

## What to do when there's more value in your house than your marriage



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**GARRY MARR** | October 11, 2014 6:30 AM ET

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Illustration by Mike Faille/National Post

He's a one-percenter. He's got the high-powered job, a vacation property and a \$1.5-million detached home in the heart of midtown Toronto. About a decade ago, he and his wife were fortunate enough to get their foot into the housing market when it was still relatively sane — paying roughly half what the place is worth today.



Timing can be everything: Waiting a few months could result in thousands of dollars in savings. Fees can be reduced if you can control when you have to sell. And, ultimately, if you're selling on your own terms — rather than in a rush — you are more likely to yield a better price.

Now the marriage is over. And Jason — who asked that his real name not be used — is out of the house and stuck, like every other new buyer, chasing after a housing market that just won't stop. Even with a hefty monthly paycheque, he figures he'll have to sell his vacation property just to afford a big enough semi-detached house for when his kids come to stay.

He's still not sure exactly what went wrong in his marriage, but can't help wondering whether money — and the hefty value of the home equity he and his wife found themselves sitting on — played some role in the breakup.

“Sometimes you've got one person who might be looking at the financial situation — especially when [that] person has initiated the process,” says Jason.

“I can't tell you whether it was part of her thinking,” he says of his estranged wife. “But I know she got a head start thinking about this.”

## Now you've got to support two households from this asset

Marriages, of course, get into trouble for all kinds of reasons, and rarely are they simple ones, but divorce lawyers and those in the real estate industry say that — whether we like to admit it or not — it's an unavoidable reality that Canada's red-hot real estate market is adding a thorny new dimension to marital strife. When a couple hits hard times, it's awfully tough for either of them to ignore that other factor in their domestic arrangement — the value of their home.

The average household in Vancouver, Toronto and Calgary owned \$533,172 in real estate at the end 2013, according to Environics Analytics. That wealth is mostly due to the relentless rise in house prices, which have climbed 156% nationally in the past 15 years and 430% over the past 30 years.

For couples who bought in long before the bubbling began — especially those Boomer couples who got in decades ago — all that home-equity wealth has created an escape hatch to get out and start a new life with a pile of cash. Yet, for others with still just a dent in their equity, splitting means getting tossed headfirst back into the unforgiving world of bidding wars and runaway prices. In some cases, the hard truths of urban real estate has them opting instead to stick it out in a flailing marriage, or trying to co-exist under the same roof long after divorce.

Whatever the outcome, the effect is the same: in 2014, the other man or woman in an unhappy couple's relationship is often a real estate agent.

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“When couples are trying to work out whether one or the other will keep the house and one has to buy the other out, they're very in tune with the fact that we're in a hot market,” says Marion Korn, a lawyer and a family mediator with Toronto's Mutual Solutions, a consultancy that helps couples through their divorce decision-making.

Blistering housing prices have created a mini-industry of people helping couples navigate a very complex financial situation where the next step can be crucial in determining how they'll be living after the divorce.

When couples make the decision to end things, they generally want to physically separate as soon as possible, says Toronto divorce coach Deborah Moskovitch.

“But that's a huge concern because often the house is the most valuable asset,” she says. “Now you've got to support two households from this asset. Oftentimes you have the wife who wants to keep the house because, if they've got kids, they want to maintain

continuity and consistency for kids. It makes it really tight on the budget. That's huge. Sometimes you have to sell."

Ms. Moskovitch has some advice about rushing in to buy or sell. "I have a client who went out and bought a house before her separation agreement was concluded and she found herself in a financial mess. She bought a house that was beyond her financial means," she says. "You don't want to buy another house or a condo or whatever until you sell your home because you don't know what your separation agreement's going to look like."

Patricia Hebert, an Edmonton-based lawyer and the current chair of the family law section of the Canadian Bar Association, has been practicing for 20 years and says the real change is not that people are getting divorced more, it's the way they handle divorce and living arrangements.

"We see people still living together who don't even have kids because they can't afford to sell [and each find similar property]," says the lawyer. "When they do sell, it usually means they become renters because they can't afford to buy a home on their own."



Tyler Anderson/National Post Blistering housing prices have created a mini-industry of people helping couples navigate a very complex financial situation where the next step can be crucial in determining how they'll be living after the divorce.

On a practical level, sharing means “lots of people moving to the basement,” says Ms. Hebert. But she has seen more elaborate arrangements where people live “like roommates” with their own bedrooms.

“It becomes a more business-like relationship, the business of parenting,” she says, adding there is a growing body of people in her profession setting up long-term legal arrangements and finances for these people. “Sometimes you’ll see a duplex where there is a door in the middle.”

It doesn’t always work. Problems arise when people start dating again. “The repartnering is what triggers the discussion about making a shift,” says Ms. Hebert.

Then there are the older Canadians, free of the burden of children and now with a home that has more than quadrupled in value. It may be a coincidence or not, but they not only have the most equity to cash out and live the life they want, they’re also splitting up at a greater rate than their adult kids.

The greatest jump in the divorce rate has occurred among people married 30 to 35 years — so-called “grey divorce” — says Nora Spinks, chief executive of the Ottawa-based Vanier Institute of the Family.

These are the same people who, on average, purchased their homes for \$67,024 in 1980 and were able to sell them for \$382,576 in 2013, based on national averages.

“The rate started going up when the Boomers turned 60,” says Ms. Spinks, noting the trend started happening just when the real estate market took off. “We can’t say for sure they are tied together. But life expectancy is now close to 90, so people start looking at themselves and looking at their equity and saying ‘cash out, split apart and spend the last 30 years with someone else.’”

For younger generations without that luxury, the alternative is a new type of relationship that’s recently become common enough it’s been labelled “living together, apart” — that is, co-habiting in the same house for the sake of the kids and maintaining a certain standard of living.

“It may be financially driven, it may be because they are looking after children, but it’s new,” says Ms. Spinks, noting that the alternative for couples without a pile of home value is often squeezing themselves, and their kids, into a pair of condos. “The more

expensive housing is the more likely it is that people will remain in these convoluted housing arrangements.”

When Cate Cochran and her husband Joe Sherman divorced, they spent 13 months figuring out a living arrangement that would work for their family and their pocketbook.

Eventually, their agent found the solution: an old 1920s, west-end Toronto home already split into four apartments. Ms. Cochran took the main floor, her husband the second. They rented out the basement and third-floor units to help with the mortgage.

**I’d say 10 years ago when prices weren’t where they are now, people would hold on**

“It was so much cheaper and easier on the kids,” Ms. Cochran says now, nearly 10 years later. They communicated via intercom. She’d have her ex’s new girlfriend down for coffee on mornings he’d sleep in.

Ms. Cochran, who wrote a book about the experience and those of others called *Reconcilable Differences*, still lives in the home, though her mother bought out her ex, who has since remarried and moved away now that their children are grown.

“I looked around before we came to our set-up — it was going to be a real step down in terms of our standard of living,” Ms. Cochran says.

Toronto realtor David Batori, among the top 10 agents in the country in terms of dollar volume, says divorced couples now make up about 20% of his transactions.

“I’d say 10 years ago when prices weren’t where they are now, people would hold on,” says Mr. Batori, adding homeowners with little or no equity and heavy debt were almost forced to sit tight when the market was in the doldrums and nothing was selling.

Now they can go a couple of different routes. They can take out their equity and both move to smaller places or cheaper neighbourhoods, or try the living-together-but-apart option.

He knows one couple, living together but divorced, continuing to pay down their mortgage for the past two years because neither can afford to buy the other out and nobody wants to move. “It’s a hard situation to be in, but what choice is there?” says the realtor. “I have a lot of clients where one person just moves out and helps continue to pay for the house.”



GETTY IMAGES/THINKSTOCK Toronto realtor David Batori, among the top 10 agents in the country in terms of dollar volume, says divorced couples now make up about 20% of his transactions.

Marina Adshade, a sessional lecturer at the University of British Columbia and the author of *Dollars and Sex*, a book on how economics influences relationships, says the U.S. experience when prices dropped 30% between April 2006 and August 2010, illustrated that people will stay together during a financial crisis.

She can't say for sure what happens when prices rise, because there is no specific data available, but she suspects the opposite is true — that people are more likely to get divorced. But she doesn't rule out the possibility there could be two effects happening at the same time, pulling in opposite directions.

“Increasing house prices increase the likelihood that some people divorce. For example, people who want to take their equity out of their marital home. And it might also decrease the likelihood that some people divorce. For example, people with small children with specific housing needs,” says Ms. Adshade. “So what looks like no effect is really just two effects cancelling each other out. I see this quite frequently when it comes to divorce and marriage statistics.”

Andrew Feldstein, who has practised family law in Toronto for 20 years, says you can't ignore the practical effects of divorce and real estate prices.

## Increasing house prices increase the likelihood that some people divorce

“If you live in the city, you may be living in a 2,500-square-foot house that may cost you \$1.5-million and you may have a \$700,000 mortgage. When that couple divorces, there is nowhere for them to downsize after they take their share of the home,” says Mr. Feldstein.

And then there's all the value immediately lost to real estate transaction costs. Agent commissions, land transfer taxes, legal fees and moving costs can easily eat up 8% to 10% of your equity by the time each party finds a new home.

“I have lots of people tell me, when they hear the numbers of what [selling] will cost them, ‘why am I doing this?’” says Mr. Feldstein.

On top of that, he says people divorcing under the gun often end up agreeing to a lousy price because they are in hurry to sell. In some cases, buyers become aware of that situation and can take advantage of it to drive a better price, especially in a slow market.

“You go to a home and notice in the master bedroom there is only a man's clothes or woman's clothes, that's a tale sign a divorce is going on. If they are litigating the matter, it's a public document. You can look at their financial statement and see how big their mortgage is and what other debt is accumulated, what their income is and how badly they need to sell the home,” he says, adding he's done that type of research before buying his own homes.

The financial leverage on homes means couples have to be more financially strategic than ever when it comes to timing their divorce, says Darren Gingras, president of The Common Sense Divorce, a divorce consultancy firm.

“Whether or not you want to keep it amicable or not amicable, that's your decision,” he says. But financially, “you've got to time when you're going to leave” with care. “Even if [you] walked home and caught somebody in bed with somebody, if you don't time this one, you're going to be nailed with up to \$100,000 in penalties. There are people now who've had to learn to suck it up.”



And yet, far from catching a spouse in a compromising situation, the biggest irony of the new divorce and real estate reality is that it's sometimes finances — including having a huge mortgage — that contribute to many break-ups in the first place. Debt is near an all-time high with the average Canadian household debt at 163.1% of annual disposable income.

“I think people definitely stay together because of debt, they cannot afford to separate,” says Laurie Campbell, chief executive of Credit Canada Debt Solutions. “On the flip side, debt causes a lot of marital stress.”

As for Jason, he's trying to take the emotion out of his marital situation, think about it financially and accept the reality of today's housing market.

“It's going to be painful. I'm lucky enough, fortunate enough to be able to afford [another home]. I'm not uber wealthy. There's a big difference between 99.01% and 99.9%. Poorer is not the right word but I will have less.”

*With files from Sarah Boesveld*

<http://business.financialpost.com/2014/10/11/what-to-do-when-theres-more-value-in-your-house-than-your-marriage/>