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Divorce is even messier now with a tightening real estate market

A split could leave someone underhoused or worse

By Kevin Oklobzija

Soaring home prices coupled with still record-low inventory has created unforeseen complications in divorce settlements, a process that already was stressful and often cantankerous.

If the house isn't being sold and the proceeds split between the parties, there can be major issues.

The spouse keeping the house must figure out a way to pay off their ex for his or her portion. And the departing spouse must somehow find what they consider to be similar housing, which could be near impossible in today's market.

Mix in wide differences in appraisals, a lack of cash flow, credit rating problems and the desire to stay in the same school district and the matter of splitting what usually is a couple's largest asset has become one big headache.

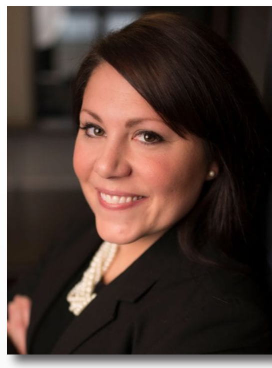
"It's thrown a wrench into some-thing that was never really an issue before," said Sarah Wesley, partner at Wesley Clark & Peshkin LLP, a law firm focused on divorce mediation and litigation.

And it's even more of an issue today because divorce rates spiked 30 percent during the COVID-19 pandemic, Wesley said.

The process starts with a question: Who's going to stay, who's going to go or are we going to sell?

"For most couples, the house is typically the largest asset and typically where they have the most liquidity," Wesley said.

If the house is being sold, which often is the case for older couples whose children are no longer at home or couples without children, both parties will be introduced to the hallmarks of the cur-rent housing market:



Wesley

Few houses to choose from, multiple bids on those that do go up for sale, bids that are thousands of dollars over list price and contingency clauses frowned upon by lenders. Oh, and interest rates that were in the 2.5 percent range 14 months ago are now pushing 5.5 or 6 percent.

"Trying to find an affordable and suit-able house in a school district is challenging," Wesley said. "I had one client where only one house came up for sale in her price range in the school district in 10 months.

"When houses do go up for sale, they're flying off the market."

And that's the welcomed scenario. Matters can be even more complicated if one spouse is keeping the house.

To come up with an equitable split of the asset, the spouse staying in the house must pay half of its value to the departing spouse. That's done after each party obtains an independent appraiser, which adds another layer to negotiations.

"Appraisers and appraisals are all over the board, depending on what comparable they're using," Wesley said. "The party that's being bought out is going to say, 'That's too low,' and the party that's staying in the house is saying, 'That's too high.' "

If the parties can't agree on middle ground, a judge must decide. And that means one party won't be happy.

"The courts (in New York) are obligated to accept one appraiser's number, they can't split the difference," Wesley said.

In Illinois, where family law attorney Raiford Dalton Palmer is based, rather than choose an appraisal number, the judge often tells the parties to sell and let the market determine the value.

"That usually brings about a settlement," Palmer said.

His recently published a book,

> *It's thrown a wrench into something that was never really an issue before.*
>
> —SARAH WESLEY

"I Just Want This Done," discusses how real estate is complicating divorce proceedings across the country.

"In a normal housing market, it's not a major issue," Palmer said. "But with the market where it is now, it adds another layer of uncertainty at a time that is already challenging." Deciding who keeps the house often is dictated by which spouse can afford to stay.

"One issue we're seeing is that one spouse can't afford to buy the other out," Wesley said. "They're saying, 'We bought at $140,000 and now they're saying it's worth $350,000. I can't afford to buy you out.' "

That becomes even more of an issue when financing from a bank is necessary. The appraisal from your appraiser won't matter to the lender. The bank will only provide financing based on its own appraisal.

"You've been told by the market that the house is worth $440,000 and the bank is saying it's worth $400,000," Wesley said. "You have to cover that gap."

If there investment assets such as a 401 (k) or IRA, then the spouse keeping the house often will agree to take less of the retirement account as a means of making up the difference in the value of the house.

"They're negotiating other assets because one of them needs cash now to buy the house," Wesley said.

If one spouse has been a stay-at-home parent, they may find credit more difficult to come by when trying to come up with the funds to buy out the spouse, or to buy another home.

"The parent is at home, there is no recent work listing so the credit has tanked and they're not getting qualified for a home," Wesley said.

Banks also aren't providing funding based on what the parties expect will happen. So all financial matters often must be wrapped up before a new mortgage will be issued.

"Lenders are not accepting generalized (divorce) agreements," Wesley said. "They're saying, 'We need finalized documents.' "

Attorneys caution that getting qualified or coming up with the money for the house isn't the end game.

"What is the child support obligation going to be," Wesley said.

Also, is there enough cash in reserve to pay for a new roof, new heating system or what could be an inevitable bump in property taxes once municipalities catch up to the recent market trends.

"I'm advising that people really think of the long-term implications," Palmer said. "This is a time when you want less stress in your life."

koklobzija@bridgetowermedia.com/ (585) 653-4020