

DIVORCE - Broken homes, unwanted houses

By Elizabeth Razzi, Bankrate.com

It used to be that when a couple divorced, the fight over who kept the house was intense. Nowadays, it's a battle over who gets stuck with the depreciating burden.



Divorce is rarely an easy process. But falling home values and sluggish real-estate sales are combining to make it particularly difficult right now.

Couples aren't fighting over who gets to keep the house. They're scrambling to get away from it. It's too soon to see the trend reflected in official statistics; the most recent marriage and divorce numbers compiled by the National Center for Health Statistics date back to 2005 — just when real-estate markets started to turn down from their boom years. But lawyers and financial planners say they are seeing more clients stay married — if only for the time being — simply because they cannot afford to break up.

"Truthfully, it's a mess," says Carol Chumney, an attorney who practices family law in Memphis, Tenn. "There are a lot of folks who want to get a divorce, and the house is an impediment because nobody wants it."

House no longer counts as an asset

The tough housing market is hitting divorcing couples in several ways. If the home's value has fallen below the amount owed on the mortgage, neither spouse wants to be saddled with that liability. If one wants to keep the home, it's difficult to refinance the mortgage so the departing spouse can be cut loose from the debt. And evaporating home equity can take with it the means to pay lawyers for the divorce itself.

Dan Couvrette, chief executive officer of Divorce Marketing Group, a Canadian company that publishes Divorce Magazine, says he's also hearing that some couples cannot afford to divorce now. "One of the ways they pay their legal fees is by selling or refinancing their home, and selling the home is getting more difficult," he says.

Bonnie Hughes, a certified financial planner with The Enrichment Group in Miami, is living through the situation herself. Two years ago, when she and her husband divorced, he kept their vacation house by a Tennessee lake, and she retained their main residence, a 3,000-square-foot home in Chattanooga, Tenn. He was able to sell the house at the lake; she was unable to get rid of what had been the family home.

"I was planning on just selling it," Hughes says. "I had already moved to Atlanta." Even though the asking price is almost \$100,000 lower than they had paid for it, the house in Chattanooga remains unsold at a list price of \$329,000. "It's in inventory with homes that are just like it," she says. A renter helps pay the mortgage, but Hughes still has to contribute to the mortgage payment each month, even though she has moved on again, from Atlanta to Miami.

Fortunately, she and her ex-husband have maintained an amicable relationship. Although she pays the full amount, he has allowed his name to remain on the mortgage so she doesn't have to refinance out of the 4.8 percent fixed-rate mortgage they had obtained while together.

Dumping the house on the ex

Of course, not all divorcing couples are able to get along well enough to minimize their losses in a depressed housing market.

"A lot of times both of them cannot agree on what to do," says Chumney. "It can be a huge financial mess. In the past, a lot of times, folks wanted to keep the house, and lately, that's not the case."

Some spouses simply dump the problem — the home with a shrinking value — on their soon-to-be-ex. "They just leave," says Chumney. "They move out and they're gone." The remaining spouse may have few options but to move out and try to rent the home, assuming that brings in enough to keep up with the payments. Or the home could be lost to foreclosure.

If left-behind spouses try to keep their homes, they face legal bills when they try to get the departing spouses to approve sales. "Every time your lawyer goes to court, you're paying for the lawyer's time, and some of these people don't have the money," says Chumney.

Putting off the divorce

Sometimes the divorce has to be put off — at least for the time being.

Hughes says she sees the issue come up with clients. "I think we're seeing people who are not divorcing. Some people cannot leave comfortably at this time."

But Nancy Zalusky Berg, a family-law attorney in Minneapolis, says not divorcing may not be a realistic option for some couples, despite their financial hardship. "What we're having is two people staying in the house because they can't afford two places. They're staying together in the same place, with a fair amount of difficulty, including threats of domestic violence and incidents," she says. "Right now is a very ugly time in my business."

Houses are hot potatoes

It used to be that divorcing couples would vie to be the one who kept the home. Women, in particular, often fought to remain in the house where the couple's children had grown up. That wasn't always the savvy thing to do financially, especially if the ongoing expenses (property taxes, insurance, utilities and repairs) proved to be too much to handle on her income alone. And often women would give up other valuable assets in the divorce settlement, such as pension benefits, in order to win the house. That seems to be changing.

"Houses have become like hot potatoes," says Berg. "Nobody wants that on their side of the ledger. They might want the house, but they don't want it at the value that's being agreed to, or because they don't feel it's a safe investment." Hughes says women seem to have less attachment to the family home now, which may be a positive change, reflecting their understanding of how they may be burdened by ongoing expenses. "I hope it's because they have learned," she says.

"More and more, neither person wants to live there," she says. Especially when couples are ending a long-term marriage, both may wish to start fresh, with fewer belongings, including the home. "People want a new start with much less," she says. "In some cases neither wants any of it. It's a past life."

Recommendations for warring spouses

Experts do have some recommendations for couples struggling with a marriage that is ending — and homeownership that is lingering.

Most important, they say, is to pay sharp attention to the valuation of the home when dividing assets. Both spouses need to be honest about how low that home's resale value may be now, given the current weak market. If it is valued too high, it distorts the distribution of assets and liabilities from the marriage.

Divorcing spouses may have to sell some of their investments to generate cash to pay off the mortgage on their former homes, and allow each to move on separately.

Spouses who wish to remain in the home after a divorce need to be realistic about the ongoing maintenance costs associated with living there. Without two incomes — and the economies of scale that come from two people sharing living expenses — the home may be a serious long-term drain on that person's finances.

What no one knows is whether some couples who would have divorced, but who put off the move because of the economy, will simply delay the inevitable or remain married for the long term.

There may be some who try harder to work it out, says Berg. "I certainly encourage that. I hate to see people get divorced, especially young couples, because they're mad at each other."

By Elizabeth Razzi, Bankrate.com

© 2009 Microsoft