

Navigating The House In
Today's Divorce:

Attorney Handbook For High Mortgage Rates

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Resource Mortgage

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Historical 30-Year Mortgage Rates 1971-2023



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Chart represents weekly averages for a 30-year fixed-rate mortgage. Average for 1971-2023 as of October 6, 2023. Source: Freddie Mac PMMG. (c) TheMortgageReports.com

Impact of Rising Rates

In January of 2022, mortgage interest rates began their sharpest increase since the early 1980's. While this has not only increased the monthly cost of a mortgage payment for the same loan amount, the severity of the increase has had a lock in effect for people with current interest rates in the 2's and 3's not wanting to move if they don't have to. The increase in rates has pushed much of the buyer demand to the sidelines, but since very few have opted to sell, the buyers are still slightly outpacing the sellers so home values have continued to appreciate. Prior to the increase in rates, there was a housing supply shortage creating an extreme seller's market where it was very difficult to be a buyer. It was common to be one of 30+ offers on a home and winning bidders were often paying \$30K to \$50K over list prices, fueling historic home value appreciation. In 2021 we saw home values go up around 19% nationally. The higher rates have had a balancing effect on the housing market and it's now easier to purchase a home than it was...if you can afford the higher monthly payments.

In the divorce world, the higher rates have made it harder to "uncouple" the mortgage. Refinancing to remove an ex-spouse's name and pull out equity to pay a marital settlement has become much more costly at today's rates, so the retaining spouse has a significant desire to preserve the rate on the current mortgage. Navigating these nuances has made it difficult for attorneys, mediators and their divorcing clients. This Handbook was created to provide a brief overview of mortgage information and possible resolutions to assist parties as they navigate these issues.



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Cooperation Matters

High conflict between the parties makes the divorce more difficult and more expensive. The same is true for uncoupling the mortgage. A cooperative couple will have more mortgage options than a spiteful couple.

However, there are many situations where aligning incentives can overcome spite. For example, if the exiting spouse wants their marital settlement from the equity in the home, they'll sign a Quit Claim Deed relinquishing their title rights.

Another example of aligned incentives is if an exiting spouse will be receiving spousal maintenance, leaving their name on the marital loan so the retaining spouse can keep their lower rate could free up more cash to pay an increased amount of spousal maintenance.

If there are no aligning incentives, sometimes there may still be a win-win for both parties. Financially incentivizing the exiting spouse to charge a joint debt to their side of a balance sheet and adding a portion of that debt to the global marital settlement so the retaining spouse can do a buyout instead of a cash out refinance (and therefore have a lower interest rate) is one such example.



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Mortgage Options

These options are drafted in the most preferred order for the divorcing client keeping their house and trying to retain their current (lower than market) rate. These options assume a standard scenario where both spouses are on the loan and equity is needed from the home to buyout the exiting spouse.

Option #1 - Remove name with QNDA/obtain marital settlement with 2nd

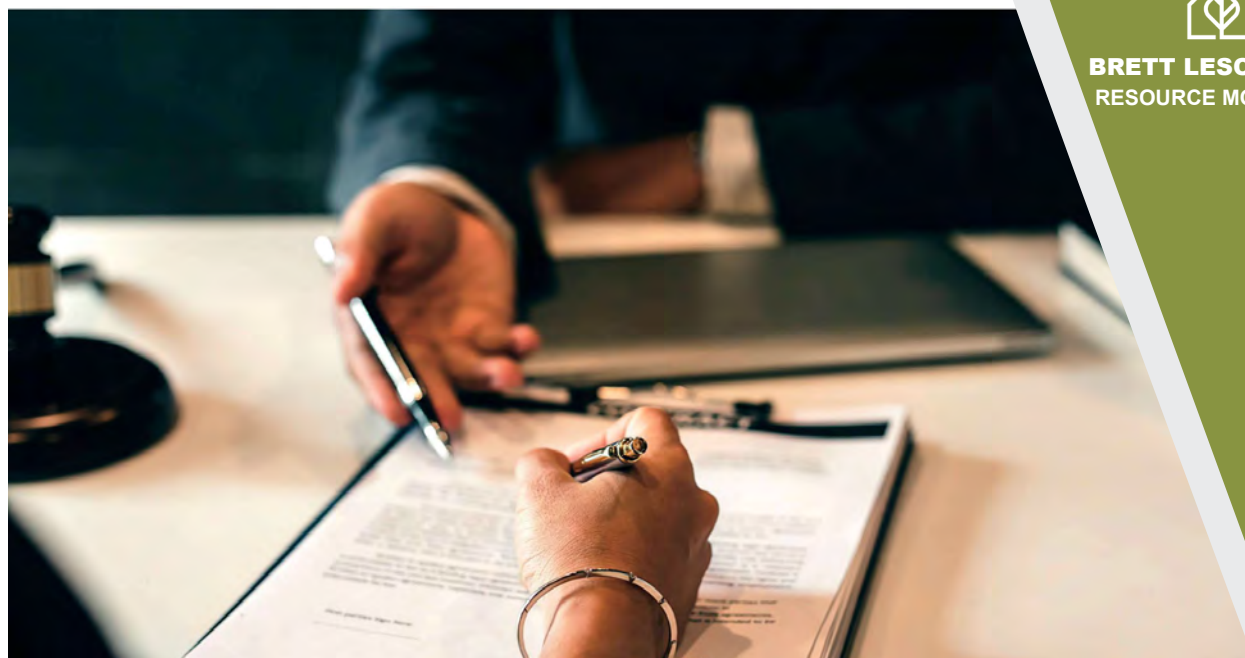
Option #2 - Leave both names on/obtain marital settlement with 2nd

Option #3 - Refinance to remove name and take out marital settlement

Option #4 - Sell home



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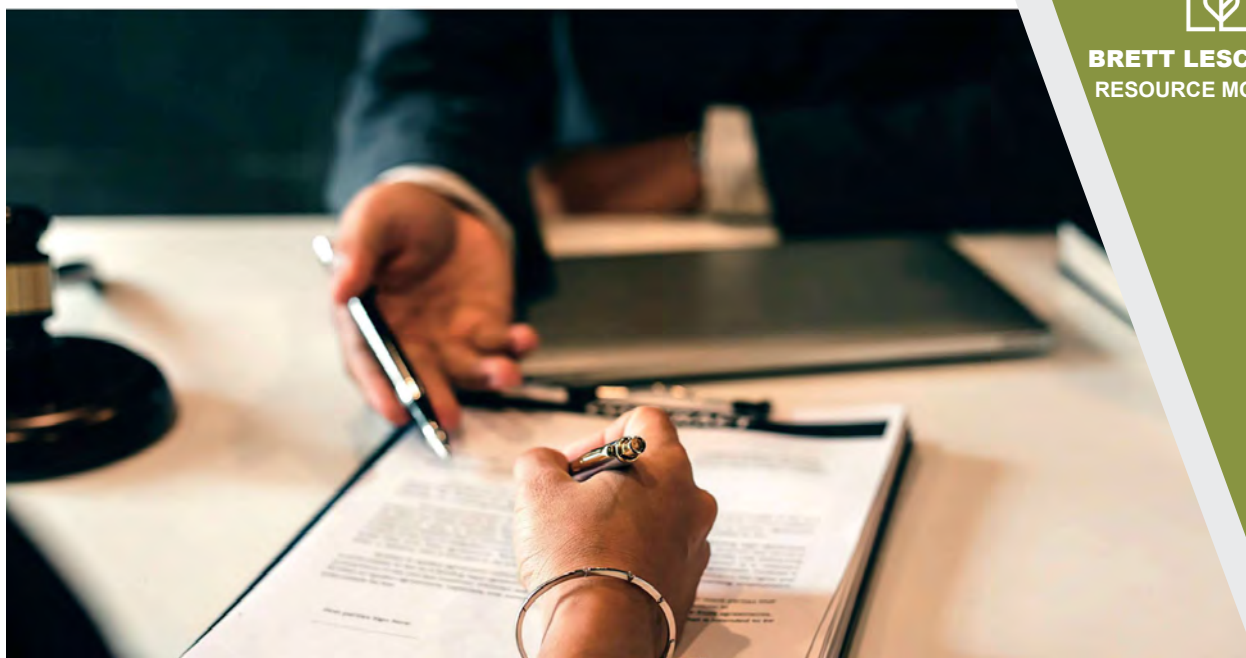
Mortgage Options - Option 1

Option 1:

Do Qualifying Name Delete Assumption (QNDA) to remove name and obtain 2nd mortgage to pay marital settlement.

When to use this option - When exiting spouse requires/would like their name removed from marital home's loan. This is not always possible depending on the servicer of the loan. (See Page 13 for QNDA FAQ's.) The servicer is the company the monthly payments are being paid to.

Even when a QNDA is possible, the servicer will charge closing costs. Therefore, if the spouses are cooperative, they may choose Option 2 to save those costs. Just be aware that there is likely a cost to remove a name down the road, unless the plan is to sell the house prior to the name needing to be removed.



Mortgage Options - Option 1

Additional Consideration #1 - Can I Qualify?

If a QNDA is determined to be possible with the servicer, the client needs to qualify for it on their own and those qualification parameters may be tighter than when they first obtained their loan. In other words, the max debt ratio Fannie/Freddie allow is typically 50%, but a QNDA servicer or 2nd mortgage lender may very well have max debt ratios that are under 50%. Therefore, before writing into the decree that the retaining spouse will do a QNDA or obtain a 2nd mortgage for a buyout, it is prudent for the client to determine:

1. The max debt ratio the servicer doing the QNDA will allow?
2. The max debt ratio the 2nd mortgage lender will allow?
3. Whether the client will be able to qualify at those parameters.

Additional Consideration #2 – Is there time for a QNDA?

QNDA's typically take longer to process than refinances...anywhere from 1 to 4 months. So make sure to account for that when writing the time frames into the decree as 60 or 90 days may not be enough. QNDA's are also typically more frustrating because there is often a lack of customer service for these transactions. I've had multiple clients come to me and say they just want to refinance because they don't have any confidence that their loan is getting worked on and they aren't hearing back from the servicer. I've had others report they went through just fine.



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Mortgage Options - Option 2

Option 2

Leave exiting spouse's name on current loan and obtain second mortgage to pay marital settlement.

When to use this option - When QNDA is not possible and exiting spouse will allow their name to remain on the current loan. Even if a QNDA is possible, this option avoids the cost of a QNDA.

**There are 3 common concerns the exiting spouse usually has with this option, but all 3 have possible solutions.

Concern #1 - I need my name removed so I can purchase my own home.

Solution: If a Divorce Decree awards the marital home to one spouse, the other is typically indemnified and held harmless. When preapproving exiting spouse for another home purchase, the indemnified mortgage debt can be ignored in the new debt ratio calculation. The issue here is that many mortgage lenders don't realize this and can give inaccurate information to the client.



Mortgage Options - Option 2

Concern #2 - I'm concerned my spouse would miss a payment and it will hurt my credit.

Solution: It is true that if the name is not removed from the marital loan and a payment is missed it would negatively affect both spouses' credit scores. However, if there is cooperation between the spouses, there are some assurances that can be agreed upon to address this concern.

- One option is to have the retaining spouse show evidence of payment every month or simply set up online access to the mortgage account so the exiting spouse can check that payments are being made on time. In many cases they can set up statements and alerts to be sent to them by email. If a payment isn't made by the due date, there is a 30 day grace period before a late payment would hit the parties' credit reports. In that 30 days, the exiting spouse could make the mortgage payment and then recover those funds. Verbiage could be written into the original decree such that attorney fees, court costs, etc. would be the responsibility of the retaining spouse if this instance were to occur. Even so, this could become more trouble to the exiting spouse than it's worth if the retaining spouse consistently couldn't make payments, so trust between the spouses is required.



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Mortgage Options - Option 2

Concern #3 - How long will my name be left on the marital loan?

Solution: It's wise for even amicable parties to have an agreement for removing the exiting spouse's name from the marital loan. This can either be after a period of time (1 or 2 years is common) or if interest rates reach some agreed upon level ("Petitioner shall refinance if rate available to the borrower is 5.5% or lower" for example) or I've seen both used, whichever one comes first.



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Mortgage Options - Option 3

Option 3

Refinance to remove exiting spouse's name and pay marital settlement in one transaction.

When to use this option - When exiting spouse requires their name to be removed and a QNDA is not possible.

While this option is the least favorable due to the lower rate being lost, if your client has to go this route there is a silver lining in that all other aspects are favorable. A refinance is quicker, it allows equity to be pulled out to pay a marital settlement at a lower interest rate than if they were to obtain a 2nd mortgage, it allows them to go up to higher debt ratios, it removes the exiting spouse's name, it allows co-signers if needed, etc.

Regarding rates on 2nd mortgages, they are typically higher than rates on 1st mortgages. Therefore, the lower the balance on the current marital loan and/or the higher the amount of equity needed to pay off the marital settlement, the less advantageous it is to use Option 1 instead of Option 3. For example, if a client has \$50K left on their marital loan and they need to obtain a 2nd mortgage for \$200K to pay the marital settlement, it's probably going to be cheaper to just do 1 new loan for \$250K at, say, 7% than to do a QNDA on the \$50K loan at 3.25% and obtain a \$200K 2nd mortgage at 9%.*

*Rates used only for education purposes and do not reflect rates available or approval for any borrower scenario.



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Mortgage Options - Option 4

Option 4

Sell house and divide proceeds according to decree.

When to use this option - When neither spouse can/want to keep the house.

When the marital home is going to be sold, many times one spouse will want to purchase a new home as soon as possible but the other spouse is planning to rent. When this scenario occurs, there is an opportunity to help the spouse purchasing a home that shouldn't adversely affect the other spouse, but takes some cooperation as well as language in the J&D.

Instead of the J&D simply stating that the marital home will be sold and the proceeds split, award the house to the spouse who is going to be renting and indemnify/hold harmless the spouse who wants to purchase. The same verbiage regarding the home being sold and the proceeds split can still be used, but if the purchasing spouse needs to eliminate the mortgage payment debt before they can qualify to buy, adding this verbiage allows the purchasing spouse to be able to buy as soon as the J&D is signed by the judge instead of then also having to wait for the house to be sold, which could take many months. This eliminates needless waiting for the purchasing spouse as long as the couple is cooperative and the mortgage payments during the sale can be worked out between the parties.



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Forecast for Rates

In late 2022, after rates had risen from 3.0% to 7.0% in just 10 months, the assessments from most economic entities was that the Fed's dramatic increases to their Fed rate would bring inflation back down and mortgage rates had seen their peak. In fact, between October 2022 and February 2023, rates steadily decreased closer to 6.0%. But since February we have seen rates increase consistently again up to 8% after the economy failed to slow as expected. Jobs and unemployment have held their ground and consumer spending has remained at a higher level than expected. This prompted the Fed to project a "higher for longer" trajectory for rates as opposed to the shorter spike that was hoped for.

But at some point, the expectation is that these higher rates are going to take their toll, the excess money causing inflation is projected to drain from circulation, consumer spending will decline, companies will feel the pressure to cut jobs and the Fed will feel the need to reduce their rates to avoid a recession in favor of a "soft landing." The bond market (which is what mortgage rates follow as opposed to the Fed's rate) will follow decreasing Fed rates and mortgage rates are expected to come down. This decrease is widely projected to occur throughout 2024, but how much remains to be seen and there is always the possibility of new issues changing that trajectory.



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Forecast for Housing Market

As discussed in the Impact of Rising Rates section above, the rise in mortgage rates has created a more balanced housing market. So if rates are expected to come down in 2024, how would that affect the housing market? It's safe to say lower rates would increase buyer demand, but the better question is how low do rates have to get to put us back into an imbalanced market where buyers are dealing with multiple offers and having to pay well over list price to be the winning bidder?

Buyer perception plays a big role in answering this question. The longer rates are in the 7's and 8's, the more buyers there will be if/when rates get back into the 6's. Given how long rates have been above 7%, we are likely to see an imbalanced housing market again when rates get into even the high 6's...and the 5's would likely create the same severe seller's market we saw before (and even as) rates increased. The wild card will be how many sellers decide to list their house if rates got into the 6's or 5's, which would ease the increased buyer demand.

It is likely that homeowners with rates in the 2's or 3's will need rates to come down more to sell their house than buyers would need them to come down to buy. Therefore, it's likely that we will see an imbalanced market again once rates get into the 6's and home appreciation will increase again. That means it's likely a good time for a divorcing client to buy while rates are higher because they can get a house more easily and for less, and then refinance as rates come down.



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Frequently asked Questions

Qualifying Name Delete Assumptions FAQ's

What is a QNDA?

A QNDA removes a borrower from an existing loan and keeps all loan parameters (rate, years left, monthly payment, etc.) the same.

How does a QNDA work?

You will need to contact your current loan servicer (the one who sends your monthly statements) and ask them if they allow QNDA's. Not all lenders allow QNDA's! If they do allow them, you will need to provide your income documentation to their underwriting department so they can determine if you qualify for the current monthly payment on your own without the income of the spouse who originally qualified for the loan with you.

Who should I call to discuss a QNDA?

Do not call the bank your loan is with and don't ask your loan officer because they won't know about QNDA's. You'll want to call the servicing number on your monthly statement and ask for the assumptions department to discuss whether or not they allow QNDA's. You'll also want to ask them if their max debt ratio calculation is the same as it is when they qualify borrowers for a new loan (typically 50% max) or if it is lower than that.



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Frequently asked Questions

Qualifying Name Delete Assumptions FAQ's

What CAN'T I do on a QNDA?

You can't add a co-signer in order to qualify, so if you don't qualify for your current monthly payment on your own, you won't be able to remove your spouse's name. You also can not take cash out with a QNDA...it just removes a name. If you need cash out of the equity in the house to pay a marital settlement, you'll need to either refinance or take out a 2nd mortgage.

How long can a QNDA process take?

Servicer's don't have much incentive to move fast on these so they typically take longer than a normal refinance, especially if their underwriters are busy. QNDA's typically take 60-90 days, but they can take up to 120 days to complete.

Is there a cost to doing a QNDA?

Yes. The cost will vary by servicer, but there are costs associated with the underwriting process, changing title, etc. Some servicers also charge points. QNDA's used to be cheaper than regular refinance costs, but because some servicers charge points, the closing costs can be higher than refinancing. You just have to check your servicer's fees.

What if my Servicer does not do QNDA's?

They will typically push you to refinance. If you determine you do need to refinance, please call me and we can discuss that. Servicer's do not know how to navigate mortgage transactions surrounding divorce situations.



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Call or Email with Questions. I'm Here to Help!



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