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HOUSING SCENE

By Lew Sichelman

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Reporting from Washington — Splitting up after years of marriage? Divorce your house, then your spouse.

That bit of advice goes against the almost universal desire to hang on to the family home, especially by the spouse who ends up with custody of the children.
"If you're still linked through the house, then you're not really divorced," says Kelly Lise Murray, a Harvard-trained lawyer and Nashville, Tenn., real estate agent.

People tend to underestimate the true cost of homeownership, drastically overstating the remaining spouse's ability to afford the place, Murray says.

Even in a friendly divorce, certain key expenses are overlooked. Lawn care, homeowners association fees, even the basic costs of maintenance are among the costs that are rarely considered, either by the courts or the splitting spouses.

And then there's the even bigger issue of hidden debt. Ideally, there will have been no secrets between the husband and wife. But money is a major cause of divorce, and in many cases, one spouse has no clue that the other has run up big bills that have become undisclosed liens against the property.
"I see it a lot," says Murray, whose goal is to reform divorce law as it pertains to real estate, one state at a time. "It's frequent. And what you don't know during your divorce can hurt you long after the marriage is over."
Fortunately, a major real estate mistake is preventable -- but only during your divorce, not afterward. So Murray recommends doing due diligence and gathering information from more financial and real estate experts early in the divorce

process. That way, you can make a more informed decision about whether you really want to keep the place or not.

In most divorces, the spouses determine what the house is worth, and the one who gives up the place is usually given a credit of some sort for his or her half of the equity the couple have in the place. Typically, the parties split the equity based on an appraisal. So if an appraiser says the house is worth, say, $300,000 and they owe $200,000, the "out spouse" gives up his or her claim to a $50,000 equity stake for, perhaps, $50,000 in stocks and bonds.

But along with that appraisal, Murray says, the "house spouse" should obtain an independent, third-party inspection of the property to determine whether there are any latent defects that could change its value.

"You wouldn't buy a house without an inspection, so why would you accept one in a divorce without an inspection?" Murray asks. "What if something's wrong or about to go wrong? You can use the inspector's report as a punch list and either use the marital assets to make the necessary repairs or reduce the value of the property accordingly."

Make sure to ask your inspector to estimate the remaining life of the property's major appliances and systems. If something is on its last legs, you'll want to know in advance so you can adjust for that as well. And while you're at it, order a termite inspection -- the damage those little bugs cause is often significant.

The real estate divorce specialist, whose self-published book "Divorce This House: When Keeping Your House Equals Losing Your Divorce" will be out this month, so wants the spouses to have two title searches, one as soon as possible after the divorce process begins and the other shortly before the divorce is finalized.

The first will uncover any unknown liens, encumbrances or clouds on the title that may have been placed by one spouse without the other's knowledge. The second will uncover anything placed on the title during the proceedings, such as a lien filed by the out spouse's attorney to cover his fees.

The more people follow these guidelines, divorce realty specialist Murray believes, the more likely they will end up selling the home and moving on. Disposing of the house during the divorce is far less risky than afterward, she says, and helps protect each spouse from the other's financial problems.

"It's the only way to be truly divorced," she says. "Your spouse's post-divorce debts become your debts if his name is still on the title. If the creditor files a lien, you will be unable to sell or refinance until the debt is paid."

Don't be fooled, either, into thinking that signing a quitclaim deed will get you out of harm's way. A quitclaim will get your spouse off the title but not off the mortgage.

To truly divorce your house, Murray says there are only two ways to go: Sell the place or refinance it. "Financial exposure is extinguished when the house is sold or individually refinanced pursuant to divorce," she says. "Otherwise, either spouse or both remain legally and financially at risk, often for years after they split."

All of these issues and others are preventable during the divorce, but they're not easily fixed afterward.

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