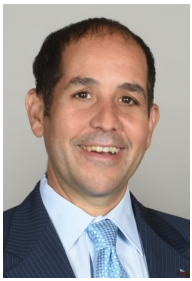
Divorcing Your Mortgage

Top 10 things you should know about your mortgage when going through a divorce



Craig Strent, CRMS, CMPS, CDLP
Chief Executive Officer
Apex Home Loans
NMLS# 6342
(301) 610-5480

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.

As a Certified Divorce Lending Professional, I bring 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.

My role as a CDLP® is to help not only you as the divorcing client but also 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.

Timing of Filing Divorce Petition

The timing of filing a divorce petition with the court has a direct impact on mortgage financing. When a petition for divorce is filed, most mortgage lenders will require either a temporary settlement agreement or a finalized divorce settlement agreement ordered by the court in order to complete and close a new mortgage application and/or loan.

Why? Because many things can change during the course of the divorce process and when maintenance and/or child support are part of the settlement it has a direct impact on either the debt load or the income stated in the mortgage application. The same applies to marital debt and when one party will be ordered as responsible for the payment of that debt—it also has a direct impact on the mortgage application.

Please be sure to discuss with me whether you have already filed or anticipate filing a petition for divorce in the near future so we can determine a game plan and set realistic expectations for a smooth closing.

Use/Ownership Rule

Many times divorcing couples agree to hold on to the martial home until a certain event happens in the future such as a child finishing school, etc. If you anticipate any type of Capital Gains when the sale of the home occurs please be sure to discuss your options with your attorney and/or financial planner.

Under the current capital gains tax rule, you are allowed a $500,000 marital couple exclusion or a $250,000 single exclusion. In order to take advantage of the $500,000 marital exclusion, you must meet both the Ownership and Use rules.

To meet the Ownership Rule—you both must remain on title. To meet the “Use Period Rule” the marital home must have been your primary residence during the marriage. Meaning if one spouse moved out at any time; he/she can still meet the “Use Rule” as long as he/she lived in the home as their marital home at any time during the course of the marriage.

I would be happy to discuss this more in detail with you.

Title Vesting

Title Vesting is the manner in which ownership/title is held on the property. Various states have various ways of holding title; however, the 3 most common are:

- Tenancy by the Entirety
- Joint Tenancy with Survivorship
- Tenancy in Common

If you are retaining the marital home and leaving any current mortgage financing in place, please be sure to discuss current title vesting with your attorney as a divorce judgement can have a default effect on title.

For example, if you currently hold title as “Tenancy by the Entirety” a divorce judgement will default title vesting to Tenancy in Common with no right of survivorship.

If you are refinancing the marital home, I will be more than happy to discuss your options for holding title with you.

Contingent Liability

Often times in a divorce situation the divorce settlement agreement will specify which party is responsible for the payment of specific debt obligations. In situations where both parties are jointly obligated for the payment of a debt; however, if the court orders one party responsible for the payment the debt is now considered a “Contingent Liability.” Note: even though the court can order one party responsible for the payment; neither party is released from the overall obligation to the creditor.

The most common instance in a divorce situation is with current mortgage financing. If the court orders one party responsible for the mortgage payment on the marital home, the current mortgage debt is now considered a contingent liability and is NOT counted in the debt to income ratio for the other party when seeking new mortgage financing.

This contingent liability rule is the same for mortgages, installment loans, credit cards, etc. We can review what debt that still shows on your consumer credit report yet is ordered to be paid by the other spouse.

Qualified Income and 6/36 Rule

There is a significant difference between what is viewed as income and what counts as 'qualified income.' In divorce situations there is often times the receipt of maintenance, child support and income from a property settlement note. While each constitutes as 'income' - each source must meet specific requirements to be considered as qualified income for mortgage financing.

In order to utilize maintenance and/or child support as income for mortgage financing purposes each source must meet the '6/36' rule. You must be able to provide documentation showing receipt of this income for the previous 6 consecutive months. Additionally, at the time of mortgage application, there must remain 36 months of future payments due to you. Otherwise this portion of your actual income can not be considered as income for mortgage financing purposes. Likewise for income from a property settlement note—you must provide 12 months proof of receipt as well as 36 months of future payments due you.

I will review with you the ability to utilize this type of income for your mortgage financing and how we can best structure your mortgage financing needs.

Equity Buy Out

In a divorce situation when one spouse is required to refinance the marital home to give the departing spouse a cash settlement for their share of equity in the marital home—it is considered an "Equity Buy Out"

There are a couple of mortgage financing guidelines to take into consideration in an Equity Buy Out situation.

1. The Divorce Settlement Agreement should state the dollar amount and/or percentage of equity the departing spouse is to receive. The benefit to you is that when the Equity Buy Out is stated in the Divorce Settlement Agreement, you will receive a lower interest rate and avoid a "Cash Out" refinance which carries a higher interest rate and lower 'loan to value' ratios.
2. The entire amount of equity taken out of the home must go directly to the departing spouse at closing of the new mortgage. No cash in any amount can go directly to you or it will not be considered an Equity Buy Out but rather the Cash Out Refinance mentioned above.

90 Day Cash Rule

If you are considering purchasing a new home with cash to avoid any potential mortgage financing during the divorce process and plan to take a mortgage out in the future, you should understand the 90 Day Cash Rule from both a mortgage perspective as well as an IRS Tax perspective.

From a mortgage perspective, you have 90 days to apply for a new mortgage and avoid the new mortgage being considered a 'cash out' mortgage which again may carry a higher interest rate and lower loan to value limits.

Additionally, if you take a mortgage loan out after 90 days of paying cash, you may be limited on the amount of mortgage interest you can deduct on your Federal Income Tax. Please be sure to discuss this with your attorney and/or tax advisor.

If you are considering paying cash for a new home and planning to mortgage the home in the near future, please let me help you with the timing to avoid any potential limitations and higher interest rates.

Maintaining Credit During Divorce

Maintaining your credit during a divorce can sometimes be a challenge; however, understanding what impacts your credit score ahead of time can be beneficial. Here are a few suggestions to help maintain your credit during the divorce:

- Communication between both spouses can help avoid any miscommunication as to who is paying what bill.
- Ask each creditor that extended you credit to transfer the debt to the name of the person who will be responsible.
- Keep joint bills current—even missed payments made years after the divorce will be reported for all individuals associated with the account.
- Ask the credit grantor to remove a spouse who is only an authorized user or close the joint account to avoid additional charges.
- Advise creditors that one spouse is not responsible for the debts charged by the other spouse to joint accounts after the divorce.
- Close as many joint accounts as possible.

You have the ability to access your credit report from all 3 bureaus (Experian, Equifax and Transunion) annually. Visit www.annualcreditreport.com for your free report.

Appraised Value / Appraisal

One of the first steps in dealing with real estate issues in a divorce situation is to determine the value of the property. If you and your spouse are unable to agree on the current market value, there are several valuation methods that can be used.

Tax Assessed Value: The tax assessed value is usually not an accurate method to value real estate. Tax valuations are generally low by as much as ten to twenty percent. If there is a dispute in value, the tax assessed value is likely to be given little weight in court.

Real Estate Agent: A real estate valuation can be performed by a real estate agent at little to no cost; however, such valuations are often less reliable than those performed by an appraiser since a real estate agent performs an appraisal to maximize sales price.

Professional Appraisal: it is often most cost effective to agree on a real estate appraiser to have a market valuation performed. This service will often cost $300 to $400 on average. Be sure; however, to be specific in requesting a Divorce Appraisal on a General Purpose Appraisal Report which is specific for divorces. If the appraiser submits a “Uniform Residential Appraisal Form” which is most commonly used for mortgage purposes, the appraisal may get thrown out of court.

I will be happy to explain the difference in the different appraisal types for you.

Documentation Needed

Every divorce is a unique situation and the documentation requirements for obtaining mortgage financing will vary depending on the situation. I understand that this is a very emotional and private time for you and I hope by providing this information I can diffuse some the negative emotions involved.

In addition to the standard mortgage financing documents which include standard income documentation; tax returns; bank statements; etc., the most common documentation requirements in a divorce situation may include but definitely are not limited to:

1. ***Executed copy of the final Divorce Settlement Agreement***— executed by the judge and stamped by the court. I realize this is a very private document and you may feel like it is an invasion of your privacy. However, the Divorce Settlement Agreement is needed to verify any court ordered assignment of marital debt as well as verify any potential income from maintenance and/or child support, etc.
2. ***Proof of age for children whom child support is paid.*** Many lenders will require proof of age of a child for whom child support is paid. This is a requirement to establish the continuance requirement of support for the required 36 months discussed earlier in the 6/36 rule of qualified income. A copy of the child's birth certificate may be requested to establish the continuance rule.

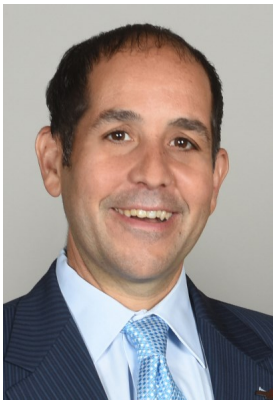
3. ***Proof of receipt of maintenance/support.*** Depending on the type of mortgage financing you are applying for, you may need to provide proof of receipt of support for the amount of time determined by the investor. Typically this will be proof of receipt for 6 months; however, maybe 3 months if receiving a government loan. Again—the 3 year continuance will need to be established as well.
4. ***Promissory Note Income***—if income from a Promissory Note is being used for qualified income, proof of receipt of 12 months must be provided in addition to substantiating the 36 months continuance as well.

Again, depending on the situation of your specific divorce case, there may be a need for more or less documentation. I understand the sensitivity of many of these documents and I want to assure you that my team of underwriters will not request anything that is not needed and they value and respect your privacy as well.

I look forward to helping you with your current and future mortgage financing requirements. It is my goal to help you manage this part of your divorce and giving you confidence that you are obtaining the highest level of knowledge and professionalism from me.

Again, don't hesitate to reach out to me with any questions and/or concerns as we move forward together.

……. Craig Strent



Craig Strent, CRMS, CMPS, CDLP

Chief Executive Officer

NMLS# 6342

Apex Home Loans

3204 Tower Oaks Blvd, Suite 400

Rockville, MD 20852

(301) 610-5480

craig@apexhomeloans.com

www.apexhomeloans.com

BEST of Bethesda

SCOTSMAN GUIDE TOP ORIGINATORS 2014 VERIFIED TOP PRODUCER

SCOTSMAN GUIDE TOP ORIGINATORS 2012 VERIFIED TOP PRODUCER

Montgomery County Department of Economic Development Small Business Awards Celebrating Small Business Success

Inc. 5000

Member DLA Divorce Lending & Real Estate Association

CDLP® CERTIFIED

Certified Divorce Lending Professional