. Many parents understandably justify or defend their own desire to stay in the house by citing their children's need for stability. I asked therapist, Brian Vignery, to offer up some tools for helping clients with the task of separating their own needs from the children's needs.

I. Keep it or leave it: a Therapist's view. By Bryan Vignery

The argument of the 'kids need to stay in the home for the sake of stability' is a common argument that I have seen over the past 10 years in my practice. Although every situation has its own set of complications, there are some common considerations.

During the process of a divorce, it is my opinion that emotional connections to the home need to be removed temporarily to be able to make wise, rational decisions. It is also important that as the adults are making decisions on what is going to take place in the dissolution of their marriage, that the children stay in the home with the least interruptions as possible. The couple that is divorcing is making a conscious decision to no longer function as a 'in-tact family' in a home so naturally there are going to be multiple changes that will ultimately take place and the family will be impacted. Keeping the kids' consistency is very helpful during this time.

In our culture today, most homes are two-income homes and the budget for that family has been based upon the two incomes. Statistics show that 66% percent of households are dual income in America today. With this in mind, here are a couple of thoughts on situations to keep in mind:

- In the end, if the kids stay with the custodial parent that cannot afford the home, then you end up running in to a worse situation like foreclosure or bankruptcy. This situation is going to create two major changes in the children's life; one when the divorce happens and two, when the bank takes over the house.

- Always remember that resiliency is a good teacher. Kids are very resilient! Unfortunately, it is all too common that the kids know a divorce is going to take place before the parents have actually even talked with them. If we can improve marital and family communication, that will be a huge benefit. One of the most challenging parts is relating to each other and the kids on what is about to take place in the months to come. All in all, the kids are resilient and typically they will be fine moving to a new location.
- Remember that your children are going to model your behavior. If you will allow yourself to be fine with the home being sold or being taken by the spouse, then your children will be fine with it happening too. Behavior is often caught, not taught.
- Just keep in mind that the divorce brings a heightened sense of entitlement and selfishness in we adults. Unfortunately, in many cases, we get wrapped up into the emotional dealings of the divorce and do not function well at the adult level. Keep the end in mind and make rational decisions and your children will be just fine with what life hands them!

Bryan Vignery
Therapist
www.vignery.com
bryan@vignery.com

Legally, many families do not understand that the title (ownership) and the mortgage loan (debt) are different. Getting one spouse's name off the title is easy and can be accomplished with a simple Quitclaim Deed. Getting one spouse's name off the loan obligation can be much more difficult. Many clients seem to think that by getting off the title they somehow also automatically get off the debt. Unfortunately, this is not the case. If both names are on the mortgage note, then the note either has to (a) be restructured (often called a loan assumption or modification) so as to remove one of the borrowers from liability; or (b) the old loan has to be paid off and replaced with a new loan (a refinance). If one spouse is awarded the home in the divorce and the loan is not paid off or modified, then the spouse that remains on the note is disadvantaged in at least two materials ways. First, if the spouse that is awarded the home does not make the payments, the spouse that did not get the home can still be sued for the debt. Second, when the spouse that did not get the home attempts to borrow money (perhaps) to buy their own home, they old mortgage debt will be considered by the new lender and may disqualify an otherwise credit worthy buyer. In his article, below, Joe Flaherty, from Country Club Bank, explores some of the mortgage loan considerations that divorcing families face.

II. The Home, keep it or leave it: A Mortgage Lender's perspective

By Joe Flaherty

When dissolving a marriage which includes a home that is owned jointly and has a mortgage loan attached that both spouses are obligated to pay, it is essential that to be aware of the rules and guidelines associated with most conventional loans.

While a well thought out divorce decree will appropriately work out the ownership and responsibility of payment after divorce, that decree is not a document or order that the original lender who made the loan to both spouses is required to honor. The original note on the loan is the document that the lender will enforce until that loan is paid in full.

After a divorce, a Quitclaim Deed can be filed in the local courthouse to transfer ownership of the property to the spouse awarded the property in the decree. However, that Quitclaim Deed does not transfer responsibility on the original note to the post-divorce owner. The only way to take the non-owner off the original note is to refinance that loan. Or, if the original loan has assumption privileges, the post-divorce owner could assume the original loan as long as they qualify on their own sources of income.

Qualifying for a new loan after the divorce can pose some challenges for the spouse that retains the home as well as the spouse who does not retain the property. In the majority of cases, the retaining spouse is receiving maintenance or child support as income. That income is needed to qualify for a new loan after the divorce. However, many lenders will not accept the maintenance or child support income until the receiving spouse can document proof of receipt of income. Furthermore, the income must continue for at least three years in order for the income to count. Depending on the ages of children, some of the child support income may not be used in qualifying for a new loan if the income will expire too soon.

For the spouse that does not retain the home and perhaps is required to pay maintenance or child support, the monthly obligation for this is counted as a debt in qualifying for a new loan. This can cause someone's qualifying ratios to go beyond what they think they can afford. However, if a divorce decree states a certain co-owned debt is the responsibility of the other party, then that decree can count as evidence to that fact and those debts would not be counted towards a qualifying ratio for a mortgage.

Each dissolution has its own challenges and requires real thought prior to so that each parties' expectations of what they can afford or do after the divorce is known from the beginning. Too often divorced individuals try to obtain a certain type of financing and are surprised at what they learn are the challenges or obstacles after the divorce.

Joe Flaherty,
Senior Vice President
County Club Bank
joflaherty@countryclubbank.com

One silver lining of the busted real estate bubble, that occurred in 2009, may be that fewer families assume home ownership is necessarily a good investment option. When there is little if any market appreciation, taxes and insurance to pay, and ongoing physical deprecation and upkeep, renting may very well be the better financial choice. Assessing that decision can be difficult. How much of my income should be allocated to housing? How much of my asset or net worth should allocated to real estate? Can I weather the storm of major capital costs like a new roof or AC unit? Do I have the time for maintenance and upkeep? A financial planner may have insights into many of these questions.

III. Don't Make "Home" a Four Letter Word

By Loren Machina

Going through a divorce can be a very emotional time. Starting by taking the right steps now to help you feel more confident about your financial future will make it easier to move on emotionally. The marital residence, the pension you earned, a painting purchased during your marriage - these assets often bring an emotionally charged debate to divorce negotiations, which can impair good decision-making. Fighting tooth and nail to keep the home, even though it is not a sound financial decision, could cause more headaches in the long run.

By separating the emotional ties to the home and taking into consideration the expenses associated with owning a home (mortgage payments, property taxes, insurance, utilities and upkeep costs) it becomes easier to look at the facts. It is important to consider all factors of your life after divorce when deciding on who will keep the marital residence. One thought to focus on would be how home ownership will affect your taxes going forward.

Joint filers are eligible to exclude as much as $500,000 from the sale of a personal residence. For single taxpayers, that exclusion falls to just $250,000.

If both ex-spouses agree to sell the home quickly, it can work out fine because both will likely be able to take their respective $250,000 exemptions. But two problems often come up. If both ex-spouses move out of the home and it takes a long time to sell, then a failure to meet the two-year residency rule over the preceding five years can reduce or eliminate the exemption. Also, if one ex-spouse gets the property in the divorce settlement and later sells it, then the total available exemption will be cut in half. It takes smart planning in the divorce settlement to make sure that both ex-spouses reach a result that makes them comfortable.

Divorced or widowed women and single women are most likely to consider themselves behind the curve in planning and saving for retirement. Gathering a solid team of professionals will help you to stay ahead of the curve; make sure to speak to legal and tax advisors, real estate appraisers, and a financial advisor to help create a plan that will sustain you post-divorce. During your divorce and settlement negotiations, your main focus should always be on how to maximize your finances by making sure you'll have enough cash for living expenses after your divorce and in retirement.

Knowing ahead of time how divorce affects your financial life will let you prepare for it and focus on moving forward with your new life.

Loren Machina
Financial Advisor
AXA Advisors, LLC
Loren.Machina@axa-advisors.com