

Snohomish County Bar Member Newsletter



Assumable Loans

By Mihaella Bayla, WSBA 51638



Can a divorcing homeowner “assume” the mortgage on the marital home? It depends.

As a Certified Divorce Lending Professional (CDLP™), I am often asked if the spouse who remains in the marital home can simply assume the mortgage on the home. In the current mortgage rate environment, this question is more relevant than ever. These are the key factors to understand when a client is considering assuming a mortgage.

Transfer of ownership does not mean transfer of the loan

When divorcing spouses agree to one spouse keeping the marital home, the transfer of ownership can be done through a quitclaim deed. However, transferring the title of a property does not release the vacating spouse from their contractual mortgage obligation. The vacating spouse can be released

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SCBA Board Meetings, 5:15 PM

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DEAR COLLEAGUES,

Our office is happy to announce that both Rhea Rolfe and Monique Gilson-Moreau are now offering mediation and arbitration services. With both Rhea and Monique having over 35 years of family law litigation experience, they are incredibly familiar and confident with settlement negotiations and well qualified for analysis and mediation of a variety of complex family law issues with attorney represented parties and pro se litigants. Contact our office to schedule your full or half day mediation and be sure to ask about our military/service member discount!



Experienced, professional, and compassionate attorney

Posted by
anonymous
August 26, 2018

Rhea Rolfe and her whole office are an amazing team of hardworking women. My case went on for several years and everyone there was always responsive, reliable, and encouraging. It was humbling to meet a group of lawyers who behaved ethically and were always looking out for the best interest of the child involved in parenting plan updates, as well as keeping us both safe and escape a domestic violence situation. Rhea and her team also helped with deescalation when the other party was sending threats to me and their whole office. On several occasions, both Rhea and Monique Gilson-Moreau waited with me in the courthouse for my case to be called and anyone knows how hard it is to sit through other hearings nervously awaiting your turn. They were both compassionate and caring and help me have hope for the future for me and my child. They also kept me informed of my options and updated on my case at all times and avoided running up my tab by declining to engage further with the other party, who at some point was sending daily non nonsensical emails to their office. I can't recommend their offices enough. If you are looking for an experienced attorney with integrity who is ready to fight for you without creating unnecessary conflict, look no further. Rhea is an outstanding attorney.



Posted by Holt
March 17, 2021

Extremely Helpful and Effective

I reached out to Monique a few years ago for help with a previously litigated case where I was having trouble seeing my son despite having a Parenting Plan in place Monique very quickly understood the situation, made phone calls to the opposing attorney and wrote a letter. Had it not been for Monique's "firmness", this issue would not have been resolved easily or effectively. As it turned out, due to Monique's help, my son's mom came to me willing to and wanting to work out a suitable path forward. And that was something that had not been possible prior to Monique taking the reins. My only regret was not finding Monique earlier in the process, but am thankful to have her help if / when needed now and into the future. Thanks again Monique and team!!

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Rhea J. Rolfe



Monique Gilson-Moreau

Continued from page 1

from the mortgage if the property is sold and the mortgage is paid off, the existing mortgage is refinanced out of their name, or in very limited cases, through an assumption of the loan.

Assumable loans can be significantly advantageous if the borrower meets the criteria to fully assume the loan. However, only an exceedingly small percentage of borrowers qualify to assume a loan. It is helpful for family law practitioners and mediators to understand the limitations of these transfers and what to look out for when their clients are considering assuming the mortgage.

Truly assumable loans are unicorns of lending

There are multiple limitations, restrictions, and considerations that make truly assumable loans a relatively rare option.

First, it is important to understand that generally, only certain types of loans can be assumed: USDA, FHA, and VA loans. Conventional loans, which account for 82% of all loans, are typically not assumable. This automatically limits the percentage of assumable loans to 18% of the market share. Therefore, assumable loans are only available for very few divorcing borrowers, and most of the time, their vacating spouse remains financially responsible for the loan.

Out of the USDA, FHA, or VA loans that can be assumed, the spouse assuming the loan must still qualify financially for the loan product. Therefore, divorce mortgage planning during the divorce is crucial to ensure the borrowing spouse is in a qualifying position at the end of the divorce process.

In the case of VA loans, the veterans' entitlement used to obtain the loan will remain tied to the mortgage being assumed. Since veteran borrowers remain financially responsible for the loan, their VA eligibility may be impacted, and they may be limited in the amount of a VA loan they can qualify for if they plan to purchase another home using their VA benefits.

Timing is another factor to consider. The assumption process can take a long time to process, especially for VA loans, and the borrower will not have confirmation of their standing to assume the loan until after the divorce is final. This delay can negatively impact the borrower's other lending options, and in extreme cases may end up forcing them to sell the home.

An additional common obstacle to assuming a loan is that most lenders will not release the original borrower from their financial contractual duty. This means that if the remaining spouse is late on the mortgage payment just once, the

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vacating spouse's credit will be severely affected. Very few lenders will actually release the vacating spouse entirely from the mortgage, making a true assumable loan the exception to the norm, instead of a real, viable option for divorcing borrowers.

The staying spouse will not have confirmation of whether their bank will successfully process the assumption of the loan until after the divorce is finalized. If time is of the essence, and/or if this borrower's qualifying income is time-limited (such as expiring alimony), pursuing this option can cause a long delay and may cost the borrower other chances to pursue a traditional refinance.

Finally, due diligence when working with a bank is essential, as some banks lead borrowers to believe they will be able to assume the loan when, in reality, their loan is being refinanced. These banks may even have an actual "assumption department," further blurring the lines of the loan product being offered. The borrower may not be aware of the new (and higher) interest rates and longer loan terms until their loan estimate is generated, quite a few steps into the process. Borrowers can avoid falling victim to this bait-and-switch practice of getting a refinance instead of an assumption of the loan by confirming that their loan will be assumed at the exact same interest rate and lending terms as the original loan.

What to do when your client qualifies for an assumable loan

1. Get them into a position to qualify for the mortgage loan. When it comes to divorce mortgage planning, it's recommended to work with professionals who have advance training in this field, such as a Certified Divorce Lending Professional (CDLP™) who can provide divorcing clients a roadmap of the income, assets, and debt allocation they will need to qualify for a loan.

Divorce mortgage planning works most efficiently if it is done before the negotiations process in a dissolution. It is critical to determine what the remaining spouse will need to have on their personal balance sheet at the end of the divorce, so they need to ask for this information during the divorce process, and before the divorce is finalized.

2. Give notice to the lender. The remaining spouse (proposed "assumptor") must notify the current note holder of the ownership transfer to avoid an acceleration of the mortgage. In addition to calling the lender to ensure they are among the few borrowers who qualify for an assumption of the loan, the borrower should also provide written notice to the lender and cite the Garn-St. Germain Depository Institutions Act of 1982. This act protects consumers from mortgage

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ARE YOU READY FOR ROUND 2?



Darrell Cochran

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lenders enforcing due-on-sale clauses of their mortgage when the transfer of ownership includes transfers to a spouse or to children of the borrower; transfers at death or divorce; the granting of leasehold interest of three years or less, not containing an option to purchase; and the transfer into an inter vivos trust where the borrower is a beneficiary.

Historically, it has been difficult for some successor homeowners to obtain information on the existing mortgage, even after they were awarded the marital home in a divorce. However, since 2018, two important Consumer Financial Protection Bureau (CFPB) amendments now extend certain protections to succeeding homeowners, such as information related to dispute rights, monthly statements, escrow accounts, servicing transfers, and other rights afforded to home mortgage borrowers by the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).

The new rules expand the definition of a “borrower” for purposes of RESPA, and “consumer” for purposes of TILA, to include a confirmed successor in interest. “Successor in interest” is defined as coextensive with transfers listed in the Garn-St. Germain Act after which a due-on-sale clause may not be exercised.

The CFPB created a special, limited “Request for Information,” applicable to potential successors in new RESPA § 1024.36(i). The “successor in interest” (the person seeking to assume the loan) should make a written request including the name of the transferor borrower and sufficient information to enable the servicer to identify the loan at issue. Once that information is provided, the servicer must then respond with a written description of the documents they require to confirm the person’s identity and ownership interest.

The servicer must acknowledge receipt within five business days and respond substantively within thirty business days. A simple letter to the mortgage holder, including a copy of the divorce decree, may suffice as notice to the servicer. The following is an example of a letter that notifies the mortgage note holder of an assumptor’s intent to assume the loan.

Sample letter:

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Concluded on page 18

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Effective May 1, 2022, The Honorable Ronald L. Castleberry (Retired) will limit his mediation practice to TEDRA mediations. He will still be available for Arbitration and appointment as a Special Master or a Hearing Officer.

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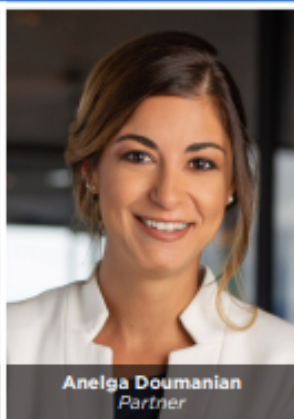
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the property and to make the payments thereon.
Therefore, pursuant to the Garn-St. Germain Depository Institutions Act of 1982, I hereby notify you of my intent to assume the Mortgage and Note. Please begin mailing statements to me immediately.
Thank you.

Truly assumable loans can be greatly beneficial if they are available to the consumer. Before recommending that a divorcing spouse pursue this method of removing one spouse from the mortgage, it is important to fully vet the availability of the loan to be assumed, understand the pitfalls and limitations of this strategy, and the risk that it may pose to both spouses.

This is for informational purposes only and not for the purpose of providing legal or tax advice.

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CAMPAIGN FOR EQUAL JUSTICE

Ann M. Brice

Well, it seems we have had fall blow (literally) right by us and now we have winter! With the recent elections and the end of the year and holidays rapidly approaching, I am taking stock of the state of things in my life and in my community. One thing that is clear to me is that Legal aid is needed now more than ever.

As many of you know, I serve on the board of the Campaign for Equal Justice, which is the fundraising program of the Legal Foundation of Washington, our state's largest private funder of civil legal aid. The annual Campaign for Equal Justice works with people and companies across Washington state to raise critical funds to help low-income people solve civil legal crises.

Solving legal problems provides immediate relief and long-lasting impacts for individuals and families experiencing poverty – especially for civil legal issues like eviction, domestic violence, and securing unemployment benefits, which all increased during the pandemic.

Civil legal aid can make all the difference for a family in crisis. For example, renters with legal representation win their housing cases up to 95% of the time, compared with just a third of self-represented renters. A 2020 study by University of Washington showed that only 8% of eviction defendants in Washington had access to representation, and that Black tenants face dramatically higher rates of eviction.

Every year, the Legal Foundation of Washington funds more than 40 legal aid programs like Northwest Immigrant Rights Project, TeamChild, Legal Counsel for Youth & Children, Unemployment Law Project, and 16 pro bono programs connected to county bars across Washington. In Snohomish County, Legal Foundation of Washington funds Snohomish County Legal Services and the Northwest Justice Project. Each year, programs funded by Legal Foundation and the Campaign for Equal Justice help more than 20,000 families access legal aid.

The Campaign for Equal Justice needs your support more than ever to people access legal aid. Funds raised through the Campaign support civil legal aid, impact litigation, policy reform, and systemic advocacy at 40 organizations around our state through the Legal Foundation of Washington's grantmaking program.

Thousands of Washington families need the representation and relief only civil legal aid can provide. So, we are asking everyone to donate today. Please be generous and give what you can.

Even before the pandemic, only one in four low-income people in Washington received the legal help they needed. The 2022 Justice Gap Report by the Legal Services Corporation found that 74% of low-income Americans experienced 1 or more civil legal problems in the past year. In Washington, we are seeing similar numbers, up from 70% of low-income families in need of legal aid pre-pandemic.

We here in Snohomish County are in a competition for the Rainier Cup! Everyone loves a little competition, right? As Snohomish County lawyers and Judges, we should set the example for the rest of

The state's attorneys by having the highest percentage of attorneys donating to the Campaign for Equal Justice. By doing so we would take home the much-coveted Rainier Cup. Last year, Whatcom County lawyers won with a 24% participation rate.

Last year in Snohomish County, 307 people in our county gave to the Campaign, which is 18% of practicing attorneys. This support helped Washington's network of legal aid programs respond to an unprecedented wave of needs. But as civil legal challenges continue to grow, we need to do even better this year.

Supporting civil legal aid is part of being a member of the legal profession. By each lawyer stepping up and supporting the Campaign for Equal Justice we expand access to the legal system for members of our community who are not able to retain a lawyer. As lawyers in our community, we see first-hand the huge impact Snohomish County Legal Services and the Northwest Justice Project make in our community. It's our job to step up and help these programs succeed. Please support the Campaign for Equal Justice today. Go to » [Donate - Legal Foundation of Washington \(https://legalfoundation.org/givenow\)](https://legalfoundation.org/givenow)

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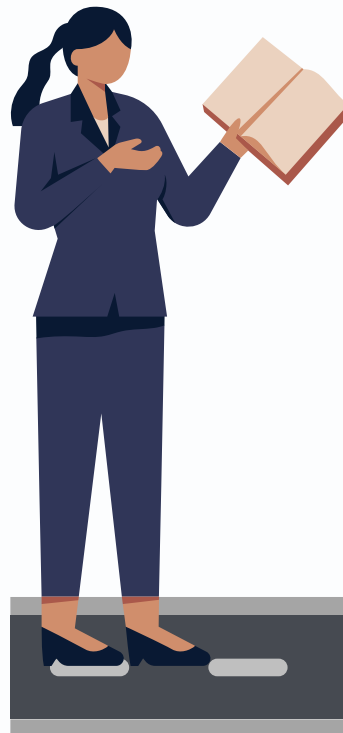
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Environmental

Crypto/Blockchain

Elder Law

Any interested parties please contact Gregory Altringer at service@snobar.org

Thank
you!