

DIVORCE REAL ESTATE BULLETIN

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REPRESENTING *BOTH* PARTIES IN A CASE?

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You wouldn't represent both spouses in a divorce case, so why can a Realtor represent both the Seller and the Buyer in a home sale? Like attorneys, Realtors have a written code of ethics that is issued by the National Association of Realtors (Code of Ethics and Standard of Practice under Article 1). Unfortunately, for parties selling a property, the code of ethics for Realtors is not nearly as stringent as the ethics rules by which you, as a lawyer, abide.

Many attorneys are surprised to learn that Realtors are allowed to "double-end" deals. According to real estate industry publication Inman News, in all but eight states, Realtors are allowed to represent both a buyer and seller in a transaction with fiduciary duties to both (referred to as "dual agency.") Attorneys are precluded from this practice, and for good reason! How do you zealously advocate for two adversarial clients?!

Family law attorneys also expect that a Realtor selling the home is advocating for the highest price for their clients. We believe "the market" is deciding this price by listing the house for a value based on comparables in the area, and then allowing competitive bids from the public. However, Realtors who represent an investor as the Buyer may dissuade other competitive offers by not listing the property on the Multiple Listing Service (MLS), or placing it on the MLS with minimal photographs and information, and for only a short period. Many Realtors like representing investors because not only do they earn the entire commission on your listing, they often then represent the investor on the next sale.

You may see "For Sale" signs with "coming soon" attached. This is a clever way a Realtor markets the

property for sale before it is placed on the multiple listing service in an attempt to secure a Buyer and double-end the deal. There are also "pocket listings" where the property is not listed on the MLS and the Realtor markets the property to their own database to secure and represent the Buyer. This denies exposure and cooperative marketing with other Realtors.

A Certified Divorce Real Estate Expert ("CDRE") will never exercise dual-agency in a divorce case where he or she is court-ordered to sell the property. They are "neutral" as between the two divorcing homeowners, but zealously advocate for those homeowners against a Buyer. CDRE's are trained in lawyer's ethics and take their fiduciary duties to the parties seriously.



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CERTIFIED DIVORCE
REAL ESTATE EXPERT

THE DEVIL IS IN THE DETAILS: TIMING IS EVERYTHING

DENISE FONTYN, CDLP, with the Divorce Real Estate Institute, Inc.

If your client hopes to refinance a current home or purchase a new home after or during his or her divorce, the date on which the divorce petition is filed with the court can be crucial.

Because individuals often experience significant financial changes following a divorce, most lenders will require either a temporary settlement agreement or a final divorce settlement ordered by the court before granting a mortgage loan.

Two issues are paramount: Marital debt and spousal support/maintenance or child support.

Marital debt must be addressed early to clarify which obligations will be the responsibility of each party. Then steps must be taken with creditors to transfer all debt liability to the responsible party.

Spousal support / maintenance and child support will be considered as a source of income for loan qualification purposes, but only if it meets requirements to be considered "qualified income." This brings the 6/36 rule into play.

Under the 6/36 rule, your client must provide documentation to prove:

- They have received this income for the past 6 consecutive months.
- They will continue to receive this income for at least 36 months following their mortgage application.

Thus, the method of support becomes important. If a non-occupying spouse makes mortgage payments on the current home in lieu of providing cash payments for support, the occupying spouse will be unable to use that as qualifying income. And, if the support payments have a step-down option that goes into effect within that 36-month period, the income will not qualify.

Clients who intend to refinance the current home or purchase a new home due to divorce will be well advised to consult with a Certified Divorce Lending Professional (CDLP) as early as possible. The CDLP will advise and guide them to ensure that they are positively positioned to obtain a mortgage loan and make a fresh start.



What is a CDRE?

A CDRE handles the sale of real property in family law cases as a neutral expert. A CDRE has knowledge and special skills to handle the effects of the family law process on divorce listings.

Complimentary Services:

- Title Documents
- Property Profiles
- Chain of Title
- Expert Advice to Attorneys with Solutions to Real Property Issues

CASE STUDY

PAMELA EDWARDS-SWIFT, Esq., CFLS, with the Divorce Real Estate Institute, Inc.



Facts:

Husband comes into my office for the initial retainer meeting. I learn that the divorce has been pending for more than two years. About 18 months earlier he signed a deed transferring title to wife *after being told by his current attorney that it was okay to do so!* Of course, both parties were on the loan.

Events:

Wife's attorney, not surprisingly, took the position that the signing of the deed created a transmutation. There had been no reason for Husband to sign the deed. According to Husband, he and Wife had been getting along and had a casual conversation about her keeping the property. That conversation led to the request by Wife that he sign the house over to her. Wanting to keep things civil, he decided to do so, but not before asking his attorney if it was okay to

do so, and getting the poor advice that it was okay to sign it over now, without a Judgment, properly worded stipulation, refinance of the property by wife, etc. At the time the client retained my office, the property value had increased by approximately 12% from the date of the deed being signed and recorded. It took another nine months from the time I was retained until the signing of the Judgment, during which time the property value had increased another 3%. Also, during that time Wife learned that she could not qualify to refinance the loan. We bifurcated the issue of transmutation and set the matter for a half-day trial on that issue alone. We eventually reached a settlement on the issue, just days before trial and after an approximate \$15,000.00 to \$20,000.00 in additional legal fees for the parties.

End result:

The house was sold and the proceeds divided, 51% to Wife and 49% to Husband. I recently learned that Husband has brought a malpractice action against his former attorney.