Certified Divorce Lending Professional

Divorcing Your Mortgage Educational Series

Proceeds from the Sale of the Marital Home

A mortgage escrow account is designed to hold a homeowner's periodic payments for real estate taxes, mortgage insurance and possibly homeowners insurance. Mortgage escrow accounts normally build up large balances at times because of the timing of payments made from them. Any excess mortgage escrow account balances must be properly accounted for and then refunded after homeowners sell their homes.

Mortgage escrow accounts accumulate money over several months, usually from borrowers' prorated payments for their real estate taxes. In most parts of the country, counties require property tax payments on a semi-annual or annual basis, meaning escrow accounts tend to build up until taxes are paid.

If the home is sold before tax and insurance payments are made, there will most likely be funds remaining in the escrow account. Lenders are required to return borrowers' escrow account funds to them once their loan accounts are closed.

Disbursing the net proceeds when the marital home is sold or refinanced can be super simple or it can be very complex. Either way, the title company or settlement agent will need to make sure all proceeds are disbursed according to the final separation and divorce orders. It is always a good idea to provide the settlement agent with a copy of the final orders as well as have your attorney review the disbursement sheet provided by the settlement agent.

When selling the marital home, it is important that the settlement agent is given the disbursement orders ahead of time in order to make sure the documents are prepared accordingly.

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It’s common for most disbursements to be 50/50; however, there are many occasions where this doesn’t happen. For example, if one party continued to make the mortgage payments on the home post-separation, that party may be eligible to be reimbursed for those payments. The same goes for repairs and maintenance.

In some marital settlement agreements, one party may be compensated for their share of the other party's retirements account or other assets through the disbursement of net proceeds from the sale of the home.

If one party is relinquishing their ownership, they should also be released from any liability. Release from financing is a process that can only be achieved by modification, refinance, payoff or sale. In today’s world, break-ups do occur with high frequency and having access to the necessary experience in helping your clients navigate the process as it relates to their mortgage loans is imperative.

One of the common misunderstood aspects of refinancing into a new mortgage is setting up the new escrow account and the costs involved in doing so. This is literally an aspect of mortgage financing where timing is everything.

The amount of funds required to establish a new escrow account is dependent upon the timing of when current and future property taxes and homeowners insurance are due and payable. As you can imagine this can require a significant amount to be added to the new mortgage or require additional cash to close.

Additionally, in divorce situations many clients are not aware of how future reimbursements of existing escrow accounts are handled when paying off or refinancing an existing jointly held mortgage. Any time a jointly held mortgage is paid off, whether through a sale or refinance of the marital home, the current lender will send a joint check made payable to both parties on the existing loan for any refunds on overpayment and escrow balances.

It is very important that we inform our divorcing clients how over payments will be handled to avoid any additional future conflict as to which party should receive the funds because both parties will need to endorse the check.

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