

# Navigating Joint Ownership of the Marital Home Post-Divorce

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**D**ividing equity in real estate in a divorce has become increasingly difficult in today's economic climate, where many existing mortgages carry historically low fixed interest rates make it challenging for either party to refinance without significantly increasing a home's carrying costs. Further, the lack of affordable housing inventory coupled with rental costs that often exceed a homeowner's carrying costs make it difficult to secure suitable alternative housing. Is the solution continued joint ownership of the marital home post-divorce? What are the benefits and drawbacks of that approach? This article explores the nuances of maintaining joint ownership of the marital home after divorce, helping attorneys and their clients to make informed decisions in a complex financial landscape.

## The Mortgage Dilemma: High Rates and Limited Options

To better understand the financial pressure divorcing couples face today with respect to what is typically their most valuable asset, it's helpful to look at how mortgage rates have shifted over time. According to SoFi origination data, backed by data from the Federal Housing Administration, between 2000 and 2018, Boston's average 30-year fixed rates ranged between 7.93% in 2000 and 4.33% in 2018. As of mid-July 2025, the average 30-year fixed mortgage rate in Massachusetts was approximately 6.92%, with a 15-year fixed around 6.05%. This stands in contrast to the ultra-low rates seen between 2018 and 2020, when some borrowers were locking in rates under 3%. For many divorcing homeowners, giving up a mortgage with a 3% rate and taking on a new one at

nearly 7% just doesn't make financial sense—making continued co-ownership post-divorce more attractive. Thus, while previously it was commonplace for one spouse to refinance the mortgage debt and buy out the other spouse's interest in the marital home, this has become less financially feasible making continued co-ownership a more attractive option. Child-centric reasons may also drive the decision to co-own the marital home post-divorce, such as maintaining stability for the children while their parents separate and divorce and to maintain eligibility in a particular school district so that a child can ensure to be enrolled there through graduation or a certain grade. Parties may also want to co-own for investment reasons if they believe the housing market will continue to thrive resulting in passive appreciation to their mutual benefit over time.

## Nesting

At the outset of a divorce, both parties may be reluctant to leave the home, not knowing where to go, what the schedule will be for the children, or whether they want to try to retain the marital home in the divorce. Nesting is a viable option in such a scenario. Like bird nesting, the children remain in the "nest"—the marital home—while the parents "fly" in and out of the nest by taking turns living there during their allotted parenting time. During the time that the parent is not in the marital home, they can rent an apartment (sometimes together) or live with a family member or friend. Nesting is a way to preserve both parties' rights to the marital home during the divorce while allowing the spouses physical separation from one another and putting them on equal footing with respect to the children. The children benefit

from the stability of not relocating and seeing their parents in a familiar environment. While the parties are nesting, the home can be appraised for its value as a next step in the asset division process. The parties can then decide what options are feasible going forward and whether continued co-ownership or a sale makes sense.

Nesting is a good transitional step but can be taxing in the long term for parents who remain unsettled living in two places, not to mention the strain of continuing to share space, even if not at the same time, with a spouse in the middle of a divorce. It is important to establish ground rules for who is responsible for what household tasks and chores during the nesting period to avoid animosity and resentment. Further, there is a cost associated with maintaining a separate residence, or even two as the case may be, while also having to continue to maintain the marital home and pay divorce lawyers. Thus, nesting typically is not a long-term solution but can be a good transitional step while parties determine who is going to stay in the home and under what circumstances.

### Managing Mortgage Liability in Divorce

Since nesting is not a long-term option, the next challenge becomes how to manage the existing mortgage and each party's financial obligations moving forward. If only one party is liable on a mortgage with a fixed low interest rate, no refinance will be necessary if that party is retaining the home in the divorce or if the parties are continuing to jointly own it for a period of time post-divorce. Should couples be jointly liable on a mortgage, a few options exist, even in a climate of high interest rates. First, some banks will entertain an assumption of the mortgage by one party—that is, no refinance obligation, but rather one party assumes the mortgage and the other party is released from liability. Banks may be willing to work with good customers to keep them as clients of the bank. So be sure not to overlook this option which presents an efficient way to maintain low interest rates secured years before the divorce and unavailable now. Second, in the event of continued joint ownership post-divorce, a departing spouse who is solely or jointly liable on the mortgage can elect to pay said mortgage (which may include property taxes and homeowners insurance) from child support or alimony payments owed. This payment can be credited against their total support obligation. After deducting these carrying costs, any remaining balance of the support obligation would then be paid directly to the receiving spouse. This approach can help ensure that expenses are paid on time to protect against foreclosure or default and avoid damage to the credit of the departing spouse who remains liable on the mortgage. An additional benefit to this approach for the departing spouse arises from the Treasury Regulation §1.1631(b) and IRS Publication 504. Under IRS Publication 504, when both spouses jointly own the home and each contributes to the mortgage, they are each allowed to deduct their respective share of the mortgage interest on their

individual tax returns. But a spouse who has moved out of the marital home while continuing to retain legal and equitable ownership may still claim property tax and mortgage interest deductions on their personal income tax returns. Thus, one effective tax strategy for a departing spouse is to pay the marital home's carrying costs directly from their support obligation to the remaining spouse, enabling them to claim the entire property tax and mortgage interest deductions on their income tax returns. Overall, this lessens their actual out-of-pocket costs for support to the remaining spouse, who is still able to remain in the marital home and have the carrying costs paid on their behalf.

### Ongoing Costs, Repairs, and Upkeep in Co-Ownership

Another consideration when deciding to co-own a property post-divorce is to define who is responsible for the home's ongoing costs and upkeep. If the remaining spouse pays all the carrying costs, will he or she receive a credit for the amount by which they paid down the principal balance of the mortgage from the date of divorce through to the date of sale? Will the parties share equally any capital improvements? Who will be responsible for the payment of repairs? Failure to delineate who pays what and how can lead to potential conflict and confusion in the future. If the parties agree to sell the home in the future and split the proceeds equally at that time, one approach is to have the spouse who remains in the home take responsibility for routine maintenance and repairs costing less than a sum-certain, such as \$1,000, and any utilities and the mortgage since they have the benefit of living there. Any capital improvements such as a new roof or boiler should be agreed upon in advance and shared equally. However, if one spouse is not in a financial position to pay for a capital repair, the other spouse can finance the improvement and be made whole at the time of the sale of the home. Given the potential complexities, it is important for any agreement to delineate exactly how expenses are paid during the period of co-ownership.

High conflict couples should consider avoiding co-ownership given the degree of coordination it could require between them to effectively co-own a property together post-divorce.

### Exit Strategies

This then begs the question, how does a spouse extricate himself or herself from joint ownership post-divorce? In all likelihood, the departing spouse will not be able to purchase a new residence while remaining liable on a mortgage for a former marital home. Any agreement reached should delineate how and when the departing spouse gets bought out. If the remaining spouse is unable to refinance and/or buy out the other party's interest by a date certain, then the house will need to be sold. The parties must then agree on how the sale will be handled and what financial accounting

will be used to determine the division of proceeds.

One approach to protect the financial interest of the departing spouse is to secure their financial interest in the equity in the property, as determined at the time of the divorce, by having the remaining spouse execute a promissory note that can be secured by a mortgage on the property. In this arrangement, the departing spouse retains a legal and financial interest in the property by becoming a secondary lienholder, subordinate to the bank who holds the primary mortgage. This can be done through a promissory note that documents the amount of equity owed to the departing spouse, secured by a mortgage for that amount. To account for deferring their equity, the promissory note can include interest accrual—compensating the departing spouse for deferring access to their share of the home's value. The benefit of this approach is ensuring that the departing spouse will be paid in the future upon the sale or refinance of the home. It also allows the remaining spouse in the home to continue residing there without having to immediately buy out the other party's equity. One risk to this approach is the uncertainty of the housing market and whether locking in the departing spouse's equity at the time of the divorce makes sense, as opposed to riding the market together through to a liquidity event at an agreed upon time in the future. In the event parties are riding the market together, it is typical for the net sale proceeds to be split in an agreed upon proportion, after the payment of broker's fee, the mortgage and any other costs of sale. Otherwise, the departing spouse is simply receiving the locked in amount negotiated at the time of divorce plus accrued interest, if applicable, at the time of sale in the future.

The parties must agree to a date certain for co-ownership to end, whether by a sale of the property or a refinance and buy-out. This date can be tied to a child's graduation or another significant milestone. If the remaining spouse is unable to complete the buyout by the agreed-upon date, the parties will then proceed with selling the property on the open market. Any agreement should specify who is responsible for preparing the house for sale, selecting a broker, and how offers are to be considered and accepted. Provisions can be made for the departing spouse to have the right of first refusal to buy the marital home from the remaining spouse at the same price offered by a third party.

### Title, Survivorship, and Estate Planning

In addition to outlining financial responsibilities, it's equally important to consider how title and ownership structure will change after divorce and what legal implications may follow. Any property owned as tenants by the entirety or as joint tenants with rights of survivorship reverts to tenants in common upon divorce. Practically, this means that upon divorce, each person owns a separate undivided share (often 50/50 but not always) and there is no right of survivorship. Thus, if one co-owner passes away post-divorce but during



the period of co-ownership, their share goes to their heirs or through their will, rather than automatically to the other owner. For example, if the parties share a child, and one party dies intestate post-divorce, their share will go to the child rather than to the other party. Without clear legal planning, this can lead to complications in the future ownership and transfer of the home. If the intention of the parties who continue to co-own a property post-divorce is for their respective share to pass to the other party in the event of death during the period of co-ownership, then title and/or estate planning documents need to so reflect.

### Conclusion: Crafting Equitable Solutions in a Difficult Market

Joint ownership of real estate post-divorce has become increasingly common as the cost of living and interest rates have dramatically increased in the past several years. Separating households is expensive and sometimes, facilitating one party to remain the marital home without an immediate buyout makes sense both financially and for the children. Deals can be crafted to benefit both parties and most importantly provide stability for the children. **FA**



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