



DIVORCING YOUR MORTGAGE

May 2017 Issue

REAL ESTATE VALUATION

How much is the marital home worth?

A licensed appraiser can probably give you the most reliable figures about the value of a home. The downside of an appraisal is that it may cost several hundred dollars. However, getting a true picture of a home's value can save thousands when negotiating a divorce settlement.

Instead of an appraisal, real estate professionals tend to value real estate through a comparative market analysis (CMA). A CMA involves comparing the home with other homes in the area that have recently sold or been listed for sale. One of the benefits of a CMA is that it will cost little or nothing to have it done by a real estate professional.

The final option which some couples utilize is to do their own research, often using online resources to do so. This is probably the least reliable method of valuing a home, as it is not being performed by a real estate professional who is well-versed in the valuation of homes.

5 Tips That Will Set You Apart As A Family Law Attorney or CDFA

If you include some or all of these 5 elements into your divorce settlements, you will set yourself apart from the majority of family law attorneys and CDFAs who do not know these principles of mortgage qualifying. As a Real Estate Divorce Specialist and Certified, it is my obligation to apply these principles in the context of a specific case where a client is actually qualifying, real-time, for a mortgage transaction. These include, especially, refinances to remove a spouse from the mortgage obligation, refinancing to include a buyout to an ex-spouse and purchasing a new home using support as qualifying income, etc.).



Of course there is a disclaimer – DO NOT TRY THIS AT HOME. You can actually describe and discuss these principles in meetings to the benefit of all concerned. But, as in all of mortgage qualifying, your client needs a **specific** Assessment/Approval with recommendations for the settlement. I can certainly help you with that.

1. First, **structure income as support income wherever possible**. You will see (#3) that, in the mortgage world, there is a difference between **income** and **qualifying income**. And, certain rules of documentation apply. Whereas child or spousal support requires a pay history of 3-6 months, receipt of payments from a “note” or “payout” requires a 12-month pay history. In a recent case, the agreement was for one spouse to pay \$3,000/month in child support and \$5,000 in a payout over time for the other spouse's interest in a company. Mortgage guidelines require a longer pay history for the payout of the “note” (12 months) than they do for child support (3-6 months). So, while the spouse is receiving \$8,000 each month, her qualifying income is only \$3,000/month (after the required history of payments has been received and documented). *Continued on Page 2.....*

DO YOU HAVE CLIENTS THINKING ABOUT BUYING THEIR NEW HOME WITH CASH?

Do you have clients thinking about buying their new home with cash? If so, I just wanted to make you aware that the IRS gives you a 90 day window to put a mortgage on your property and gain the tax benefits associated with the coveted “acquisition indebtedness” status.

What is “Acquisition Indebtedness” - according to the IRSA Publication 936:

Any mortgage that is used to buy, build, or substantially improve a qualified home (your main or second home) qualifies for “acquisition indebtedness” status. If the amount of your mortgage is more than the cost of the home plus the cost of improvements, only

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5 Tips That Will Set You Apart Continued.....

2. Secondly, **get the clients to begin support payments IMMEDIATELY** if at all possible. You will see (in #3) that a pay history must be developed. So why would a husband, for example, want to begin paying child support or spousal support before the final divorce or before/without some order from the court (vis a vis a final decree of divorce or other orders)? It's really straight-forward – that husband wishes for his wife to refinance the mortgage in order to remove it from his liability, perhaps to roll in a buyout to him of an agreed amount or for her to be able to purchase a home nearby for their children's wellbeing. These are personal reasons why it is in the best interest of all concerned. But, **how** could a payer manage to begin "supporting" his/her own children and spouse when, many times, they are already doing this by making the mortgage payments and buying the groceries? Actually, it's easier than one might think. If, for example, a husband will be paying child and/or spousal support to his wife and she will be refinancing the mortgage into her own name and liability, he can begin support payments to her and she can, in turn, make the current mortgage payments and buy the groceries with her new income. As the old saying goes, "it's six one and half-dozen the other." This is more than "gaming the system." It's creating a documented paper trail that shows the husband's ability and willingness to make support payments – a real key in mortgage qualifying. Here's a sub-tip: Make sure that the payer pays from their sole/separate bank account into the payee's sole/separate bank account. Payments to or from joint accounts do not count.

3. Thirdly, **remember the 3/36 or 6/36 rule**. The 3 and the 6 represent months. For FHA loans, a "pay history" of 3 months of support payments must be documented. For conventional (aka Fannie Mae or Freddie Mac) – generally preferred – the requirement is more stringent, 6 months. The borrower must have received 3 months (FHA) or 6 months (conventional) of support income in order for that amount to be considered "qualifying income." But, that's not all. The second number – the 36 – represents the number of months which the support income must continue **after loan closing**. Note that this is after loan closing, not after final divorce. This is critical because when an attorney thinks of "continuance" they are generally thinking of how long some provision may continue after its start date or final divorce. Mortgage guidelines apply to the date on which the loan closes. One more thing – 35 months will not suffice. It must be 36 or more months remaining in the support payment schedule. Yes – it's that tight. There are some variations – none which are more lenient – to this rule. A little over one year ago, many conventional financing guidelines changed from requiring 3 months to now requiring 6 months of pay history. The 3 year (or 36 months) rule has been standard for many years now and also guides other types of income. For example, for wage-earner borrowers, there is the same expectation for 3 or more years of employment. The standard Verification of Employment form has a box for "Probability of Continued Employment." Most employers avoid answering that question for obvious reasons. But, if there is a definite end to employment (as in the case of a wage earner who is also under a contract with the employer) that is stated as earlier than 3 years after projected loan closing, the applicant's income cannot be considered as "qualifying."



4. Fourthly, **convert assets to an income stream** when there is a potential need for the recipient to qualify (with support income) for a mortgage. In higher net worth divorces, there is often a transfer or division of financial assets to "equalize" the property settlement. While such an agreement may satisfy a logical agreement to split assets, it often leaves the recipient of such large assets without qualifying income and, therefore, without the ability to obtain their own financing. How many times has this happened? Two attorneys, two clients and a couple of ancillary personnel are seated around a large conference room. One attorney says, concerning opposing client, "Well, we're giving her \$300,000, the house is worth at least a \$1,000,000 and the mortgage is only \$100,000; any bank would be happy to have that loan." Well, maybe so. But, after January 1, 2014, when the CFPB's new rules kicked in it may be more difficult to make that loan without the client having their own, separate income from some other source. And even now, there would be no standard (FHA or conventional) mortgage available for that scenario. Why? No income. (Actually, \$300,000 can possibly be considered as \$833/month – 1/360th of \$300,000. But, that income wouldn't service the taxes on such a property). But, by dividing \$300,000 into, let's say 46 months, the qualifying income could be about \$6,520/month. Now, we have something in the range of qualifying for a real mortgage. *Continued top of next page....*



"A true teacher would never tell you what to do. But he would give you the knowledge with which you could decide what would be best for you to do."

– Christopher Pike, *Sati*

5. **Never rely on what you've heard "on the street"** or what an amateur advises. Always call to verify. Call me, have your client call me, have the other attorney call me – but call. Even though I am giving you these tips – even outlined as principles – no tip or principle is as important as involving a professional Divorce-Mortgage Specialist. And the earlier someone calls the better for everyone. **Guidelines are in a constant state of flux.** Many lenders "layer" their own guidelines on top of FHA/VA/Fannie/Freddie guidelines.

I've given some general guidelines which **could** be subject to change but have remained in their present form for quite a while. If you had to memorize only one of these tips – make it #5. Always call. I'll help sort it out.

A Little Humor



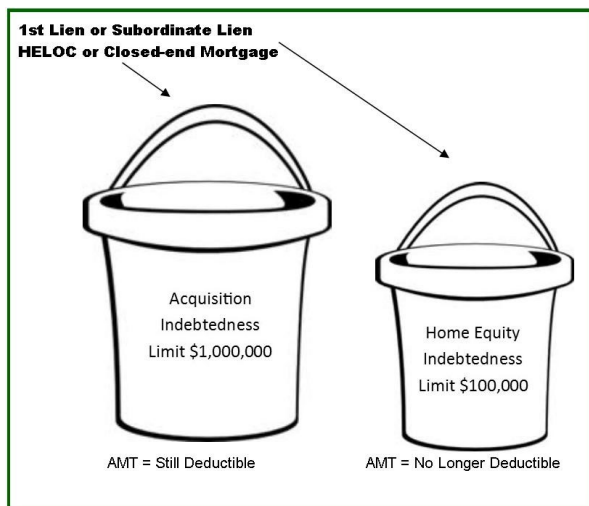
"Cheer up, buddy! She might have got the house... but she can never take away your dignity!"

90 Day Cash Rule Continued....

the debt that is no more than the cost of the home plus improvements can qualify as acquisition indebtedness. Any additional debt may qualify as home equity debt instead.

Home Acquisition Debt Limit. The total amount you can treat as home acquisition debt at any time on your primary home and second home combined cannot exceed \$1 million (\$500,000 if married filing separately). Debt over the \$1 million limit may qualify as home equity debt.

Refinanced Home Acquisition Debt. Any secured debt you use to refinance home acquisition debt is treated as home acquisition debt. However, the new debt will qualify as home acquisition debt only up to the amount of the balance of the old mortgage principal before refinancing. Any additional new debt not used to buy, build, or substantially improve a qualified home is not home acquisition debt, but may qualified as home equity debt.



Acquiring an interest in a home because of a divorce. If you incur debt to acquire the interest of a spouse or former spouse in a qualified home because of a divorce or legal separation, you can treat the new debt as home acquisition debt.

Home Equity Debt. If you took out a loan for reasons other than to buy, build or substantially improve your home, it may qualify as home equity debt. In addition, debt you incurred to buy, build or improve your home, to the extent it exceeds the home acquisition debt limit, may qualify as home equity debt.

Home Equity Debt Limit. There is also a limit on the amount of debt that can be treated as home equity debt. The total home equity debt on your main home and second home is limited to the smaller of:

- \$100,000 (\$50,000 if married filing separately), or
- The total of each home's fair market value reduced by the amount of its home acquisition debt.

The alternative minimum tax (AMT) is another concern for individuals and the mortgage interest deduction. Generally, interest paid on debt used for acquisition indebtedness on a qualified home is unaffected by individuals subject to the AMT. However, individuals who are subject to the AMT may not be able to deduct interest paid on Home Equity Indebtedness. Additionally, any mortgage interest paid on a qualified mortgage that was NOT used to buy, build or substantially improve a qualified home can not be included in your mortgage interest deduction.

When you have divorcing clients who plan to buy a new home with cash it is important to review tax deduction limitations. Additionally, when a client buys a new home with cash and they later decide to take a mortgage out on the property after 90 days from purchase, although a portion of the new mortgage may qualify for the mortgage interest deduction, the new mortgage will be considered a cash out refinance for mortgage purposes and may result in a higher interest rate as well as limits on loan to value, etc.

Please don't hesitate to reach to me if I can help clarify the 90 Day Cash rule with your divorcing clients.

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WHY YOU NEED A CERTIFIED DIVORCE LENDING PROFESSIONAL (CDLP) ON YOUR PROFESSIONAL DIVORCE TEAM.

A professional divorce team has a range of team players including the attorney, financial planner, accountant, appraiser, mediator and yes, a divorce lending professional. Every team member has a significant role ensuring the divorcing client is set to succeed post decree.

A Certified Divorce Lending Professional brings the financial knowledge and expertise of a solid understanding of the connection between Divorce and Family Law, IRS Tax Rules and mortgage financing strategies as they all relate to real estate and divorce. Having a CDLP® on your professional divorce team can provide you the benefit of:

- A CDLP® is trained to recognize potential legal and tax implications with regards to mortgage financing in divorce situations.
- A CDLP® is skilled in specific mortgage guidelines as they pertain to divorcing clients.
- A CDLP® is able to identify potential concerns with support/maintenance structures that may conflict with mortgage financing opportunities.
- A CDLP® is able to recommend financing strategies helping divorcing clients identify mortgage financing opportunities for retaining the marital home while helping to ensure the ability to achieve future financing for the departing spouse.
- A CDLP® is qualified to work with divorce professionals in a collaborative setting.
- A CDLP® can provide opportunities in restructuring a real estate portfolio to increase available cash flow when needed.
- A CDLP® maintains a commitment to remaining educated and up to date in the ever changing industry guidelines and tax rules as they pertain to divorce situations.
- A CDLP® is committed to providing a higher level of service to you and your divorcing clients.

The role of the CDLP is to help not only the divorcing client but the attorney and financial planner understand the opportunities available as well as the challenges divorce can bring to mortgage financing during and after the divorce. When the CDLP is involved during the divorce process and not after the fact, many potential financing struggles can be avoided with valuable and educated input from the Certified Divorce Lending Professional.

“Nothing matters more in winning than getting the right people on the field. All the clever strategies and advanced technologies in the world are nowhere near as effective without great people to put them to work.” - Jack Welch, *Winning*

CDLP® CERTIFIED

Certified Divorce Lending Professional

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