

What Unmarried Couples Must Know Before Buying a House

Most unmarried couples purchasing a house together do it blindly. When they split, issues that should have been foreseen but weren't may prevent a clean and amicable separation.

Here are the major issues to resolve with your partner before you buy. Then see a lawyer.

Should Split Mean Sale? There is much to be said for an agreement that the house must be sold if either partner aborts the relationship. This avoids the thorny issues, discussed below, that can arise when one partner stays with the house.

If a split leads to sale, the only issue is how the proceeds are to be divided. Equal shares may or may not be equitable. In your case, your partner is paying the down payment and deserves a larger share of the proceeds. In other cases, one of the partners may be responsible for a larger share of current expenses than the other.

One approach is to divide the net proceeds by each partner's contribution to the equity in the house when it is sold. Suppose, for example, that the partners pay \$100,000 for a house, take a mortgage of \$80,000, pay \$20,000 down plus \$3000 in settlement costs, and sell it after 5 years when the loan balance is \$74,000. Total contributions of the partners to equity in the house at the time of sale consist of \$23,000 in cash at purchase, plus \$6,000 in reducing the loan balance. If one partner contributed 60% of the cash and paid 40% of the expenses, that partner's share of net proceeds would be $[\frac{.6(23,000) + .4(6,000)}{29,000}]$, or 56%.

In some cases, this rule would not be fair. For example, one of the partners might unilaterally work on improving the house, which would call for a higher share. The point is that the partners ought to agree at the outset on the terms of the split. If they can't agree, they should reconsider whether they really want to cohabit.

When One Partner Stays: Most of the problems I encounter arise when one of the partners remains in the house. The terms of settlement are more complex than if the house is sold. There is no sale price, so the partners must agree on an appraisal procedure and on who will pay for it. They should also agree on whether a real estate sales commission should be deducted from the valuation used in the settlement. If they wait until the event, this is invariably contentious.

Another problem arises if the partner remaining in the house doesn't have the money to pay off the partner who is leaving. The more equity they have in the house, the more cash the resident partner needs to raise. A home equity loan is not possible unless both partners become responsible, which is the last thing the departing partner wants.

Much the largest problem, however, is the departing partner's continuing responsibility for the first mortgage. Many departing partners believe that they are off the hook because the partner remaining in the house has agreed to assume full responsibility for the mortgage. They (and evidently their lawyers) overlook the fact that the lender was not a partner to their agreement. Departing partners who remain liable for their mortgages often are unable to get new mortgages on their own.

Lenders have no incentive to remove one partner from the note. Some can be induced to do it if the partner remaining with the house has a perfect payment record and can document that they are solely responsible for the payments. But in the best situation this takes time, perhaps a year. If the lender refuses, the only way to get the departing partner off the note is for the remaining partner to refinance in her own name.

If I were drafting an agreement for a loved one, not knowing whether they were more likely to be the remaining or the departing partner, it would grant the remaining partner 14 months to make the settlement payment, and to remove the departing partner from the note. Otherwise, the house must be sold and the mortgage paid off.

"I bought a house 5 years ago with a buddy who split shortly thereafter, and I haven't heard from him since. I have paid all the expenses, including the mortgage. Now, I would like to sell but I can't without his signature. What can I do?"

According to Bob Bruss, this is a common problem among co-owners who cannot agree if and when to sell. The answer, he says, is a "partition lawsuit" where the owner who wants to sell sues the one who doesn't. Bob says that unless the court finds some compelling reason not to sell, which happens very seldom, it will order the sale and the proceeds split between the co-owners.

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