

In Housing Slump, Breaking Up Is Harder to Do

With Couples
Reluctant to Sell
Homes, Mediators
Must Get Creative

By Greg Katz
Daily Journal Staff Writer

LOS ANGELES — Traditionally, splitting up a marriage has often meant splitting up most families' greatest financial asset: the house.

But with the mortgage market paralyzed and the housing market in the tank, selling a house is beginning to look like a bad idea to even the most embittered separating spouses.

Nowhere is that more evident than in Los Angeles, where the closely watched Case-Shiller index indicates that home prices are down more than 21 percent from a year ago, a drop much larger than the national average.

In Los Angeles County, divorce filings remain as high as ever, with 3,571 requests for annulment, dissolution and formal separation filed in April, about the same as previous years, according to Superior Court records.

But with couples reluctant to sell, mediators and collaborative lawyers say they are being asked to craft ever more creative settlements, keeping divorcees' homes in their hands until the market recovers.

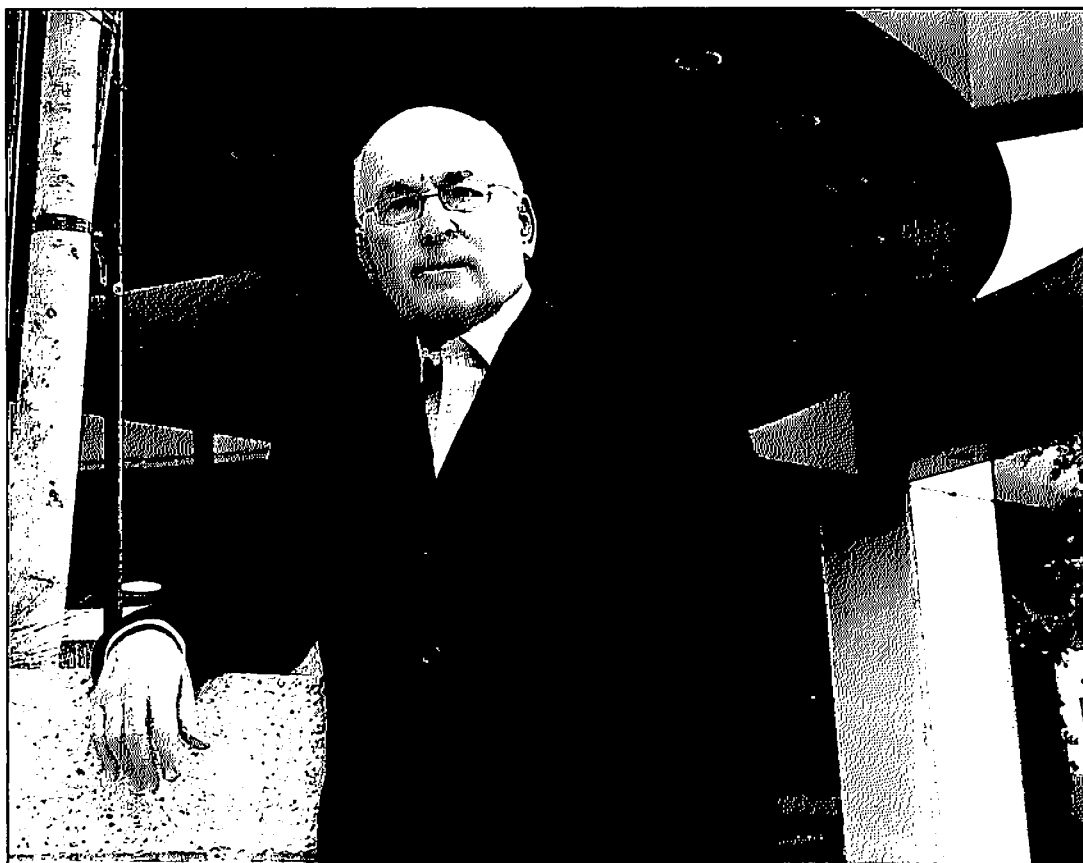
"I'm seeing a lot of people who are saying, 'We'll hold onto the house,'" said Los Angeles family law mediator Fern Topas Salka, co-chair of the State Bar family law section's Los Angeles committee on ADR. "Then they make various arrangements about how it will be funded."

Salka, who has been working in family law for 35 years, said a novel solution in one recent case had the divorcing parents, who were unwilling to sell their house because of its low value, agree in the settlement to let their children stay in the house while they took turns living there.

"Kids stay, parents move — that works for a while," she said.

But Salka said she also has spoken to a few people recently who have decided not to follow through on divorcing because of the impact on their wallets.

"There have been people who



JULIANE BACKMANN / for the Daily Journal

"In many of my cases now, we're saying, 'This isn't the right time to sell the house, and it may not even be the right time to award it to one party or the other, because it might not have the value it would otherwise have,'" said Los Angeles Collaborative Family Law Association president Frederick Glassman.

say, 'Looks like I'm not going to have enough money to live [if I get divorced], thanks for the information,'" Salka said.

Frederick Glassman, president of the Los Angeles Collaborative Family Law Association and senior partner at Mayer & Glassman, said he also has crafted settlements recently centered on the parties' unwillingness to sell their homes.

"In many of my cases now, we're saying, 'This isn't the right time to sell the house, and it may not even be the right time to award it to one party or the other, because it might not have the value it would otherwise have,'" Glassman said. "With the economy the way it is, they're looking for some choices in the process."

Going to court for a divorce often results in a judgment that requires the sale of the house. That makes mediation or collaborative proceedings attractive to those concerned about losing the investments they made in their homes, said Glassman, who for years has been an outspoken advocate of using ADR in divorce proceedings.

He was careful to say that he doesn't think that the economic slump has made parties reconsider divorce.

"In my experience, I don't want to say it's just the opposite, but people get divorces because there's a lack of income, there's a lack of financial security," he said.

But an agreement not to sell a home may cause other complications in a divorce.

Torrance-based mediator Kimberly Davidson said that parties may want to defer selling their homes at the time of a mediation, but often change their minds later when circumstances change, so settlements have to account for uncertain future events, like remarriages or job losses.

To work around that problem, Davidson said, she suggests including triggers in their settlements that can require them to discuss selling earlier than the original agreement indicates.

"A triggering event might be 'husband loses his job,'" she said. "That would be a trigger that would cause them to sit down and talk and sell the house sooner

than the year or two years that we agreed on."

In one case Davidson is handling now, the divorcing couple is still living together and operating a business together because the business' fortunes and the house's value have suffered with the economy.

For the man to buy his former wife's share of the business, the couple would have to sell the house, creating a tricky financial web, Davidson explained. So, she said, they will wait to sell.

"This is completely motivated by the economy," Davidson said. "If the housing market was a lot better, they would cut their losses and they would sell."

While Davidson said no one is waiting to get divorced for economic reasons, financial pressures are adding a little more animosity to the already tense proceedings.

"I have a lot clients who say, 'It would have been great if we'd done this four years ago, when our house was worth \$400,000 more,'" she said.

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Collaborative Divorce Booms as Method to Ease the Parting

By Susan McRae
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LOS ANGELES — Family law attorney Fred Glassman can't stop talking about his new practice.

After 35 years as a litigator, he is part of a team of like-minded lawyers, mental health professionals, accountants and child specialists helping couples to end their marriages in a collaborative way.

ADR

To ensure commitment to the process, the lawyers sign a pledge not to litigate in court. If either couple backs out, the lawyers quit.

Called collaborative divorce, the practice has been gaining momentum nationally and internationally.

In January, California became the third state, behind Texas and North Carolina, to incorporate collaborative law into its state statutes in the family law section. Additionally, a number of counties, including Los Angeles and San Francisco, have had in place for some time local court rules that spell out the protocol in more detail.

"I am excited every day when clients come to me," said Glassman, this year's president of the Los Angeles Collaborative Family Law Association, the largest organization of collaborative law professionals in the nation. "I don't talk about substance. I talk about the process.

"I tell them, 'You know, you have options. You don't have to go to court. You can take control of your own destiny and make your own decisions.'"

Glassman, a partner at Los Angeles' Mayer & Glassman, recently lent his expertise as a consultant to lawyers in the divorce of Roy and Patricia Disney, who chose the collaborative method to end their 52-year marriage. Roy Disney is the nephew of Walt Disney and one of Walt Disney Co.'s major shareholders.

"What the Disneys did has given us a lot of credibility," Glassman said. "We are mainstream now. We have people doing these kinds of cases who are in the public eye."

Developed in 1990, collaborative divorce was the idea of Stuart Webb, a Minnesota-based lawyer and Buddhist seeking a softer path to marriage dissolution.

The way it works is the couple and their lawyers sign a stipulation with the court agreeing to collaborate fully and honestly to meet each other's needs. The four meet in a neutral environment, usually the office of one of the



ROBERT LEVINS / Daily Journal

Attorney Fred Glassman, right, helped Bart Greenhut obtain a collaborative divorce, a process whereby a couple, their lawyers, and specialists cooperate out of court on a divorce.

lawyers, to decide who else might be needed, such as a mental health counselor, certified public accountant and, when minor children are involved, a child specialist. The couple understand the lawyers will not represent them in any litigated proceeding in court.

San Francisco family law practitioner Pauline Tesler began organizing the collaborative law movement in California in 1993.

At the same time, mental health professionals working in the court system in the San Francisco East Bay were working on a similar move. Psychologist Peggy Thompson and social worker Nancy Ross were becoming frustrated that their reports, rather than helping divorcing couples, were causing irreparable harm.

They decided to take their skills outside the court and to train others. But they became discouraged because, when a couple would have a bad day, they would hire lawyers, and all the progress they had made would vanish.

Thompson and Ross heard about Tesler's work, and soon the two groups began meeting to see how they could work together in an interdisciplinary fashion. Financial planners and child specialists joined the mix.

"Out of that grew an incredible international movement that now has over 3,000 members," said Tesler, author of "Collaborative Law: Achieving Effective Resolution in Divorce with-

out Litigation," and co-author with Thompson of "Collaborative Divorce."

"This is the gold standard on how people can get the kind of help they need," Tesler, a partner in Tesler Sandmann & Fishman in Mill Valley, said.

As a measure of its growth, the practice held its second annual statewide conference in May, hosted by the International Academy of Collaborative Professionals and Collaborative Practice California. Two dozen practice groups throughout the state were represented.

"I think what we are seeing now is a real maturity of the process in the dedication to teamwork," said family law attorney Leslee J. Newman, a member of the academy's executive board and the director of public education for Collaborative Practice California.

Newman, who co-founded Collaborative Divorce Solutions of Orange County in 2003, said even her small group has grown from a handful of lawyers when it began to 20 lawyers and 20 other collaborative professionals.

Still, collaborative divorce isn't for everyone.

One complaint is about the requirement that the attorneys must withdraw if negotiations break down. Opponents say that forcing the lawyers who know the case best to bow out makes no sense. Not only does it add to the couple's time and expense of hiring new law-

yers, but it also increases pressure to settle for what may not be in their best interests.

But, advocates point out, this collaborative commitment is what makes this process work.

Moreover, Tesler said, if a couple does decide to retain new lawyers and go to court, they are far ahead in the process because they can take the discovery part of the case with them, and it is completely usable.

Another criticism involves the ethical question of how much a lawyer can advocate for a client, when signing a contract to collaborate with the opposing party's lawyer.

Although several jurisdictions have raised this question, only the Colorado Bar Association has gone so far as to issue an advisory opinion declaring the practice unethical. It does offer a fix, however. Lawyers can practice collaborative law in the state as long as the contract to withdraw is just with their client and not the opposing spouse.

But Tesler said there is little to fear from the opinion, noting that it is nonbinding and, even in Colorado, prevents no lawyer or client from electing collaborative legal representation.

Criticism aside, the consensus seems to be that the advantages outweigh the disadvantages. For those willing to give the process a try, lawyers say they achieve an 80 percent to 90 percent success rate.

Los Angeles resident Bart Greenhut decided to use the collaborative concept when he and his wife sought a divorce. A family relative recommended Glassman.

As divorces go, he said, theirs was relatively simple. He and his wife shared joint property and had two businesses to divide. There were no children or huge sums of money. In all, he

said, the time and money spent was half what it would have been had they gone to court.

But the main benefit, he said, was the emotional factor. He and his former wife remain on good terms.

"There are some people who want to get even, and it is not for them," said Greenhut, who has remarried. "But when you go into it rationally and honorably, this is definitely the way to go.

"It still takes time. It still costs money. But, in the end, there are no hard feelings. Neither of us feels taken advantage of by the other.

"It is the least painful way to do a painful thing."

Glassman began incorporating collaborative divorce into his practice four years ago. He has settled 30 divorces with the method over the past two years. He teaches a course in the subject at UCLA Extension and lectures widely on the topic.

He's also added his own special twist to the process, a play on words he has trademarked as "MEDICOLLAB" That's "MEDI" for mediation and "COLLAB" for collaborative.

"Get it?" he asked.

Grabbing a yellow legal pad, Glassman began sketching a pyramid. The mediator is at the top. A husband and wife anchor each side of the base. This is the mediation model, he said.

He drew a square. Spaced evenly around it, going clockwise from the top right corner, are the wife, her mental health coach, her attorney, a child specialist, the husband's attorney, his mental health coach, the husband and a financial expert. This, he said, is the collaborative model.

Picking up the pen again, he drew a circle in the middle of the collaborative square. Inside

it, he printed a large "M" for mediation. This, he said with satisfaction, is the MEDICOLLAB model.

A longtime mediator himself, Glassman said he often sensed a missing link in the collaborative process. During negotiations, a couple might agree on all the main points but get hung up on one or two minor issues.

Usually, Glassman said, these impasses are mere stumbling blocks along the way. But if they are not dealt with, they threaten to dismantle the progress and send the couple running to court.

That's where MEDICOLLAB comes in, he said. By taking a short mediation time-out, people usually can resolve these issues and return to the work at hand.

"Doesn't that make sense?" he said. "I am taking the best of both worlds."

Here are a few places to find out more about collaborative divorce:

- Collaborative Divorce Solutions of Orange County, www.cdsoc.com
- Los Angeles Collaborative Family Law Association, www.LACFLA.com
- International Academy of Collaborative Professionals, collaborativepractice.com
- "Collaborative Divorce" by Pauline Tesler and Peggy Thompson, collaborativedivorcebook.com
- Collaborative Practice California, cpcal.org
- Collaborative Divorce Team Trainings, collaborativedivorce.com