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## **Alimony (Spousal Maintenance) Payments And Your Ability To Refinance Your Home**

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After a divorce decree is entered, there may still be steps that need to be taken to wrap up property division issues (for example completion of forms and orders to divide a retirement account and/or steps to divide the ownership and responsibility for real estate). When a home was jointly titled and jointly mortgaged during the marriage, and

one person is keeping the property following the divorce, there are steps to take to finalize the sole ownership of that property item. One such step is changing over the title, which is as straightforward as signing a quitclaim deed and recording it with the clerk and recorder's office for the county in which the property is located. The more complex step is getting the person that did not retain ownership off of the mortgage. This step is necessary for the protection of both parties. For the party retaining the property, it ensures they have complete ownership of the property, as well as complete responsibility for all liabilities, and can be solely responsible for future decisions for the property. For the person not retaining the property, it is critical to ensure you are removed from the mortgage. If the other person does not pay the mortgage, and you are still on the mortgage, the bank can come after you for recovery of the debt, regardless of what your divorce orders say. Therefore, if the other person will not be able to remove you from the mortgage for the property, it may be important to consider alternative methods of dividing the property, prior to finalizing the divorce, to ensure you are protected from creditors.

It is not uncommon for the individual that is the primary parent of the children to want to retain the house as their property, to ensure consistency for the children.

However, depending on the person's income, they may not qualify to refinance the mortgage into their sole name, which may cause issues for the other parent in terms of protection for credit, ability to qualify to purchase another home, etc. Therefore, before finalizing a divorce case, it is important to consider all aspects of the property division, including whether the party receiving any real estate as their sole property will be able to refinance any mortgages into their sole name.

One aspect that can be considered in determining a person's qualifications or ability to refinance is whether there maintenance (alimony) orders in the case. **Alimony payments may be considered as "income" for mortgage** qualification purposes. However, alimony payments will only be considered for a refinance if they are court ordered payments, have been received consistently for six months, and will be received for at least three years. These time frames are important because steps you take while your divorce case is pending could actually affect whether a person is able to refinance the home. For example compare the following scenarios:

Scenario A: The parties file for divorce in July. They spend the next six months discussing issues related to custody, finances, property division, etc. During that time, they decide continuing to use the joint bank account is working well and there is no need for temporary orders. Therefore, there are no orders for **spousal maintenance**, and the parties continue to just put their paychecks in the joint account and use it as needed for expenses. They finalize a separation agreement in December stating that wife will receive the marital home, husband will begin paying her maintenance in January, and she will need to refinance the mortgage into her sole name within 90 days or list the house for sale. In this scenario, unless wife qualifies to refinance based on her sole income, she will end up needing to list the house for sale because there were not six months of consistent, court ordered maintenance payments before the refinance process for the lender to consider.

Scenario B: The parties file for divorce in July. They receive temporary orders in September, part of which requires husband to pay wife maintenance each month until final orders. Husband pays maintenance each month as ordered. The parties finalize a separation agreement in December stating that wife will receive the marital home, husband will continue with maintenance payments, and wife will need to refinance the mortgage into her sole name within 90 days or list the house for sale.

In this scenario, wife will have received regular, court ordered maintenance payments for at least six months before the refinancing deadline, which the lender can consider in determining whether she is qualified (assuming the payments were to last for at least 3 years).

Therefore, depending on your ultimate goals in your divorce case, getting a temporary order for maintenance may help you meet such goals. Even if you are the party that would end up paying maintenance, having such temporary orders would help you for tax purposes (see the recent blog post regarding the effects the recent tax changes have had on maintenance payments) and, if you are agreeable to the other party receiving the house as long as they can get your name off the mortgage, having regular, consistent, court ordered maintenance payments before the decree is entered could actually help you meet that goal. Consulting with an experienced **divorce** attorney prior to making decisions regarding spousal support and the marital home can help give you the clarity you need as you move on to the next chapter of your life.



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