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# Legal Matters®

## Which spouse should get the house?

**A**side from child custody, the most emotionally charged issue in a divorce is often who gets to keep the house. For most couples, a house is their most valuable asset, and it has an enormous symbolic value as well.

Sometimes the best plan is to try to keep the house. But not always. For many divorcing spouses, it's smarter overall to allow the other spouse to keep the home (and the mortgage), and receive other assets instead. And some couples are better off if they jointly sell their home.

Here are some things to consider:

**The mortgage.** If you keep the house, your spouse will almost certainly want to take his or her name off the mortgage in order to avoid being potentially liable for the debt. That means you'll likely have to refinance the mortgage in your own name.

So you'll have to consider whether you can afford the payments, and even whether you can obtain a mortgage based on your income alone. Most banks have tightened up their lending practices considerably since the financial crisis a few years ago. And while you might be receiving alimony or child support from your ex, you should know that many banks

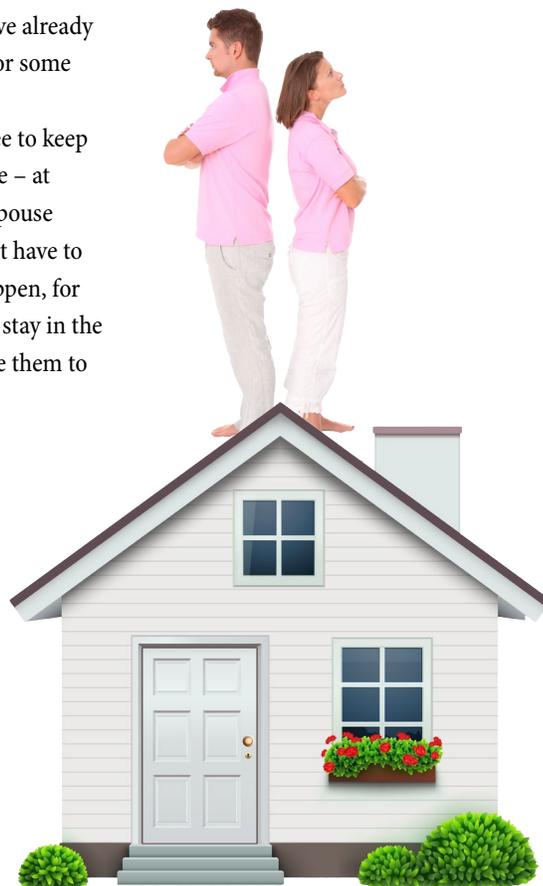
won't consider alimony payments to be part of your income unless you've already been receiving them regularly for some period of time, such as a year.

Sometimes a spouse will agree to keep his or her name on the mortgage – at least temporarily – so that the spouse who is keeping the house doesn't have to sell it right away. This might happen, for instance, if the children want to stay in the house, or if selling it would force them to switch to a different school or otherwise upset their routines and social lives.

Even if a couple plan to eventually sell their house, it might be in an ex's interest to let the other spouse keep the house for several years, especially if the local real estate market is soft or if the house needs some updating to fetch a good sale price.

An ex who keeps his or her

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### Most divorce documents can be shredded later – but not all

We've all heard horror stories about personal privacy and identity theft. That's why many people shred all their sensitive documents after they no longer need them – including credit card bills, bank statements, older tax documents, and *anything* with PIN or Social Security numbers.

But what about divorce papers?

In general, most divorce documents can safely be shredded after the divorce is final. This includes motions, replies, document requests, and so on. It might actually feel liberating to shred such documents, which may contain a lot of uncomfortable details from a failed marriage.

However, there are certain documents that you should definitely hold onto, including your divorce decree. This is your official proof that the marriage ended with a judge's approval. You'll also want to keep copies of your divorce settlement and parenting agreement, along with certain other records.

If you have any questions about what paperwork to keep, we'd be happy to help you.

### Couples are putting 'social media clauses' in their prenups

Prenuptial agreements are usually thought of as a way of protecting assets in case a marriage doesn't work out. But they're increasingly being used to protect a spouse's reputation as well.

In the age of social media, it's very easy for a bitter ex-spouse to humiliate someone in front of family and friends, or even thousands of strangers.

To prevent this, some couples are incorporating "social media clauses" into their prenups. These clauses prevent each spouse, in the event of a breakup, from posting revealing or unflattering pictures, details about the relationship and its problems, status updates

about the other spouse, or other derogatory messages.

A spouse who violates such a clause is typically subject to a financial penalty that's laid out in the agreement.

Some social media clauses prohibit spouses from posting *anything* about their ex, positive or negative. This helps avoid a situation where a spouse posts something embarrassing and then claims it was intended to "flatter" the other spouse. ("I thought that picture of you drunk at a party looked cute.")

### Going to jail doesn't end father's parental rights

The fact that a father was given a lengthy prison sentence for drug offenses doesn't automatically mean he should lose his parental rights, says the Kentucky Court of Appeals.

The state had argued that the father's rights should be terminated due to "abandonment and neglect."

But the court said the father didn't intend to go to jail, so he didn't deliberately abandon or neglect the child. It also noted that he had had an overall positive influence on the child before going to jail, and that prison visits with the father were beneficial to the child.

The state has to show more than the mere fact that the father committed a crime, the court said.

### Wife shares in pension cost-of-living adjustments

A woman who received part of her ex-husband's civil service pension at divorce was also entitled to share in his later cost-of-living adjustments, the Kentucky Court of Appeals recently decided.

When the couple divorced, the pension was divided equally between the husband and wife.

The husband argued that wife shouldn't get any of the cost-of-living adjustments because they weren't property that was accumulated during the marriage – they all happened after the divorce was final.

The court said that was true, but on the other hand, the cost-of-living adjustments weren't the result of any work that the husband had performed after the marriage. The court said the adjustments were simply part of the pension, and since the wife got half the pension, she should get half the adjustments as well.



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# In a divorce, which spouse should get the house?

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name on the mortgage might want to be compensated in some way for this, or might want other guarantees that the “house spouse” won’t default and ruin the ex’s credit score.

**Other costs of owning a home.** If you keep the house, you’ll also need to take a hard look at the other costs of owning a home by yourself – including property taxes, homeowner’s insurance, upkeep, etc. These costs won’t go down after a divorce.

**Tax consequences.** When deciding whether to keep or sell a house, you’ll want to consider all the tax consequences. For instance, selling a house means you’ll no longer get a mortgage interest deduction, and in some cases you may owe capital gains tax on the sale.

Of course, if you decide to let your spouse keep the house and take other marital assets instead, you’ll want to consider the tax implications of those assets as well. For instance, if you have stocks that have appreciated in value, you’ll probably have to pay capital gains tax if you sell them. If you have an IRA or 401(k) account, you might have to pay income tax when you withdraw the funds.

**Appraisals and inspections.** If you decide to keep the house and essentially “buy out” your ex’s share with other assets, it’s a good idea to treat this the same way you would any other real estate purchase, just as if you were buying from a stranger.

For instance, you should get an appraisal so you know the house’s market value. Include the value of appliances and other things that are staying in the home.

You may want to get the house inspected, and find out how long it will likely be before you have to repaint, repair the roof, fix the heating and air conditioning systems, etc. Are there any signs of termites or other problems? Remember, once you “buy” the house from your ex, you can’t undo the sale if you find unexpected issues.

Finally, it’s a good idea to do a title search before the divorce is final. You don’t want to discover too late that there’s a lien on the home owing to something your ex did without your knowledge.



## Woman who lived with male tenant wasn't 'cohabiting'

Many divorce agreements say that a spouse can stop paying alimony if the other spouse begins “cohabiting” with someone of the opposite sex who financially supports them.

A colorful case in Florida involved a divorced woman who owned a two-bedroom townhouse. To help make ends meet, she took on a male tenant who paid her \$400/month in rent.

The woman and the tenant lived separate lives, slept in separate rooms, dated other people, ate separately and were never intimate with one another. Nevertheless, the woman’s former husband claimed he should be able to stop paying alimony because the woman was literally living with a man who provided her with financial support.

A judge actually agreed with the ex-husband, but an appeals court took a different view. It said “cohabitation” means living together in a romantic relationship – not merely living together in a landlord-tenant relationship.

## Wife who hid lottery winnings is a loser in divorce

When you’re going through a divorce, one of the biggest fouls you can commit is trying to hide assets so you can keep them for yourself. It’s easy to get caught, and you can be punished for not being truthful.

For instance, a California woman named Denise Rossi was already contemplating divorce when she and several co-workers won a \$6 million jackpot in the state lottery. She never told her husband, and had the lottery checks sent to her mother’s house.

But two years after the divorce was settled, a company that offers lump-sum payments for lottery winnings mailed an offer intended for Denise to her ex-husband’s address by mistake, saying it could help “lottery winners like you.”

Once the husband realized what had happened, he went to court, presumably hoping to get a fair share of the prize. But the court decided to punish Denise for not revealing the truth – and it ordered her to pay the entire amount of the lottery winnings to her ex.

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**Your Family Law Attorneys**  
**4270 South Decatur Boulevard, Suite B-10**  
**Las Vegas, NV 89103**  
**(702) 384-9664**  
**www.steinberglawgroup.com**

## Missing prenuptial agreement might still be valid

If someone signs a prenuptial agreement but can't locate the original signed copy years later, it's possible that it might still be enforced. It's not a sure thing, but it's possible, as a couple of recent court cases show.



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In one case, a wealthy owner of strip malls and hotels in New York persuaded his fiancée to sign a prenup during a whirlwind three-week engagement by telling her that his dad would “cut him off” if he didn’t get a prenup. On their honeymoon cruise, the couple ripped up the prenup documents and threw them in

the sea. The wife’s original was gone – but the husband kept a photocopy.

A dozen years later, the couple divorced. The wife argued that the couple never meant for the prenup to be enforceable, never entered into a real negotiation, and intended to revoke the document when they ripped it

up. The husband denied all this.

A judge sided with the husband, and said the prenup was valid because it had standard fine print saying it couldn’t be changed or revoked unless the couple signed a new agreement in the presence of witnesses.

Meanwhile, in New Hampshire, a divorcing husband wanted to have a prenup enforced but he didn’t have the original document. He told the court that his wife had the only signed copy and that she lost it. The wife, however, claimed she never signed a prenup at all.

The New Hampshire Supreme Court said that even if the husband couldn’t produce the original document, he might still be able to prove it existed with other evidence, such as witnesses who were there when it was signed.

The moral of the story is that it’s critical to keep important documents in a safe place – such as a safe deposit box or with your lawyer – and to hold onto copies. Even though you might be able to prove that a document exists in some other way, doing so is likely to be expensive and uncertain.