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**YOUR PROPERTY INTEREST IN THE FORMER MARITAL HOME MAY NOT BE
PROTECTED AFTER THE DIVORCE**

By Susan C. Ryan, Esq.

Your divorce is finally done! After months of negotiation your ex-spouse agreed you, and perhaps your children, could stay in the former marital home for a designated time without selling the home. You both are to share any capital repairs and expenses related to the eventual sale, but the utilities, real estate taxes, and the mortgage are your financial responsibility. Both names are on the mortgage, and you own the home together as tenants by the entirety, so you give no further thought to this situation.

Beware! Things are not always what they seem, and ownership interests in real estate after a divorce do not always continue as before. Most married couples elect to take ownership in property as “husband and wife, tenants by the entirety” at the time they purchase a home, meaning they own it as one unit, and neither can force the sale of his/her interest in the property. Holding title in this manner provides for the right of survivorship should one owner predecease.

However, at the time of the divorce, that “unity” ends, just like the marriage, and as a matter of law, the parties then own the property as tenants in common. As tenants in common each party owns his/her share (presumably fifty percent), but there is no right of survivorship. If your ex-spouse dies, his/her interest will go to his/her heirs, and you might end up owning the house with a new spouse!

This situation can be avoided by having a deed drafted in which the property is transferred to the person entitled to remain in the home. In the alternative, the parties could execute a deed transferring the ownership from them as husband and wife, tenants by the entirety, to joint tenants, retaining the right of survivorship.

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