The Lindley Team
Certified Divorce Lending Professional

Divorcing Your Mortgage Educational Series

Avoid a Housing "Crisis" - Plan Now for an Equity Buy-Out Later

One of the main issues to consider **early** in the divorce process is what to do with the family residence. Often one party wishes to buy out the other's equity in the property. Before any agreements can be reached, it must be determined if the "buying" spouse can qualify for a mortgage in his or her name.

Avoiding a Contempt of Court Issue

A Contempt of Court issue when a former spouse fails to execute their obligations in the marital settlement agreement (MSA) with regards to real estate and mortgage financing can be avoided if the right steps are taken in advance. There are many times when mortgage financing is a requirement post-decree, whether it involves refinancing the marital home to remove a spouse from the current mortgage, completing an equity buyout, or even for the purchase of a new home for one or both parties.

Oftentimes the successful execution of mortgage financing requirements in many divorces fails, not because of a lack of effort on behalf of the divorcing parties, but rather on other details within the marital settlement agreement. The two most common reasons divorcing clients are unable to successfully obtain mortgage financing have to do with qualified income and credit. The best way to avoid these issues is to consult with a qualified divorce lending professional during the settlement process rather than after the martial settlement agreement is final—this can make a big difference in ensuring the successful execution of the MSA and avoiding a possible Contempt of Court issue.

Let's take a look at the common income and credit issues that can prevent a successful mortgage transaction.

Income vs. Qualifying Income

Oftentimes in a divorce and mortgage situation, there are various types of income to consider: employment income; alimony (spousal support) or maintenance income; unallocated maintenance income; child support income; property settlement note income; and more. Although all sources of income are considered "income" by the recipient, it is important to understand that from a mortgage financing perspective, not all sources of income are considered "qualifying income."

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In order to be considered qualifying income, certain requirements of each income source must be met. For divorcing clients who will need mortgage financing once the divorce is final, involving a mortgage professional who specializes in Divorce Mortgage Lending during the divorce process rather than post decree can potentially help avoid common pitfalls when income is not considered as qualifying income.

Let's take a look at some of the most common income issues in divorce situations with regards to alimony (spousal support)/maintenance and/or child support.

Alimony (Spousal Support)/Maintenance: Alimony, whether unallocated or allocated, along with child support must meet specific requirements to be considered as qualifying income for mortgage financing purposes by meeting both continuance and stability tests.

- **Continuance:** A key driver of successful homeownership is confidence that all income used in qualifying the borrower will continue to be received by the borrower for the foreseeable future. Must be able to document that income will continue to be paid for at least three years AFTER the date of the mortgage application. Check for limitations on the continuance of the payments, such as the age of the children for whom the support is being paid or the duration over which alimony is required to be paid.
- **Stability:** A review of the payment history is required to determine its suitability as a stable qualifying income. To be considered stable income, full, regular, and timely payments must have been received for six months or longer for standard conventional underwriting guidelines. Income received for less than six months is considered unstable and may not be used to qualify the borrower for the mortgage. In addition, if full or partial payments are made on an inconsistent or sporadic basis, the income is not acceptable for the purpose of qualifying the borrower.
- **Back to Work:** Oftentimes one spouse has been out of the workforce for an extended absence while raising the children. Even though this spouse may have recently returned to the labor force, specific requirements must be met in order to use ordinary employment income as qualified income. The borrower must be currently employed in the current job for six months or longer and must be able to document a two-year work history prior to an absence from employment.

Common Credit Concerns With Divorcing Couples

Mortgage payment is missed: Whether an oversight or intentional, when a mortgage payment is missed, there are more repercussions than just a negative hit to the credit score.

- A single, 30-day late mortgage loan payment can cause a credit score to drop by as much as 100 points.
- A single, 30-day late mortgage loan payment may prevent mortgage financing from 12 months up to 24 months depending on the loan program and investor.

Always work with a Certified Divorce Lending Professional (CDLP) when going through a divorce and real estate or mortgage financing is present.

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