

# Legal Bulletin

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## When Sellers Divorce: How To Protect Yourself And Your Clients

Taking a listing when the sellers are getting a divorce requires extra diligence, skills, and patience. Representing the buyer on that property can expose your buyer to delays or much worse. Here are some basic legal principles to keep in mind when listing and selling property during the sellers' divorce.

**Who Must Sign The Listing and Purchase Agreements?** The normal rule is that you need one seller to sign the listing agreement and all sellers to sign the purchase agreement. When the sellers are divorcing, you need both of their signatures on the listing agreement and every other document associated with the listing and sale. When one spouse petitions the court and serves the other spouse in any divorce, legal separation, annulment, or domestic violence (family law) proceeding, a temporary restraining order (TRO) is automatically in effect in California. The TRO prevents either spouse from transferring, encumbering, concealing, or pledging property as security for a loan, or in any way disposing of any real or personal property without either the written consent of the other party or a court order. This rule restricts a spouse from transferring his or her own separate property as well as property in which both spouses are on title. So both spouses must sign the listing agreement, the purchase agreement, and every other document associated with selling the property.

**What If The Sellers Cannot Agree?** If the sellers' squabbles prevent them from moving forward with a listing or sale, they should speak to their lawyers about getting a court order to break the impasse.

**What Should The Listing Agent Do?** You should insist that the sellers give you mutual written instruction every step of the way. Each decision, no matter how small, could lead to an epic battle. You need to be very careful not to put yourself in the middle. Remember, you are not a marriage counselor or a friend; you are a professional with a job to do. Get everything in writing from both spouses (email works well for this purpose), don't take sides in their disagreements, and encourage both to work out disputes between themselves (or through their lawyers) before giving you instructions.

**What Should The Selling Agent Do?** You probably won't know that the sellers are divorcing when you show the property or make an offer (the listing agent is not obligated to tell you). If you find out at any point, then alert your buyer to the possibility that there could be delays caused by disagreements between the sellers. Be certain that the purchase agreement, all amendments, escrow instructions, repair requests, etc. are signed by both sellers to ensure that they are enforceable.

You should speak with your broker if any problems arise from the sellers' divorce.

IMPORTANT: The discussion in this Bulletin is based upon general legal principles and is not intended to be used as a substitute for consultation with a qualified attorney. Each situation is unique. Specific facts may completely change the applicability of general rules, and this Bulletin cannot possibly deal with all of the variables which may apply in a given case. This Bulletin is intended to help highlight certain issues of general interest. This Bulletin is not intended to be viewed or relied upon as legal advice. Any unauthorized use, distribution, disclosure, copying or dissemination, either in whole or in part, is strictly prohibited. © All rights reserved