Temporary orders during divorce can protect both spouses

By Trey Yates

For many couples facing divorce, a common concern is the disruption of financial security during the divorce process. This issue can be especially frightening and overwhelming for a stay-at-home parent, a financially dependent spouse or a disabled spouse facing divorce.

Here are some of the concerns I hear from clients considering divorce who face financial challenges:

- one spouse earns much more than the other, so the lesser earning spouse fears financial hardship;
- one spouse has complete control of the household finances, leaving the other with no access to funds to pay for a divorce attorney;
- one spouse is threatening to take the away the children if the other files for divorce since he/she is the major bread winner;
- one spouse has cared for the children and the household for many years and does not have a job or the skills to get one after divorce.

I have counseled many individuals in these and similar circumstances who are so concerned about finances, they are virtually paralyzed with fear and unable to act. I cannot over emphasize that there are solutions to these and other concerns with regard to maintaining a couple's financial stability during the divorce process.

While the divorce is pending and agreements are being worked out, setting up "temporary orders" and/or support will go a long ways in protecting marital assets and each individual's credit during the divorce process. Whatever the situation, either spouse can ask for a temporary support hearing at the time the divorce is filed or shortly thereafter.

Temporary orders can state, while the divorce is pending, who stays in the family home; who cares for the children; and who is financially responsible for the mortgage payments, utilities, car payments, etc. These orders also set rules restraining any inappropriate conduct by divorcing spouses.

In my experience, couples can often agree upon reasonable, temporary financial arrangements, through their attorneys, that will tide them over until the divorce is final. One attorney can draft a *Temporary Orders* document that outlines all the financial details agreed on. This document is then signed by each spouse and filed with the court. Agreeing on temporary orders at this stage moves the process along, alleviates fears and avoids incurring additional legal fees from going to court.

As far as paying attorney's fees, many lawyers today accept credit cards from clients going through divorce. This is an option to consider if couples do not have the cash reserves available to finance divorce. This also may be a good solution for couples wanting to preserve what cash reserves they have to pay for unexpected expenses during the divorce process. Attorney's fees in a divorce are considered community debt.

The first step to securing your finances during the divorce process is to find a family law attorney who is experienced in divorce and can assist you with these and other concerns you may have.

What happens to the family home in a divorce?

By Patricia Barrett, CFP, CDFA

The question of what happens to the house in a divorce is often one that requires careful consideration. In my experience, this issue is often clouded by the emotions of one spouse or the other, and can prevent them from making the smartest financial decision. I advise my clients to set aside emotions and consider all the significant, interrelated factors before deciding on what happens to the house.

Consider the following:

First, is there equity in the home, and if so, how much?

If there is substantial equity in a home acquired during the marriage (present value minus amount owed on any loans) it is typically divided or allocated between the parties. Home values can be determined by getting an appraisal of the property by a qualified appraisal company, or securing a “comparative market analysis” from an experienced real estate agent familiar with current market values in the area. The appraisal is preferred in family law cases.

If there is significant equity in the home, one spouse may decide to keep the home while the other receives different assets of comparable value. If the parties don’t own other sufficient assets, it may be necessary to devise another way to buy out the person not retaining the home. Or, the couple may need to sell the home to equitably divide the marital assets.

Second, can either party realistically afford to keep the house?

The answer to this question depends on a number of interrelated issues, only one of which is whether either spouse can afford the monthly payments. Time and again, I see women initially insist on keeping the family home until I flesh out a budget and show them the real costs of this decision -- short- and long-term. Maintenance and repair expenses, utilities, homeowners' association fees, as well as property taxes and insurance costs can push home ownership beyond a newly single, wage earner.

If the couple would like to keep the children in the same schools, compare what it might cost to rent an apartment or house in the area. Also, I try to demonstrate to the couple the long-term financial impact of this decision by projecting the above numbers out 10, 15, 20 years, and illustrating how not keeping the home may place them in a much better financial position in the future. Quite often, this is a major wake up call, especially for women, to see how keeping the home in lieu of investments can be financially unwise.

Third, consider selling the home to pay down debt or yield cash

In some cases, the home will need to be sold, potentially before the divorce is final. After payment of the real estate commission, mortgage balance, and other costs of the sale, the proceeds may be used to pay down or pay off marital debts, if any, or may be split between the parties. Divorcing couples are sometimes surprised to learn that monies invested in renovations or remodeling may not bring a dollar-for-dollar increase in a home value/sales price.

If the home is to be sold, both parties will typically be equally affected by the costs of the sale and both will share the risks and benefits of a sale for less or more than expected. However, if one party retains the home, he or she will typically bear the entire cost of any post-divorce sale, including paying the real estate commission. That person also would have the sole risk or benefit relating to the ultimate selling price. As a result, keeping the house may not be a wise financial move in the long run if the plan is to sell it a year or two after the divorce.

If one party decides to keep the home, an appraisal may be necessary to determine the current market value, unless both parties can agree on a present value. In many areas of the country, the assessed value of a home for property tax purposes is not a reliable measure of its current market value in a sale. Hire a home appraisal professional to determine the home's value.

What about the mortgage loan?

Most people who own a home have a mortgage in the names of both parties. Though transferring a home into the name of only one party can be done quite simply post-divorce, that transfer does not change who is obligated on the mortgage.

Typically, removing a name from the mortgage requires that the loan be refinanced, which involves an application and qualification process. Even though both parties were on the original loan, it isn’t automatic that the party who wants to keep the house will qualify for a new loan, especially since his or her income and assets will change post-divorce. As well, new interest rates or other terms may not be as favorable as on the existing loan.

Couples divorcing are not required to refinance their mortgage loan, but this loan remains on the credit report of both parties until paid off. The mortgage loan could prevent the non-owner from obtaining a mortgage on a new home until the original joint loan is paid off, or refinanced by the other party. However, an attorney can draft a “deed of trust to secure assumption” that will enable the non-occupant to move forward with a new loan, since he would have a lien against the old home.

Ultimately, keeping the family home should be primarily a business decision and not one based on emotions alone. Be sure to consult with a divorce financial analyst to be sure you can manage it and that you aren’t giving up too much of the more liquid financial assets just to keep the house.

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The decision to end a marriage is hardly ever an easy or happy one. And the process is filled with many questions and concerns. Your lawyer will advise you to collect a variety of financial records and to compile details information about your family's monthly expenses. Although time consuming, this activity will become an important part of your financial planning process.

For more information, call the law office of Trey Yates 713-932-7177.