

The Marital House: Should I Stay or Should I Go?

If you are obtaining a divorce in Minnesota and you own a house, there are several factors that come into play as to whether you should pursue possession and eventual ownership of the house, or whether you should relocate to a different residence.

An obvious concern as to whether a divorcing spouse wishes to stay in the marital house, is whether or not there is equity in the home. The less obvious issue on whether to stay in the house or not as part of a divorce in Minnesota, involves the issue of child custody. If there are minor children involved, as a divorce attorney, I will almost always advise my client to NOT leave the house – at least on a temporary basis. The reason for this is, if the Minnesota divorce is disputed/contested, and in particular if the issue of child custody is disputed, more than likely the Court will be requested (through a motion for temporary relief) to issue a Temporary Order granting temporary child custody to one of the parents.

One of the main objectives that the Court considers in assessing “the best interests of the children” to determine which parent will receive temporary child custody, is to “maintain the stability of the children.” To maintain the stability of the children, the Court usually will want to keep the children in the house where the children resided during the parties' marriage. Thus, often times is the case, the parent who gets possession of the house pending the divorce, will also get temporary child custody (or at least the majority of parenting time) with the children. However, this is just a temporary order (a temporary fix) until a permanent solution regarding the house can be agreed to or decided.

As a divorce attorney and lawyer in Prior Lake, Minnesota, and as a resident of Prior Lake, Minnesota, I have witnessed and been subject to the recession and the adverse impact that the recession has had on the housing market. The Prior Lake area and neighboring Savage, Shakopee, Burnsville, and all of Scott County, Dakota County and the Twin Cities metropolitan area in Minnesota as well as the vast majority of the country did not evade the declination of housing values. As a divorce attorney and as part of my divorce practice it is always an issue of “what to do with the marital house.”

A few years ago, the notion of the value of one's home decreasing was inconceivable and the parties' house was almost always considered an “asset” for divorce purposes. However, now days, more times than not in my divorce cases in Minnesota, the house is a liability – and often times a substantial liability. So, the concern is whether to choose to stay in a house with an “upside down” mortgage. In many of my divorce cases, the parties simply elect to “let it go” and discontinue paying the mortgage. However, the divorcing couple cannot stipulate in a Court Order that they will no longer pay the mortgage payments – because the Court cannot sign an Order providing that the parties will violate the terms of their mortgage and promissory note. So, in these cases, it is usually “implied” that the payments will no longer be made. In such cases, as a [Minnesota divorce attorney](#), I will advise the parties to agree that one spouse will receive possession of the house during this process and that they will each be liable for any costs and expenses associated the inevitable foreclosure process.

In the few cases where there is still equity in the marital home, and where one of the spouses can afford the mortgage payments and other expenses associated with the house, it may be a wise decision (depending on house and location) to choose to stay in the house, since the housing market did decline substantially, it may rebound exponentially one of these days – hopefully that is not just wishful thinking on the part of the author . . .

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