

# Divorcing Your Mortgage

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



## You're Awarded the Marital Home But Not On The Current Mortgage - What are my options?

So, what now? You were awarded the marital home in the divorce but you're not a borrower on the existing mortgage. How do you work with the Mortgage Holder going forward?

If you were awarded the marital home during divorce and will be refinancing the current mortgage into your name or if you will be keeping the existing mortgage as is - if you are not a current mortgagee (borrower) on the existing loan there are a couple of things to keep in mind.

When refinancing a mortgage into your name and you are not a current mortgagee, is not typically a problem. Whether your name is currently on the title to the home and if so for how long or your name is currently not on the title to the home may impact the type of mortgage you will be able to obtain. It is highly recommended that you speak with a divorce mortgage planning professional to determine your eligibility.

If the plan is to retain the existing mortgage as-is and you are not currently a mortgagee on the mortgage there are a couple of steps you should take to notify the current lender (mortgagor) as to your intent and rights moving forward.

**Assumption & Release of Liability** | When a former spouse assumes ownership of the home and the mortgage, this does not always mean the mortgage lender will release the original borrower from their financial obligation or liability on the mortgage. A loan assumption is a transaction in which a person (the "assumptor") obtains an ownership interest in real property from another person and accepts responsibility for the terms, payments, and obligations of that other person's mortgage loan. The assumptor is liable for the outstanding obligations and unless a release of liability is requested, the original borrower will remain liable as well.

**Successor Homeowner's Right to Information** | Another sticking point for divorcing spouses who are awarded ownership of the marital home and who are not currently obligated on the existing mortgage is the hurdle of obtaining information on the current mortgage.



Dave Kaufman

NMLS: 908155  
Co NMLS: 1782441

Divorce Lending  
Association

Certified Divorce Lending Professional  
*A different perspective. A better solution.*



# Managing the Mortgage During and After Divorce

Two important sets of CFPB amendments to its RESPA and TILA mortgage servicing rules went into effect April 19, 2018. One set of amendments for the first time extends the broad array of mortgage servicing protections to successors in interest—such as home-owners who inherited a home after the borrower’s death or were awarded the marital home in a divorce. These homeowners now are entitled to protections relating to loan modifications, dispute rights, monthly statements, escrow accounts, servicing transfers, and other rights afforded by TILA and RESPA to home mortgage borrowers.

The new rules expand the definition of a “borrower” for purposes of RESPA, and “consumer” for purposes of TILA, to include a confirmed successor in interest. Successor in interest is defined as coextensive with transfers listed in the Garn-St. Germain Act after which a due-on-sale clause may not be exercised.

This list includes transfers related to the borrower’s death or a divorce or separation agreement, transfers to a spouse or children, or to a trust in which the borrower is a beneficiary. Protections are afforded a successor under RESPA and TILA once a servicer has confirmed the successor’s identity and ownership interest in the property. No other requirement should be imposed as a condition of “confirming” a successor in interest pursuant to the regulation .

The CFPB created a special limited “Request for Information” applicable to potential successors in new RESPA § 1024.36(i). If a servicer receives any written request from a person that “indicates” that a person “may be a successor in interest” and that contains the name of the transferor borrower and sufficient information to enable the servicer to identify the loan at issue, the servicer must respond by providing the potential successor in interest with a written description of the documents the servicer reasonably requires to confirm the person’s identity and ownership interest. The servicer must acknowledge receipt within five business days and respond substantively within thirty business days.

A simple letter including a copy of the Divorce Decree sent to the mortgage holder may suffice as notice to the servicer. Sample wording follows:

Loan No. 12345678

## **GARN-ST. GERMAIN ACT ASSUMPTION NOTICE**

I write to inform you that, as of April 1, 2018, my husband and I were divorced by an order of the Circuit Court of Henry County, Georgia. Pursuant to the divorce decree, Mr. Smith is required to transfer to me his entire interest in the marital residence located at 1234 Main Street. The transfer will take place on May 30, 2018. On that date, I am to assume the mortgage that encumbers the property and to make the payments thereon.

Therefore, pursuant to the Garn-St. Germain Depository Institutions Act of 1982, I hereby notify you of my intent to assume the Mortgage and Note. You may begin mailing statements to me immediately. Thank you for your cooperation and understanding.

As a divorce mortgage planner, the CDLP® can help divorcing homeowners make a more informed decision regarding their home equity solutions while helping the professional divorce team identify any potential conflicts between the divorce settlement, home equity solutions, and real property issues.

**Involve a CDLP® early in the settlement process for collaborative problem-solving, leading to better outcomes.**

**Knowledge is a game changer.**

It is always important to work with an experienced mortgage professional who specializes in working with divorcing clients. A Certified Divorce Lending Professional (CDLP®) can help answer questions and provide excellent advice. Please don’t hesitate to reach out to me directly if I can provide additional information.

This is for informational purposes only and not for the purpose of providing legal or tax advice. You should contact an attorney or tax professional to obtain legal and tax advice. Interest rates and fees are estimates provided for informational purposes only, and are subject to market changes. This is not a commitment to lend. Rates change daily - call for current quotations. The information contained in this newsletter has been prepared by, or purchased from, an independent third party and is distributed for consumer education purposes.