

The “Financial Divorce”

By Susan Davis



What is the “Financial Divorce”? It is the process of bringing a divorcing couple to a position of healthy financial independence to include as little co-mingled financial obligations as possible.

I am not a family law attorney nor do I work in the legal world. I can only begin to imagine and empathize with the job that an attorney performs in getting two disappointed, confused, angry, always emotionally driven people through their divorce process. I do not envy the job they must accomplish!

In my career as a Mortgage Planner I am often on the receiving side of a client who has completed their divorce and years later remain financially entwined with their ex-spouses. Their borrowing potentials are extremely limited and at times they are unable to secure a new mortgage. The situation is sad and completely unnecessary in today’s age. In the past decade we have experienced the inception of a whole “new age” of banking products that lend resolution to financial independence for divorcing couples.

What kind of products are these? There are high loan-to-value products designed specially to pay spousal equities, products for borrowers with good credit but no present employment, and sub prime products for borrowers with tremendous credit and debt problems. Fixed second mortgages and equity lines exist to consolidate debts and lower monthly overhead. Government programs exist that can help borrowers that have experienced a Chapter 7 or 13 Bankruptcy providing certain factors are in place.

Education and Awareness

There is a tremendous need for family law attorneys to educate divorcing clients concerning their financial position and to help provide them with as much individual financial closure for the future as possible. What are they unaware of? Many couples divorce not realizing they remain responsible for the mortgage loan on a property they have just quit-claimed to a spouse. They do not know that the note secured on that property limits their own individual borrowing potential. Also, the manner in which the joint mortgage is paid can have serious impact on their credit.

Most people believe that if a credit card is given to a spouse in a divorce settlement it is no longer their obligation. Of course, the banks continue to report the payment history to the three main credit bureaus in the country until the account is officially closed. Again, if the account is not paid on time both individuals’ credit scores are being adversely affected often with only one spouse being aware. The bottom line is that many couples are unaware that the legal terms of a divorce settlement do not supersede any earlier dated joint financial applications or commitments.

Examples and Resolutions

#1 – An attorney referred a client to me to evaluate for a refinance mortgage on a primary residence she was receiving in a divorce. The property presently held a joint first mortgage utilizing the husband's VA benefits. The couple had experienced a Chapter 7 Bankruptcy discharged 1-1/2 years ago. Both spouses thought they would not be able to get another mortgage for a seven year period of time. This is no longer true.

The resolution for this couple is as follows: The wife can be placed in a government FHA loan. The guidelines read that if a borrower is past 18 months from the bankruptcy discharge date, she has established three healthy credit lines for over six months and the cause of the bankruptcy can be explained and documented as no longer an element in her life, she will obtain loan approval. The husband's obligation was paid in full with the refinance. After a period of 2 years, with re-established credit lines he will also be able to apply for another VA benefit loan and receive approval. This couple achieved financial independence because of the existence of flexible products in place to help them.

#2 – A REALTOR® referred a client to me for a new home mortgage. His credit is flawless with the exception of one credit card that has been paid late 10 times. His credit scores are very low as a result of this one account. He informs me that the card belongs to his ex-wife. It is listed in the settlement agreement as her card and that for the full duration of his marriage the card belonged solely to her. At no time did he have any possession of a card from this account. I explained to him that the divorce agreement would not have any influence with the bank or the bureaus if he has never existed on this account. I communicated with the bank that issued the card to discover that although he was never a card holder, his ex-wife included his name, Social Security Number, and monthly income when qualifying. Without his knowledge this man was financially responsible. Unfortunately, mortgage products are very credit score driven.

The resolution for this client consisted of placing him in a two year fixed sub prime loan product at an interest rate of 9.75%. Needless to say, it was not what he had in mind for a mortgage, but it allowed him to purchase a home and receive the benefits of a tax deduction. It also afforded him time to deal with his ex-wife to get the account closed and have his credit scores rebound to good health. In 24 months he will be able to refinance to a healthy 8.00% loan product.

#3 – This referral came to me from an attorney. The husband was concerned about quit-claiming two properties to his wife with his name remaining on the mortgage. The wife was concerned about meeting the monthly payment obligation of three credit card accounts she was also receiving. After reviewing the overall financial picture, the resolution was found in the equity existing in the primary home. Banks always offer borrowers the most favorable interest rate on a primary, owner-occupied home mortgage.

Presently there exist a few cash-out refinance products that are specifically available to pay spousal equities in a divorce situation. The wife was able to secure this product in a consolidation loan. It left her with a 90% loan on the primary residence secured by a first trust deed. Her monthly financial payments were reduced by \$550.00 and the husband now had his own borrowing potential available for his individual mortgage needs. They are financial severed without those issues to argue over for the net few years while emotions remain high.

#4 – The following is a referral case I wish to share with you simply to increase the awareness of how important it is that clients are educated and guided through a financial closure. This is a client I remain in touch with and am hoping to help in the future. This young lady quit-claimed a home to her ex-husband in her divorce three years ago. It was never explained to her that she remained responsible for the joint mortgage until it was paid off. Approximately one year after the divorce, her ex-husband sold the home in a “contract of sale” leaving the mortgage in place. Later, the couple that purchased the home began to pay the mortgage late month after month. My client was completely unaware that her credit was being destroyed until she attempted to secure a new mortgage of her own. She thought the mortgage had been paid off and closed at the time the house sold. Her ex-spouse felt it was his home and that he owed his ex-wife no explanations.

She notified the bank of her position, but of course they are not concerned with helping her. The bank’s perspective is that they do not approve of a loan being transferred in sale without formal assumption, however, they presently have four people with reason to meet this obligation and they do not want the property. A bank will only move to acquisition as a last resort. This young lady is in this position solely due to lack of knowledge and awareness.

Benefits of Financial Closure

In conclusion, I would like to emphasize that the benefits to more financial closure at divorce time or shortly thereafter are far-reaching. It saves the legal court systems from both a financial and time standpoint by reducing some of the issues that continually return to the courtrooms and judges’ chambers for legal action and decisions. Keep in mind that the children of these couples often go back and forth between homes listening, feeling confused and being influenced by unresolved issues. Another priceless benefit it provides is to be a factor to a more peaceful and healthier family environment for the children of joint parents.