

Stuck With A House Divided

Posted to NorthJersey.com-Real Estate Section-Bergen Record - by Mary Amoroso on Sun, 04/05/2009 - 10:22am

Irina came to the United States with her parents from Ukraine 17 years ago, and has been a firm believer in the American Dream ever since.

She was proud to contribute to the American economy during the years she had a job as a programmer in downtown Manhattan, and proud to give birth to two young American citizens.

When she and her husband were able to buy an up-scale home in Demarest eight years ago, it was another validation of the dream.

But her spouse became an absentee husband working long hours on Wall Street, and Irina filed for divorce over a year ago.

Nonetheless, they are both still living in the Demarest home, albeit in separate bedrooms, while they undergo arbitration. With the economy and the real estate market in free fall, they can't afford to live separately. Her husband would like Irina to buy out his share of the house (now valued at about \$960,000), but Irina can't find a mortgage company willing to give her a mortgage.

"It's not my dream of how I wanted my life to be, but I'm doing the right thing for my children," said Irina, who asked that her last name not be used. "It's not just about the house, it's not because it's a big house, it's that it's my home, it's my children's home."

The declining real estate market has added even more angst to the divorce process. As divorcing couples watch the equity in what is often their biggest marital asset drop, they often can't afford to maintain separate residences. So, like Irina, they continue to live together under one roof, either communicating through their lawyers or re-enacting the fights that precipitated their breakup. Some couples are continuing to live together after the divorce, waiting for the house to be sold.

When they do finally sell the home, there may be little or no cash to stake their new lives. And some decide to stick it out and postpone divorce until the real estate market and the economy improve.

"I have several clients who would like to get divorced, but who can't afford to get out of the home," said Angele Leaptrot, director of the Shared Housing program at the Women's Rights Information Center in Englewood. "They're either waiting for the real estate market to come back or for one of them to get a job."

Until recently, you couldn't file for a no-fault divorce in New Jersey unless one spouse had moved out of the house. If you wanted to file for divorce without assigning blame (grounds such as extreme cruelty or adultery), spouses had to live separate and apart for 18 months before a divorce complaint could be filed. But a 2007 state law allows for no-fault divorce if a spouse claims irreconcilable differences that have caused the breakdown of the marriage for six or more months. There is no separation requirement

The one upside of the declining market, according to lawyer Helene Herbert of Herbert & Weiss in Wood-Ridge, is that with home prices much lower, it can be cheaper to buy out the other spouse's share of the home. To do that, though, you have to use other assets or obtain a new mortgage on your own – no easy task in these days of tight credit and high lending standards.

And the appraised value of the home can become another source of conflict.

"It's really getting sticky when it comes to who is looking to buy whom out," said Jacqui Atcheson, a senior mortgage consultant with Metrocities and a former divorce mediator. "The one who wants to buy the other spouse out wants the lowest appraisal of the home's value. The one being bought out wants the biggest appraisal."

In a recent case, Atcheson said, the wife wouldn't pay the appraiser because she didn't like the appraisal numbers. And multiple appraisals need to be done over the course of several months, as the divorce case works its way through the legal system and the market continues to fall.

"More people are staying together until their finances pick up," Atcheson said. "There's no money to split

and they can't afford to go anywhere else, which makes people more miserable and nastier and angrier."

More than occasionally in this market, spouses stay together even after the divorce, Herbert said, citing a recent case he handled.

"The husband is there because of the mortgage issue," he said. "They're trying to sell the house, and he's working on repairing the house. After the divorce [finalization], they left the courthouse together in the same car. The ex-wife handed the car keys over to the ex-husband and said, 'You drive.'"

Melissa Cannizzaro, a certified divorce financial analyst with Signature Financial Group in Paramus, said she's seen the same thing.

"I have one client, they just settled their divorce and they're still in the house together," she said. "There's just nowhere to go. It's not a huge house, not a brand-new house. They don't have much equity and they can't afford another mortgage, so they're living together, for better or for worse."

Janell Weinstein of the law firm Melli, Guerrin and Wall in Paramus, notes that living together while divorced also creates a whole new set of issues, such as "How do we handle dating and overnight guests?"

Lawyers and financial experts say they see a number of divorcing clients whose homes are either in some stage of foreclosure, or "underwater," where they owe more than the house is worth.

"Financial ruin often precipitates or follows marital ruin," Herbert said. "If you're not handling the emotional piece of your marriage, you're probably also not handling the financial piece."

And increasingly, arguments over the declining real estate market trigger and enflame talk of divorce, and because of the market and the poor economy, the consequences of divorce are harsher.

"They can't agree whether to sell the house, keep the house, who can afford to stay in the house," Cannizzaro said. "If they are able to sell the house, they're taking a huge loss; therefore, alimony and some other things are being cut."

There aren't hard statistics on how many people postpone divorce because of the real estate market and the economy, but, when the American Academy of Matrimonial Lawyers (AAML) polled its 1,600 members, 37 percent said divorce filings decrease during economic downturns. Only 19 percent said they increase.

Gary Nickelson, president of the AAML, said:

"For many spouses, the divorce process involves a great deal of long-term planning, and waiting for better economic times is often just another element of the overall process," said Nickelson. "Many individuals tend to employ a wait-and-see strategy during a troubled marriage and are very well prepared when it comes time to file for divorce. A sudden drop in net worth can effectively postpone this final decision from being made."

So what do you do if your marriage has become untenable, but your post-divorce finances look bleak?

First off, if there is any possibility of domestic violence should you stay under the same roof, you must get out.

If you can't afford rent, stay with friends or relatives, or seek out a shelter, but get away from potential danger.

If you can remain amicable or put a lid on your conflict while living in the same house as you prepare for divorce, you might consider talking to a counselor or mediator, both to review your financial situation and to set up new living arrangements and division of responsibilities in your marital home.

"Be realistic, and have realistic expectations," Weinstein said. "If you're going through a divorce, generally your home is your biggest nest egg. If you can't afford to pay the mortgage, you have to sell it. If the house is priced too high, you have to reduce the price."

Ultimately, you may decide to see where the economy takes you and your marriage.