



Mortgage Insight: Marriage, Divorce and Mortgages

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For a couple in the midst of a divorce, the home that they've owned over the years can represent many things; fond memories of the past, a wise investment, a great source of pride and comfort. It may also represent a sizable asset that needs to be fairly divided, or a liability that needs to be either responsibly assumed or legally discarded.

In many divorce cases a home may represent the money desperately needed money for a fresh start, and can even sometimes become the source of unwittingly ruined credit for one or both parties.

There are many far-reaching ways in which a mortgage can impact the future of the individuals working through a divorce, simply depending on how the mortgage on their jointly owned home is handled.

Most couples are not aware that divorce decrees and other court orders are binding only on the parties to the divorce- the divorcing husband and wife. For home owners with a mortgage, a divorce decree stating "who gets to keep the house and make the mortgage payments" is meaningless to the bank holding the mortgage. Whoever applied for and received the mortgage in the first

place will continue to be responsible for repayment of the mortgage, regardless of what a divorce decree or other court order may say.

Here's an example:

John and Sue concluded their divorce and as part of their divorce decree, the court awarded John the house and also required him to pay a set amount each month to Sue for child support. John started paying the mortgage late and soon the mortgage company started calling Sue and began sending her late payment notices demanding that she bring the account current. Sue mailed the mortgage company a copy of her divorce decree and insisted repeatedly that the court had made John responsible for the mortgage payments, not her. After all, he was the one that was awarded the house! Ultimately, Sue also received a foreclosure notice when John fell several months behind on the mortgage.

Unfortunately, Sue learned too late that in spite of the divorce, she also remained responsible for the timely payment of the mortgage. After all, both she and John had originally applied for the mortgage when they first purchased the home. The original agreement to repay the mortgage remained unchanged in spite of John and Sue's divorce.

Additionally, because of John's actions, or rather, inactions in this case, Sue now had severely damaged credit including late

payments and a foreclosure proceeding. These strikes against her credit continued to haunt her for many years. She had an extremely difficult time renting an apartment and had to pay a very high interest rate when she financed a new car. I learned about these events when Sue contacted me for help in obtaining a mortgage of her own for a new home. Even though she had not been an active participant in John's mortgage disaster, she paid a heavy price because of it.

What could John and Sue have done differently?

One of the simplest safeguards in a situation like John and Sue's would have been for John to immediately refinance the mortgage on the home solely into his own name. The old loan with John and Sue on it would have been paid off and the new loan with only John on it would have been his sole responsibility. From that point forward, his actions-or inactions, would have had no impact on Sue or her credit history. Many times, this obligation to refinance or remove a spouse from joint credit obligations, along with a time table or other Protective Language is included in the divorce decree to ensure its execution.

The only way to remove a responsible party from a mortgage is to pay off the loan and replace it with a new one in the newly responsible party's name exclusively.