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Today's real estate market calls for dire divorce decisions

Published: Sunday, December 05, 2010, 6:00 AM



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Sarah Bandy always knows something is up when she helps a couple try to sell their home, but hears back from only one spouse.

"They don't tell us in the beginning," said Bandy, a real estate agent who brokers deals for luxury homes in Colts Neck. But lately, when she presents clients with a home valuation report, the answer is almost always, "Oh, we can't do that. It's too low."

"Then they end up confessing, especially the wife," Bandy said.

The couple is divorcing, and they need to get rid of the house. But today's housing market has reversed what once was a hallmark of divorce

settlements — who gets to keep the house. Now, the home might be worth less than its mortgage, and there are no guarantees it will sell in the near future, much less for a profit.

Couples then are left with a series of unforeseen puzzles — who takes on the financial responsibility, how to split any possible debt and at what point it makes sense to move on.

"This has become one of the prime issues that I'm dealing with," said Robert Kornitzer, a matrimonial attorney in Hackensack. "I don't want to say it's slowly developed. It's hit us with a sledgehammer."

One day this fall, two of the three cases Kornitzer mediated involved houses worth less than what was owed. Later, an adversary in court told him their case was the only one of six that morning that didn't involve such debt problems.

Divorce rates have risen only 2 percent since 2006, according to state data. But Bandy said 30 percent of her clients are now either divorced or heading that way, and are struggling to sell their home and quickly find a new, affordable one.

Lawyers today also are forced to wear many hats — financial adviser, real estate agent, career counselor, therapist.

"It's devastating for us as divorce attorneys because there are no real answers for people," said

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Vikki Ziegler, a family lawyer in Roseland.

Each blip in the economy has vast ramifications for how a couple will structure its settlement. Lawyers now maneuver deflated retirement accounts and how to set alimony when one spouse has been laid off. But the housing market's effect on divorce proceedings has surprised even veteran attorneys.

"It makes it more difficult to settle a divorce case," said North Brunswick-based matrimonial attorney Len Busch. And Busch said the more a couple squabbles over these details, the more legal fees rack up and the process slows.

Lawyers said they have had to develop a more focused approach in an economy that, according to real estate valuator Jeffrey Otteau, has seen the inventory of unsold homes in New Jersey climb 10 percent from last year.

"There are so many additional decisions you have to make now," Busch said. "You can't just say, 'Let's split up the assets and we'll have a decent life.' It can take a lot of sacrifice on one person's part for the sake of the kids."

For those who decide to sell, it's a daunting task for people trying to split up. Do they keep the house now and try selling it next year? If they wait, will its value go up or down? Can they rely on a short sale? What happens if they just stop paying the mortgage? Is one spouse willing to buy out the other, own the home and assume all risk? There is no obvious solution.

"It's a gamble," Kornitzer said. And, he added, "it makes it harder to make decisions because of the uncertainty."

TETHERED TOGETHER

In particularly dire situations, a "substantial majority" of Kornitzer's clients have opted to live under the same roof during divorce proceedings to save money on extra rent.

Ziegler has seen the same trend.

"Most people are not [renting] unless it's a dire emergency, or they just can't live together anymore," she said.

Others stay put even after the process is finalized, but before the house sells — a decision judges frown on for fear of possible domestic violence. Pressure and stress from financial and emotional concerns can escalate fights and introduce new ones.

Michael Diamond, the presiding family court judge in Passaic County until he retired in October, recalled a woman who called and asked if she could move back into the house several months after the divorce was finalized. He allowed it, but warned her to be aware of the risks, find ways to minimize frayed nerves and make arrangements to lead separate lives.

"I don't know how they do it," Diamond said. "You say, 'Well, how do you stay in the same house?' Their answer is, 'We have no choice. We can't afford to get out.'"

Tensions can get high, and Diamond said he warned couples to be careful.

"They have to understand that because of the tension, and if there's a substantial dislike of each other, they have to be prepared not to get in a domestic violence situation," he said.

The prospect of losing everything scares some of Bandy's clients, who choose to stay together once they realize how challenging the alternative might be.

"Then I see the other side where they don't care, they're leaving, they want to be happy and they will deal with the consequences later," Bandy said.

"It's just sad."

Sarah Portlock: (973) 392-5994 or sportlock@starledger.com






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I appreciated your article on divorce and the house. One solution you did not mention is a short sale. The tax laws were recently amended to exempt the difference between the mortgage and the ultimate sale price as taxable income. In these situations, walking away will allow both people to rebuild their lives. The fallacy is that the real estate is coming back soon. It might, but it might not. Holding onto the house might seem the easiest path during the divorce, but the first time there is a major repair needed such as a new roof, and there is no cash, the deferred decision leads to another crisis. Divorce mediation is an avenue that allows both parties to explore their options together... and often leads to more creative solutions. There is no winning here. The idea is just to lose less. Regards, Anju D. Jessani, Accredited Professional Mediator, Hoboken & Clinton, NJ, <http://www.dwdmediation.org>.

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