



Divorce and the House

Often the house where the two of you have lived together will be the single largest asset of the marriage. In most cases, you and your spouse have owned the house jointly, and you owe money on the mortgage jointly.

Often one of you will be moving out, and the other will plan to stay in the house and continue making the payments. At some point down the road, the the one who stays in the house will sell it or refinance the loan, but often that doesn't happen right away. Let's think through some things you need to think about if you're planning that kind of arrangement.

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Getting Disentangled

We can get really creative with the arrangements we make with our house in divorce. Whenever I'm tempted to say that I've seen every possible permutation of the interlocking relationships people have about their house, along comes another divorcing couple to show me yet another way to do it.

I generally try to talk my clients into doing whatever it takes to get as disentangled as practicable, as quickly as practicable. I think this is particularly important with the house.

Richard and Cynthia got creative. They knew as they negotiated their divorce that cash was tight. They both wanted Cynthia and the kids to stay in the house until they left for college. Cynthia and Richard agreed to continue owning the house together for as long as eight years after divorce. By that time, she had to sell the house and split the proceeds with Richard equally.

Richard and Cynthia are divorced, but now they're still partners. They're business partners because they've invested in this #\$\$@& house together.

Whenever Richard drives by, he looks to see if Cynthia is taking care of the lawn and the shrubs. He frets about the color she painted the shutters. And he really doesn't care much for the way she's letting the kids and their friends throw the ball in the living room.

What's more, he's just now figured out that he's going to owe capital gains taxes on the profit from the sale of the house when it happens. And because it's not his principal residence any more, he won't be able to take advantage of any rollover provision.

Cynthia finds it offensive and invasive, of course, that Richard worries about how she lives her life. And she too is just beginning to focus on how all this affects her economically. Although she's pleased that Richard will share some of the tax burden on the gain of the house, she believes most of the appreciation in the house value has come after divorce, and she resents having to share that with Richard. "This is the one thing of value I walked away with, and I'm having to give half of it to him," she says. "It's just asinine!"

If you and your spouse are talking about an arrangement in which you both remain owners of the house for a long time in the future, where you both remain on the loan for a long time in the future, or where you share some designated percentage of the proceeds of the sale of the house out in the future, stop. See if there's not some way one of you can take all the upside and all the downside of the house. That will give you one less thing to argue about -- one less thing to resent down the road.

If You're the One Who's Staying

First, you need make sure you can afford the mortgage payments. One of the things I've discovered is that, in almost every case, people who get divorced underestimate what it's going to cost them to live once the divorce is finished. Do yourself a favor: develop a comprehensive budget before you lock yourself in to a divorce settlement and make sure you really can live within it.

You need to make sure you understand the way capital gains tax works. More about that below.

You also need to think through whether what you really want is simply to win the house, or whether you really want to live in it. It's happened enough now with my clients that I need to tell you about it. You may insist throughout the negotiations of your divorce that you're going to keep the house. You may think strategically and make valuable

concessions to keep it.

Then you may realize less than a year later that the house harbors so many atrocious memories for you that you can't stand to wake up in it another day. You put it on the market and sell it so you can escape. You will have lost money, sometimes thousands of dollars, that you can't afford to lose.

What's the lesson? If you're negotiating hard for the house, take a time out. Take time to walk through each room. Sit quietly in each room. Lie down in the bed you and your spouse shared. Picture a day three or four years after your divorce when your marriage will be a memory. Is this the place you will want to sit and sip orange juice? Is this where you will want to entertain your friends? Is this where you will want to relax when you've had a hard day?

Your answer may very well be, "Yeah, Lee, this is where I want to be. Get off my back." Good. Just make sure you ask yourself the questions.

If You're the One Who's Leaving

You need to think through how this is going to affect your credit. Even though you won't be living in the house any more, the lender still has your name on the loan, and if your spouse doesn't pay, the lender could come looking for you. When that happens, the lender won't care much that you haven't lived in the house – the lender wants its money, and you're still obligated to pay it.

Even if your spouse is absolutely faithful in making the mortgage payments, though, there's another possible problem. Because you still owe a great deal of money on the house, it may be difficult or impossible for you to borrow to buy another house or to make another large purchase until you're off the loan entirely.

If you're going to continue owning an interest in the house, make sure you think through the capital gains tax. Specifically, you might lose your rollover option because the house won't be your principal residence by the time you sell.

One other thing to think about when you're getting ready to move: creditors often downgrade your credit score when you show multiple addresses of short duration. That doesn't mean you shouldn't move, of course, but it probably does mean you should be circumspect about each move you make, knowing that it may have some impact on your credit rating.

Capital Gains

Not long ago, capital gains on the sale of the house was a huge issue in divorce. This is less so today, though. Almost any taxpayer selling his or her principal residence after May 7, 1997 gets a \$250,000 exclusion from gain, and a married couple gets a \$500,000 exclusion. You can read all about this on the page here called [Capital Gains on Your House](#).

Gathering Information

There's a whole head full of information you may need to gather if you and your spouse own a house (or for that matter, any real property). You can check out a full explanation of the information you'll need to gather, including information about what the house is worth.

What Kind of Deed?

When one of you is conveying the house to the other, you have several choices available when it comes to the kind of deed you use. There's a separate page here about the [Different Kinds of Deeds](#) people can use in divorce.

Divorce Lien

You may be able to share the equity in your house and still get disentangled, by using a Divorce Lien. Using a divorce lien, the spouse who stays in the house gives a promissory note to the other spouse, secured by a mortgage or deed of trust to the house. It doesn't work for everyone, but it may be a viable alternative for you. the spouse who takes the note may even be able to sell the note at a discount and get cash currently. [Click here](#) to find out more about divorce liens.

Selling the House

There's no question or disagreement between you and your spouse that if you're selling the house, you want to get top dollar. How do you do it? This subject is important enough, and it comes up often enough, that I've added a separate page called [Selling Your House When You're Divorcing](#).

When You Have to Live Together

There are many things about divorce that don't surprise me any more. One of them is the stoic, Spartan utterly resilient creativity I see every day from couples in troubled marriages who have to keep living under the same roof.

Why do you have to live together?

- Maybe it's because you both want to be close to your children.
- Maybe it's because you're not ready yet for your friends to know that your marriage is coming apart.
- Maybe it's because both of you are maneuvering for ownership of the house, and you're both convinced that your claim will be stronger if you're living there. If so, you're probably both right.
- Maybe it's because one of you is convinced that if you move out, you'll be accused of abandonment or desertion. Fears of that are way overblown, by the way.
- Usually, though, it comes down to what drives so many decisions in divorce -- money. You've looked into the price of living somewhere else, and you're not ready or able to make the leap financially.

So what do you do?

You stay together.

And you do what you have to do.

Many of you are already living in separate rooms in the same house. That's to be expected. But some of you become much more innovative.

Larry lived in one room of his apartment for two and a half years. Because he had things in the room he was afraid his wife would take, he locked the door from the inside and used only an outside window to enter and leave.

Charlton lived in a trailer out behind the house for three years. There was electricity to the trailer, but no phone and no heat except for a small kerosene burner from Wal-Mart.

Shanna couldn't afford to move out, so she and Frank slept in the same room for 18 painful months. He slept in the bed. She slept sitting up in non-reclining easy chair. "I still have the pain in my neck to show for it," she told me.

If you and your spouse are stuck under the same roof, I don't really have any advice for you about how to do it. I can only tell you you're not alone. You'll get through it. Maybe one day you'll even laugh about it.

So You Got the House! Now What?



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