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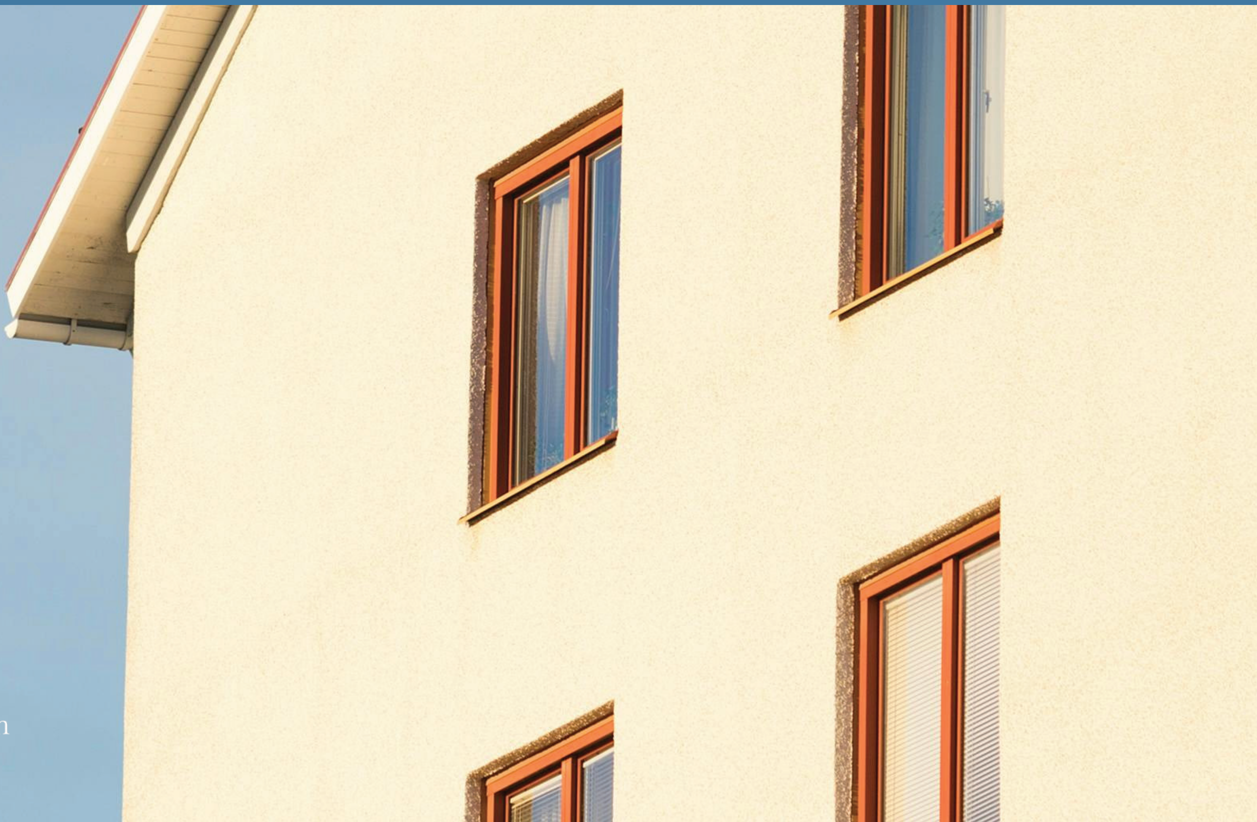
# Navigating Mortgages During Divorce:

## A Comprehensive Guide for Canadian Homeowners



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## Introduction

Going through a divorce is an emotionally and financially challenging time. As a mortgage agent, I'm here to provide you with a comprehensive guide to help you make the best decisions for you and your family when it comes to your home and mortgage.

## Understanding the Matrimonial Home

During a divorce in Canada, the matrimonial home is treated as a jointly owned asset, regardless of whose name is on the title or mortgage. This means that both spouses have an equal right to the home, and its value must be accounted for in the division of assets.

Example: Sarah and John have been married for 10 years and own a home together. Even though the home is only in John's name, it is still considered a matrimonial asset, and Sarah is entitled to her share of the home's equity.

## Dealing with the Mortgage

One of the first decisions you'll need to make is what to do with the mortgage on the matrimonial home. Here are your options:

## Refinancing the Mortgage (One of the most common solutions)

If one spouse wants to keep the home, they can refinance the mortgage in their own name. A bonus of this program is saving on Realtor fees on selling your home.

This involves qualifying for a new mortgage and removing the other spouse from the existing one.

In Canada, we have a mortgage program that permits one party to buy out the other with as little as a 5% equity requirement, refinancing up to 95% of the value of the home. This means, for example, if there is 15% equity in the home, 10% can be extracted to pay out or settle the joint debts and obligations of the relationship. Default mortgage insurance premiums would apply.

If refinancing up to 80% of the value of the home, you will avoid the insurance premium as well has have the ability to increase the amortization up to 30 years,

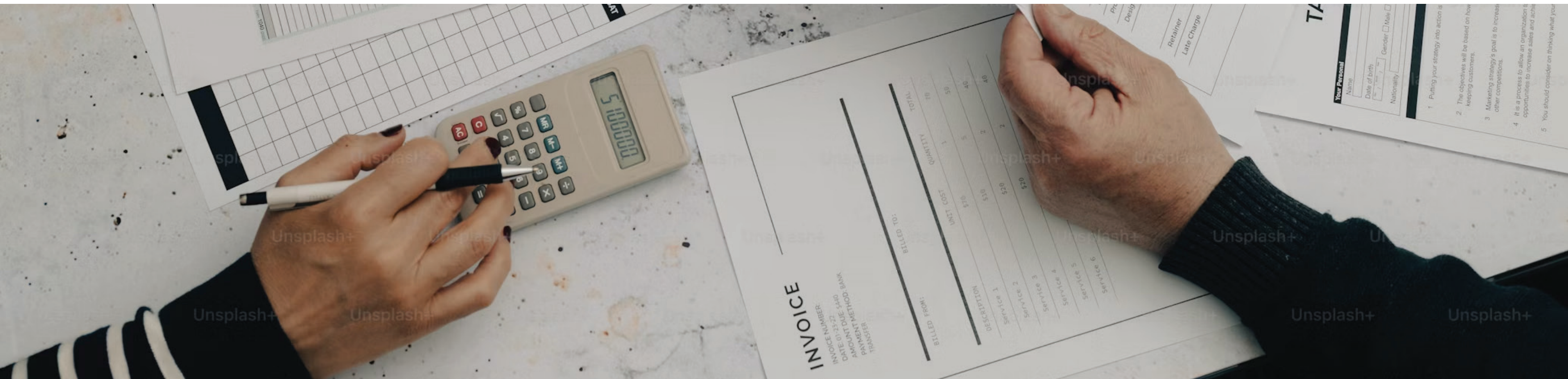
"Equity is the difference between the mortgage balance and the current market value of the home as determined by a licensed appraiser."

- The program applies to a mortgage held jointly with your spouse or any immediate family
- member (brother, sister, parent, etc.)

- Requires an Offer to Purchase, a Separation Agreement, and an Appraisal (to be ordered by your mortgage professional)

- Home must remain owner-occupied by one of you (cannot become a rental)

- Person to remain on title and mortgage must still be able to qualify to carry the mortgage in their own name (which means enough income and a good credit rating).



## Example

Mike and Mary own a home with a current market value of $450,000 and a mortgage balance of $375,000, so there is $75K of equity, which they have agreed to split (per separation agreement) 50/50 or $37.5K each

Mary wants to stay in the home with the kids, who are still in nearby school, and Mike agrees. Mike and Mary have $30K in joint debts to be paid before these joint accounts can be closed (per separation agreement)

Mike and Mary agree to “sell” the home to just Mary for $450K, and a purchase agreement is drawn up by a lawyer.

The new mortgage available under this program is for $427,500 (95% of the purchase price) Mary will provide $22,500 (5% equity/down payment) from her $37.5K share of the $75K in joint equity.

After Mary’s down payment, this will leave her with $15K and Mike with $37.5K. The joint debts are $30K, so they both chip in $15K and the joint accounts are then paid and closed.

Mary is left with the home, title and mortgage in her own name and no joint debts with her ex- Mike is left with no more joint debts, no mortgage, and $22.5K cash, which he can then go use as a down payment to purchase his next home.

## Requirements

- At the time of mortgage approval, in addition to income verification and other standard conditions, lenders will require the following:

- Divorce/Separation Agreement. Lenders will not finalise a mortgage approval until there is a legal agreement in place outlining the split of assets. This protects both the lender and the client as a soon to be ex-spouse could make a claim against any assets in your name.

- Proof of support payments. If there are child or spousal support payments and these are needed as income for the buyer to qualify, further documentation will be required. The payment amounts should be specified in the Separation/Divorce Agreement and lenders will require a minimum of 3 months’ worth of bank statements showing the support payments are being made/received consistently on the same day each month and for the same amount.

- An Offer to Purchase between the two spouses for the subject property (in the case of spousal buyout)

- An Appraisal will always be required in the case of a spousal buyout. As this transaction is not an Arm’s Length Transaction the lender or insurer will order an appraisal to be completed on the property to confirm market value. In the event of a refinance, the appraisal requirement can sometimes be waived, depending on the loan-to-value ratio.

## Selling the Home and Dividing the Equity

If neither spouse wants to keep the home or if it’s not feasible for one to do so, the home may need to be sold. The proceeds from the sale will then be divided according to the divorce settlement.

Example:

Sarah and John decide to sell their matrimonial home. After paying off the mortgage and any other outstanding debts, they divide the remaining equity based on their divorce agreement.

## Transferring the Mortgage to One Spouse

In some cases, the divorce agreement may stipulate that one spouse will keep the home and assume the entire mortgage. This requires the mortgage to be transferred to the retaining spouse’s name.

Example:

John agrees to keep the matrimonial home, and the divorce order states that he must refinance the mortgage in his name only, effectively removing Sarah from the loan. It’s crucial to work closely with your mortgage agent, lawyer, and financial advisor to ensure that the mortgage and home ownership are properly addressed in your divorce settlement.

## Protecting Your Credit and Financial Future

Divorce can have a significant impact on your credit and finances. Here are some steps to help protect yourself:

- Monitor your credit report regularly and dispute any errors or fraudulent activity.
- Even if you have a joint debt, monthly minimum payments should be paid even when there is a dispute about the debt. Not making the payment will harm both individuals credit.
- Avoid taking on new debt during the divorce process.
- Ensure that any joint accounts are closed or transferred to the appropriate spouse.
- Develop a new household budget and financial plan to help you achieve your post-divorce goals.

## Conclusion

Remember, going through a divorce is a challenging time, but with the right support and guidance, you can make informed decisions that protect your interests and set you up for a successful financial future.

If you have any other questions or need further assistance, please don't hesitate to reach out to me. I'm here to support you throughout this process. If you know of anyone going through a similar situation, it would be an honour to be able to help advise them.

"I'm here to support you throughout this process"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