

DIVORCE IN A DOWN ECONOMY

BY CATHERINE BECHTEL

PARTNER



Since the economy spiraled out of control and housing prices plummeted nearly as fast as the stock portfolios we once saw as our security for retirement, many contemplating divorce express worry about splitting up in this economy. Some are asking themselves and their prospective lawyers if it may be more prudent to wait.

Even couples who started their divorce a year ago are perplexed about how to finish it. The economy has a big impact on how people may be able to divide their assets in a divorce. Declining values of homes and other assets create panic about how individuals will live separately – and very often the realization hits hard that they will not live as comfortably alone as they did together. This is usually the case in a divorce, but the impact has been particularly tough lately following years of increasing home values that allowed individuals to walk away from their marriage and start over with several hundred thousand dollars, or more, based on the sale of a house or stock.

For most, our biggest asset is our house – and it's also our biggest liability (debt), at least in Silicon Valley. Couples hesitate to sell their house and lose equity they saw skyrocket over the last five to 10 years. In many cases, neither individual can afford to take over the mortgage and “buy out” the other. Making matters worse, couples often realize they can only afford to keep the house by staying together.

Lay-offs have added to the anxiety. In some cases, couples face a situation where neither party is working, which means neither will receive spousal or child support. Some two-income households have experienced a lay-off of the high earner, and a part-time worker finds that he or she may have to pay spousal support if the couple separates.

Many couples are pulling in the reins, deciding to work together to sort out their assets informally rather than incur the expense of fighting in court. More than ever, parties to divorce are showing interest in mediation, which can be an effective and cost efficient way to work through tough issues without spending a fortune. Parties that once pushed for litigation may find that working with a neutral mediator and a consulting lawyer gets the job done – and often at less emotional and financial expense than doing it themselves. Further, a “Do-It-Yourself” divorce can put anyone with stock, real property and retirement accounts at risk of making a deal that will compromise long-term security.

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DIVORCE IN A DOWN ECONOMY – Continued

There are several approaches lawyers can take to help clients through emotionally difficult times, without also making divorce a financially devastating experience. Couples who have been on the fence about separating may take this period to work through issues in marriage counseling. Considering the financial alternatives, what may have seemed impossible six months ago may be approached with a renewed sense of enthusiasm. However, most individuals seeking counsel have spent years coming to the decision to divorce and need strategies for working through this tough economic time with some of their assets intact.

There are many creative solutions that are not normally considered in dissolution cases, because they require couples to remain entangled with each other. However, in the current financial climate and with the accompanying drop in housing prices, clients and lawyers are reviewing these options with renewed interest. Complicating matters even at the highest end, in this tight credit market, a spouse who might have afforded a buy-out last year is unlikely to qualify for the refinance necessary to remove his or her former mate from the title and the debt. In response, settlement agreements can be drafted that allow the parties to continue to hold the family residence as joint owners, with one spouse remaining in the house and the other maintaining specific rights and security in exchange for waiting to get his or her equity. The long-range benefit is that the house will likely increase in value.

These settlement agreements can be specifically tailored to the situation and family. For example, the wife may remain in the family residence with her former husband on the title as a co-owner (tenants-in-common) for a period of years or until children reach a certain age. If she decides to move, or sell the property, or defaults on the mortgage, the former husband may exercise his right to purchase the house. An alternative to joint ownership is to have one party secure the former spouse's interest with a deed of trust.

These agreements are complicated, and therefore need careful drafting to cover a multitude of scenarios and concerns. The details must be meticulous. However, for some couples facing the sale of a house that is underwater or has lost significant equity, a co-ownership agreement may be the best way to stave off losses if they can afford to maintain the status quo.

Catherine Bechtel and the McManis Faulkner family law team focus on assisting clients in all aspects of marital dissolutions, including complex asset valuation and disposition. The creative and strategic group partners with their clients to understand the family dynamics and critical pressure points so the best possible of outcomes may be achieved.