

# Chicago Daily Law Bulletin®

Volume 164, No. 218

Serving Chicago's legal community for 164 years

## Who keeps marital home in divorce can be most contentious of questions

**D**eciding what happens to the marital home can be one of the most contentious aspects of divorce as it is often the most valuable asset. In addition, this is where the family lived together, so the decision of what to do with the home can be emotionally charged.

The first question for many divorcing couples is: What should we do with the house? Often, the family home holds deep sentimental value. For some, the marital residence is the first home the couple purchased together. For others, the family home might be the only home the children have ever known.

Family law attorneys can help a family consider options about what to do with their home. One, which spouse will keep and continue to live in the home. The other, whether to sell the home and split the proceeds.

Attorneys should work with their clients to help them consider the financial and emotional factors regarding the family home.

### An emotional decision

The home is often more than just a property. Some clients might feel the need to start anew and move out of the marital home. Others will likely try to hold on to their home, which symbolizes so much.

Heather Locus, certified public accountant and certified financial planner, is an owner and wealth manager at Balasa Dinverno Foltz LLC in Itasca and Northfield and head of firm's divorce practice group. She also founded their women's service team. Locus assists clients by helping balance the emotional aspects of financial decisions couples are faced with during divorce.

Locus explains, "Clients often have difficulty maneuvering emotional reasons they want to either stay in or leave their home. The most challenging consideration is whether staying in the home will help the children cope with their parents' divorce. Other clients want a fresh start in a home of their own."

Divorce can be traumatic for children, especially young children.

Maintaining routine, structure and continuity are important to create stability for children. Children may react negatively to moving out of the marital home because it is such a big transition. However, this does not mean leaving the home has to be detrimental to the children.

In recent years, a new co-parenting strategy known as nesting has evolved. Traditionally, children have transitioned back and forth between two homes, based on a set parenting schedule. A nesting arrangement does the opposite in that the children remain in the home and the parents transition in and out depending on their parenting schedule.

Instead of adapting to two new homes, or at least one, the parents obtain one, or sometimes two separate households. The parents stay there when they are not at the family home exercising parenting time with the children. This type of arrangement often allows children to experience less disruption in their routines.

Depending on the couple, nesting may provide a less expensive option. Parents must be able to share a living space for this to work. If co-parents have the ability to share both a modest home

### COLLABORATIVE CONCEPTS



*Beth Fawver McCormack is a partner at Beermann. She practices exclusively in family law matters and is a collaborative law fellow, mediator and child representative.*

remain in their school and neighborhood, while maintaining meaningful relationships with both parents. Nesting is often seen as a temporary solution used to avoid anyone gaining an advantage in litigation.

Locus recommends any couple thoroughly think through the ripple effect of two houses and ideally live a parenting schedule before finalizing their divorce. Locus encourages parents who live in two different communities to consider the travel time and effect on their children's social schedules as the children need support from their friends more than ever during this time.

*Keeping the family home can be more burdensome than it is worth. It is important to consider the financial impact of keeping the marital home.*

### Financial considerations

Although keeping the children in the marital residence is a top priority for some families, financial factors are a major consideration when making these decisions. Locus encourages couples to be open to all possibilities early in the process, to write down their priorities and then quantify the long-term financial implications of various housing options.

Keeping the family home can be more burdensome than it is worth. It is important to consider the financial impact of keeping the marital home. Most families

will have remaining mortgage payments and maintenance costs, which could be too much of a financial burden after the divorce.

In determining who will remain in the family home, it is important to contemporaneously decide who will pay for all major repairs and improvements of the home after separation. Even if one party is receiving maintenance, it may not be enough to maintain a single-family home. Moving out might be inevitable. Helping clients come to terms with that early in the process can be helpful.

Locus cautions that divorcing couples often underestimate the monthly cost of maintaining the family home. Homes often require more maintenance with age, and there can be an increased need to outsource the work when there is only one parent. If neither spouse wants the house, or cannot afford to keep the house, it is often a good idea to sell it before the divorce is finalized.

Locus reminds clients they should also consider selling costs, which are typically 7 to 10 percent of the home's value. If there is a mortgage, Locus encourages clients to be aware of the challenges of refinancing during a divorce.

It is typical for one party in a divorce proceeding to be paid maintenance or child support, or both. In that case, typically, the party receiving maintenance must have received it for at least six months before, and three years after closing, to use the support as qualified income by most mortgage companies. In unique cases, an asset depletion loan or reverse mortgage might be an option.

Helping clients navigate the emotionally charged and financially significant decision regarding the family home can be highly contentious.

Ensuring your client understands all available options and their outcomes can make the process an easier transition for the family.

*The author would like to acknowledge the substantial contributions to this column by Adeline Sulentic and Marcus Dominguez.*