

I Want The House! What It Takes to Keep It After Divorce

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For many couples going through a divorce, the marital home is not only their most valuable asset but also their most sentimental asset. If one spouse wants to keep the home, they may need to “buy out” the other spouse’s marital interest. There are several ways to accomplish this, depending on finances, the mortgage, and the overall settlement strategy.

The most common way to buy out a spouse’s share is through refinancing the mortgage. The spouse keeping the home applies for a new mortgage in their own name. The new loan pays off the existing joint mortgage. At closing, they may also borrow enough to pay the other spouse their share of the home’s equity. The other spouse is removed from the mortgage and is no longer liable for the debt. The spouse keeping the home gains financial independence and certainty, however they must qualify for the new loan independently, based on their own income, credit score, and debt-to-income ratio. Higher interest rates may also affect affordability.

In some cases, a lender may allow an assumption of a mortgage. Instead of refinancing, the spouse keeping the home formally “assumes” the existing mortgage. They take over responsibility for the loan under its current terms. This allows the spouse to keep the existing interest rate and loan terms, which can be especially valuable in a rising interest rate environment. Not all mortgages are assumable, and the lender must approve the assumption. The spouse taking over the loan must still prove they qualify. Some jurisdictions, such as Maryland, are enacting laws that specifically require lenders to allow an assumption incident to divorce, provided the party meets applicable credit and underwriting standards. In Maryland, it also applies retroactively to existing loans (with nuances for conforming vs. jumbo loans). Check your local laws.

Sometimes, the buying spouse can offset the other spouse’s equity interest without immediately changing the mortgage. This works when one spouse keeps the home and relinquishes other marital assets of equal value, such as retirement funds, investment accounts, or cash. This avoids immediate refinancing or sale and allows for a creative settlement tailored to the family’s circumstances. The spouse leaving the home may remain on the mortgage unless it is refinanced later, which can impact their credit and borrowing ability.

If neither spouse can afford to keep the home, or if it makes more sense financially, the couple may decide to sell. In this scenario, the home is listed for sale, and the proceeds (after paying off the mortgage, costs of sale, and any liens) are divided according to the divorce agreement. This provides a clean break and cash that can help each spouse move forward and eliminates ongoing joint financial ties. However, this can be emotionally difficult, especially if children are still living at home. The timing of the real estate market may also impact the value received.

Every family’s situation is different, and the right approach depends on finances, loan eligibility, and long-term goals. Whether through refinancing, assumption, offsetting with other assets, or sale, it’s important to consider both the short-term affordability and the long-term financial implications. Consulting with both a family law attorney and a mortgage professional can help you

choose the option that best supports your future stability.