

Market slump makes divorce more difficult

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Back in the days of the housing boom, I knew a couple whose marriage went sour, but they continued to live together for years after their divorce went through. Turns out the holy grail of stability wasn't their affection for one another, but a rent-controlled apartment. They simply couldn't afford to move on.

I wrote then about the way the white-hot real estate market was burning families going through divorces. Now, ironically, the sharp downturn in the market is taking a similarly painful toll on **couples** who are breaking up. It's not that they can't afford their next home but that they can't get rid of the old one. I have friends who are taking turns living in their marital home even as they hope to sell it.

But in the new era of homes going stale in an over-supplied market and their owners going underwater on their mortgages, this is but the tip of the domestic iceberg. According to divorce lawyers, the quickly shifting real estate landscape is making breaking up harder to do than ever.

"The housing market is having a major impact on divorce cases," says Stephen Ruben, a certified family law specialist in San Francisco. "If a house doesn't sell, it has a major impact on cash flow for child support, on where people live, on future taxes." Indeed, the mortgage crisis and moribund market have made for some strange bedfellows.

"There is a whole new aspect of divorce that most **couples** never had to face," explains Janell Weinstein, a partner in the law firm of Federbusch & Weinstein in New Jersey. "Many **couples** are forced to live under the same roof because they can't afford to move on until their home gets sold. This can go on for months or even years as the real estate market across the United States slows down tremendously. Homes that used to sell in weeks are now not moving at all." This month, Weinstein wrote about the phenomenon of cohabitation after divorce for the Web site www.firstwivesworld.com.

She told me that for most **couples**, living with an ex is a choice of last resort. "If you have a substantial

amount of assets, then one person moves out. Some people are moving in with family members," she says. "But for some people, all their savings are in their homes and with the house not selling, they have no other choice."

Her clients most affected by this trend are mostly seniors on fixed incomes who no longer have family living in the area. But other lawyers suggested it also is affecting families with young children. "Kids add to the cost of everything," said San Francisco divorce lawyer Tilden Moschetti. "One person may feel like they can't just move into a studio because it's too small to house their kids."

Whatever the life stage of the couple, Weinstein says, living together after divorce presents some difficult, potentially dangerous situations: "What if there's domestic violence going on? It can be very hard. We try to come up with creative solutions, but the fact is that it's not an easy issue for most **couples**."

Strained situations

Moschetti has seen another conundrum created by the meltdown - owners who owe more on their homes than they're worth.

"It's really challenging," he said. "Do you do a deed in lieu of foreclosure? Do you try a short sale? What if one person wants to keep living in the house? Who eats the cost?"

In places such as Contra Costa County, where homes are just sitting on the market, it's especially difficult. "It becomes so untenable," said Moschetti. "Something needs to change - someone needs to find a way to live in a studio, to make a change." But Moschetti said his clientele are hardly among the hardest hit. "I'm seeing people who can afford to pay me. For others, the situation is much more strained."

Although selling the house has always been a central part of the divorce process, the market decline has changed the face of divorce. "A few years ago, it took only a couple of weeks to sell the house, but now we

have to write agreements carefully because we just don't know," Weinstein said. "I've been practicing law since 1991 and this is the first time I've seen a situation like this."

Moschetti echoes Weinstein's frustration. "In the past, the hardest thing was picking a Realtor," he says. "There was always an argument about that - but other than that it was straightforward."

Another option is for one spouse to buy the other out. But what if neither person can afford that? Then a common conflict arises: One person wants to sell at all costs and the other wants to hold the house until the real estate market rebounds. Such arguments have put judges in the bizarre position of real estate analysts. "Courts are not ordering properties for sale because of the market," explains Ruben, who says that judges now routinely bring in real estate experts and analyze housing forecasts to decide whether to side with the spouse who wants to sell now, or the one who wants to wait for the market to improve.

"We're seeing judges decide to wait, based on the assumption that the market will improve in the summer or fall. It's having a major impact on resolution of these cases."

Complex division

Indeed, all the attorneys I spoke to bemoan the complexity that the condition of the housing market has brought to divorces. In economic terms, a divorce is a dividing of the couple's jointly held assets.

Now many divorces are finalized before the couple sell their home. That creates a host of other potential points of contention: Who gets to live there in the meantime? Who pays the mortgage? Does paying the mortgage increase the payer's equity? Who gets the mortgage interest deduction? Who is responsible for a major repair that might be needed?

In the long run, judges seem to be assuming that the market will rebound. But what if it doesn't? For all the **divorced couples** who have put their lives on hold, continuing to share real estate based on predictions that just don't pan out, the phrase "a house divided" may assume a new meaning.

This prospect has left some lawyers wondering how much more complicated, stressful and time-consuming divorces will become. "It's going to be very interesting" said Weinstein. "I don't know what's going to happen."

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