



Assessing The Value Of Marital Property: Is The Home A Key Marital Asset In A Volatile Market?

As a result of the rapidly changing real estate market, there is an increased focus on the current value of the marital home. In order to assess value, we first have to use the appropriate valuation date. Case law is clear that a marital home is valued as of the date of trial. But appraisals are often done several months before the trial date. In such a volatile market, the marital residence – which has long been thought of as a key marital asset – may no longer be an asset that will increase in value.

Problems Assessing Real Estate Value

In a September 2008 case, the Complaint for Divorce was filed in September 2006, and the original appraisal of the marital home was completed in April 2007. During the trial, both real estate experts testified that their profession was resisting making adjustments for time prior to early 2008.

The original appraiser updated his report in January 2008, and it should come as no surprise that the value had decreased. It's also not surprising that the person who wanted to be bought out of the house objected and got his own appraisal in April 2008, which used comparables from the last quarter of 2007. No adjustments for time were made. The original appraiser updated his

report for trial in September 2008. Given the current real estate market, it is no surprise that the value had gone down again.

“Today’s volatile real estate market calls into question whether a home’s value at trial is a fair assessment for equitable distribution.”

In fact, the appraiser believed that at that point, values were going down at a rate of 0.5 – 1 percent per month, and he expected this trend to continue.

Key Questions and Areas for Concern

- In most cases, due to court scheduling orders or otherwise, appraisals will be done several months before the trial date.
- In the event that there is a trial, it often takes several months to get a decision. This calls into question whether the value at trial is a fair assessment for equitable distribution. If the matter is then appealed, the value could be further jeopardized.

- Does it make sense in the current market for one party to keep the house and either buy out the other spouse’s interest from the equity or offset the other side’s share of the equity against other non-real estate assets? With the prognostications regarding the continued decline in the market, would it not be most fair to sell the house, so that the pain is shared equally, and then divide the rest of the assets in kind? The answer depends on a couple of factors.

First, how long does the person getting the house plan to stay there? If it is a long time, it may make sense to keep the house; otherwise, the best route may be to sell. Second, how does the selling of the marital property affect the children? It could impact their stability, schooling and friendships.

Rethinking the Home as a Key Marital Asset

The equitable distribution statute requires a court to look at the income-producing aspect of the assets received in equitable distribution. This calls into question how a court should look at an asset that is expected to continue to

decrease in value for the foreseeable future. We need to revise our prior thinking about what to do with the marital home in this declining economy in terms of who gets it and how to value it.

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