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Real Estate.



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the spouse and the house

Divorce Real Estate




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The Spouse *and the* House





By Tiffany Whisner

With divorce real estate, too late often comes early

“Do you take this man or this woman to be your lawfully wedded husband or wife till death do you part?” It’s a well-known question within traditional wedding vows, and some people think, “I do — but if it doesn’t work out, I’ll just file for divorce.”

“We found there was an opportunity to prevent permanent real estate mistakes that are made during divorce. And they are mistakes that ruin finances, families and futures.”

— Kelly Lise Murray, J.D., president and CEO,
Divorce This House, Nashville, Tenn.

Forty-five percent to 50% of first marriages end in divorce. And the rates are higher for second and third marriages. While unfortunate, divorce is a real possibility for a married couple. With this possibility, there exist many unforeseen problems in what is arguably the largest asset between the couple: real estate.

Divorce Real Estate?

Collaborative Continuing Education Council Inc., more commonly known as DivorceThisHouse.com, is the collaboration between a former litigator and a former educator — who also happen to be niece and aunt. DivorceThisHouse.com President and CEO Kelly Lise Murray, J.D., and chief operations officer and director of marketing and advertising Wendy Waselle say their interest in divorce real estate and motivation to co-found DivorceThisHouse.com began with a brilliant question from one divorcing homeowner.

Waselle was speaking at a do-it-yourself home staging clinic at the local public library. “As I spoke to the audience, I noticed a woman with an especially forlorn expression, so sadly solemn that I immediately thought: divorce,” she says. Waselle was right — the woman’s husband was leaving her after more than 20 years of marriage that produced two now nearly grown sons. Waselle offered the woman a free home-staging consultation in the hopes of boosting her home’s equity and salability.

“Then she asked me a question that changed everything: ‘Whom should we hire as our real estate agent? We need someone who understands divorce real estate,’” Waselle says. Murray agrees that this brilliant question is what started the duo on their journey into the world of divorce real estate.

“The question was brilliant for at least three reasons. One, no one else thought to ask; two, no one knew the complete answer; and three, the question and answer applied to every divorcing homeowner everywhere,” Murray says.

“The more we researched, the more we learned that divorce real estate presents unique challenges

for homeowners, lawyers, courts and real estate professionals,” Murray says. “Divorcing homeowners unknowingly risk major financial and legal problems after divorce (resulting) from real estate mistakes during divorce.”

But even more shocking, according to Murray, is that unlike traditional real estate, the divorce process itself magnifies mistakes into permanent financial problems preventable during your divorce — but not fixable afterward.

“These mistakes often lead to damaged credit, default, foreclosure or even bankruptcy,” Murray says. “And they are mistakes that ruin finances, families and futures.”

Because most divorce real estate mistakes are preventable but not fixable, the solution is clear: To successfully divorce your house, you need “more/earlier.” Developed by Murray and Waselle, this concept means getting more information and doing more due diligence with more real estate and financial experts much earlier in the divorce process.

In every divorce, Murray says, more information promotes more informed decision-making and a stronger financial future for divorcees and their families. Following the “more/earlier” method has led Murray and Waselle to develop groundbreaking legislation, public outreach, continuing education for real estate professionals, lawyers and family mediators, along with professional networking, television appearances and books — all in less than two years.

“We are among the first authors and activists actually reforming divorce real estate,” Murray says. “And the positive impact of a collective effort will improve the post-divorce financial fate of millions of Americans, adults and children, now and years from now.”

Unfortunately, many divorced homeowners find out too late that they didn’t divorce their house — or completely divorce their spouse — if there is

any joint debt or joint ownership after the divorce decree becomes final.

A Joint Reality

Divorce, separation, job loss, illness, injury, death, foreclosure, bankruptcy — these are all major life changes that could force an individual to deal with the realities of joint real estate, which often includes joint ownership and/or joint debt, putting both credit score and equity at risk.

“A joint debt, particularly a joint mortgage, is your individual debt under joint and several liability,” Murray says. “The lender can unfortunately seek repayment in full from you alone. Also, under joint ownership, the individual creditor of your co-owner can record a lien against title to the property you own jointly — preventing you from refinancing or selling until that lien is released, which usually requires payment of the debt.”

Murray further cautions that there are only two ways to remove your name from a joint mortgage: your co-borrower individually refinances the mortgage, or the house is sold. That’s it. And with any joint debt after divorce, you risk damaged credit, foreclosure and bankruptcy.

“One late payment on the mortgage or credit card reduces your credit rating — even if the judge required your spouse to pay that bill each month,” Murray says. “Missed or additional late payments can cripple your ability to even rent an apartment, let alone purchase a house for years following a divorce.

“Foreclosure on a joint mortgage damages your credit rating for years after divorce — three years or more on your credit report and at least seven years on any future mortgage application,” she continues. “Bankruptcy filed by your former spouse can also drag you into the bankruptcy after divorce, when your joint creditors seek repayment of the

entire debt from you as the non-bankrupt spouse.” In living this joint reality, Murray points out one possible highlight of joint real estate.

“Right of survivorship: It is the right of surviving co-tenants to acquire the ownership or property interest of a deceased joint tenant,” she says. “It is ownership of property by two or more people (including husband and wife) where death of a co-tenant transfers the ownership share to the surviving co-tenants without probate (court) and irrespective of a will.” For a husband and wife, this automatic transfer of full ownership has no tax consequences, but when it comes to divorce real estate, there really is no “do-over.”

The Shocking Truth

While conducting their research, Murray and Waselle uncovered some shocking truths about divorce real estate that impact every homeowner early in the divorce process. First, appraisal minus mortgage does not equal house equity. Murray says the key is to understand what an appraisal is — and is not.

“An appraisal is not a home inspection, not a title search, not a mortgage consultation and not an insurability assessment,” she says. The second truth is that keeping a house after divorce is extremely risky.



“It places you in danger of damaged credit, hidden debt, foreclosure or even bankruptcy,” Murray says. “And when you sell the house after divorce, all costs of sales are yours alone. After paying your ex his or her share of the equity, these costs are coming out of your half but not your ex’s half.” Third, waiting until after divorce to sell the house is equally problematic.

“Waiting to sell until after your divorce is final makes selling worse,” Murray says. “It is both more difficult and less profitable, from less time and fewer resources to work with. After divorce, you have less time to complete the sale and more financial pressure.”

Finally, for sale by owner (FSBO) sales are disastrous per the divorce. Murray says that’s why you need a REALTOR® who is trained to neutralize divorce real estate as a business transaction “in the best interest of the house” as well as each divorcing spouse.

An Evergreen Niche

Waselle says Divorce This House has helped create an essential role for REALTORS® in divorce real estate due diligence: to establish true house value.

“Only a select group of top real estate professionals will be trained to work directly with local divorce attorneys and mediators,” Waselle says, adding that this creates an opportunity for savvy brokers and managers to bring in this kind of training for their

agents and also invite in REALTORS® they hope to recruit.

“It’s all about managers and brokers bringing visible value to their agents,” Waselle says. “In a divorce when the marital home is sold, two adults need a residence. Managers need to focus on benefits other brokerages don’t offer that really deliver business transactions.” For real estate professionals who are interested in real estate sales beyond REOs and short sales, Waselle says there are many benefits to dealing in divorce real estate.

“They build their personal brand and business simultaneously in a market-proof niche,” she says. “They are trained in content marketing and offering information to divorcing clients earlier in the divorce process so they can make an informed decision regarding the residence.”

Agents within this niche receive constant referrals from the divorce network, Waselle explains. “Five attorneys or mediators can refer more than 100 transactions per year — and the emotional team on board during the divorce can double that number through word of mouth.”

Divorce real estate is an evergreen niche that not only increases agent productivity but also attracts top agents to brokerage managers who provide office and corporate support for this niche. Waselle says a recent community outreach effort was hugely successful.

“We recently launched our program in Nashville, and we were left with standing room only,” she says. “The group in attendance included attorneys, mediators and the divorcing public — all of whom greatly outnumbered our hosts. Because this was an ‘invitation-only’ event, the (hosts) put themselves in the power position to recruit and retain. There were no cold calls and no marketing dollars involved — creating no-fail business. Best of all, the divorcing public is protected and grateful to the (hosts) for their information. It’s social capitalism at its best.”



Contract

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— Wendy Waselle, COO and director of marketing and advertising, Divorce This House, Nashville, Tenn.

Perspective During Separation

Over the course of his legal practice, J. Carlton Drumwright, an attorney with McCann, Hubbard & Solomon in Brentwood, Tenn., has seen many examples of the problems which can result from mishandling the real estate transaction during divorce.

“The majority of problems I have seen deal with improperly drafted deeds, unrecorded deeds or a misunderstanding of what language is necessary in a divorce decree to convey real property,” Drumwright says.

During a divorce, a neutral third party who is not an advocate for either the attorney or either party is an essential ingredient — enter the real estate appraiser. Regina Hoover, TN CR-2230, is a certified residential real estate appraiser and owner of Sumner Appraisal Service based in Portland, Tenn.

“An objective perspective helps establish an impartial view of the facts regarding the value of the marital home in the divorce process and can help to remove some of the emotions the parties are feeling,” Hoover says. “People tend to become emotionally invested in the value of their property and can easily contribute more value for sentimental reasons than is justified by the market. The converse can also be true when we see the marital home as a place of trouble or attribute negative emotional energy to components that may in fact be highly valued in the market.”

Drumwright agrees that the divorcing couple must try to remove emotion from the situation and remember that this is still a real estate transaction and must be treated as such.

“A person would not buy a home without having a home inspection,” he says. “Yet people keep the marital homes in divorces on a daily basis without any inspections because they ‘know the house.’ Home inspections may uncover problems with the house that neither spouse is aware of and that can drastically affect the value of the property.”

Hoover says that since the value of the marital home is the cornerstone of so many decisions, it is imperative that the divorcing couple also obtain a qualified appraisal expert to provide an accurate estimate.

“It should be considered unacceptable to allow the value of the home to be derived by any other means, such as a tax card assessment, since those are for property tax purposes and are not necessarily indicative of market value,” she says. “Since the value established by the appraisal is from a neutral party, with no current or future interest in the property, its presence alone provides concrete, substantiated proof of the value of that asset.” That is why she strongly encourages hiring an appraiser with experience in appraising divorce real estate.

“Just as you should never purchase a home without a home inspection or an appraisal, you should never accept the transfer of real estate in a divorce situation without them either,” Hoover says.

Too Little, Too Late

As is often the case with divorce, too late comes too early.

“Many people believe they ‘have to keep the house’ because of the kids or the economy,” Murray says. “And given that significant concern, they may agree in writing early on to keep the house — before complete due diligence regarding house value. Once a property settlement agreement is signed by both spouses, that agreement is a binding contract and can't be changed — not even by the judge — without the signature of both spouses.”

Hoover agrees that too many times, the divorcing couple is so involved with the difficult emotional aspects of divorce that they want to move through it quickly and “get it over with.”

“After you have signed a binding contract, it is too late to find out that pertinent information now available to you would have drastically affected the negotiated agreement,” Hoover says. “In essence, after the divorce, it is too late to discover the

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information you need now to make an informed decision about all issues of divorce, including joint real estate.” Drumwright also agrees.

“It is of the utmost importance to take care of any problems during the divorce process because many of them can’t be resolved once the divorce is closed,” Drumwright says. “And even if it is possible to go back and reopen the divorce case, this is a very expensive and time-consuming process that could easily have been avoided in the first place.”

Two Minds are Better than One

Up until now, there has been little collaboration between professionals offering advice to those individuals in divorce situations and their attorneys — the lack of communication makes an already difficult experience even more of a struggle. Having been through a divorce herself, Hoover says that even with her extensive knowledge in real estate, she

felt it was reasonable to rely on her divorce attorney for advice in all her matters.

“As a real estate expert, I know how unrealistic this is,” she says. “To be fair, we must recognize the heavy burden divorce attorneys carry in that they must address all of the parts of a couple’s divorce, including but not limited to: joint real estate, joint assets, child support, custody, visitation, alimony and division of personal property. Furthermore, we must remember that a divorce attorney’s primary job is to help their client obtain a divorce, not give specific advice regarding property value, property title issues, financial matters and real estate tax implications.”

Therefore, combining forces offers added benefits to a divorcing couple, since without the necessary information needed to make informed decisions, both individuals lose. ♦

