

## **“The House” by Susan A. Heinemann, Esquire**

Not too long ago, a divorce attorney in Allegheny County was talking with a potential new client about a One-Count No Fault Divorce. Our law firm provides services for this type of divorce for a low rate as it is the simplest and many times the quickest type of divorce (you are just asking the Court to issue the decree). This PA divorce attorney inquired with this client if he had any joint assets with his wife. He responded with a no but upon further pressure, admitted that yes, there was indeed a house. He quickly added he had signed over his interest in the home to her. The smart divorce attorney in Pittsburgh asked “what about the mortgage?” Apparently, this potential new client assumed that the deed transfer naturally took care of taking his name off of the mortgage. Needless to say, the potential new client realized from this Allegheny County divorce attorney that his assumption was wrong. The potential new client stated he needed to talk with his wife, investigate further and call back.

In life, everyone undertakes complex legal transactions without understanding the exact nature of the contract. For example, you may enter into a lease, a car loan, a mortgage, a deed, and/or a credit card contract. Most people are not lawyers but are still dealing with another side that has an overly priced lawyer drawing up paperwork with loads of jargon and fine print. In terms of a divorce, a PA family law lawyer will tell you that the marital residence is one of the most highly valued assets in the marital estate. However, it can be extremely difficult to understand everything that is involved with a home.

In short, a deed is document that transfers ownership of a piece of real property. Other major pieces of property have their own titles to show who owns it, such as pets and vehicles (actually, vehicles are soon to or need to be subject of their own article!). Unless you can buy the home outright, you will need a loan of money. Most people go to the bank for this loan. Normally, you will sign a note, which is your promise to repay the money and a mortgage, which is your pledge of your title to the home as collateral for the loan of money. Since most people spend years in the same residence, it is easy to forget who signed what and when. A good first step in your divorce is to review and make a copy of your current deed, mortgage and note.

In the course of a divorce, one spouse may be awarded the marital residence. A Court may order or the parties may agree to this award of the home. As a divorce attorney in PA, I have seen clients assume that an agreement signed by both parties in which one spouse assumes responsibility for payment of a debt (credit card or mortgage) and indemnify the other, mean that they are protected from all liability for the obligation. This is wrong. One important item to understand is the bank or mortgage holder is not a party to any agreement between your spouse and yourself or to the case and therefore, is not obligated to anything in your agreement with your spouse or with a Court Order is issued in your case. Thus, if you sign a new deed to transfer your interest, this does not remove your name from the mortgage and note. A bank could still move against the home and/or you for repayment of the loan. As well, you will still see your mortgage obligation on your credit report.

In many cases, the parties agree or the Court orders that a spouse refinance to remove the other party's name before title is transferred. It is important to check with the mortgage holder to understand their requirements in regards to title transfers and refinancing early on in your divorce matter. Did you or your spouse secure a second mortgage or loan using the title as a security? There may be a high likelihood that the spouse who is awarded the marital residence will need to refinance this loan as well. Finally, one spouse or both spouses may not be able to refinance at all. In this case, one may decide or the Court order that both parties remain on the title and mortgage/note or the home sold.

“Information is Power” is an old saying. As a family law attorney in Pittsburgh, I prefer to take my time, gather up with my client all of the necessary facts, encourage my client to talk with everyone, as it will only benefit my client in the long run, before any decision is made on the home.

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