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Tax Problems in Joint Home Ownership for Divorced Couples

In what is referred to as the 'hidden area of the law', Vanderbilt law professor, Kelly Lise Murray has been conducting free seminars to educate couples on the inherent dangers of divorce while the home is under joint names. Situations like these have led to lawsuits all over the country mainly due to bad advice from divorce lawyers, real estate agents and even divorce court judges. In today's bad economy, many divorcing couples are maintaining joint ownership of their houses waiting to sell when the price goes up.

But in the meantime, should the mortgage payments fall behind schedule, then both ex-partners are liable. If both parties decide to rent out the property, then when it comes time to sell, it will be more costly for the couple as the house no longer qualifies for tax breaks as their primary residence.

Even if the spouse who moves out of the house legally signs over his or her claims to the home to the spouse who continues to live there, the ownership of the house is still in joint names. So if the spouse who lives in the house misses mortgage payments or faces foreclosure, it can adversely affect the credit standing of the other spouse, too.

On the other hand, sometimes the spouse who remains in the house may discover that creditors have filed liens (including tax liens) on the house against the debts of their ex-spouse. Due to these liens, the house may be sold, and the proceeds will be used to settle the debts of the ex-spouse. This will happen as long as both spouses' names are listed as joint owners of the property.

Another potential problem for the spouse who stays in the house is unknown structural problems. These may need repairs that the spouse is not able to pay making the house worth less than it should be worth.

To avoid all these pitfalls, Murray advices divorcing couples who intend to keep their house to have the house inspected not just appraised. Then the spouse who is to keep the house should refinance the property, thus removing the ex-spouse's name from the mortgage. This will also ensure the spouse who retains ownership of the house is able to afford the mortgage payments.

If this is not done, the IRS has the right to file a lien on the house to recoup the debt of either or both spouses who are joint owners of the house.