

ALBUQUERQUE DIVORCE LAWYER BLOG

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The Marital Residence Poses Many Challenges in a New Mexico Divorce

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A significant source of contention issue in many divorces is the valuing and allocating, or selling, the marital home. For most couples in New Mexico, and around the country, the residence is the most objectively valuable asset shared by the parties and, at times, it is the only source of possible revenue available to pay community debts.

Though it seems it should be easy, valuing the family home rarely is. A house isn't just a place where people live; it's a home, a symbol of security and comfort. Because buying a house is a major investment of financial resources, a house can also represent years of hard work that the parties put into buying, improving and maintaining it.

Given the potential monetary value of the residence, and the emotional attachment many people feel to their home, much of the stress and frustration in a divorce centers on allocation, or sale, of the residence. In turn, one of the biggest problems presented by the residence is the difficulty in assessing its value.

Contrary to what many people in the real estate business may tell you, property appraisal is not an exact science, or even an objective process. Licensed appraisers may compare the residence to other properties in the area with similar features in order to assess a market comparison. However, this may be difficult in areas without any comparable properties, or when the real estate market is depressed and there aren't very many homes selling.

Sometimes, there might be huge differences in appraised values based on which comparable properties an appraiser chooses to review and how an appraiser views the attributes of the residence. Then, even if the parties do agree on the value provided by an appraiser, that value is only a hypothetical estimate of how much the residence is worth from which an asking price can be determined.

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The only true way to know the value of a house is to sell it. Again, this is easier said than done. One or both of the parties may want the home. If the parties refuse to sell the house, settling on a value can be a point of contention resolved only after lengthy litigation ultimately ending at trial.

To make things worse, given the recent drop in home prices across the country, a house is not necessarily an investment or a valuable asset, but rather a major economic burden. In many cases, parties owe more money to the lender that holds the mortgage on the residence than the residence is actually worth.

In these situations, if parties can't arrange a short sale, or some other remedy with their lender, they may face foreclosure and then what was once thought of as a community asset becomes a cumbersome community debt. This leads to potentially very hostile litigation for the determination of who will take the debt or how it will otherwise be divided.

And, all the talk of valuation above doesn't even address the issue of who will pay the cost of insurance, utilities and maintenance of the residence while the divorce is pending, not to mention who gets to actually live there. These issues can be very difficult to resolve in a contested divorce.

Of course, most of these issues can be resolved rationally if the parties are willing to do so. Unfortunately, one or both of the parties often cannot or will not behave rationally. This can lead to unnecessary and costly litigation. In cases where the parties are already in financial distress, the added burden of attorney fees can make a bad financial situation much worse. It is highly advisable for the parties to consult with an experienced divorce attorney early in the process so unnecessary conflict can be avoided to the degree possible.

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