The Lindley Team

Certified Divorce Lending Professional

Divorcing Your Mortgage Educational Series

Buying A New Home When Tied To The Mortgage On The Marital Home

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EQUAL HOUSING LENDER

One of the main concerns, when one party is retaining the marital home, is that the vacating or out spouse will not be able to qualify for future mortgage financing while their name remains tied to the current mortgage. This isn't necessarily so and we can help our divorcing clients with this issue with the correct verbiage contained in the final divorce settlement agreement.

When a borrower has outstanding debt that was assigned to another party by court order (such as under a divorce decree or separation agreement) and the creditor does not release the borrower from liability, the borrower has a contingent liability. The lender may not be required to count this contingent liability as part of the borrower's recurring monthly debt obligations.

Contingent liabilities are debts that a court orders one party the responsibility of paying yet does not relinquish the legal obligation of paying the liability to the creditor. In a divorce situation, often times a mortgage cannot be refinanced and the marital home is not being sold. When the final divorce decree states that one party shall be responsible for making the mortgage payment including taxes and insurance, it is considered a court- ordered contingent liability that can be looked at in various ways when the non-responsible party is looking to obtain new mortgage financing.

While many investors have their own guidelines or 'overlays' to Agency underwriting guidelines, a Certified Divorce Lending Professional (CDLP) will know how to handle a Court-Ordered Assignment of Debt.

A mortgage professional working with divorcing clients needs to understand that choosing an investor for their borrower can have an impact on tax planning in the divorce settlement as well as avoiding potential Capital Gains taxes on the future sale of the marital home. A Certified Divorce Lending Professional (CDLP) has the knowledge to take into consideration any tax planning in conjunction with the effect of the mortgage product and investor chosen.

> **Fannie Mae:** As long as the final documents state who the responsible party shall be in the orders, the contingent liability will not be considered in the other party's debt to income ratio.
> **Freddie Mac:** As long as the non-responsible party has been removed from title/ownership, the contingent liability will not be considered in the debt to income ratio.
> **FHA:** As long as it can be documented that the responsible party has made twelve (12) consecutive payments after the orders, the contingent liability will not be considered in the debt to income ratio for the other party.

There is yet another mortgage guideline that may throw a glitch into this mortgage planning. What happens to the contingent liability when there has been a property settlement buyout other than refinancing the other spouse off of the current mortgage? Fannie Mae Guidelines state that "When a borrower's interest in a property is bought out by another co-owner of the property, as often happens in a divorce settlement, but the lienholder/lender does not release the borrower from liability under the mortgage, the borrower has a contingent liability. If the lender obtains documentation to confirm the transfer of title to the property, this liability does not have to be considered as part of the borrower's recurring monthly obligations."

Occasionally, one spouse may have the cash available to buy out the other party's ownership in the marital home. Rather than refinancing the current mortgage to avoid unnecessary fees or higher interest rates, the spouses may agree to leave the current mortgage in place.

However, some spouses will not agree to take their name off of title because their name is still on the current mortgage. Keep in mind that if the equity is bought out in cash or some other form, the vacating spouse may need to come off of title to qualify for future mortgage financing which again, may affect any tax planning contained in the final divorce settlement.

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