

A FREE GUIDE FROM THE ROBBINS GROUP

Selling Your Home During a California Divorce

Your options, your rights, and how to protect your interests without making the situation worse.

Written by Teresa Kerwood Robbins & Samuel Robbins
Mother & Son Real Estate Team | La Mesa, California

Important: *This guide is general information and is not legal, tax, or financial advice. For your specific situation, always consult a qualified attorney and CPA. We're real estate professionals who specialize in this work, we'll happily refer you to trusted professionals if you don't already have them.*

The Robbins Group

San Diego Probate, Trust & Divorce Real Estate

Teresa Robbins

DRE# 01924836
(619) 719-8496

TreeRobbins7777@gmail.com

Sam Robbins

DRE# 02061826
(619) 971-2070

SRobbins0613@gmail.com

If you're going through a divorce and the house is part of it, this is for you.

Few decisions in a divorce are heavier than what happens to the home. It's often the largest asset on the table. It carries enormous emotional weight, especially if there are children involved. And the timing of the decision can have real financial consequences for both spouses.

We're not divorce attorneys. We are San Diego real estate professionals who have helped many couples navigate this specific transition. We work neutrally, for both spouses, not for one against the other. And we coordinate with family law attorneys throughout the county.

This guide is meant to give you a calm overview of your options so you can have better conversations with your attorney. Nothing here is legal or tax advice.

California Community Property. The Quick Version

California is a **community property state**, which means most assets acquired during the marriage, including the home, are owned equally by both spouses, regardless of whose name is on the title or who paid the mortgage.

What counts as 'community' vs. 'separate'?

- **Community property:** Assets acquired during the marriage (with some exceptions). The home, even if titled in one spouse's name, is presumed community if bought during the marriage with community funds.
- **Separate property:** Assets owned before the marriage, OR inherited or gifted to one spouse during the marriage. These remain that spouse's, generally.
- **Mixed property:** Most common in practice. A home bought before the marriage by one spouse but paid down during the marriage with joint income has both separate and community components. This is where it gets complicated.

Date of separation

Your **date of separation** is when one spouse expresses an intent to end the marriage and acts on it (often by moving out, though physical separation is no longer strictly required under recent California law). This date is critical: earnings and debts after the date of separation are generally separate property, not community.

Moore-Marsden. When separate property pays for community-owned homes (and vice versa)

If one spouse owned the home before the marriage but community funds (joint paychecks) paid down the mortgage during the marriage, California's **Moore-Marsden** rule gives the community a proportional interest in the home's appreciation. The math is technical and your attorney will handle the actual calculation, but it can result in tens or hundreds of thousands of dollars in claims either direction.

WHY THIS GUIDE STAYS HIGH-LEVEL

Moore-Marsden, Pereira/Van Camp, reimbursement claims under Family Code §2640, these are legal calculations that depend on dates, dollar amounts, and documentation you have (or don't have). Your family law attorney does this analysis. We focus on the part we handle: actually selling the home cleanly.

Your Three Options for the House

Option 1: One spouse buys the other out

One spouse keeps the home and pays the other for their share of the equity. The remaining spouse refinances the mortgage into their name only and the departing spouse signs a quitclaim deed.

Pros: Children stay in the same home and school. No moving costs. The keeping spouse captures any future appreciation.

Cons: Requires the keeping spouse to qualify for a refinance on their income alone, often at current (higher) rates. Requires a current appraisal so both spouses agree on value. Cash for the buyout has to come from somewhere, savings, retirement, a parent loan.

Option 2: Sell now and split proceeds

The cleanest financial option. List the home, sell it, pay off the mortgage and selling costs, split the net proceeds (after accounting for any separate-property claims) per the divorce agreement.

Pros: Both spouses walk away with cash. No ongoing financial entanglement. Often the fastest path to emotional closure.

Cons: Both spouses need to find new housing (often at today's higher rents/rates). Sale during contested divorce can be emotionally difficult. Requires cooperation on showings, repairs, and pricing.

Option 3: Defer the sale (Duke / deferred sale orders)

California family law allows for **deferred sale orders** (sometimes called Duke orders, from the case *In re Marriage of Duke*): the court orders that the sale be postponed for a defined period, most commonly until the youngest child reaches a milestone like graduating high school. The custodial parent and children remain in the home until then.

Pros: Stability for children. Time to plan financially.

Cons: Both spouses remain financially entangled for years. Disputes about repairs and maintenance are common. Future market conditions are uncertain. Many couples who choose this initially regret it later.

Selling During a Divorce, Practical Considerations

Choose a neutral agent

If you decide to sell, both spouses are equally the seller. And any agent you hire owes both spouses fiduciary duty. Some couples interview agents together. Some have each attorney recommend one and pick from the overlap. What you **don't** want is one spouse's friend or close family member as the agent, even if they're qualified, the appearance of bias creates tension and bad outcomes.

HOW WE OPERATE IN THESE SITUATIONS

We communicate with both spouses equally, same updates, same documents, same response times. And copy both attorneys on anything material. We don't take sides on negotiations or pricing strategy unless both spouses (or the court) sign off. Our job is to sell the home for the best terms achievable, not to advocate for one party.

Who decides on price, repairs, and offers?

Ideally, both spouses agree. In practice, the divorce agreement or a court order will spell out how to break ties:

- List price: often pegged to a neutral appraisal or the average of two CMAs.
- Repairs: typically capped at a dollar amount in the order. Anything above goes to the attorneys.
- Accepting an offer: usually requires both spouses' signatures, with a fallback (e.g., 'accept any offer within 3% of list within 60 days').
- Disagreements: resolved via the divorce attorneys or, if needed, a court motion.

When one spouse won't cooperate

If one spouse refuses to sign listing agreements, blocks showings, sabotages offers, or otherwise stalls the sale, the other spouse can petition the court for a **court order of sale**. The court can authorize the sale to proceed with one spouse's signature, or appoint a neutral party (a real estate elisor) to sign in place of the uncooperative spouse.

This is a last resort, it's slow, expensive, and harms both spouses. But it exists, and the threat of it often resolves a stalemate without actually needing to file.

Tax Considerations (Talk to a CPA)

The \$500,000 / \$250,000 capital gains exclusion

Federal tax law allows married couples filing jointly to exclude up to \$500,000 of gain on the sale of a primary residence (provided the ownership and use tests are met). Single filers can exclude up to \$250,000. **The timing of your divorce relative to the sale matters:** if you sell while still married and filing jointly, you may capture the full \$500,000 exclusion. If you sell after the divorce is final, you may each be limited to \$250,000 individually.

THIS IS A CPA QUESTION

We can flag the issue. Your CPA will run your actual numbers, factoring in basis, depreciation history (if any), separate vs. community treatment, and the specific language of your divorce decree. Do not finalize divorce timing relative to a home sale without one.

Mortgage interest deduction during the proceeding

Who deducts the mortgage interest during the period of separation but before the divorce is final? This depends on filing status, who is paying the mortgage, and the language of any temporary orders. Again, your CPA.

Transfers between spouses are generally tax-free

Under IRC §1041, transfers of property between spouses (or former spouses, if incident to divorce) are generally not taxable events. This means a spousal buyout. Where one spouse takes title to the home in exchange for paying the other spouse's equity share, does not trigger capital gains tax on the buyout itself. (The keeping spouse will, however, eventually owe capital gains on the full appreciation when they sell.)

We work with divorcing couples and their attorneys every month.

If you're going through a separation in San Diego County and the home is part of the conversation, we can help you understand your options and. When the time comes , handle the sale neutrally and professionally. Free consultation, no pressure, and we can speak to one or both spouses based on what works for your situation.

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therobbinsgroupsd.com