

## Spouse in the House



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In many divorces, the most crucial decision in dividing the marital property is what happens to the house. There are basically two choices, sell or stay, with a few middle ground options. Either path can be heart wrenching, emotionally & financially. Once the fate of the house is decided, the remaining economic pieces fall into place.

With a short term marriage, the choice is easy. Neither spouse can afford to buy the other out so the property is listed for sale. If the children are young and not yet in school, relocation is relatively painless.

The decision is tougher for a couple with a longer marriage who have accumulated significant equity and like their neighborhood. Whether to stay or sell is fueled mostly by finances. The divorce decree will obligate the spouse keeping the house to re-finance in their individual name. Years ago, courts allowed the staying spouse to keep their ex's name on the mortgage until the property sold or re-financing occurred at some future point such as a remarriage or high school graduation. This is no longer an option, as it is impossible for the leaving spouse to purchase a new home if the old mortgage remains on the credit report.

The old way created a myriad of problems anyway, when the divorced couple continued to jointly own the property. For the spouse out of the house, the former home became a rental investment. To its occupier, it is still home. Inevitable conflicts between the "landlord"

spouse and the "tenant" spouse arise. Ex spouses hold different opinions on what constitutes a necessary repair or improvement versus what can be ignored. For example, the landlord may opt for fake wood flooring in the kitchen, but the spouse in the house wants real wood. Who decides when the furnace needs to be replaced and who pays for it?

When the house does sell and the net proceeds are split in some predetermined percentage, the tenant spouse resents sharing the increase in value with the landlord, believing they are cheated out of their sweat equity poured in during years of sole occupancy. The field is fertile for controversy. Arguments over the choice of realtor, sale price, date of sale, etc. are routine. Ultimately, continued joint ownership of a home for a divorced couple is impractical.

A less enmeshed option is to choose a buy out figure for the departing spouse, to be secured by a promise to pay a percentage of the house's value due either when the house sells or upon the occurrence of a triggering event. Post divorce, the house value may increase enough for the spouse in the house to refinance. Or the refinance can be delayed until the leaving spouse actually needs clear credit to buy their own house. As time passes, refinancing becomes easier.

In many cases, however, the leaving spouse can't wait for the cash. If delay is not an option, the staying spouse must refinance now. This is when hard choices have to be made. Let's say the wife, both the custodial parent and the income inferior partner, wants to stay in the house. There are two children, a 4th grader and an 8th grader. They love the neighborhood which sits in a good school district.

To refinance, wife must convince a lending institution she is a good risk. After paying \$1,000 for a mortgage application and another \$300 for the appraisal, she meticulously submits pay stubs, tax returns, the child support order, checking account statements and credit card balances. She liquidates her saving, makes herself as debt free as possible to reduce

her debt to income ratio and tries to negotiate a favorable interest rate. Rarely is it wise to name your parents as co-owners

Even if she is successful in refinancing, continued ownership of the big house is no cakewalk. She is now solely responsible for all carrying costs. Even with child support and alimony, this is a daunting prospect. How much this newly single mother pays monthly for her mortgage, taxes and insurance determines the quality of her and the children's lives. Being mortgage poor leaves no wiggle room in the family budget. A leaking roof or malfunctioning stove can constitute a huge setback.

Staying in the house is no breeze from an emotional standpoint either. While the status quo may seem comforting, other factors must be evaluated. As a single woman, will she feel comfortable in a neighborhood of couples? She needs to talk to the kids about staying versus moving. The answer may surprise her. A house may hold bitter memories

for the children, who may crave a new beginning.

This article does not advocate either option, staying or selling. The circumstances of every divorce are unique. What worked for a friend may not work for you. Before you decide to sell or stay, do your homework. Find out what you can afford. Consult with a mortgage broker before the divorce is final. Drive around with a realtor just to see what is available. Talk to your kids.

Even in today's market, houses do sell if they are properly exposed and reasonably priced. Consider pricing the house a little lower. Time on the market is the kiss of death. Motivate your realtor with a bonus for a quick sale. If you are over 62, consider a reverse mortgage. Credit history is not considered and many are HUD funded. It not repaid for as long as you occupy the home, but if you move to a nursing home the house must be sold.

Your decision on what is right for you must be calmly and rationally reached, after

you have explored all available options.

*Nancy Larkin Taylor is a familiar figure in Bucks and Montgomery County where she has been practicing family law for many years.*

*Mrs. Taylor firmly believes that if our divorce, support and custody systems are ever going to improve, it will occur when parties and parents work together to achieve joint goals.*

*Those goals include striving for custodial arrangements that meet their children's best interests & full financial disclosure which leads to a fair and quick resolution of economic issue so that fissures created in divorce do not last a lifetime.*

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