Todd Guidry

DIVORCING YOUR MORTGAGE

June 2017 Issue

DID YOU KNOW??

This Month in History

June 1, 1926– Marilyn Monroe is born in Los Angeles, CA, as Norma Jean Mortensen.

June 4, 1944– Rome was liberated by the U.S. 5th Army let by General Mark Clark, during WWII in Europe.

June 10, 1652– In Massachusetts, silversmith John Hull opened the first mint in America, in defiance of English colonial law. The first coin issued was the Pine Tree Shilling, designed by Hull.

June 14, 1775– The first U.S. Military service, the Continental Army, consisting of six companies of riflemen, was established by the Second Continental Congress. The next day, George Washington was appointed by a unanimous vote to command the army.

June 28, 1914– Archduke Francis Ferdinand, Crown Prince of Austira and his wife were assassinated at Sarajevo, touching off a conflict between the Austro-Hungarian government and Serbia that escalated to WWI.

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Don't Roll the Dice: Top 10 Things You Should Know About Your Mortgage When Going Through a Divorce

Divorcing clients have many questions when going through a divorce; especially when real estate and mortgage financing are involved. Here are ten top things every divorcing client should take into consideration when dealing with the marital home and/or other real estate.

1. Timing of Filing The 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.

2. Use/Ownership Rule. Often 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 issue when the sale of the home occurs, please be sure to discuss your options with your attorney and/or financial planner.

3. **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.

Top 10 Things You Should Know About Your Mortgage Continued....

4. 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 and the court orders one party responsible for the payment, the debt is 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.

5. 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.

6. Equity Buy Out. In a divorce situation where 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”. The divorce settlement agreement must be worded correctly to avoid this transaction from being considered a “Cash Out” refinance which may carry higher interest rates and lower loan to value restrictions.

Collaboration

Working together to achieve a goal. A recursive process where two or more people or organizations work together to realize shared goals.

It takes teamwork to bring the typical divorce settlement together. There are usually quite a few people involved from the divorcing clients, attorneys, financial planners, mediators, real estate agents, appraisers and mortgage professionals.

As daunting as the coordination required might seem, you can always count on me to manage the mortgage financing piece for your divorce team and divorcing clients.
This is what I do and I do it every day.

Never hesitate to reach out whenever you have questions.

7. 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.

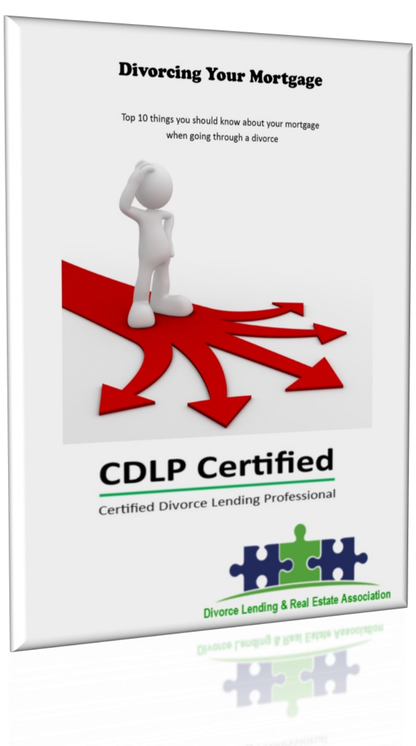
8. Maintaining Credit During Divorce. Maintaining your credit during a divorce can sometimes be a challenge; however, understanding what impacts your credit score ahead of time can be beneficial. You have the ability to access your credit report from all 3 bureaus (Experian, Equifax and Transunion) annually. Visit www.annualcreditreport.com for your free report.

9. 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, it is often most cost effective to agree on a real estate appraiser to have a market valuation performed. A professional divorce appraiser is also able to determine a value of the property at a specific period in time as well –not only current value.

10. 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. The most common items of documentation in a divorce situation will consist of:

- ⇒ An executed copy of the final Divorce Settlement Agreement
- ⇒ Proof of age for children whom child support is paid
- ⇒ Proof of receipt of maintenance/support. Typically this will require 6 months proof of receipt and again meeting the 3 year continuance of income as well.

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..



If you would like more details on the top 10 things your clients should know about their mortgage when going through a divorce, please let me know and I will send you a copy of an informational booklet for reference as well as extra copies you can provide to your divorcing clients as well.

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Divorce Lending & Real Estate Association

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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