DIVORCE REAL ESTATE BULLETIN

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REAL PROPERTY INTAKE

THE COMMON AND FREQUENT PITFALLS

Because law school doesn't teach real estate, it's common for attorneys to overlook asking questions whose answers will reveal the true financial status of a home owned by a divorcing couple.

While many liens and obligations will show up on a preliminary title report, the following obligations will not.

Loan Modifications: Because each loan modification is unique, the only way to determine whether there is a deferred principal balance is to read the Loan Modification documents. Most homeowners don't have a copy, so in those instances, it is necessary to contact the lender.

The presence of a deferred principal balance can wipe out any equity the couple expected upon sale of the house. However, under some modifications, that deferred balance will be forgiven if the payments have been made on time for at least ten years.

In those cases, a sale in 9 years and 11 months could trigger an event that would harm both spouses, and could lead to a malpractice suit.

HERO or PACE loans: These high-interest home improvement loans also don't show up on a title or credit report. They are paid off through an increase in yearly property taxes and must be repaid upon transfer of tile. Always check the tax rolls to see if such a loan exists.

Solar power equipment: The purchase or lease must be addressed to avoid a future issue. When the house is transferred, the solar provider may be willing to re-write the lease. If not, negotiations are called for. The lease is often an enforceable lien, and no attorney should allow a client to deed off when any lien in his or her name remains.

If the homeowners paid cash, especially recently, the non-occupying spouse may demand reimbursement.

Intake forms should ask: Have you ever had a loan modification? Have you ever gotten a HERO or PACE loan? Did you install solar power? If so, was it a cash purchase or a lease?

These questions will help to uncover hidden financial land mines that can have significant impact on a case.

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CDRE™ CERTIFIED DIVORCE REAL ESTATE EXPERT

WHAT LAWYERS (AND JUDGES) DON'T KNOW ABOUT DIVORCE REAL ESTATE

The disposition of a home is often not addressed until divorcing parties get to trial. That's a mistake that can have a significant, and detrimental, impact on both parties. The house and the mortgage should be considered early in the divorce proceedings.

1. If the house is to be listed for sale, it should not go on the market before the condition is ready for potential buyers to see it. Then, the occupying party must cooperate fully with showings and with keeping the house in showing condition.
2. In no case should the house be put on the market while repairs or cleaning are still underway, because the first 2-4 weeks are critical to a fast sale. The longer a house is on the market, the lower the selling price, so cooperation benefits both parties.
3. If the cost of separate housing or a dispute over occupancy causes a payment to be missed, it can be very difficult to recover. One 30-day late payment can drop FICO scores by 100-150 points; 60-days late can drop scores 150-200 points.
4. An agent's duties: The listing agent has a fiduciary duty to the parties who hold title to the house –whether one or both. In the case of one party on title, the listing agent does not have a duty to the other spouse, and therefore has no obligation to confer with or present offers to a non-owner. In fact, if they take instruction from the non-titled spouse and it is in conflict with their client on title, the listing agent can be found in breach of fiduciary duty to their client.

Fortunately, there are real estate specialists and experts who can serve as a resource for the legal community, and given the importance of real estate in a family law case, these experts should be consulted with regularly.

What is a CDRE?

A CDRE handles the listing and sale of real property in family law cases as a neutral third party expert.

Complimentary Services:

- Title Documents
- Property Profiles
- Chain of Title
- Expert Advice to attorneys with solutions to real property issues

Services Offered:

- Fair Market Value
- Fair Rental Value

CASE STUDY:
A COSTLY CONUNDRUM

Mr. and Mrs. Smith owned a home together when Mr Smith filed for divorce. A comparative market analysis (sight unseen) valued the property for $470,000 . Mrs Smith wanted to buy-out Mr Smith but hadn't fully secured financing by the time of trial. At trial, Mr and Mrs Smith were court ordered to list the home for sale within 15 days for $470,000 and Mrs Smith was given the first right of refusal to purchase the house at the price offered by a buyer.

The parties listed the property with the realtor who had sold them the house. Once the realtor went into the home, she found the place filthy and in total disarray. The realtor kept (unsuccessfully) telling Mrs Smith she needed to clean the house but listed the property on the MLS on the 15th day.

The house sat on the MLS for 4 months with no offers. The price was lowered 3 times and finally a full-cash offer with no contingencies was received for $400,000. Mrs Smith then decided she wanted to purchase the house for $400,000 and reapplied for the loan. By the time Mrs Smith was declined, they had lost the buyer.

The lack of knowledge by the legal professionals and the lack of expertise by the Realtor cost the parties tens of thousands of dollars.

What should have happened:

1. Had a Real Estate Expert visited the property to perform the Comparative Markets Analysis, the pitfalls would have been readily apparent and resolutions could have begun sooner.
2. A Real Estate Expert would have known that the court has power to make orders to ready the property for sale. The Expert would have contacted the lawyers immediately to identify the problem and advise of a solution, which would have included resolution for clearing out the contents of the house prior to the listing, for pricing the property accurately and for scheduling an optimal date for listing. This would have saved the parties tens of thousands of dollars lost due to listing the property in an "as is" state and having it lose value as it sat on the market. The lawyers would have had an opportunity to seek court intervention, if that became necessary.
3. A Real Estate Expert would have educated the lawyers and the court against allowing a first right of refusal once the property had been listed. Ultimately, it was this provision that lost the parties the sale.