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Divorcing Your Mortgage

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Avoiding a Contempt of Court Issue

A Contempt of Court issue when a former spouse fails to execute their obligations in the marital settlement agreement with regards to real estate and mortgage financing can be avoided if the right steps are taken in advance. There are many times when mortgage financing is a requirement post decree whether it involves refinancing the marital home to remove a spouse from the current mortgage, completing an equity buyout, or even for the purchase of a new home for one or both parties.

Unfortunately, often times the successful execution of mortgage financing requirements in many divorces fail. It fails not because of a lack of effort on behalf of the divorcing parties, but rather on other details within the marital settlement agreement. The two most common reasons why divorcing clients are unable to successfully obtain mortgage financing have to do with qualified income and credit. The best way to avoid these issues is to consult with a qualified divorce lending professional during the settlement process rather than after the martial settlement agreement is final—this can make a big difference in ensuring the successful execution of the MSA and avoiding a possible Contempt of Court issue.

Let's take a look at the common income and credit issues that can prevent a successful mortgage transaction.

Did You Know?

Factors Affecting Fraud Risk

"Mortgage application fraud risk will likely rise over the next few years if current trends of higher LTV purchases and increased credit availability continue. Because post-fund quality control findings are biased to specific types of fraud that are easy to detect shortly after closing, lenders should not rely only on those results to measure fraud risk. Examples of other monitoring techniques include root cause analysis of loans that default in the first several years, random 4506-T discrepancy rates, and origination and trends analysis of high-risk attributes of your applications and/or originated loans." — Senior Director, Fraud Solutions Strategy at CoreLogic

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Income vs. Qualifying Income

Often times in a divorce and mortgage situation there are various types of income to consider: Employment Income; Alimony/Maintenance Income; Unallocated Maintenance Income; Child Support Income; Property Settlement Note Income; and more. Although all sources of income are considered “income” by the recipient, it is important to understand that from a mortgage financing perspective, ***not all sources of income are considered “Qualifying Income.”***

In order to be considered as “Qualifying Income” certain requirements of each income source must be met. For divorcing clients who will need mortgage financing once the divorce is final, involving a mortgage professional who specializes in Divorce Mortgage Lending during the divorce process rather than post decree can potentially help avoid common pitfalls when “Income” is not considered as “Qualifying Income.” Let’s take a look at some of the most common income issues in divorce situations with regards to Alimony/Maintenance and/or Child Support.

Alimony/Maintenance, whether unallocated or allocated, along with child support must meet specific requirements to be considered as “Qualifying Income” for mortgage financing purposes by meeting both continuance and stability tests.

Continuance: A key driver of successful homeownership is confidence that all income used in qualifying the borrower will continue to be received by the borrower for the foreseeable future. Must be able to document that income will continue to be paid for at least three years ***AFTER*** the date of the mortgage application. Check for limitations on the continuance of the payments, such as the age of the children for whom the support is being paid or the duration over which alimony is required to be paid.

Stability: A review of the payment history is required to determine its suitability as stable qualifying income. To be considered stable income, full, regular, and timely payments must have been received for six months or longer, provided the income does not represent more than 30% of the total gross income used to qualify for mortgage financing. When the income represents more than 30% of total gross income, a longer period of receipt may be required. Income received for less than six months is considered unstable and may not be used to qualify the borrower for the mortgage. In addition, if full or partial payments are made on an inconsistent or sporadic basis, the income is not acceptable for the purpose of qualifying the borrower.

Back to Work: Often times once spouse, typically the wife, has been out of the workforce for an extended absence while raising the children. Even thought this spouse may have recently returned to the labor force, specific requirements must be met in order to use ordinary employment income as qualified income. The borrower must be currently employed in the current job for six months or longer, and must be able to document a two year work history prior to an absence from employment.

Common Credit Concerns With Divorcing Couples

Mortgage payment is missed. Whether an oversight or intentional, when a mortgage payment is missed there are more repercussions than just a negative hit to the credit score.

- A single 30 day late mortgage loan payment can cause a credit score to drop by as much as one hundred points.
- A single 30 day late mortgage loan payment may prevent mortgage financing from 12 months up to 24 months depending on the loan program and investor.

Marital Home in Foreclosure Proceedings. Many times in a divorce situation there are financial struggles and often times the marital home is involved in foreclosure proceedings.

> If foreclosure proceedings have already begun the best option and sometimes the only option is to contact the current lender/servicer to determine if there is a loan modification or alternative plan to salvage the marital home if this is desired. Once the foreclosure proceedings are underway, new traditional mortgage financing is very difficult if not impossible to obtain. Even if the foreclosure proceedings were resolved, the recent mortgage payment history stated above will be a factor in obtaining new financing.

Joint Marital Debt Retained Post Divorce. When it is currently not possible or not the best option to close out joint marital debt the court may order one party responsible for the full payment of specific debts. When this occurs, the debt is considered a “Contingent Liability” and for mortgage financing purposes, contingent liability is not typically included in the debt to income ratio for the party not responsible for the joint marital debt. But what happens if the responsible spouse makes a late payment on the joint obligation?

- The credit score of both spouses will be affected negatively as both individuals are still liable to the creditor.
- For mortgage underwriting purposes, if the debt was ordered to be paid solely by one party per the Marital Settlement Agreement, the payment history of the debt ***after*** the contingent liability was ordered may not be considered by the mortgage underwriter.
- Contingent Liability guidelines are applicable to all joint marital debt including mortgage financing, auto loans, installment loans, credit cards, etc.

FREE Credit Reports

In 2003, Congress passed the Fair and Accurate Credit Transaction Act as a way to address identity theft. FACTA is an addendum to the Fair Credit Report Act. Under the FACTA, consumers have the right to request one free copy of their credit report from all three bureaus: Experian, Equifax and TransUnion. Congress also created a website where consumers can order all three reports in one place: www.annualcreditreport.com

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LENDING SOLUTIONS
Done Deal.

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*