



Divorce, Separation & Mortgages

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The topic of divorce is a very interesting subject in the mortgage industry. We approach this subject with caution and hesitation due to the many variables involved in a divorce or separation. *This document will outline the basics of handling these circumstances but in no way will this outline each and every option available to a borrower when going through a divorce.* It is important to know the basics and then get the facts you are dealing with to determine if we can proceed with a mortgage loan at time of application.

There are 2 situations that may occur. We will outline the basic requirements needed for both situations.

Borrower wants to purchase but has not filed for divorce

In this scenario, the borrower has indicated they will be filing for a divorce but have not done so at the time of application or discussion with the Loan Officer.

There are a few red flags that lenders will have in this scenario. The underwriters will be watching for:

- 1) The borrower and spouse will not actually be getting a divorce. The home will be used for income purposes and the borrower is trying to beat the system to obtain a better rate
- 2) The borrower is trying to bail out of their existing mortgage (they may not be on it) to obtain a new residence without wanting to show the problem with the current home.

These red flags may sound extreme, but they do occur on occasion.

For the borrower that wants to complete the purchase prior to filing for divorce, they can do this. However, there are things to consider:

- 1) If they own the home, they live in with the soon to be ex, they do have to count this debt against them.
- 2) If they are not on title or the note, we will not have to count the debts against them, but they will need a rent free letter from the ex/spouse.
- 3) The spouse will need to sign at closing the spouse documents or sign a homestead waiver. If the couple is not at a point where, they are amicable enough to do this, it could be a problem.

All situations are different and will bring up questions during the process. Be prepared for questions from underwriting as they want to make sure they understand the situation very well and insure they do not miss any important detail.

Borrowers are currently in Divorce or separation proceedings through the courts

This will be a more common occurrence than the situation listed above.

If the borrower is currently in divorce or separation in the courts, we will require a Property Settlement agreement executed through the courts to complete the loan and close. The divorce itself does not need to be final, but the property settlement portion, does.

The ex will also need to sign a homestead waiver if the divorce is not final at the time of closing.

Again, it is important to explore all options of your borrowers' circumstances to know if there will be any issues. Please check with our Mortgage Support Team to allow them to help you sort through the details and determine if all is well to proceed.

Borrowers that have not officially filed for Divorce or Legal Separation (Conventional Loans Only)

If the parties have not officially filed for Divorce or Legal Separation, then the following will be accepted. This will not work in a Community Property State to remove the requirement of the spouse's credit report and debt to be included. We would need an executed divorce decree or legal separation agreement for that.

A document with both parties' signatures notarized that contains the following information:

- a. Spells out how subject property is being split including any funds to be paid or if purchase how marital residence is being handled.
- b. Spells out if there are kids and any child support.
- c. Spells out any alimony to be paid by either party.
- d. Spells out any debts that either party will be liable for that are not showing on their individual credit report.
- e. States if any other properties are owned jointly and how they will be handled.
- f. Contains a statement that an official agreement has not yet been filed. If an agreement has been filed, then it must be provided.