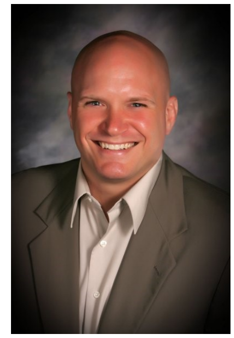
Todd Guidry

Divorcing Your Mortgage



January 2017 Issue

As a Divorce Lending Professional, I am presented with many unique situations. As we both know, no two divorce cases are ever the same. One of the most frequently asked questions that I am asked is how one party to the divorce can purchase a new primary residence either during the divorce or prior to filing the petition or obtaining a legal separation.

Falling in line with mainstream IRS tax rules, a married couple without a legal separation can have two primary residences. Yes, there is a tax exception to this rule when meeting the requirements for Head of Household; however, I am focusing on mortgage financing rules.

When a married couple is not yet divorced or legally separated, one party may not solely purchase a new home and obtain mortgage financing as a primary residence if they currently own their marital home. This same rule applies even if the 'buying' spouse is not on the current mortgage or title of the marital home.

So what are the options for the buying spouse?

The buying spouse will typically need to purchase the new home as an investment property for mortgage financing purposes. Buying a new home as an investment property carries some stricter guidelines than buying a primary residence.

- **Down Payment:** Typically requires a 20% down payment.
- **Interest Rates:** Due to what is called "Risk Based Pricing", investment properties will carry a slightly higher interest rate than primary residences.
- **Insurance Requirements:** Insurance requirements may vary by lender; however, landlord insurance with rent loss coverage may be required which carries a higher premium than a primary residence.
- **Reserves:** Again, reserve requirements may vary by lender and loan program; however, can sometimes require 3-6 months reserves for all owned properties.

Continued in page 3.

Did You Know?

New Year's Day History

The earliest recorded festivities in honor of a new year's arrival date back some 4,000 years to ancient Babylon. For the Babylonians, the first new moon following the vernal equinox—the day in late March with an equal amount of sunlight and darkness—heralded the start of a new year. They marked the occasion with a massive religious festival called Akitu (derived from the Sumerian word for barley, which was cut in the spring) that involved a different ritual on each of its 11 days. In addition to the new year, Atiku celebrated the mythical victory of the Babylonian sky god Marduk over the evil sea goddess Tiamat and served an important political purpose: It was during this time that a new king was crowned or that the current ruler's divine mandate was symbolically renewed.

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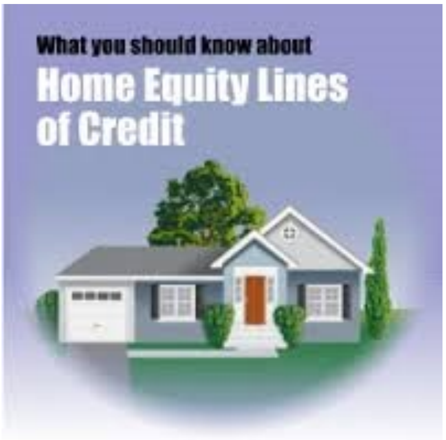

What You Should Know About Home Equity Lines of Credit in a Divorce Situation

Anytime you have a martial home involved in a divorce situation, it is important to identify any lines of credit attached to the home. Many times when clients are asked what the mortgage balances are on the marital home or other jointly owned properties, they often forget about any open equity lines of credit because there may be no outstanding balances.

Even if you obtain a current consumer credit report for your clients, depending on the format of the report an equity line of credit with a zero balance is often overlooked. Many consumer credit reports will group all accounts with zero balances towards the bottom of the credit report whether they are closed or open accounts.

When working out the details on the martial home, don't stop with just obtaining a legal description of the property. Be sure to pursue actual evidence of ownership and encumbrances, including liens, by order either a full time commitment from a local title company. At the very minimum, I recommend ordering a O&E (Ownership and Encumbrances) report as this will show you how current title is vested which is needed for any transfer of ownership as well as all outstanding liens, mortgages tied to the property.

If you find that there is an open equity line of credit on the property and if there is a balance on it, note that simply paying off the home equity line of credit does NOT close the line of credit. A letter requesting that the line of credit be closed is required. If left open even though it is paid off, both parties are liable for any future balance and either party can use the line of credit—regardless if ownership was transferred to one party.

In First American Title Insurance Company vs. TCF Bank, the appellate court held that the payment of a line of credit loan by a title company in full did not close the line of credit, because the demand must come from the borrower or the credit line is not cancelled. In this case, First American Title Insurance Company paid off the balance of an open line of credit; however, did not request the line of credit be closed with TCF Bank. Afterwards, the line of credit was used by the vacating party and First American Title was held liable for the amount drawn on the unclosed line of credit.

When freezing a line of credit, obtain a letter signed by each of the mortgagors requesting that the line of credit be frozen, and request written acknowledgment from the lender of the bank. If one of the parties refused to cooperate, obtain a court order requiring the reluctant party to sign a written request freezing the account. This may become an issue when the marital home is being transferred to one party and there is not an immediate refinancing of current outstanding mortgages on the property.

When one spouse is retaining the marital home and an open line of credit is overlooked during the divorce process, there could be detrimental effects on the spouse who was awarded the martial home. Any future use of the line of credit, divorced or not, is a lien against the property and must be paid.

Investment Property Purchase Continued….

Once the divorce is finalized and or a legal separation is obtained, the property can then be refinanced to primary residence interest rates and insurance requirements may be modified in alignment with a primary residence as well. Although it may seem quite burdensome for the buying spouse to obtain investment property financing, sometimes we have to be strategic in our planning and understand that things may be modified once other things are finalized.

Preparing for the January Jump in Divorcing Filings

We all know that divorce filings typically jump by one-third in January of every year. Preparing our clients for an easier transition where mortgage financing requirements are concerned can be a benefit for all parties involved.

There is a saying, **“You don’t know what you don’t know.”** If you have new divorcing clients who own real estate and they will need to obtain new mortgage financing to either refinance and buy out the equity of the other spouse or set themselves up for obtaining a new purchase money loan, it is to the benefit of not only the divorcing clients but you as their attorney/advisor to work with a Certified Divorce Lending Professional. Not only are there certain requirements for the use of maintenance and child support for qualified income, but certain aspects of the divorce/marital settlement agreement can have a detrimental effect on obtaining mortgage financing as well ~ sometimes it is just a matter of wording that can cause a mortgage loan to be denied.

Please don’t hesitate to reach out to me during the settlement process when your divorcing clients need to consider their current mortgage financing needs pursuant to the divorce. I can help identify potential hurdles and opportunities for a positive outcome with their mortgage financing. If you wait until the divorce is final, we must all deal with the cards that are dealt and that is the main reason divorcing clients are unable to obtain mortgage financing.

Our mutual goal is to ensure that our divorcing clients come out of the divorce as whole as possible and avoid the inability to execute any requirements of the final settlement agreement.

I look forward to developing a strong relationship with you and your practice in 2017 and becoming a valuable member of your professional divorce team.

“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*

Wishing you, your family and your practice a happy and prosperous New Year in 2017!

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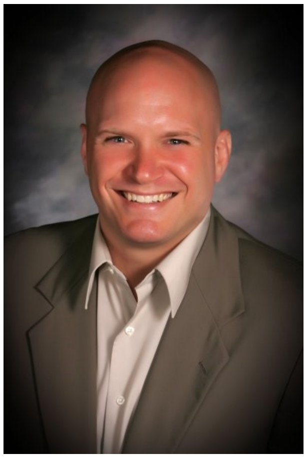

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Why you Need a Certified Divorce Lending Professional (CDLP) on Your Professional Divorce Team.

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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EQUAL HOUSING LENDER

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