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PERSPECTIVE

Mediating divorce after a natural disaster

By Dianna Gould-Saltman

When a couple seeks to settle their divorce through mediation, both sides generally come into the process with a general idea about how they want the financial pie divided. They may have documentation supporting the valuation of those assets, including the family home and any other real estate acquired during the marriage.

But all bets could be off if a natural disaster strikes in the middle of their preparations. The value of real property impacted by a flood or fire will be a big unknown as the parties sit down to divide up their assets. For couples with significant assets beyond the family home, the safest approach may be simply to put the real property aside and work toward agreement on the rest of their holdings.

When the family home is the principal asset in a marriage, however, this may not be possible. Following the Eaton Canyon and Pacific Palisades fires, mediating family law matters has become somewhat of a guessing game. How much is a home worth if it sits on potentially toxic soil? If it sits by itself in a vast desert of destroyed homes? If no insurer will provide coverage for it? And what might that same home be worth if there are hardly any rental properties in the area and prospective renters will pay almost anything to stay nearby?

The gap between valuations may be vast, but parties shouldn't have to pluck arbitrary numbers out of the sky. Instead, they should use care and thought to arrive at mean-



A house engulfed in flames during the Eaton Fire in Altadena. | Shutterstock

ingful valuations that will narrow the divide.

Valuation fundamentals

One of the best measures of future real estate value is historic value. What have comparable properties sold for in the past? What factors might increase a particular home's value? Traditionally, those factors have included such things as location, improvements, school proximity and quality, views, safety, and privacy.

In the aftermath of a flood, fire or earthquake, other factors could be even more important. Did the house survive a powerful earthquake when those around it crumbled? Was it protected by a tile roof when homes with shake roofs were lost in a fire?

Did its elevation protect it from flooding when neighboring homes were submerged?

Under California Evidence Code Section 813 property value can be shown by way of opinions from qualified witnesses or "experts," owners of property and their spouses, and organizations with an ownership interest in the property. Other evidence may be considered if it provides insight into those opinions.

The first step in establishing property value will be obtaining "expert" opinions about the pre- and post-disaster value of the home. There is no history of fires of this magnitude in the Eaton Canyon area, but fires have struck comparable neighborhoods in other

parts of the state. When were those neighborhoods rebuilt? What did insurers do in those other fires? How did the property values change in those areas, and how do those valuations provide meaningful benchmarks for the property at issue?

High or low?

In any real estate transaction, one side – the seller – might push for a high valuation while the other side – the buyer – might try to poke holes in that valuation. When property at the heart of a divorce has been impacted by a natural disaster, the calculus may be much more protracted and personal.

One spouse asserts that the property has negligible value. Private

fire insurance may no longer be available in an amount sufficient to replace the home and CalFire, the insurer of last resort, imposes a cap that significantly limits recovery – a bitter pill for owners of high-value properties. Neighboring properties are now vacant or substantially destroyed. The local school is an ash pile or closed; local businesses are shuttered or up in smoke.

The other spouse argues that the house is even more valuable than it was before the fire. It is ideally located for displaced residents who want to remain close to worksites, daycare, and other community resources. The rental value, the argument goes, will surely be a multiple of what it would have been had the fire not occurred.

California Penal Code Section 396 makes it a crime for property owners to engage in rent price gouging when a local emergency has been declared. Subsection (e) states that “it is unlawful for any person, business, or other entity, to increase the rental price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent.”

Because the statute applies only to properties previously offered for

rent or lease, the sky could be the limit for potential rental revenue from the family home.

Stay or leave?

The key question, then, may be what the parties intend to do with the property. A spouse who originally had planned to stay put after the divorce may now have second thoughts. The house is no longer the safe haven in which to regroup and start over. The neighbors are gone and the children will be attending school online. The party remaining will daily be facing the ghosts of a failed marriage in a haunted house.

If ever there was a good reason to put the past behind and start over, a natural disaster may provide that reason. An aggrieved spouse may realize that the worst option after the fire is to go back into the marital house. The prospect of a healthy rental stream could be the added pebble that tips the scales in favor of starting over.

Court or mediation?

As challenging as it may be to negotiate property values in a mediation, the alternative could be far more challenging. If parties are unable to reach an agreement on the

value of real property, they could go to court and await a judge’s decision on the matter. The judge will have reviewed and evaluated the evidence provided by the parties, but the judge’s decision will be solely his or her own; it may not satisfy either party and, absent an appeal, it will be final. How much better when parties can retain control of such an important issue? In mediation, they each have a strong bargaining position, they can consider each other’s positions and, with the mediator’s support, they can craft a resolution that addresses their respective concerns. Instead of putting their fate in the hands of a judge, they can ultimately agree to resolve their dispute.

Conclusion

Property valuation has always been more art than science, but natural disasters call for a higher level of mastery. Divorcing couples seeking to value property in such circumstances need as much support as possible to do their due diligence and arrive at intelligent valuation decisions.

They may not get it right. It could be years before the true impact of a disaster is reflected in property values; by then, the parties will have

taken their money and moved forward. Even though hindsight is 20-20, divorcing couples should feel confident that their valuation decisions were well considered and properly made.

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