Divorcing Your Mortgage

Divorce Mortgage Planning offers a different perspective and a better solution.

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What happens when parents want their down payment gift back after divorce?

It is not uncommon for parents to gift their children money to help with the down payment of a new home. But what happens when they want the money back when you divorce?

Newlyweds Sam and Ashley wanted to buy their first home together. Like many young couples, they struggled to come up with a down payment on the house. Luckily Sam's parents offered to gift them with a $50,000 down payment. Sam and Ashley were ecstatic, knowing their dream of homeownership was within their reach.

As part of the standard mortgage approval process, Sam and Ashley must document where the funds for the down payment were coming from. Easy enough – it was a gift from Sam's parents. The typical paper trail consists of a Gift Letter from Sam's parents stating that the funds were indeed a gift and not expected to be repaid.

Six years later, Sam and Ashley find themselves going down the path of divorce and what to do with their beautiful family home. Ashley wants to keep the house so their five-year-old daughter can grow up in the home and stay within the excellent school district; however, she would need to refinance the current mortgage into her name only and pay Sam his share of the equity.

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EQUAL HOUSING OPPORTUNITY

Sam's parents are furious that they contributed $50,000 to the home's downpayment, and now their son is moving out. They want their money back and are stating it wasn't a gift and expect repayment of the money they now 'loaned' to the newlyweds.

What happens now? Depending on how Sam and Ashley want to handle the situation, there are a couple of options to consider, but each may have consequences.

Theoretically, they could agree to repay Sam's parents out of the refinance of the home. However, this limits Ashley's access to the equity in the house because the repayment is not a secured loan against the property, and the new loan would fall within the 'cash-out' category, limiting a new loan amount to only 80% of the home's value. *Hint: Ask your local CDLP® for a strategic workaround to this situation.*

A note of caution when repaying funds said to be a gift with no repayment required: This could potentially cause a legal issue for Sam and Ashley, bringing into question potential mortgage fraud.

The other option Ashley could argue is that the downpayment was a gift, as stated in the original gift letter Sam's parents provided when they purchased the home. Furthermore, the gift letter would have noted that the money was a gift and repayment was not expected.

Regardless of how Sam and Ashley agree (or don't agree) on handling the generous gift from Sam's parents, feelings and relationships may be fractured. When parents get involved in their adult children's divorces, the potential for an amicable settlement gets muddy and heightens the already charged emotions.

Involving a Certified Divorce Lending Professional in the negotiation process will bring the opportunity for strategic solutions to the table such as this. A CDLP® can provide clarity and suggested language in the settlement agreement to avoid hiccups with the mortgage loan process when an equity buy-out or new purchase loan is required.

How are you integrating divorce mortgage planning into your case management? Involving a Certified Divorce Lending Professional (CDLP®) early in the divorce settlement process can help the divorcing homeowners set the stage for successful mortgage financing.

Divorce Mortgage Planning is the ability to put into play the desired outcome by pairing the needs and options available while incorporating the necessary details and clarity into an executable settlement agreement to obtain closure and peace of mind successfully.

Working directly with the divorce team, a CDLP® incorporates divorce mortgage planning into the overall process with a unique and solid understanding of the intersection of family law, financial and tax planning, real property, and mortgage planning.