



**DIVORCE LITERACY:
LOAN ASSUMPTION
INCIDENT TO
DIVORCE**

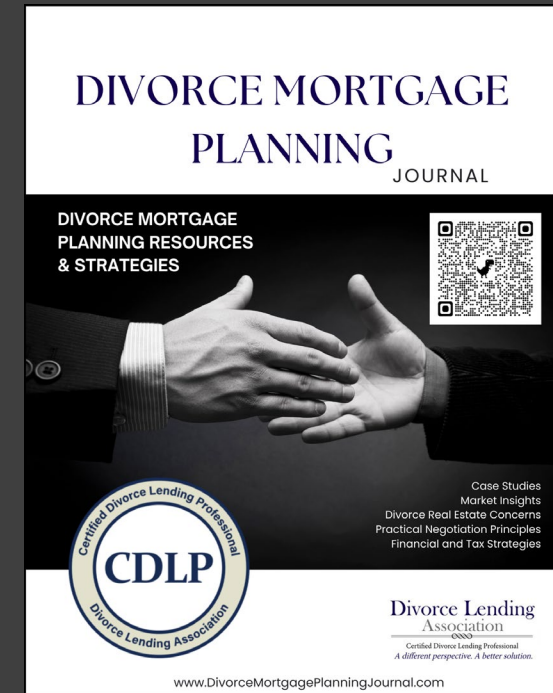
www.DivorceLendingAssociation.com





JODY BRUNS

- President/Founder, Divorce Lending Association
- Certified Mediator / Trainer
- 30+ Years Experience – Finance & Mortgage Banking
- Divorce Mortgage Expert for over 20 Years
- Trained Over 1,000 Mortgage & Real Estate Professionals
- Author, “A House Divided | The Clash between Divorce, Real Estate & Mortgage Financing”
- MCLE & CE Provider | Multi-State Bar Associations, CFP Board (CFP), Institute Divorce Financial Analysts (CDFA), Real Estate and more.



Two Objectives Today



Breakdown Loan
Assumption
Options

Provide Additional
Strategies to
Consider

What is Divorce Mortgage Planning?

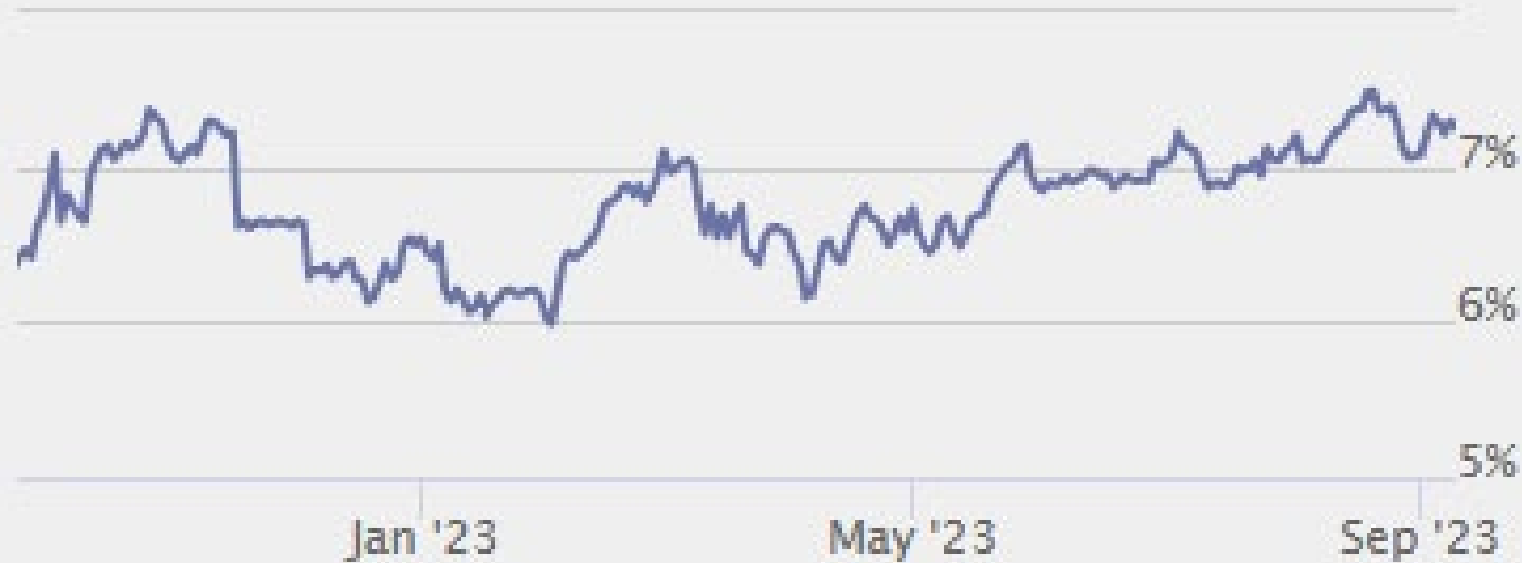
- Divorce Mortgage Planning refers to the process of carefully considering and planning the mortgage-related aspects when going through a divorce.
- This involves making informed decisions about real estate, mortgages, and financial matters tied to the division of property and assets during divorce.
- Working directly with the divorce team, a CDLP® incorporates divorce mortgage planning into the overall process with a unique and solid understanding of the intersection of family law, financial and tax planning, real property, and mortgage planning.
- Our mission is to help divorcing homeowners make more informed decisions regarding their home equity solutions and mortgage financing opportunities during and after the divorce.
- A CDLP® does **NOT** give legal or tax advice.



Current Mortgage Rates

30 Year Fixed Rate

7.25% **-0.05**



← September 15,
2023: 7.25%



Effect on Divorcing Homeowners Payments

- \$300,000 Mortgage Loan
- 30 Year Fixed Rate at 3.25%: Principal & Interest Payment \$1,306
- 30 Year Fixed Rate at 7.25%: Principal & Interest Payment \$2,047

- Payment shock of \$741 (57% increase!)



What is a Loan Assumption

- An assumable mortgage is a type of mortgage loan that can be transferred by a seller and “assumed” by the purchaser of the parcel of property to which the mortgage is attached.
- When such a situation occurs, the purchaser will become responsible for paying off the remaining balance of the mortgage loan. The act of assuming the terms of the mortgage is known as, “mortgage assumption.”





Two types of loan assumptions

- **Legal Transfer Assumption or Simple Assumption**
 - Assume legal responsibility for paying an existing mortgage
 - Original mortgagee is now in a secondary position to pay off the loan, similar to a co-signer
- **Qualified Assumption or By Novation**
 - Assume responsibility for both the payments and the terms of the mortgage loan.
 - A full release of liability may be obtained.

Equity Buy-Out

Absolutely NO equity can be taken out in a loan assumption



Mortgage Instruments

- A mortgage instrument is an instrument that places a lien or encumbrance on property associated with a mortgage debt.
- Examples of mortgage Instruments
 - Mortgage Note
 - Deeds of Trust
 - Security Deeds



Mortgage Instruments - *Note*



- **Alienation Clause a/k/a Acceleration or Due-On-Sale**

Section 19 only, “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower to a purchaser at a future date.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender’s prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.

However, Lender will not exercise this option if such exercise is prohibited by Applicable Law.

Lender also will not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee, and (b) Lender reasonably determines that Lender’s security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender’s consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises this option to require immediate payment in full, Lender will give Borrower notice of acceleration. The notice will provide a period of not less than 30 days from the date the notice is given in accordance with Section 16 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to, or upon, the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower and will be entitled to collect all expenses incurred in pursuing such remedies, including, but not limited to: (a) reasonable attorneys’ fees and costs; (b) property inspection and valuation fees; and (c) other fees incurred to protect Lender’s Interest in the Property and/or rights under this Security Instrument.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Additional Information About This Loan

Loan Disclosures

Assumption

If you sell or transfer this property to another person, your lender

will allow, under certain conditions, this person to assume this loan on the original terms.

→ will not allow assumption of this loan on the original terms.



Legal Transfer Assumption

What is an exempt transfer?



Garn St. Germain Depository Institutes Act of 1982



- Protects consumers from lenders enforcing the **Due-On-Sale** Clause.
- Protects against a Lease Hold Interest of **3** years of less.
- The spouse awarded the home (new owner) legally **assumes** responsibility for paying the current mortgage and becomes known as a **Successor of Interest**.

Loan No. 12345678

GARN-ST. GERMAIN ACT ASSUMPTION NOTICE

I write to inform you that, as of April 1, 2018, my husband and I were divorced by an order of the Circuit Court of Henry County, Georgia. Pursuant to the divorce decree, Mr. Smith is required to transfer to me his entire interest in the marital residence located at 1234 Main Street. The transfer will take place on May 30, 2018. On that date, I am to assume the mortgage that encumbers the property and to make the payments thereon.

Therefore, pursuant to the Garn-St. Germain Depository Institutions Act of 1982, I hereby notify you of my intent to assume the Mortgage and Note. You may begin mailing statements to me immediately. Thank you for your cooperation and understanding.

**Must confirm Successor's Identity and
Ownership Interest in the Property**





CONTINGENT
LIABILITY



Qualified Assumption

- In contrast, a novation is when a purchaser agrees to take responsibility for both the payments and the terms of the mortgage loan. In this scenario, a lender will assign the seller's rights and duties to the new purchaser. A new mortgage contract will then be created that releases the seller from all mortgage loan obligations.
- Release of Liability
- Where to check on documents
 - Closing Disclosure
 - Mortgage Note
- ***MUST STILL QUALIFY***



Government Backed Mortgage Loans



- FHA / VA / USDA are typically assumable loans
- Rider with an assumability feature which overrides the 'acceleration' clause in the mortgage note
- Caution on VA Assumptions
 - If Assumptor is not a veteran with sufficient VA home loan entitlement; the veteran's entitlement will stay attached to the existing VA home loan until it is paid in full.
 - This may limit the veteran's options on future VA home financing.

Conventional Assumption

- Alienation Clause
- Adjustable-Rate Mortgages
 - Usually Assumable with some restrictions
 - Typically, cannot be assumed only after the initial fixed-rate period has expired
- Servicers have an option – never hurts to ask
 - Opening Pandora’s box
 - Typically want to see 6 mos. payments by Assumptor
 - Read the fine print
 - Fees
 - Don’t be fooled – they will typically come back with new terms
 - Risk vs. Reward
- Not eligible if there is any type of subordinate financing
- Mortgage Insurance

Additional Information About This Loan

Loan Disclosures

Assumption

If you sell or transfer this property to another person, your lender
 will allow, under certain conditions, this person to assume this loan on the original terms.

will not allow assumption of this loan on the original terms.



FNMA/FHLMC Assumption Information/Requirements:

Guild Mortgage

- Property must be **owner-occupied** only.
- Account must be current.
- DTI must be 43% or less; and FICO must be 620 or higher.
- Principal & Interest payment, loan number, and interest rate remain the same.
- **Any Escrow account balance/shortage transfers to the new borrower(s).**
- Must **least 12 concurrent months** of good payment history.
- Must have **at least 6 months'** proof that you have been making the mortgage payments yourself prior to the application date. **(Cannot be from a Joint Account).**
- **If the reason for the Assumption is due to divorce, a recorded/approved by court official divorce decree may be required to prove spousal support, child support, and equalization award (if applicable).**
- There is no cash out allowed and the Assumption fees cannot be added to the loan.
- 2 years work history (Ex: 2 years taxes, 2 years of W2, and 30 day current paystubs)
- **Time frame is approximately 120 days or longer.**
- Appraisal is not required.
- Any assumption fees set by lender are non-refundable!



Example – Bank of America



4. Once your application has been fully processed, your file will be submitted for the review of your income, assets and credit. Your loan processor will contact you to inform you of the loan decision. If additional items are required, your file may require a second review.

Notes:

- Borrowers may be required to place a 5% down payment.
- Third party fees, like credit report, flood certification and Property ownership report will apply. The amount of these fees will be determined by the loan program and (in some cases) where the property is located.
- For a HELOC Assumption, **future advances on the line of credit will be suspended.** After the suspension of the line of credit, the original Borrower and the new Applicant(s) will not be able to borrow against the HELOC account, and future transactions will be denied. The original Borrower (and the new Applicant(s), if the assumption is approved) will continue to receive statements as appropriate and be responsible for any payments due on the account.

Is a Loan Assumption in Your Best Interest?

A conversation worth having with your divorcing clients.



Comparing Standard vs. Itemized Deductions

- Standard Deduction | deduct a set amount of money from your taxes
- Itemized Deduction | lower income from a list of qualifying expenses



Filing Status	Tax Year 2022	Tax Year 2023
Single Taxpayers Married Filing Separately	\$12,950	\$13,850
Married Filing Jointly	\$25,900	\$27,700
Heads of Household	\$19,400	\$20,800

Scenario on Loan Assumption vs. Refinance Equity Buy-Out



Wife to retain home valued at \$750,000



Current Mortgage \$400,000



Equity \$350,000 (\$175,000 equity buy-out)



WF Auto Loan Balance \$25,000 | \$597 Monthly Pmt.



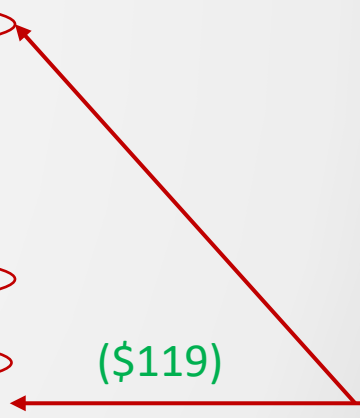
Opportunity Cost



	Investment Funds	Mortgage Funds
Funds Needed for EB	\$175,000	\$175,000
Opportunity Cost %	7.2%	
Opportunity Cost \$ (what you would have earned by keeping your money invested.)	\$12,500	
After-Tax Cost of Funds % based on 7.25% & 24% Tax Bracket		5.51%
After-Tax Mortgage Cost \$		\$9,643
Annual Benefit		<i>\$2,857 Annually</i>

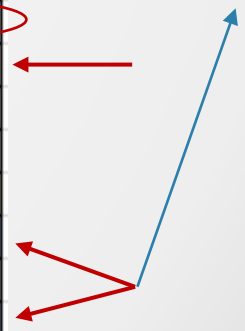
Conventional		30 Year Fixed	Conventional		30 Year Fixed
Current Loan			Scenario 1		
Original Loan Amount		\$550,000.00	Current Loan Amount Payoff		\$400,000.00
			New 2nd Loan Amount		\$0.00
			Equity Buy-Out Amount		\$0.00
			Estimated Loan Fees		\$5,375.00
			Estimated PrePays		\$1,400.00
Original Loan Amount		\$550,000.00	New Estimated Loan Amount		\$406,775.00
Loan Period (Years)		30	Loan Period (Years)		30
Interest Rate (%)		3.250%	Interest Rate (%)		7.250%
			APR (%)		7.325%
Loan to Value (LTV)		73.33%	Loan to Value (LTV)		54.24%
Combined Loan to Value (CLTV)		73.33%	Combined Loan to Value (CLTV)		54.24%
Principal & Interest Payment		\$2,393.64	Principal & Interest Payment		\$2,774.93
Taxes & Insurance		\$700.00	Taxes & Insurance		\$700.00
Total Monthly Housing Expense		\$3,093.64	Total Monthly Housing Expense		\$3,474.93
Expected Tax Filing Status		Single	Effect on Cash Flow vs. Current		-\$381.29
Standard Deduction		\$13,850.00	Standard Deduction		\$13,850.00
Estimated Tax Bracket 2023		24%	Estimated Tax Bracket 2023		24%
Estimated Gross Annual Income (Taxable)		\$144,000.00	Estimated Gross Annual Income (Taxable)		\$144,000.00
Estimated Mortgage Interest Paid (12 mos)*		\$16,222.35	Estimated Mortgage Interest Paid (12 mos)		\$29,362.07
Property Taxes Paid		\$6,000.00	Property Taxes Paid		\$6,000.00
Estimated Adjusted Gross Income		\$121,777.65	Estimated Adjusted Gross Income		\$108,637.93
Estimated Tax Liability		\$22,626.64	Estimated Tax Liability		\$19,473.10
			Estimated Tax Savings vs. Current		\$3,153.53
			Estimated Monthly Tax Savings vs. Current		\$262.79
ATCOF Monthly Mortgage Payment (PITI)		\$2,864.60	ATCOF Monthly Mortgage Payment (PITI)		\$3,012.18
ATCOF Interest Rate		2.470%	ATCOF Interest Rate		5.510%
Existing Monthly Debt Payment Considered		\$0.00	Less Monthly Debt Payoff Considered		\$0.00
			Net Effect After Tax on Cash Flow vs. Current		-\$147.58
Monthly Housing Expense + Debt Payments		\$3,093.64	New Monthly Housing Expense		\$3,474.93
			Bottomline Effect on Cash Flow vs. Current		-\$381.29

(\$119)



Conventional	30 Year Fixed	Conventional	30 Year Fixed
Current Loan		Scenario 2	
Original Loan Amount	\$550,000.00	Current Loan Amount Payoff	\$400,000.00
		New 2nd Loan Amount	\$0.00
		Equity Buy-Out Amount	\$175,000.00
		Estimated Loan Fees	\$5,375.00
		Estimated PrePays	\$1,400.00
Original Loan Amount	\$550,000.00	New Estimated Loan Amount	\$581,775.00
Loan Period (Years)	30	Loan Period (Years)	30
Interest Rate (%)	3.250%	Interest Rate (%)	7.250%
		APR (%)	7.302%
Loan to Value (LTV)	73.33%	Loan to Value (LTV)	77.57%
Combined Loan to Value (CLTV)	73.33%	Combined Loan to Value (CLTV)	77.57%
Principal & Interest Payment	\$2,393.64	Principal & Interest Payment	\$3,968.74
Taxes & Insurance	\$700.00	Taxes & Insurance	\$700.00
Total Monthly Housing Expense	\$3,093.64	Total Monthly Housing Expense	\$4,668.74
Expected Tax Filing Status	Single	Effect on Cash Flow vs. Current	-\$1,575.10
Standard Deduction	\$13,850.00	Standard Deduction	\$13,850.00
Estimated Tax Bracket 2023	24%	Estimated Tax Bracket 2023	24%
Estimated Gross Annual Income (Taxable)	\$144,000.00	Estimated Gross Annual Income (Taxable)	\$144,000.00
Estimated Mortgage Interest Paid (12 mos)*	\$16,222.35	Estimated Mortgage Interest Paid (12 mos)	\$41,994.02
Property Taxes Paid	\$6,000.00	Property Taxes Paid	\$6,000.00
Estimated Adjusted Gross Income	\$121,777.65	Estimated Adjusted Gross Income	\$96,005.98
Estimated Tax Liability	\$22,626.64	Estimated Tax Liability	\$16,441.44
		Estimated Tax Savings vs. Current	\$6,185.20
		Estimated Monthly Tax Savings vs. Current	\$515.43
ATCOF Monthly Mortgage Payment (PITI)	\$2,864.60	ATCOF Monthly Mortgage Payment (PITI)	\$4,006.91
ATCOF Interest Rate	2.470%	ATCOF Interest Rate	5.510%
Existing Monthly Debt Payment Considered	\$0.00	Less Monthly Debt Payoff Considered	\$0.00
		Net Effect After Tax on Cash Flow vs. Current	-\$1,142.31
Monthly Housing Expense + Debt Payments	\$3,093.64	New Monthly Housing Expense	\$4,668.74
		Bottomline Effect on Cash Flow vs. Current	-\$1,575.10

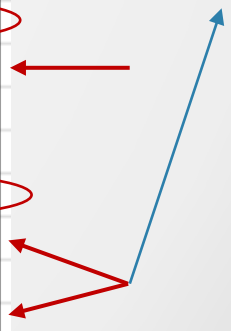
Opportunity Cost
\$1,042 monthly



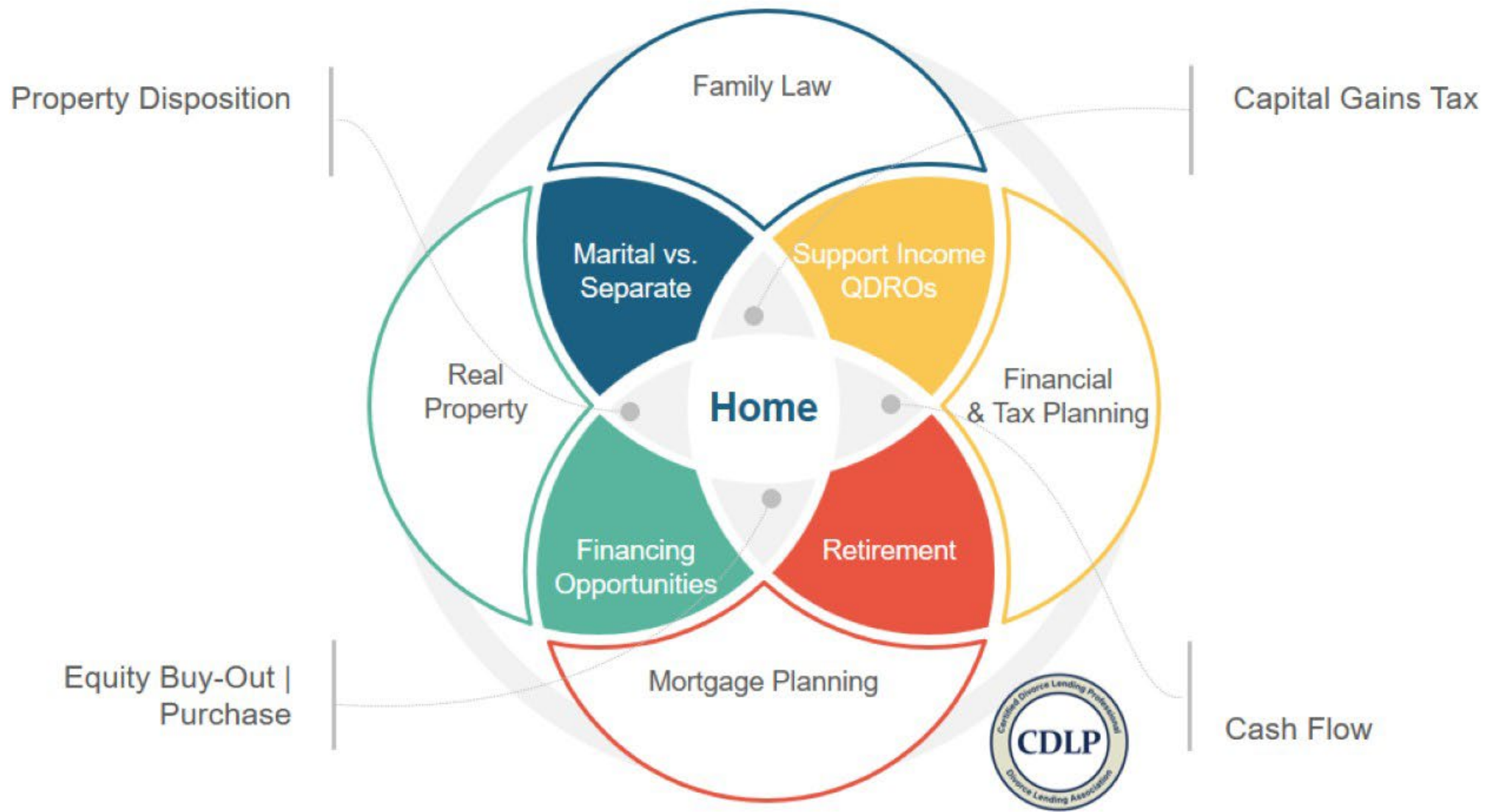
Conventional	30 Year Fixed	Conventional	30 Year Fixed
Current Loan		Scenario 3	
Original Loan Amount	\$550,000.00	Current Loan Amount Payoff	\$400,000.00
		No 2nd Lien	
		Equity Buy-Out Amount	\$200,000.00
		Estimated Loan Fees	\$5,375.00
		Estimated PrePays	\$1,400.00
Original Loan Amount	\$550,000.00	New Estimated Loan Amount	\$606,775.00
Loan Period (Years)	30	Loan Period (Years)	30
Interest Rate (%)	3.250%	Interest Rate (%)	7.250%
		APR (%)	7.300%
Loan to Value (LTV)	73.33%	Loan to Value (LTV)	80.90%
Combined Loan to Value (CLTV)	73.33%	Combined Loan to Value (CLTV)	80.90%
Principal & Interest Payment	\$2,393.64	Principal & Interest Payment	\$4,139.28
Taxes & Insurance	\$700.00	Taxes & Insurance	\$700.00
Total Monthly Housing Expense	\$3,093.64	Total Monthly Housing Expense	\$4,839.28
Expected Tax Filing Status	Single	Effect on Cash Flow vs. Current	-\$1,745.64
Standard Deduction	\$13,850.00	Standard Deduction	\$13,850.00
Estimated Tax Bracket 2023	24%	Estimated Tax Bracket 2023	24%
Estimated Gross Annual Income (Taxable)	\$144,000.00	Estimated Gross Annual Income (Taxable)	\$144,000.00
Estimated Mortgage Interest Paid (12 mos)*	\$16,222.35	Estimated Mortgage Interest Paid (12 mos)	\$30,322.29
Property Taxes Paid	\$6,000.00	Property Taxes Paid	\$6,000.00
Estimated Adjusted Gross Income	\$121,777.65	Estimated Adjusted Gross Income	\$107,677.71
Estimated Tax Liability	\$22,626.64	Estimated Tax Liability	\$19,242.65
		Estimated Tax Savings vs. Current	\$3,383.99
		Estimated Monthly Tax Savings vs. Current	\$282.00
ATCOF Monthly Mortgage Payment (PITI)	\$2,864.60	ATCOF Monthly Mortgage Payment (PITI)	\$4,149.01
ATCOF Interest Rate	2.470%	ATCOF Interest Rate	5.510%
Existing Monthly Debt Payment Considered	\$597.00	Less Monthly Debt Payoff Considered	-\$597.00
		Net Effect After Tax on Cash Flow vs. Current	-\$687.41
Monthly Housing Expense + Debt Payments	\$3,690.64	New Monthly Housing Expense	\$4,242.28
		Bottomline Effect on Cash Flow vs. Current	-\$551.64

- EB \$175,000
- Auto \$25,000

Opportunity Cost
\$1,042 monthly



Intersection of Divorce, Real Estate & Mortgage Planning



The Perspective of a Certified Divorce Lending Professional (CDLP®)



Working directly with the divorce team, a CDLP® incorporates divorce mortgage planning into the overall process with a unique and solid understanding of the intersection of family law, financial and tax planning, real property, and mortgage planning.

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Thank you!



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