

What Happens to the Marital Home During Divorce?

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The marital home is often one of the most significant and emotionally charged assets in a divorce. Deciding what happens to the home can be a complex and contentious process involving both financial considerations and personal attachments.

There are options with regard to the Marital Home, including:

1. Selling the Home
 1. Pros: Selling the marital home is a common option, as it allows both parties to liquidate the asset and divide the proceeds. This option can give both parties a clean break and financial resources to start anew.
 2. Cons: Selling a home can be time-consuming and emotionally challenging. Additionally, market conditions may affect the sale price, potentially leading to financial losses.
2. One Spouse Buys Out the Other
 1. Pros: If one spouse wishes to keep the home, they can buy out the other spouse's share. This option allows one party to maintain stability, particularly if children who benefit from staying in the same home and school district are involved.
 2. Cons: The buying spouse must have the financial resources to afford the buyout, which can be substantial. Additionally, refinancing the mortgage in one spouse's name may be necessary, which could be challenging depending on their financial situation.
3. Co-Ownership Post-Divorce
 1. Pros: In some cases, divorcing couples may agree to continue co-owning the home temporarily. This arrangement can be beneficial if the housing market is unfavorable, or the children's needs are prioritized.
 2. Cons: Co-ownership requires ongoing cooperation and communication, which can be difficult post-divorce. There is also the risk of future disputes over maintenance costs, mortgage payments, and eventual sale.
4. Deferred Sale (Nesting)
 1. Pros: Deferred sale or "nesting" involves spouses taking turns living in the home while the children remain there full-time. This arrangement provides stability for the children and allows both parents to share in the responsibilities of the home.
 2. Cons: This arrangement requires significant coordination and ongoing communication. It is typically a short-term solution until a more permanent arrangement can be made.

Some factors may be considered in determining what to do with the Marital Home, including:

1. Financial Considerations
 1. Equity and Mortgage: The home's equity and the remaining mortgage balance will significantly impact the decision. Both parties must consider whether they can afford the mortgage, maintenance, and associated costs.
 2. Credit and Financing: Refinancing the mortgage in one spouse's name requires good credit and sufficient income. This step is crucial if one spouse plans to buy out the other or keep the home.
2. Children's Needs
 1. Stability and Continuity: If children are involved, their need for stability and continuity will be a significant consideration. Keeping the marital home may be beneficial to minimize disruption to their lives.
3. Emotional Attachments
 1. Personal Value: The emotional attachment to the home can influence decisions. It's essential to balance emotional factors with practical financial considerations.
4. Legal Agreements
 1. Prenuptial and Postnuptial Agreements: Any existing agreements will play a role in determining the outcome. These documents may specify what happens to the marital home in the event of a divorce.
5. State Laws
 1. Community Property vs. Equitable Distribution: State laws vary in dividing marital property.

There are legal process options in determining what happens with the Marital Home, including:

1. Negotiation and Mediation
 1. Collaborative Approach: Many couples resolve the fate of the marital home through negotiation or mediation. This collaborative approach allows for more flexibility and control over the outcome.
2. Court Decision
 1. Judicial Ruling: The court will decide if the couple cannot agree. The judge will consider various factors, including financial circumstances, children's needs, and each party's ability to maintain the home.

Deciding what happens to the marital home during a divorce is a complex process that requires careful consideration of financial, emotional, and legal factors. Each option—selling the home, one spouse buying out the other, co-ownership, or deferred sale—has pros and cons. The decision should be guided by the best interests of both parties and any children involved, aiming for a resolution that provides stability and fairness.