



DIVORCING YOUR MORTGAGE

April 2018 Issue

DID YOU KNOW??

This Month in History

1st: Formal ratification of the Articles of Confederation. (1791)

1st: Lindbergh kidnapping. (1932)

4th: King Charles II of England granted land in the New World to William Penn. The area later became Pennsylvania. (1681)

4th: The first meeting of the new Congress of the U.S. Constitution took place in New York City. (1789)

10th: The first issue of U.S. government paper money occurred as \$5, \$10 and \$20 bills began circulation. (1862)

22nd: The Equal Rights Amendment to the U.S. Constitution was passed by the U.S. Senate but failed to be ratified. (1972)

30th: President Ronald Reagan was shot. (1981)

Marital Liens, Lis Pendens & Mortgages



Lis Pendens are notices that warn the public of lawsuits that affect real estate. They are often used in divorce cases to protect one spouse when the other tries to transfer real estate without the other spouse's knowledge. A Lis Pendens help to protect a spouse's

interest in the property until a final settlement is reached or a judge decides how to fairly divide the real estate between them.

Failing to record a lis pendens during a divorce may lead to property loss. A new homebuyer may unknowingly buy real estate involved in a divorce unless a recorded lis pendens warns him not to. An innocent buyer may need to give the property back, even if a judge later awards it to the selling party in the divorce. A recorded lis pendens may also help protect a spouse's property interest if the other spouse files bankruptcy. It provides a recorded interest and maintains a higher priority over other unsecured creditors in bankruptcy court.

Generally, a final judgment for divorce discharges a lis pendens; however, each state has its own set of statutes governing the requirements of lis pendens. Because a judgment for divorce may discharge a lis pendens, many times the vacating spouse will have a marital lien placed on the property to protect (Continued on page 2)

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Marital Liens, Lis Pendens & Mortgages Continued

their interest that was awarded to them during the divorce if their interest is to be obtained from a future sale or refinance. A Marital Lien is also considered a 'notice' of lis pendens and will reflect in the property title searches.

When a Marital lien is going to be placed or is already in place on a property, it is important to recognize the following important mortgage guidelines. These guidelines should be considered in the event future mortgage financing is required for the marital home.



There are 2 primary rules that need to be followed when refinancing the marital home with a marital lien in place.

Rule #1. Balloon Date of the of the marital lien must not be within the first 5 years. Current Fannie Mae guidelines state that if the marital lien created in the divorce decree will NOT be paid and released by the spouse retaining the marital home, then the subordinate lien must not balloon within 5 years.

Rule #2. The specific amount needed to satisfy the marital lien must be detailed in the final marital settlement agreement. When refinancing the marital home to satisfy the marital lien, meeting specific guidelines can help the refinancing spouse gain more favorable loan conditions. Avoid including the marital home in a combined asset and debt division formula. Doing so may cause the cause the new loan to be considered as a cash out refinance causing a higher interest rate and reducing access to equity. The division of equity in the marital home should be noted separately and noted within the Real Property section of the marital settlement agreement. Noting the equity division separately, including the specific percentage or dollar amount, will qualify the new mortgage as an Equity Buy-Out which is treated the same as a no cash out refinance by mortgage professionals.



Contingent Liability vs. Mortgage Financing

One of the main concerns when one party is retaining the marital home is that the departing spouse will not be able to qualify for future mortgage financing while their name remains on the current mortgage. While many investors have their own guidelines or ‘overlays’ to Fannie Mae underwriting guidelines, a divorce mortgage professional will know how to handle Court-Ordered Assignment of Debt.

When a borrower has outstanding debt that was assigned to another party by court order (such as under a divorce decree or separation agreement) and the creditor does not release the borrower from liability, the borrower has a contingent liability. The lender is not required to count this contingent liability as part of the borrower’s recurring monthly debt obligations.

The lender is not required to evaluate the payment history for the assigned debt after the effective date of the assignment. The lender cannot disregard the borrower’s payment history for the debt before its assignment. This applies to all contingent liabilities including mortgages, auto loans, credit cards, etc. (FM Selling Guide B3-6-05)

Again, if you have any questions regarding a client’s contingent liabilities and how it will be considered in qualifying for a future mortgage, please don’t hesitate to contact me directly. Working directly with a Certified Divorce Lending Professional (CDLP) during the settlement process can help protect your divorcing client from failed mortgage financing in the future.

CDLP Certified

Certified Divorce Lending Professional

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Divorce Lending Institute
Professional Member



WHY YOU NEED A CERTIFIED DIVORCE LENDING PROFESSIONAL (CDLP) ON YOUR PROFESSIONAL DIVORCE TEAM.

A professional divorce team has a range of team players including the attorney, financial planner, accountant, appraiser, mediator and yes, a divorce lending professional. Every team member has a significant role ensuring the divorcing client is set to succeed post decree.

A Certified Divorce Lending Professional brings the financial knowledge and expertise of a solid understanding of the connection between Divorce and Family Law, IRS Tax Rules and mortgage financing strategies as they all relate to real estate and divorce. Having a CDLP® on your professional divorce team can provide you the benefit of:

- A CDLP is trained to recognize potential legal and tax implications with regards to mortgage financing in divorce situations.
- A CDLP is skilled in specific mortgage guidelines as they pertain to divorcing clients.
- A CDLP is able to identify potential concerns with support/maintenance structures that may conflict with mortgage financing opportunities.
- A CDLP is able to recommend financing strategies helping divorcing clients identify mortgage financing opportunities for retaining the marital home while helping to ensure the ability to achieve future financing for the departing spouse.
- A CDLP is qualified to work with divorce professionals in a collaborative setting.
- A CDLP can provide opportunities in restructuring a real estate portfolio to increase available cash flow when needed.
- A CDLP maintains a commitment to remaining educated and up to date in the ever changing industry guidelines and tax rules as they pertain to divorce situations.
- A CDLP is committed to providing a higher level of service to you and your divorcing clients.

The role of the CDLP is to help not only the divorcing client but the attorney and financial planner understand the opportunities available as well as the challenges divorce can bring to mortgage financing during and after the divorce. When the CDLP is involved during the divorce process and not after the fact, many potential financing struggles can be avoided with valuable and educated input from the Certified Divorce Lending Professional.

“Nothing matters more in winning than getting the right people on the field. All the clever strategies and advanced technologies in the world are nowhere near as effective without great people to put them to work.” - Jack Welch, *Winning*

CDLP Certified

Certified Divorce Lending Professional

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