How Does Divorce Mortgage Planning Benefit Divorcing Military Spouses?

According to data released by the Pentagon, married troops are divorcing at about the same rate as they have for the previous few years. However, since 2014, the divorce rate among men and women across the services has fluctuated between 3% and 3.1%. In addition, the divorce rate among female troops is typically two to three times higher than that among male troops at 7% compared to 2.5%. The overall divorce rate is higher for the enlisted forces, at 3.5%, compared to the divorce rate for officers, at 1.7%, regardless of gender.

How does divorce mortgage planning benefit divorcing military spouses? Working with a Certified Divorce Lending Professional (CDLP™), divorce mortgage planning can help identify how to manage the existing VA Loan on the marital home and help document the verbiage and documentation of benefits payable per the Uniformed Services Former Spouses' Protection Act.

VA loans are a great benefit to eligible veterans. That said, it is essential to understand that eligibility for VA financing is held for the veteran directly and qualified surviving spouses. So what happens when the marital home is awarded to one spouse during the divorce when currently financed with a VA loan?

- When the non-veteran spouse is awarded the marital home and needs to refinance the existing mortgage and pay their former spouse their share of equity, the non-marital spouse will not obtain VA financing.
- When the non-veteran spouse is awarded the marital home and will not be required to refinance the existing mortgage, the veteran spouse will remain legally obligated for the loan. The divorce settlement may assign the responsibility of paying the existing mortgage payment to the non-veteran spouse; however, that will not alter the original agreement and obligation between the veteran spouse and the current mortgagor. Additionally, the veteran spouse's entitlement used for obtaining the current VA financing will remain tied to the existing mortgage. Therefore, it may limit their ability to get another VA loan for purchasing a new home for themselves. Provided the veteran has enough second-tier entitlement remaining, they may be able to secure a second home utilizing their VA loan benefit.

- When the veteran spouse retains the marital home, there are three ways to remove the ex-spouse from the existing VA mortgage:

  1. A new Equity Buy-Out refinance with new VA financing to pay the equity share to the former spouse can be obtained when necessary.
  2. In the absence of the need to distribute any equity ownership in the property, an Interest Rate Reduction Refinance Loan (IRRRL) is a possibility to remove the former spouse from the existing mortgage; however, there must be a minimum interest rate improvement of .5% to qualify.
  3. A release of liability may be possible provided that the veteran spouse meets the requirements of the existing mortgage holder, which allows the veteran spouse to retain the current mortgage terms and time invested.

The Uniformed Services Former Spouses' Protection Act (USFSPA) 10 USC § 1408 accomplishes two things. First, USFSPA recognizes the right of state courts to distribute military retired pay to a spouse or former spouse. Secondly, it provides a method of enforcing these orders through the Department of Defense. The Act gives state courts the authority to treat disposable retired pay as property of the member and spouse in a divorce and allows for direct payment to the former spouse if the 10/10 Rule is met. In addition, the USFSPA limits the direct payment of pension division awards to 50% of the member's disposable retired pay. The USFSPA also provides a method of enforcing current and/or previously owed child support and current alimony awarded in a court order. The maximum may potentially be raised to 65% if spousal or child support garnishment orders are in effect against the member. When the support orders exceed the maximum payment allowed, the receiving spouse will need to receive the balance of the payment from their ex-spouse each month directly.

For the recipient spouse to use the income as qualified income when obtaining mortgage financing, they must source and document receipt to establish consistency and stability. When possible, the marital settlement agreement should clarify the total amount of support ordered and paid from each source to meet the requirements for mortgage financing. Again, a Certified Divorce Lending Professional can help provide clarity and guidance for a smoother and more successful process.

It is always important to work with an experienced mortgage professional who specializes in working with divorcing homeowners. A Certified Divorce Lending Professional (CDLP™) can help answer questions and provide excellent advice. Please don't hesitate to reach out to me directly if I can provide additional information.

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