

# **Should You Sell Your Home in Divorce?**

When going through a divorce one of the first things that may come to mind is whether or not you should sell the marital home. *Divorce and selling a home or other real estate* are probably two of the most stressful life events.

Going through both at the same time can be ten times worse. Questions of homeownership can become complicated to deal with when you are facing a divorce.

For many couples, their home is the greatest asset they have, and it usually holds a fair amount of sentimental value as well. As much as one or the other may want to keep the home, though, many times, the situation demands getting rid of it.

This can be due to financial, legal, or personal reasons, but in the end, they must unload the home.

Knowing how divorce affects the sale of a home, including reasons to sell, is essential. We at Lakes Country Realty are here to guide you through this process. As emotionally trying as the divorce is, a wrong move concerning a home can come back to haunt you for many years - long after the divorce is said and done.

There are usually one of three scenarios that take place for most couples who go through a divorce:

1. One of the spouses buys out the other legal interest and keeps the home.

2. One spouse keeps use and occupancy of the home for a specified period, which is typically when the youngest child turns eighteen at which time the house can be sold.
3. The house is sold immediately, and the equity, if there is any, is split up in some fashion.

Selling a home and getting divorced is a tricky business that should be thought through thoroughly!

### **Legal Reasons For Selling a Home in Divorce**

Some divorces involve two people who can deal peaceably and reasonably with one another. If this is the case in your divorce, you can discuss the best options for your situation and act accordingly. However, in many cases, the division of property and specifically the division of the family home is not cut and dry.

Each of you contributed to the purchase of the home - even if one did so more than the other - and each wants his or her fair share. If you cannot agree out of court, either on your own or through mediation with your attorneys, the courts will decide for you. This is not a pleasant experience for most homeowners, though, as the judge rarely decides precisely as either party would like.

This is why it is always advisable to agree beforehand, if possible. Many times the most straightforward solution is to sell the home. When the family home is sold, the division of assets becomes more comfortable because you are not trying to figure out the future value of the house. You can get current assessments of value from Lakes Country Realty or your local appraiser. Selling a home in a divorce is a tricky business that should be thoroughly thought out.

## **Financial Consideration For Selling a Home During Divorce**

Divorce and selling a home creates some significant financial concerns. Because you were married, there is an excellent chance that your mortgage is based on both of your incomes. Cut that salary in half, and you understand very quickly why the home you managed to buy required both of you to pay for it.

Even if your income is the higher of the two, house payments, insurance, property taxes, and upkeep can all eat away at your finances. For most spouses, this is too much to handle.

One of the critical financial aspects that should be considered is the capital gains tax ramifications. The current capital tax gains law says that if you are married and selling a home, you can exclude up to \$500,000 in profit.

If you are single, the capital gains exclusions drop in half to \$250,000. To be eligible for this exclusion, you must have lived in your home for two of the last five years. The home must also be your personal residence and can not be an investment property.

This is where it becomes tremendously crucial for both parties to think this through properly. Essentially what this means is that there is an enormous financial incentive to sell the home while you are still legally married.

Selling the marital home will allow up to \$500,000 in profit to be excluded from federal capital gains taxes.

Couples can apply for this tax break if they file a joint tax return or if they file separately. When filing separately, each partner can still claim up to \$250,000 on their tax return, provided that they again meet the two-out-of-five-years in the home qualification.

If you have owned your property for a significant amount of time, and there has been a substantial equity growth, this can amount to substantial tax savings. If one party chooses to remain in the home but plans on selling sometime in the future, there could be quite a difference in tax savings. This makes selling a home while getting divorced, something that needs to be planned carefully.

## **Emotional Reasons For Selling a House**

Divorce and selling a home usually go hand in hand because of the psychological issues stemming from keeping the property. You may have built a happy and fulfilling life in your home, including pets and children, and improvements to make it just like you like it.

With the departure of your spouse, though, the once happy home can quickly become unpleasant to live in. Memories of better times - or the bad times - can taint the comfort you once experienced in your house. Some people are just not interested in going through these feelings day in and day out.

This is, in fact, one of the more prominent reasons that one of the parties may decide at some point in the future, that keeping the house was not all that it was cracked up to be.

The emotional factor is also something that people don't think about enough. There are so many things going through your mind when going through a divorce that often your judgment can become clouded.

## **Liability Reasons in Divorce**

If the first two reasons are not enough, liability is usually enough to seal the deal for divorcing couples. Even if one person wants to keep the house, the other spouse should get very clear on what that will mean. There are multiple ways to keep a property and let one spouse remain in it, but each carries difficulties and risks.

**Take over the mortgage** - If the spouse who wants the home has enough income, he or she could take over the loan and just make the payments. This requires talking to the lender and refinancing the house - meaning the person must qualify - but some are capable of doing this. If you can accomplish this, it removes the other spouse from the equation altogether - therefore eliminating his or her liability - but not many people have this kind of income.

Of course, you also have to answer the question of how much equity the departing spouse has in the home and either buy them out or set up a payment plan. Unless you are divorcing on the best of terms, this probably means consulting a divorce attorney.

**Co-own the home** - If you have children and you want to keep them in the same house, you could both stay on the mortgage to create as little disruption as possible. The remaining spouse can make full payments, or you can both agree to a percentage.

This requires a considerable amount of trust, though, because should the remaining spouse fall behind or fail to make the payments, the departing spouse will suffer the same credit issues and mortgage problems.

**Win at all costs** - One of the unfortunate things I have experienced in some divorce scenarios is one party desire to “win” at all costs. There have been occasions where one spouse insists on keeping the home even though it is not a prudent financial decision because they see it as winning a significant battle.

In other words, their judgment becomes clouded from going through such a traumatic event which they may not have wanted.

When one party ends up keeping the marital home, for this reason, there are times when later on down the road, they then realize that maybe taking on such a substantial debt and all the expenses that come along with homeownership were not such a good idea.

If you decide to keep the marital home, you REALLY need to make sure you can afford the mortgage payments and all the other expenses that come along with homeownership that you may not be considering.

Lots of couples getting a divorce underestimate what it’s going to cost them to live once the divorce is finalized. One of the things you should be doing when contemplating to keep the home is to develop a comprehensive budget before you lock yourself into a divorce settlement.

Don’t think about keeping the home in a divorce as a “win” if it is going to bury you financially somewhere down the road.

## **How To Sell Your Home During Divorce**

*Selling a home during a divorce* is much like selling real estate any other time, except that you MUST lay the groundwork beforehand that determines who gets what.

With Lakes Country Realty helping you, selling the home for a fair market value should be possible - as long as you follow your agent's advice. Before this happens, though, you should have decided on how the money from the sale will be divided up.

This decision-making process is best achieved through your attorneys. Let them guide you through the process of deciding equity.

This will involve a thorough examination of the history of your marriage related to the property and consulting one or more real estate appraisers. You need a good idea of what your home is worth as well as the value of any improvements you made to the house.

Once this is decided, bring in Lakes Country Realty and get your house on the market. Follow our advice to a T, and be willing to compromise a little. Selling for a little less than what you might want can get the home off your hands faster and help you both move on with your lives.

### **The Divorce Realtor You Select Is Important**

When going through a divorce and selling real estate, you are going to want to work with a Realtor that has exceptional communication skills.

Given that there could be two parties that might not be getting along that well anymore, you are going to want to work with someone who understands the nature of divorce and all the emotional baggage that comes with this stressful life event.

The Realtor you choose to work with is going to have a certain level of patience, as all communications could be repeated multiple times. At Lakes Country Realty we all have training on great communication skills, dealing with stressful situations and deflated sometimes tense situations.

The Realtor you decide to work with is a process that should be worked on together. As an agent who has worked with a number of divorcing couples over my 20 years in the business, I have found that if one party selects the Realtor, the other feels slighted. Make the choice together.

Human nature kicks in, and the natural instinct is to feel that the Realtor is going to play favorites because of an established relationship with one party. Think of Lakes Country Realty like Switzerland-we are here for both of you to get a fair deal with no biases in either direction.

When I am hired to represent a divorcing couple, I want them both to be present for any listing interviews that take place. I want them to understand that I represent both of them equally.

There is no favoritism involved. My number one priority is to sell the home for the most money possible in a reasonable amount of time with the least amount of headaches.

Creating an atmosphere of trust where either party can call me at any time is very important. Getting a divorce is stressful enough as it is. Adding a home sale on top of it can make you feel like your life is totally upside down. Striving to make the home sale process go as smoothly as possible is always one of my goals.

While going through a divorce brings with it a different set of challenges, the real estate agent you should work with should not only have some experience with divorce but also a strong track record of success selling homes.

When selling a home and getting divorced, selecting a Realtor is an incredibly important decision, yet so many sellers do not take the time necessary to really make a sound business decision. Being in the business

as long as I have it still puzzles me how lackadaisical some people can be with choosing a Realtor.

You would think that selling one's most significant asset would bring a determination to choose one of the best agents around. Often this is not the case, and no research is done to make the best possible selection. Divorce and selling a home at the same time is a tricky business. Make sure you are well prepared for this endeavor.