

Your Home and the Law is authored by the attorneys at JacksonWhite Attorneys at Law and addresses legal issues that arise for renters, homeowners and neighborhoods. **Have a question related to your home or community?** Send your questions to firm@jacksonwhitelaw.com.

Q: When going through a divorce, what are the options for spouses who own a home together?

A: There are basically three options for divorcing couples who own a home together. Option one is for the parties to sell the home and to divide any remaining equity or debt. This is a good option if neither party is able to or wishes to maintain the property after the divorce. This is also the option the court will order if the parties cannot reach an agreement as to the home.

When there is equity in the home and one party wishes to remain in the home, a second option applies. This option is for the remaining spouse to buy the other spouse out of his or her equity share in the home. This is a good option if one spouse wishes to remain in the home and is able to take on all payments and associated costs. If the parties cannot agree on who should keep the home and who should be cashed out, the court will order that the home be sold, and any remaining equity after fees and costs, be divided equally between the parties.

When there is no equity, or the home is upside down, a third option exists. Sadly, negative equity is a very common reality in our present economy. In this situation, one spouse keeps the home and assumes full responsibility in the divorce decree for maintaining the mortgage and other expenses related to the home. This option is ideal if the spouse remaining in the home is able to refinance the property into his or her own name, thus removing the other spouse from the mortgage. The party who is relieved of further financial responsibility for the home can then quitclaim his or her interests in the home to the remaining party. It should be noted however, that lenders are often reluctant to refinance a home with little or no equity. Therefore, when divorcing spouses agree that one spouse will keep a home with no equity, the result is generally that both spouses continue to be responsible to the lender for the mortgage(s), even though their divorce decree states otherwise. This situation leaves the non-remaining spouse exposed to the potential collection efforts of the lender if the remaining spouse fails to maintain the mortgage(s).

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Timothy W. Durkin is a family law attorney at JacksonWhite Attorneys at Law. He can be reached at tdurkin@jacksonwhitelaw.com. For more information, please visit www.jacksonwhitelaw.com.