Divorce the house before the spouse

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By Lew Sichelman

Splitting up after years of marriage? Divorce your house, then your spouse.

"If you're still linked through the house, than you're not really divorced," says Kelly Lise Murray, a Harvard-trained lawyer and Nashville real estate agent.

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. Indeed, the courts almost always give special consideration to the parent who gets the kids: Keep the kids, keep the house.

But Murray, who describes herself as a "divorce real estate advocate," says people tend to underestimate the "ghosts" that go along with keeping the house. The place is often so filled with memories, both good and bad, she says, that "it's not the family home anymore. It's a huge lodestone."

People also tend to underestimate the true cost of homeownership, so much so, according to Murray, that the remaining spouse's ability to afford the place is often drastically overstated.

Even in a friendly divorce, if there really is such a thing, certain key expenses are either forgotten or overlooked. Lawn care, homeowners' association fees, even the basic costs of maintenance and upkeep are among the costs that are rarely considered, either by the courts or the spouses.

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 one has rung 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 mistake is preventable—but only during your divorce, not afterwards. So Murray's mantra is "more earlier," as in more due diligence and more information from more financial and real estate experts, all much earlier in the divorce process.

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 has in the place. Typically, the parties split the difference based on an appraisal. So if an appraiser says the house is worth, say, $300,000 and they owe $200,000, the “out spouse”—usually the man—gives up his claim to his $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 impact 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 buggers cause is often significant.

The real estate divorce specialist, whose book, “Divorce This House: When Keeping Your House Equals Losing Your Divorce” ($19.95, divorceyourhousetoo.com) was released in December, also wants the spouses to have two title searches, one soon after the divorce process begins and the other shortly before it’s 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. Often, there is—a second mortgage, perhaps, or maybe a gambling debt that has become a lien on the property. 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.

Speaking of one spouse not being totally honest and aboveboard with the other, it might not hurt, either, to request a CLUE report from the company that insures your home or directly from ChoiceTrust.com.

CLUE (comprehensive loss underwriting exchange) provides a seven-year history of losses associated with an individual and his or her personal property. If you didn’t normally handle the household finances, the report could alert you to the fact that your mate pocketed the insurance money instead of paying to repair the roof that was damaged a few years ago.

The more people follow these guidelines, Murray believes, the more they will end up selling the once-family home and moving on. *United Feature Syndicate*