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Managing Mortgages in Divorce: A Guide to Your Options

Dividing property during divorce can be complex, especially when it involves a **joint mortgage**. Understanding your options can help you make decisions that protect your financial future. This guide outlines the three primary ways to handle a mortgage in divorce:

1. Keep the Mortgage As-Is (with indemnification)
2. Refinance the Mortgage
3. Loan Assumption or Name Deletion

Comparison Snapshot:

	Removes Liability?	Credit Review Needed?	Keep Current Loan Terms?	Fastest to Implement
Keep Mortgage As-Is (with indemnification)	No	No	Yes	Yes
Refinance	Yes	Yes	No	No
Loan Assumption/Name Deletion	Likely	Usually	Yes	Varies (usually faster than refinance)

These options can't be decided in a vacuum. Work closely with your **divorce attorney**, **mortgage advisor**, or **financial planner**. Include clear terms and timelines in your divorce agreement to avoid confusion or conflict. Focus on protecting your **credit** and **future borrowing power** by ensuring any mortgage option is legally and financially sound.

For each option, we'll break down what it is, how it works, and what to watch out for. You'll also find pros and cons and checklists to help you prepare and guide conversations with your attorney or financial advisor.

Option 1: Keep the Mortgage As-Is (with indemnification)

The mortgage remains in both spouses' names, but only one spouse takes full responsibility for making payments. The divorce decree includes indemnification language to legally require that person to all obligations related to the mortgage and protect the other from any liability.

Decide to keep mortgage as is → Include indemnification language in divorce decree → Real estate title is transferred to spouse keeping house → Spouse retaining home makes all mortgage payments → Other spouse remains liable until paid off or refinanced

Pros:

- No need for immediate credit checks or refinancing
- Preserves low interest rate if current mortgage is favorable
- Fastest option logistically

Cons:

- Both spouses remain legally liable on the loan
- Missed payments can affect both parties' credit
- Can impact the non-occupying spouse's debt-to-income ratio for future loans

Don't Forget:

- ☐ Divorce agreement includes indemnification clause to clearly identify all obligations
- ☐ Plan in place for mortgage payments (including backup options and monitoring by non-paying spouse)
- ☐ Understand impact on both parties' credit and future borrowing

Option 2: Refinance the Mortgage

The spouse keeping the home refinances the mortgage into their name alone, removing the other spouse from liability. Sometimes you can add money to the new mortgage to buy out the other spouse's share of the home equity.

Decide to refinance the mortgage → One spouse applies for new loan in their name alone → Loan approval depends on income, credit and home equity → New loan pays off old joint mortgage → Title is updated → Divorce decree outlines refinance terms & timeline

Pros:

- Clean break: only one person remains responsible
- Can use cash-out refinance to settle equity division
- Removes other spouse's liability and credit risk

Cons:

- Requires qualifying for new loan (income, credit, debt ratio)
- May lose a good interest rate from original loan
- Closing costs and new loan terms apply

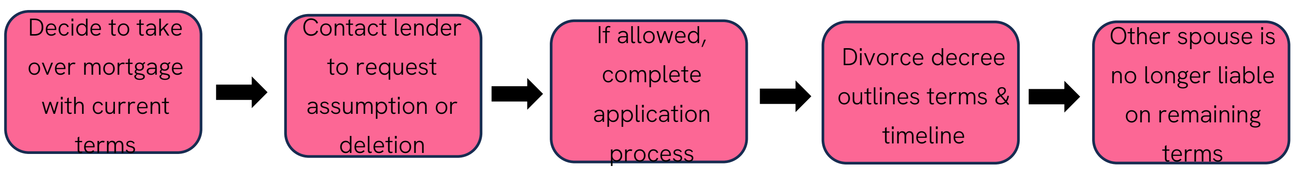
Don't Forget:

- [ ] Credit score and income reviewed for refinance eligibility of purchasing spouse
- [ ] Timeline for refinance included in divorce agreement
- [ ] Plan for equity buyout (if applicable)

Option 3: Loan Assumption or Name Deletion

Some lenders allow a loan assumption, where the spouse keeping the home takes over the existing mortgage under the same terms. Alternatively, some lenders may permit a name deletion, removing one party from the loan without full refinance.

Important: Not all mortgages are assumable, and name deletion is rare. These options require lender approval so start by checking with your bank!



Pros:

- Keeps existing mortgage terms (including interest rate and months/years into loan)
- May be easier, quicker and cheaper than refinancing, if terms allow
- Removes one party from loan liability (if approved)

Cons:

- Not widely available; lender must approve
- Assumption fees may apply
- May still require credit/income review by lender

Don't Forget:

- ☐ Confirm whether loan is assumable or allows name deletion
- ☐ Obtain written confirmation from lender
- ☐ Complete all lender-required paperwork
- ☐ Include terms in divorce decree
- ☐ Update title and loan records as needed

See PartWise www.part-wise.com section on Property Division – Real Estate for more information