



What to Do When The Homeowner Dies & How to Handle Divorces

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Issues Arising from the Homeowner's Death or Divorce

TITLE – WHO OWNS THE HOME NOW?

- ◆ After the homeowner dies or gets divorced, the first step is to figure out who owns the property upon the homeowner's death or after the divorce.
- ◆ Because the mortgage loan is secured by the property, the answer to the question on property ownership will impact what loss mitigation options may be available going forward.

DEBT – WHO IS RESPONSIBLE FOR THE MORTGAGE LOAN NOW?

- ◆ The only person(s) required to pay back the loan amount is the borrower.
- ◆ The borrower(s) is the person(s) who signed the note.
- ◆ After a borrower passes away or gets divorced, the next step is to figure out who is or can be responsible for the loan payments going forward.



Who Owns the House?

Ownership of the Property After the Homeowner's Death

DETERMINED BY THE DEED

- ◆ If the deed lists more than one owner and they own the property either as joint tenants with the right of survivorship or as a married couple as tenants by the entirety, the property automatically passes to the other surviving owners.

DETERMINED BY THE WILL

- ◆ If the deceased homeowner had a will that addresses ownership of the property, the property will eventually go to the person designated in the will.

DETERMINED BY INTESTATE LAWS

- ◆ If the deceased homeowner did not have a will and the deed does not contain any automatic transfer provisions, surrogate's court will determine who gets the property according to New York state's intestate laws (laws that determine how a deceased person's assets are distributed if there is no will).

Ownership of the Property After the Homeowner's Death

MULTIPLE OWNERS WITH NO RIGHT OF SURVIVORSHIP

- ◆ If the deed has more than one owner with no right of survivorship, ownership of the deceased homeowner's portion of the property must be determined by the homeowner's will or by intestate laws.
- ◆ If either a surviving co-owner or an inheritor want to take any action with the property, that person will have to get all the other co-owners and inheritors on board with the action.
- ◆ If one or more of the co-owners or inheritors is not willing to cooperate with the others, the others may have to buy out this particular person's share. If the parties cannot reach their own resolution, the uncooperative person can bring a partition action in court, and New York law will force a sale of the property to address the dispute.

Ownership of the Property After the Homeowner's Death

TRANSFERRING TITLE AFTER A HOMEOWNER'S DEATH

- ◆ Unless there is an automatic transfer provision in the deed, the deceased homeowner's heirs will need to go through the court process at surrogate's court to make sure title is properly transferred to the inheritor.
- ◆ The heirs will likely need the help of a trust and estates attorney with this process, and should at the very least get a brief consultation so that they know how to move forward with the process.

Estate Planning Resources

- ◆ Legal services organizations generally do NOT handle estate issues.
- ◆ While they only provide advice, the following two organizations are good free resources for consultations:
- ◆ Grow Brooklyn [Protect Your Treasure](#) program (718-418-8232)
- ◆ City Bar Justice Center [Planning and Estates Law Project](#) (212-382-6756)
- ◆ Both cannot provide representation in court or assist with contested matters.

Ownership of the Property After a Divorce

TRANSFERRING TITLE AFTER A HOMEOWNER'S DIVORCE

- ◆ Often transfer of title is negotiated as part of a divorce settlement.
- ◆ The most common transfer mechanism is a quitclaim deed, which is a document transferring the transferor's interest from the transferor to the transferee
- ◆ Most mortgage companies require a quitclaim deed before they will move forward with reviewing a homeowner without the ex-spouse's financial documents or before they will provide permanent modification documents without requiring the ex-spouse's signature.
- ◆ A quitclaim deed only addresses ownership of the property; it does not change any liability on the mortgage loan itself.

Who Is Responsible for Payments?

Liability for the Mortgage Loan

THE NOTE AND THE MORTGAGE

- ◆ There are 2 parts to a mortgage loan: 1) the note and 2) the mortgage.
- ◆ The note is the “IOU” for the mortgage loan: the homeowner agrees to borrow a certain amount of money from the mortgage company.
- ◆ The mortgage secures the collateral (the home) for the amount borrowed.
- ◆ Any person who signs the note is a borrower: a person actually responsible for paying the loan back to the mortgage company.
- ◆ There is no such thing as “just a co-signor.” If a person signed the note, that person is equally responsible for paying back the mortgage company for the amount borrowed as every other person who signed the note.
- ◆ Every person who signs the note is liable for the loan, even if the person does not live in the home or is not on the deed.

Liability for the Mortgage Loan Payments After Borrower's Death

SOLE BORROWER'S DEATH

- ◆ If the deceased homeowner was the only person on the note, there is no one who is required to pay the mortgage loan after the sole borrower's death.
- ◆ BUT the mortgage company can still foreclose on the home if the mortgage company's loan is not repaid because the home is the collateral for the mortgage loan.

CO-BORROWER'S DEATH

- ◆ If there are other co-borrowers on the note, the co-borrowers are still responsible for paying the mortgage loan because all co-borrowers are equally liable.

Liability for the Mortgage Loan After a Divorce

EX-SPOUSE WAS THE ONLY BORROWER

- ◆ If the ex-spouse was the only person on the note, the other spouse is technically not obligated to make payments on the mortgage loan
- ◆ BUT the mortgage company can still foreclose on the home if the mortgage company's loan is not repaid because the home is the collateral for the mortgage loan.

EX-SPOUSE WAS A CO-BORROWER

- ◆ If the ex-spouse was a co-borrower, nothing has changed for the remaining homeowner because they are both still responsible for paying the mortgage loan because all co-borrowers are equally liable.

Liability for the Mortgage Loan After a Divorce

UNCOOPERATIVE EX-SPOUSE

- ◆ Neither the mortgage company nor the remaining homeowner can force the ex-spouse to continue making payments or to cooperate with a sale or a modification. The only court that can order the ex-spouse to do any of these things is family court.
- ◆ If the ex-spouse chooses not to pay or cannot pay and the remaining homeowner is unable to make the payments, the mortgage company can initiate a foreclosure and take the house as collateral since its loan was not repaid.
- ◆ Unless the ex-spouse signs a quitclaim deed, the remaining homeowner is also unable to sell the home or receive a modification.

When the Deceased Borrower or Ex-Spouse
was the Only Borrower

If an Heir Wants to Keep the Home after the Sole Borrower's Death

Heir: person who inherits the home either through the deceased homeowner's will or through intestate laws

TAKING OUT A NEW MORTGAGE LOAN

- ◆ Because the heir is not personally liable on the deceased homeowner's mortgage loan, the heir can get the heir's own mortgage loan to pay off the deceased homeowner's remaining loan and keep the home.
- ◆ In order to move forward with the heir's own mortgage loan, the heir will need to make sure title is in the heir's name to secure the new mortgage loan.
- ◆ This is usually the easiest and most straightforward way for the heir to keep the home and pay off the deceased homeowner's loan.

If an Heir Wants to Keep the Home after the Sole Borrower's Death

ASSUMPTION OF THE MORTGAGE LOAN

- ◆ The heir may also be able to assume the deceased homeowner's loan.
- ◆ Assuming the loan means stepping in the shoes of the deceased borrower and taking over the mortgage loan as is.
- ◆ In order to move forward with an assumption, the heir will need to make sure title is in the heir's name.

If an Heir Wants to Keep the Home after the Sole Borrower's Death

ASSUMPTION AND MODIFICATION

- ◆ Often the mortgage company may tell the heir that the mortgage loan must be current to do an assumption, but this is wrong. Under federal law, the mortgage company is required to treat heirs like they would treat borrowers.
- ◆ Therefore, the mortgage company is required to review an heir's modification application for the deceased borrower's mortgage loan. If an heir needs an assumption and a modification, the heir should submit proof that the home now belongs to that heir with a modification application and ask that the mortgage loan be simultaneously assumed and modified.

If an Heir Wants to Keep the Home after the Sole Borrower's Death

APPLYING FOR AN ASSUMPTION & MODIFICATION

- ◆ In order to move forward with a simultaneous assumption and modification, the mortgage company will need proof that the heir is now both the owner of the property and the person who lives in the home now.
- ◆ If being reviewed simultaneously for a modification, the mortgage company will review the heir's credit and income to evaluate the heir's request to assume the deceased homeowner's loan as modified.
- ◆ The mortgage servicer is required to review an heir for a modification if the heir asks to be reviewed. The applications can and should be reviewed simultaneously. The heir should push for this if the heir needs a modification.

If a Spouse Wants to Keep the Home after a Divorce from the Sole Borrower

NEW MORTGAGE LOAN

- ◆ Like an heir, if the spouse was not a borrower on the original mortgage loan, the spouse can get a new mortgage loan to pay off the original one

ASSUMPTION OF THE SOLE BORROWER'S MORTGAGE LOAN

- ◆ Like an heir, the spouse may also be able to assume the sole borrower's loan.
- ◆ Also like an heir, the spouse may apply for a simultaneous assumption and modification as needed.

TRANSFER OF TITLE

- ◆ In order to move forward with an assumption or a new mortgage loan, the spouse will need a quitclaim deed transferring full ownership to the remaining spouse before the spouse can proceed with any action.

If an Heir or Remaining Spouse Wants to Keep the Home after the Sole Borrower's Death or Divorce

FINANCIAL CONSIDERATIONS

- ◆ The heir or spouse must have the financial means to pay the mortgage loan payments (either for a new mortgage loan or to assume the deceased homeowner's mortgage loan payments).
- ◆ The heir or spouse should have documentable income to show the heir or spouse can afford to pay the mortgage loan payments every month.
- ◆ In addition to income, the heir or spouse must also have sufficient credit to qualify for either a new mortgage loan or a simultaneous assumption and modification of the deceased homeowner's mortgage loan.

What Co-Borrowers Should Do When A Borrower Dies or There is A Divorce

If a Co-Borrower Heir Wants to Keep the Home after a Borrower's Death

IF THE MORTGAGE LOAN IS CURRENT AND CO-BORROWERS CAN MAINTAIN PAYMENTS

If the remaining co-borrowers can continue paying the monthly mortgage loan payments, the remaining co-borrowers should just continue making payments as usual. Nothing changes.

IF THE MORTGAGE LOAN IS IN DEFAULT OR CO-BORROWERS CANNOT AFFORD PAYMENTS GOING FORWARD

If the remaining co-borrowers cannot keep up with the payments or are already behind, they should apply for a modification by submitting the usual modification application for review with a copy of the deceased homeowner's death certificate.

If a Co-Borrower Heir Wants to Keep the Home after a Borrower's Death

TITLE

In most instances, ownership of the home does not automatically transfer to the co-borrowers. After a borrower's death, the other co-borrowers must make sure that the deceased homeowner's interest is properly transferred and work with the inheritor so that they can transfer clean title if they decide to sell or refinance the home.

PAYMENT OBLIGATIONS

All borrowers are equally liable for the entire loan, and the fact that one of them passed away does not make any other borrower less responsible for the payments.

If a Co-Borrower Spouse Wants to Keep the Home after Divorce from a Co-Borrower

TITLE

Unless title is transferred to the spouse remaining in the home, the two divorced spouses will have to cooperate with each other to sell, modify, or refinance, or take any action with the home.

PAYMENT OBLIGATIONS

All borrowers are equally liable for the entire loan. Neither the fact that one of them transferred his/her ownership through a quitclaim deed nor the fact that the once married co-borrowers are now divorced does not mean that the ex-spouse is not technically still liable for the payments. However, arguably once a loan has been modified with only one spouse, then the modification is just the signing spouse's responsibility.

Impact of a Homeowner's Death or Divorce on the Foreclosure Process

What Happens to a Foreclosure Case when the Borrower Dies

BEFORE THE LAWSUIT

If a borrower dies before the lawsuit, the deceased borrower cannot be sued, but the deceased borrower's estate can be sued in foreclosure along with the other co-borrowers. Please refer the case to legal services if a deceased borrower has been sued.

DURING THE LAWSUIT

If a borrower dies while the lawsuit is pending in the court process, the case will be stayed from moving forward until the borrower's administrator or heirs are substituted for the deceased borrower.

AFTER JUDGMENT

If a borrower dies after the foreclosure judgment has been granted (i.e. the legal process is over), there is no stay of the case. The foreclosure auction can proceed.

What Happens to a Foreclosure Case when the Borrower Gets Divorced

NO IMPACT

A pending divorce and any pending family law proceedings have no impact on a foreclosure lawsuit. The court is not obligated to consider the divorce proceedings at all.

Questions?

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