



Amaral & Associates, P. C.

ATTORNEYS AT LAW

Who gets the house in a divorce?

Q: I'm getting a divorce. Who gets the house when the divorce is finalized?

A: The short answer is, it depends. There are many factors that must be considered in determining who gets to keep the marital home during a divorce.

Q: What factors are considered in determining who gets the marital home in a divorce?

A: One of the biggest factors is finances. If either or both spouses want to keep the marital home, the court will consider whether he/she can afford the operating costs of the marital home. Also, the court will consider whether the spouse who wishes to retain the marital home can afford to buy out the other spouse based upon the remaining equity in the marital home.

Q: How does a spouse buyout the other spouse's equity in the marital home?

A: This can be done in a few ways. First, the spouse who retains the marital home can take out a mortgage, or refinance the existing mortgage and take out additional cash, to pay the other spouse his/her equitable share in the marital home. Another way this can be accomplished is by ensuring the spouse who is not retaining the marital home get a greater share of other marital assets (such as cash accounts or retirement accounts) to offset his/her equity in the marital home.

Q: What if one or both of the spouses cannot afford to buy out the other spouse's interest in the marital home?

A: If one spouse cannot afford to buy-out the other spouse from the marital home, but the other spouse can afford to do so, the spouse who can afford to buy-out the other spouse is typically permitted to do so. However, if neither spouse can afford to buy-out the other spouse's interest in the marital home, then the court will typically order that the marital home be sold.

Q: What if neither spouse can agree who can keep the house?

A: If neither spouse can agree as to who will keep the marital home, the court, rather than picking one spouse to keep the marital home, will require that the home be sold.

246 Revere Street, Winthrop, MA 02152 T: (617)539-1010 ~ F: (617)539-0505

63 Atlantic Avenue, Suite 4B, Boston, MA 02110 T: (617)742-2020

Email: edamaral@amarallaw.com - www.amarallaw.com

Q: What if I had this house prior to my marriage?

A: If you bought the marital home prior to when you were marriage, the same rules will typically apply. However, if the house is sold, or your spouse is entitled to some equity from the home, you will likely be given a credit for any funds (including the down payment) you put into the house on your own prior to it becoming the marital home.

Q: We have agreed to sell the house. Will we equally split the proceeds?

A: Again, the short answer is it depends. Because Massachusetts is an equitable division state, there is no law requiring that spouses receive a 50/50 split of marital assets. Although a 50/50 split is not uncommon, it is not required. Therefore, when the marital home is sold, first any mortgages, home equity loans, and liens on the home will be paid. Then, any closing costs and taxes will be paid at closing. Then, any net proceeds will be divided between the spouses. How this gets divided will depend on many factors, including, but not limited to:

- Each spouse's contribution towards the purchase and upkeep of the marital home (financially and through "sweat equity")
- Whether marital funds were used to purchase the home, or if one spouse used his/her own funds to purchase the home.
- How are the other marital assets being divided, and who gets what share of the other marital assets
- Were there any liens on the marital home that pertained to just one spouse that had to be paid at closing (e.g. lien from a creditor, tax lien, etc.)

Q: Our house is going to be sold for a loss. Who is responsible for covering that loss?

A: Like many of these questions, the short answer is it depends. Sometimes spouses are equally responsible for the shortfall, and sometimes one spouse is responsible for all or most of the shortfall. It will largely depend on the factors listed above.

Q: We still have young children, and I want them to grow up in this house. Can they?

A: Yes. It is possible to negotiate that one spouse stays in the marital home with the children, until they are older (i.e. graduate from high school or college). Once the children are grown, the spouses can agree to sell the marital home at that time, or they can agree in the beginning that the spouse who stays in the home can buy-out the other's spouse's interest in the home, but can have additional time to do this, since the children are also staying in the home.

Q: The divorce was just filed. Will one of us have to move out?

A: It is not uncommon for one spouse to move out of the marital home after the divorce is filed, but while the divorce is still pending. However, at the same time, some spouses choose to continue to live in the house together, whether for the sake of the children or for financial reasons. This is determined on a case by case basis. It will depend, in part, how well the spouses still get along. If the spouses are continually fighting, then the court may decide it's best for one spouse to move out.

Have any further questions about property division?

Call the attorneys at Amaral & Associates, P.C.