

## THE SALE OF THE FORMER MARITAL RESIDENCE – What to do when the parties do not agree on the sale. By Natasha Meyers, Esq.

A common provision in many divorce agreements or stipulations of settlement or even separation agreements is that the former marital residence will be sold upon certain terms and conditions at a future time. For example, I have seen many Agreements that contain the following language: the parties have agreed that within six months after the Judgment of Divorce is entered, they shall cooperate and sell the marital residence and the net proceeds of the sale will be divided between them equally. When the parties are able to discuss issues after a divorce, such language will not necessarily cause any problems. However, after an acrimonious divorce proceeding, many times, the parties cannot manage to cooperate in the sale of the house or one party decides not to honor the terms of the agreement and refuses to participate in the sales process or thinks the home should be sold for more than the real estate broker wants to list it for and refuses to sign with the listing agreement or comply with the actual sale. This often leads to more acrimony and Court intervention.

After the entire divorce process, especially if it was acrimonious, the last thing most former spouses want to do is engage in more litigation. However, with language as written in the example above, further Court intervention may be inevitable if the parties cannot come to an understanding or agreement themselves. With carefully drafting of the parties Stipulation of Settlement, such disputes may be avoided or curtailed all together. If the parties' agreement is silent on the listing price or the selection of a real estate broker to sell the former marital residence or the language is vague and open to interpretation and they cannot agree on what the initial listing price should be or the terms of the sale, one party will have to go back to Court and petition the Court to either enforce the terms of the Stipulation of Settlement or Settlement Agreement, seek a modification of the parties agreement or ask the Court to appoint a receiver to oversee the sale. An often overlooked tool available to the Court is an order appointing a receiver to sell the home.

What is a Receiver? A receiver is an agent of the Court who is empowered by the Court, in a court order, to effectuate the sale of the home by those means authorized by the Court. The costs of the receiver (commissions and legal fees for the receiver's attorney) decrease the ultimate sale price, which parties may not like either because it means less money in their pocket. Who pays for the receiver? The costs for the receiver are allocated between the parties by the Court, and this does not necessarily means equally. If the Court finds that one party is particularly at fault in the dispute over the sale of the home, it can require that party to pay all of the costs associated with the receiver.

A recent case illustrates that the Court will inquire into the need of a receiver to oversee the sale of a former marital residence and further inquire as to which party or parties are ultimately to be held responsible for the costs of the

receiver. For instance, in Lutz v. Goldstone, 31 A.D.3d 398 (2nd Dept. 2006), the New York State Appellate Division, Second Department, approved the appointment of a receiver and found that both parties were sufficiently at fault so that they each were charged with one-half of the cost of the receiver. The Court reasoned that “in light of the acrimonious relationship between the parties, the Supreme Court providently exercised its discretion in granting that branch of the plaintiff’s motion which was to appoint a receiver for the purpose of selling the marital residence.” Id.

Although the signing of the parties Stipulation of Settlement often marks the end of a divorce action, there are times when the parties still cannot agree or issues were not addressed as expressly as they could have been. When finalizing the terms of a Stipulation of Settlement, it is very crucial to address such key issues that are bound to arise in the future to avoid further Court intervention, if possible. A carefully drafted Stipulation of Settlement or Separation Agreement as the case may be, can provide for the procedure the parties can use to sell the former marital residence, provide for the initial listing price and also provide for a selection process on the event the parties do not agree on the listing price. It may be more costs effective to address such issues in the final divorce settlement rather than leave such an issue open.

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