DIVORCE & MORTGAGE FORECLOSURE

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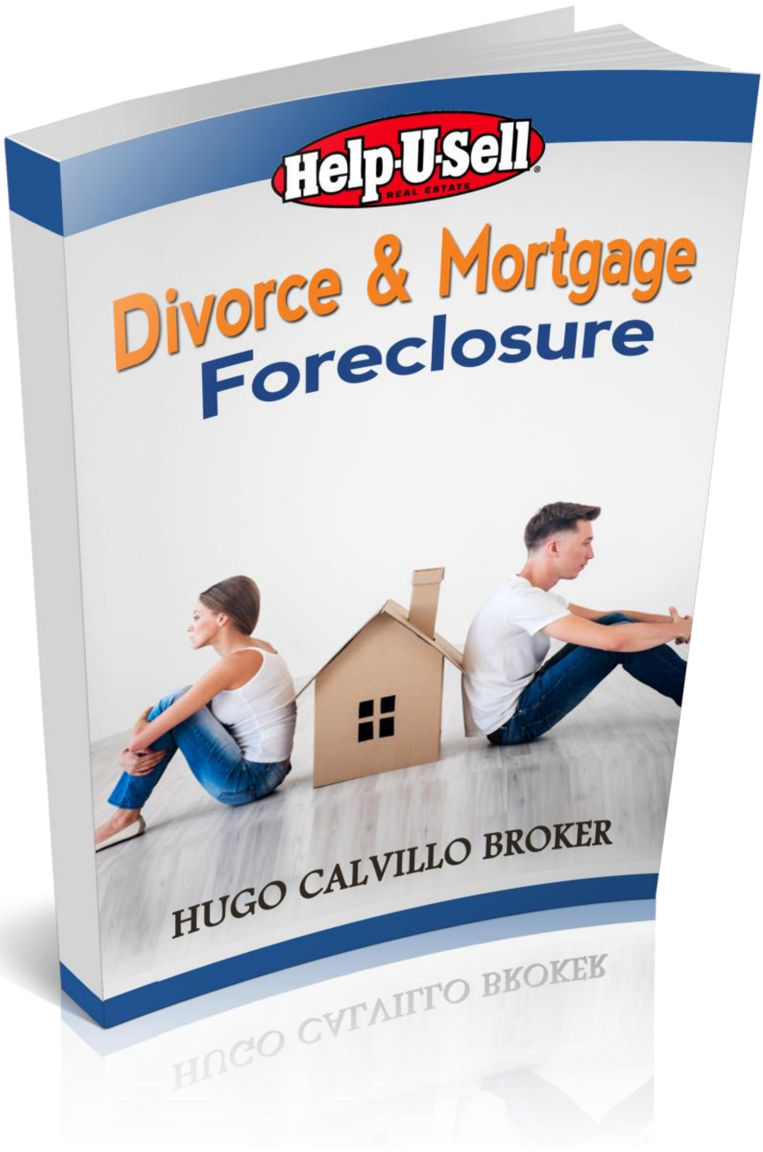
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Does Divorce Cause Foreclosure or Foreclosure Cause Divorce?

Without a doubt, financial issues are often the biggest strain on a marriage, and if the money problems were great during the marriage, they are doubly so after the split, because it's far more costly to maintain two separate domiciles than it was just one. The house payment, which seemed so formidable during your marriage, may become impossible when you only have your own income to count on. Conversely, the debt while married may be so overwhelming that all you do is argue which eventually leads to divorce. To paraphrase the old saying, "What came first? The divorce or the foreclosure?"

The cost of a divorce itself can be the main cause of losing a home in foreclosure. Poor communication in a divorce is a factor which leads to unintended neglect and defaulted payments as well. There are many different divorce scenarios that lead to home foreclosure. Divorce often results in foreclosure, and foreclosure is a leading cause of divorce. Statistics in the state Orlando Florida offer support for both sides of the issue. Not only does it have the highest divorce rate in the nation, it also boasts the highest number of foreclosures. Throw in the worst unemployment numbers in the entire country, and you can see a recipe for marital disaster. The order that the problems occur in is really a moot point here, possibly because the reasons a couple is getting divorced and losing their home are hopelessly entangled. Both issues are extremely costly to those involved in them both emotionally and financially, and it's sad, because it really doesn't have to be this way.

The American Dream of home ownership isn't as easy to come by as it once was. Many couples struggle to get into a home, because required down payments and closing costs are so prohibitive, and mortgages are large and hard to obtain. Many folks who managed to buy homes before the housing bubble burst have lost them to foreclosure, because when times got hard, they didn't have the cash resources to continue making the payments. Dreams are now something that you must fight for, and if both you and your spouse realize from the beginning that there may be difficulties in achieving your goals, you'll both be able to approach them with a cooler head and a more positive outlook.

Often in the course of a divorce, couples find it difficult to agree on what to do with their home. In the past, when divorcing homeowners faced a foreclosure, they could simply sell the property and equitably distribute the profits. However, due to the fact that some houses are now “underwater” (where the fair market value is lower than the total amount owed on the mortgage debt), it can be difficult to sell the home at a profit or even break even on a sale. This does not mean that there are no options available when facing a foreclosure in the middle of a divorce. It is in fact possible for one spouse to retain the property, if he or she desires it, or to dispose of the property without having to succumb to foreclosure.

Until debts do us part - It’s very common in divorces for one spouse to transfer their interest in the marital home to the other. It’s also very common for the transferring spouse to think that such a transfer relieves them of any liability for the mortgage—unfortunately, that’s not how it works.

If both spouses are listed as borrowers on the mortgage, transfer of the property alone will not remove a spouse from the mortgage.

As far as the bank is concerned, both spouses are obligated to make sure the mortgage gets paid, regardless of whose name is, or isn’t, on the deed.

Should the mortgage go unpaid, foreclosure will be filed against both spouses, both spouses' credit will be affected, and both spouses will face the potential of a deficiency judgment (a judgment ordering payment of any deficiency between what was still owed on the mortgage and what the property sold for at foreclosure).

Unsuspecting spouses often find themselves dealing with foreclosure after divorce on a home they no longer live in, nor own.

And so, until proper steps are taken to clarify financial responsibility for the mortgage, divorce may not be the final and complete separation that a couple was hoping for.

Happily ever after - Despite the inherent challenges involved, it is in the best interests of divorced couples to work together towards a solution that effectively carries out their intentions and allows both spouses to move forward without uncertainty regarding their financial obligations or fear of foreclosure.

HOW DOES DIVORCE AFFECT FORECLOSURE?

It is not uncommon for divorce to coincide with foreclosure. Let’s take a deeper look at it. Navigating a foreclosure during divorce will largely depend upon when the mortgage was obtained. If the mortgage was obtained before a marriage, it will likely only be the responsibility of one spouse. For the purposes of this content, it will be assumed that mortgage was obtained after the couple married and both couples signed the loan document.

The laws governing divorce and foreclosure will vary from state to state. Ultimately, however, there are three general situations couples whose marriage is ending are facing.

1) One Spouse Wants to Keep the House

If one spouse wants to keep the house, that spouse can typically do one of these things:

- Assume the mortgage
- Refinance in their name alone
- Apply for a loan modification

If a spouse assumes the mortgage, they may need to demonstrate they can afford payments on their own to avoid foreclosure. Many mortgages contain a due on sales clause; however, under federal law, this clause is not enforceable if the property is transferred as the result of a divorce.

Moreover, a spouse can also refinance the home in their own name, therefore releasing the other spouse from liability. However, refinancing may not always be available, and particularly if the couple is struggling financially and foreclosure is closely looming on the horizon.

Even if a spouse may not be able to assume a mortgage as it is, and is not capable of refinancing due to the mortgage being severely delinquent in payments, one final option is for the spouse who wishes to keep the home to apply for a loan modification. Because a lender would rather continue to receive some type of payment over initiating a foreclosure, this option is common for borrowers in financial trouble. However, it is worth noting that before a lender will be able to modify a loan agreement, both parties to the loan will have to agree. While sometimes one spouse may be happy to release the mortgage to the other, this may not be the case where a divorce is not amicable or where both spouses want to keep the house.

2) Both Spouses Want to Keep the House

This scenario, particularly if both spouses wish to remain in the house, is not ideal for either party, particularly if foreclosure is inevitable. This may require a court to intervene, and even require the sale of the property. Thus, an otherwise uncontested divorce may turn into a contested one, raising legal fees, court costs, and making an already difficult situation even harder.

If the property is approaching foreclosure, and the divorcing couples cannot agree, it could spell financial disaster. Often times, the sale of a home will not cover the cost of the mortgage and other various fees that have accumulated. Thus, if both spouses want to keep the house, and cannot reach agreement, both may be liable for a deficiency judgment.

3) Neither Spouse Wants to Keep the House

The options for both spouses who do not want to keep the home are perhaps easiest in terms of divorce. If a couple’s home is facing foreclosure, and their marriage is ending, a situation where neither spouse wishes to remain in the house could potentially be beneficial for everyone. For instance, both spouses could rent the home to a tenant, and their rental payments could cover the mortgage payment, and potentially more. Moreover, the lender may be willing to accept the deed to the home in lieu of initiating foreclosure proceedings. This may ultimately save both spouses from being liable to a deficiency judgment. Finally, if the home is worth more than the mortgage, the couple's final choice as a couple could be to sell the home and split any remaining proceeds.

WAYS TO AVOID A FORECLOSURE WHEN GOING THROUGH A DIVORCE

Foreclosure rules differ quite a bit from state to state. Some states have ant deficiency statutes that prohibit lenders from coming after you for a delinquent loan balance, or for property taxes, after the house goes into foreclosure; others leave you on the hook for the balance owed after the property is resold. If you own a condominium that is foreclosed on, you may remain on the hook for homeowners' association expenses. And if you have a second mortgage or equity line of credit, it’s likely not going to be covered by the ant deficiency law.

Foreclosures are either judicial—meaning they are processed in court, you end up with a judgment on your record, and the entire process is public—or non judicial, meaning it’s a private transaction between you and the bank, although when the bank puts a “foreclosure sale” sign up outside your house, your privacy is lost. Either way, your credit record will show a foreclosure for seven years.

In as much as divorce laws, foreclosure laws and procedures vary by state, the financial implications for either spouse should be clearly defined in the separation agreement or divorce decree. Even if spouses agree that one will keep the marital home, if you get behind in the mortgage payments during the divorce process, both can face serious financial consequences as a result. But there are

options available to help you avoid foreclosure and protect your credit.
These foreclosure alternatives require the cooperation of both spouses, which may be difficult during a divorce.

Short Sale

Even though a short sale will affect both spouses' credit scores, it won’t look as bad as having a foreclosure show on each of your credit reports. If the property is underwater and the divorcing homeowners wish to dispose of the property, an alternative to a foreclosure is a short sale. A short sale is a transaction where the homeowners sell the property for less than is owed on the mortgage. The lender must agree to accept the proceeds, which fall short of paying off the total mortgage debt. In some cases, the difference between the sales price and the mortgage debt will be forgiven. In others, the lender may require that the borrowers remain jointly liable for the deficiency (meaning the difference between the sales price and the total debt), though it may be possible to bargain for a reduced deficiency or to offer a lump sum settlement to satisfy the remaining debt. (Or, in some cases, such as in California, state law may prohibit a deficiency judgment after a short sale).

Deed in Lieu of Foreclosure

A deed in lieu of foreclosure (deed in lieu) is a transaction where the homeowners grant title to the property to the lender in exchange for the lender releasing them from the mortgage. This can be a viable option in a divorce to dispose of the property and avoid a foreclosure. In most cases, a deed in lieu will be in exchange for full satisfaction of the debt. However, it is possible that a deficiency could exist with a deed in lieu. If the deed in lieu documents clearly state the amount of the deficiency, which will be the difference between the fair market value and the mortgage debt, this means that the borrowers remain jointly liable for the deficiency amount. To avoid a deficiency with a deed in lieu, the borrowers must negotiate forgiveness of any deficiency amount that is owed to the lender. As with short sales, it is also possible to negotiate a reduced deficiency or pay a lump sum to settle any remaining debt associated with a deed in lieu.

Renting Out the Home

When divorcing borrowers find they cannot sell the property or complete a deed in lieu, sometimes it is possible to rent the property and then apply the rental income towards the mortgage. This can, however, be a difficult option since the divorcing couple’s remains responsible for the property, as well as the mortgage, and must come up with a mutually agreeable arrangement for managing the rental.

Refinancing the Mortgage

If one spouse wants to keep the property, that spouse can refinance the property so that the co-borrower is released from the debt. Frequently, the terms of a divorce will require a refinance if one borrower wants to retain the property. However, refinancing may not be possible if the borrower who wants to keep the home is in financial distress due to a lost job or reduced income, or if the property is severely underwater.

Loan Modification

Another option if one of the divorcing borrowers wants to retain the property is to apply for a loan modification, though both borrowers will remain responsible for the loan even after it’s modified. If one spouse won’t agree, this can be a complicated, if not unworkable endeavor, since both borrowers will need to sign the loan modification agreement. However, once a divorce settlement is finalized and one borrower is awarded the property, then that borrower can apply for loss mitigation assistance solely. If that borrower qualifies for a loan modification, the co-borrower may be released from liability on the loan and his or her signature will not be needed. Of course, this is subject to any provisions in the divorce decree. For example, if the divorce decree states the remaining borrower must refinance to remove the co-borrower from the mortgage, then a loan modification will not be granted.

Sticky Situations

A lender can foreclose on a property once the loan goes into default regardless of the circumstances. Even when one spouse is awarded the marital home and the other spouse ordered to make the mortgage payments, the bank can still go after any parties named on the loan documents when the payments aren't made. In some cases, the court orders one spouse to refinance the mortgage loan, but that's a difficult stipulation to enforce. The spouse to whom the home was awarded can sue the other spouse for contempt of the court’s order; however, a lender won't refinance the mortgage loan in that spouse’s name if he doesn’t qualify for a loan on his own.

When to Seek Counsel

The logistics of arranging any of these options can be problematic during a divorce when parties find it difficult to work with one another. If you are dealing with foreclosure during a divorce and are having a difficult time reaching an agreement with your spouse about what to do with the home, you should seek the assistance of a qualified attorney or professional real estate company who can inform you about which options are available and can facilitate arrangements to divest or retain the property.

We are Professionals in the field of real estate. We help to manage your entire housing sale and buy challenges; this includes homes that are difficult to sell for a number of reasons, and also homes that have their owners in ugly, captive situations. We pay cash to purchase these homes from their owners, rehab them, and then sell these homes to investors or buyers, or rent them to tenants and further gives professional guides on how to go about divorce and mortgage foreclosure.

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