Todd Guidry

Divorcing Your Mortgage

August 2018 Issue

Did You Know?

This Month in History

August 1, 1944 - Anne Frank penned her last entry into her diary. "[I] keep on trying to find a way of becoming what I would like to be, and what I could be, if...there weren't any other people living in the world." Three days later, Anne and her family were arrested and sent to Nazi concentration camps. Anne died at Bergen-Belsen concentration camp on March 15, 1945, at age 15.

August 2, 1776 - In Philadelphia, most of the 55 members of the Continental Congress signed the parchment copy of the Declaration of Independence.

August 5, 1861 - President Abraham Lincoln signed into law the first Federal income tax, a 3 percent tax on incomes over $800, as an emergency wartime measure during the Civil War. However, the tax was never actually put into effect.

August 5, 1962 - Film star Marilyn Monroe died at age 36 from an overdose of sleeping pills. She made 29 films during her career and came to symbolize Hollywood glamour.

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FOR SALE

When selling the marital home, don't overlook the importance of Basis.

Divorcing Clients who are selling the marital home need to understand the importance of Basis. The basis of the property is usually the acquisition cost. The cost is the amount paid in cash, debt obligations, other property, or services. In addition to the cost of the property, certain other fees and expenses become part of your cost basis.

Real estate taxes. If you pay real estate taxes the seller owed on real property purchased and the seller did not reimburse you, treat those taxes as part of your basis. You cannot deduct them as taxes paid. If you reimburse the seller for taxes the seller paid for you, you can usually deduct that amount as an expense in the year of the purchase. Do not include that amount in the basis of the property. If you did not reimburse the seller, you must reduce your basis by the amount of those taxes.

Settlement costs. Your basis includes the settlement fees and closing costs for buying the property. You cannot include in your basis the fees and costs for getting a loan on the property. A fee for buying property is a cost that must be paid even if the property was purchased with cash. The following items are some of the settlement fees or closing costs included as basis: Abstract fees (abstract of title fees)

- Charges for installing utility services
- Legal fees (including title search and preparation of the sales contract and deed)
- Recording fees
- Surveys
- Transfer taxes
- Owner's title insurance

Any amounts the seller owes that you agree to pay, such as back taxes or interest, HOA assessment fees, recording or mortgage fees, charges for improvements or repairs, and sales commissions.

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Settlement costs do not include amounts placed in escrow for the future payment of items such as taxes and insurance. The following items are some of the common settlement fees you CANNOT include in the basis of the property:

- Casualty insurance premiums
- Rent for occupancy of the property prior to closing
- Charges for utilities or other services related to occupancy of the property prior to closing
- Charges connected with obtain a mortgage
- Fees for refinancing a mortgage

Dispositions other than sales: Some special rules apply to other disposition of your main home.

Foreclosure or repossession – If your home was foreclosed on or repossessed, you have a disposition and may have ordinary income, gain or loss.

Abandonment. If you abandon your home, you may have ordinary income, gain, or loss.

Trading homes – if you trade your home for another home, treat the trade as a sale and purchase

Transfer to spouse – If you transfer your home to your spouse or transfer it to your former spouse incident to your divorce, you in most cases have no gain or loss. This is true even if you receive cash or other consideration for the home. If you owned your home jointly with your spouse and transfer your interest in the home to your spouse, or to your former spouse incident to your divorce, the same rule applies. You have no gain or loss.

Exception: These transfer rules may not apply if your spouse or former spouse is a nonresident alien. In that case, you generally may have a gain or loss.

Involuntary Conversion – You have a disposition when your home is destroyed or condemned and you receive other property or money in payment, such as insurance or a condemnation award. This is treated as a sale and you may be able to exclude all or part of any gain from the destruction or condemnation of your home.

Let's put the importance of basis into play with a couple of divorce scenarios.

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Importance of Basis

Paul and Karen

Paul and Karen	
Condo	$350,000
401(k)	150,000
Savings	250,000

Assets	Karen	Paul
	350,000	
	-250,000	
	100,000	
	150,000	250,000
	250,000	250,000

Paul and Karen are getting a divorce and believe the division of their assets are pretty simple and straight forward.

Karen hires you as her divorce attorney and tells you that Paul and her have very few assets and already have decided how to divide them and just need you to draw up the divorce settlement agreement. Awesome – how much simpler of a divorce case can you get, right?

Here is the situation:

- Paul and Karen own a vacation condo is Hilton Head, South Carolina, worth $350,000.
- Karen has a 401(k) worth $150,000.
- They have a joint savings account of $250,000.

Their plan to divide their assets are as follows:

- Paul tells Karen she can have the condo and since she is a talented real estate agent she can sell the property for $350,000 but needs to know that Paul took out a mortgage on the property for $250,000. (Thus the savings account balance of $250K). Once she sells the property, the net proceeds will be $100,000.
- Karen will keep her 401(k) worth $150,000 so her total marital assets after divorce will be equal to the $250,000 cash in the savings account that Paul is taking.

In their eyes, the division of assets is simple and straight forward. Unfortunately, the sale of the vacation home changes the end result when Basis is taken into account.

- Paul signs the papers to transfer ownership to Karen and Karen manages to sell the condo in SC for $350,000.
- The property was initially acquired for $90,000.

Paul and Karen didn't take into account the potential of a tax liability for a capital gain of $260,000. Karen is unable to use her capital gains exclusion of $250,000 because the property was not her primary residence.

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Divorce Lending Institute
Professional Member

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*

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