



## The Marital Home By Jodi Wyman

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There are many difficult issues when couples separate, and often the most emotionally charged asset they own is the marital home. Usually, the house is purchased not only as a home, but also as an investment.

Couples most commonly own the home as joint tenants. This means that they each have equal standing in terms of ownership, and as well they have a right of survivorship in the event of the death of the other. The house becomes an asset however that must be split if the couple decides to separate.

In many separations, one person moves out and the other will continue to live in the home, sometimes even for years. The law allows the person staying to make a claim against the other spouse for a contribution toward the house expenses but the spouse who has left the home however is then entitled to make a claim for occupation rent. This is basically rent for the person in the home to use their half of the house. Usually, what ends up happening is that the spouses simply agree that one person will be responsible for the expenses for the home and the other party will not claim occupation rent.

One alternative to deciding which spouse leaves is for them both to leave, and the children to stay. Called “nesting”, it is possible for a couple to purchase and maintain a second home or even rent an apartment. After a divorce, the children will continue living in the family home, in a comfortable and familiar environment near their friends and their school, and the parents will alternate living with them.

To make this sort of arrangement work, not only would the couple need sufficient disposable income, but more importantly a strong desire to share space and cooperate with the former spouse.

When couples divorce they often have to sell the home for financial reasons. The Law of Property Act allows either owner to ask the Court for an Order that the home be sold and the net proceeds equally divided. It is very difficult to oppose this type of application to the Judge. Normally all that the spouse in the home can get is a temporary delay of sale.

The other option is that one spouse can purchase the equity in the home from the other partner. They can informally decide how much their equity is worth by obtaining an appraisal of the fair market

value of the house, and then deducting the outstanding mortgage amount from the value of the home. This will tell them what the equity is, and they would owe half that to their spouse.

Often the most difficult roadblock to buying the other person’s interest is whether the purchasing spouse can obtain financing. A jointly owned home usually has a joint mortgage against it. The mortgagee would have to be willing to release one spouse from the mortgage or issue a new mortgage to just one partner. This is sometimes not financially possible.

Before a spouse makes a decision to try to keep the home, they will need to look at their long-term financial picture. Besides the cost of paying a mortgage, there are also taxes, maintenance, repairs and utilities which may be difficult when the person is now left with only one income.