

# Senior Law Day, 2023

# Silver Divorce

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# Silver Divorce: by the numbers

- Between 1990 and 2015 the divorce rate among people aged 50 and older grew **109%**
- Divorce rate is growing the fastest among adults **over the age of 65**



# Division of Assets

Division of assets can be complex...  
and there are many considerations.

Seek legal counsel!



# Division of Assets

## Virginia is an **Equitable Distribution State**

- Court considers a number of factors when dividing the marital assets
- Most cases are a 50/50 division, but the Court is not bound to divide assets 50/50

# Division of Assets

Virginia courts classify assets as:

- **Marital**
- **Separate**
- **Hybrid**

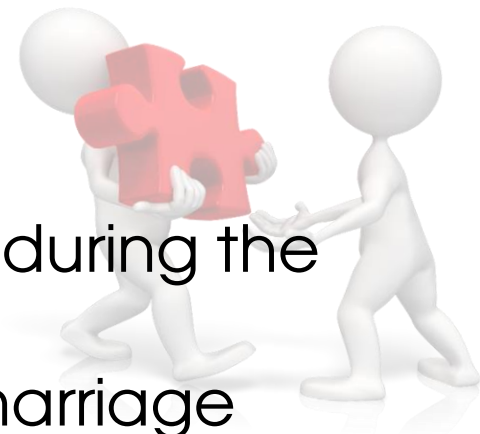


# Division of Assets: Marital

Assets earned during the marriage through efforts of **either** spouse

Examples:

- Money accumulated in a 401(k) earned during the marriage
- Pension entitlement earned during the marriage
- Real estate, bank/investment accounts established during the marriage
- Business started or purchased by either spouse during the marriage



# Division of Assets: Separate

Assets either spouse had prior to the marriage

Examples:

- Premarital home
- Inheritance
- Gifts from third parties



# Division of Assets: Hybrid

## Part marital, part separate

### Examples:

- Parties married when husband had 5 years military service; husband retired at 20 years. This military pension is hybrid property: 75% marital and 25% separate
- Parties marry and move into house wife owned before marriage. During the marriage, mortgage is paid down using marital funds. House is hybrid property based on mortgage pay-down

**Can be hard to prove**



# And... a couple notes

- Court can order retirement accounts be divided and rolled over, without tax consequences
- Court can order that portion of a pension be paid directly to former spouse
- Court can order something different than 50/50 split, but anything over 50% cannot be paid directly from the paying entity



# Spousal Support

- Spousal support intended to keep lower-income spouse in the same standard of living, to the extent possible
- Amount and duration of spousal support is in the Court's discretion, depending on statutes
- You cannot receive spousal support if the Court finds you committed adultery, unless the Court determines it manifestly unjust to deny support

# And... a couple notes

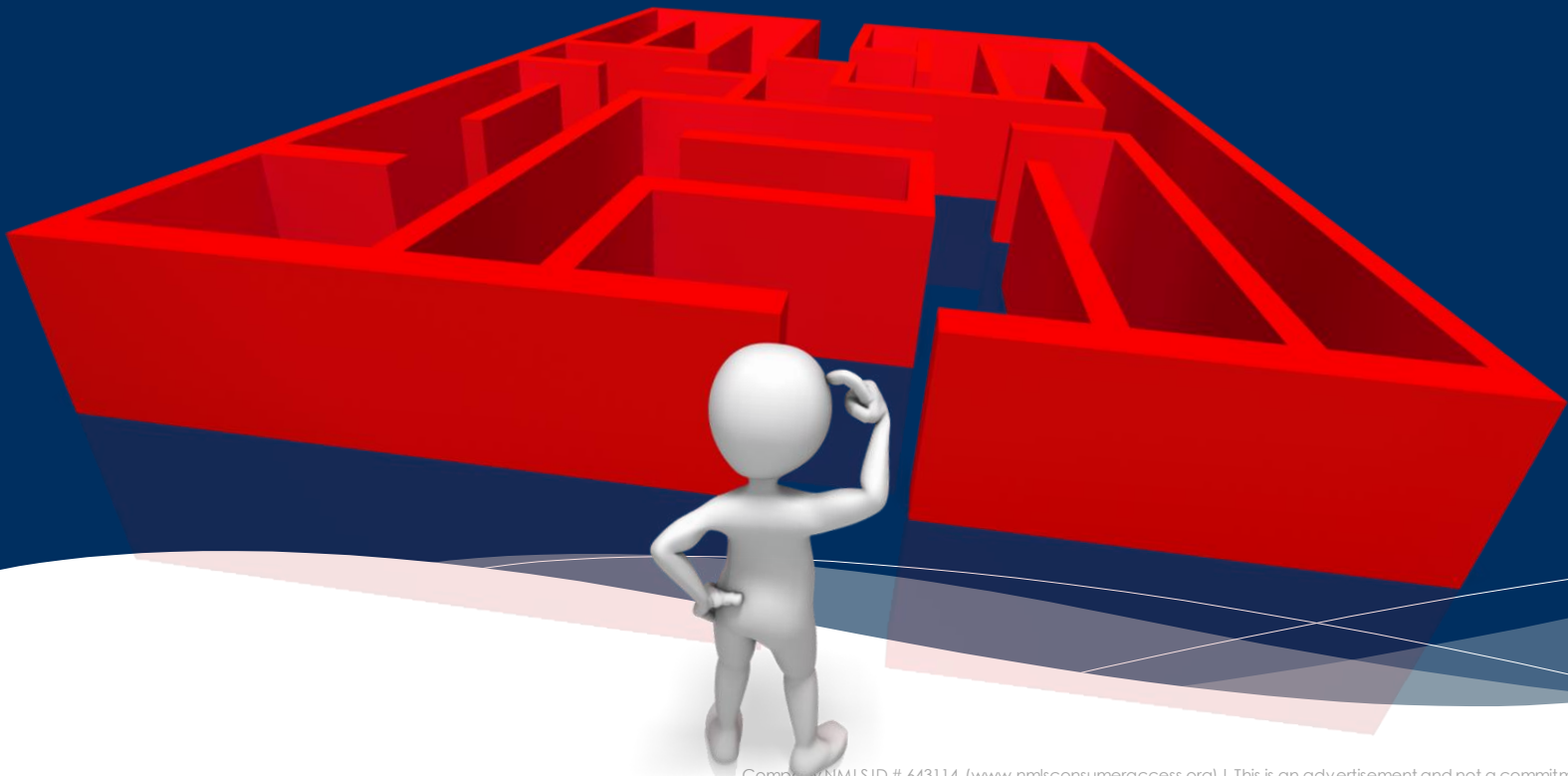
- If both parties are retired and have sufficient income, the Court likely won't award support
- If one party is retired, or never worked, and one is still working, the Court may order employed party to provide support for a period of time
- If both parties are retired, but one party has significantly more assets, Court could still award support even though neither party is working

# Social Security

- Divorce court does not make awards of Social Security
- Divorced spouse is entitled to claim ex-spouse's Social Security benefit if married at least 10 years, *and* unmarried at the time of Social Security eligibility
- Social Security payments to ex-spouse do not reduce the payor's Social Security payments, *or* payments to ex's current spouse
- If ex dies, former spouse may be entitled to Widow's Benefit



# Reverse Mortgage: An additional solution to Equitable Distribution



# Two kinds of Reverse Mortgages: Refi and Purchase

## Refinance



## Purchase



# Potential equitable distribution challenges in Silver Divorce

- If one party wishes to remain in the home, equity typically must be split with departing party, **BUT**
- Residing party may find traditional cash-out refinance difficult/impossible due to reduction in household income
- Assets/investments may be diminished due to distribution
- If there have been credit difficulties, approval for a traditional loan is unlikely
- Traditional mortgage requires a monthly mortgage payment
- Clearing the departing party from existing financing can be difficult/impossible

# What is a Reverse Mortgage refinance?

If you remember nothing else, remember this: a reverse mortgage refinance is simply a **home equity loan**.

BUT...

It's a home equity loan with unique features.





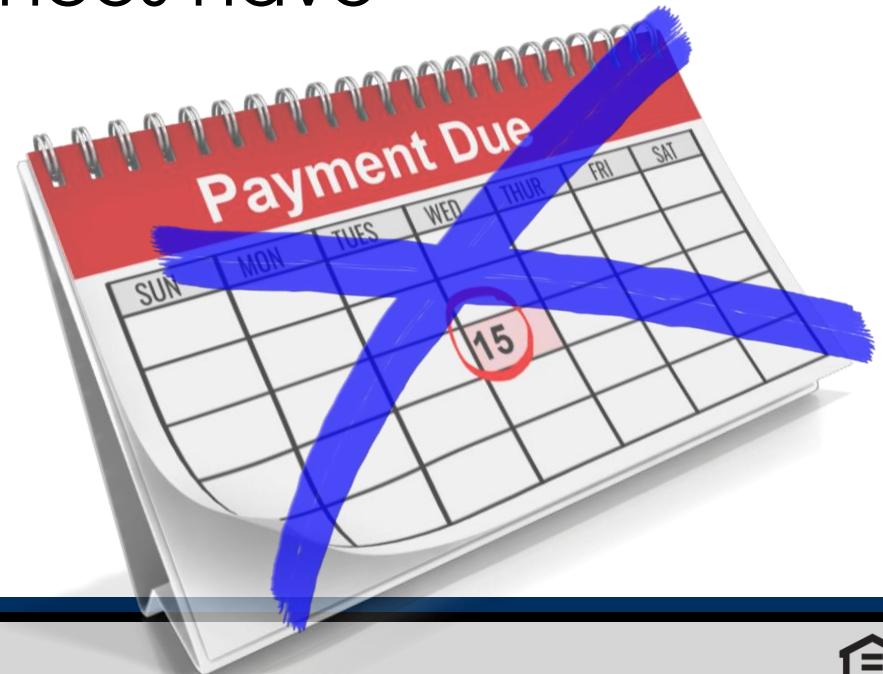
# Unique Features Include...

- No employment requirements (most applicants are retired)
- 100% non-recourse debt
- But most importantly...

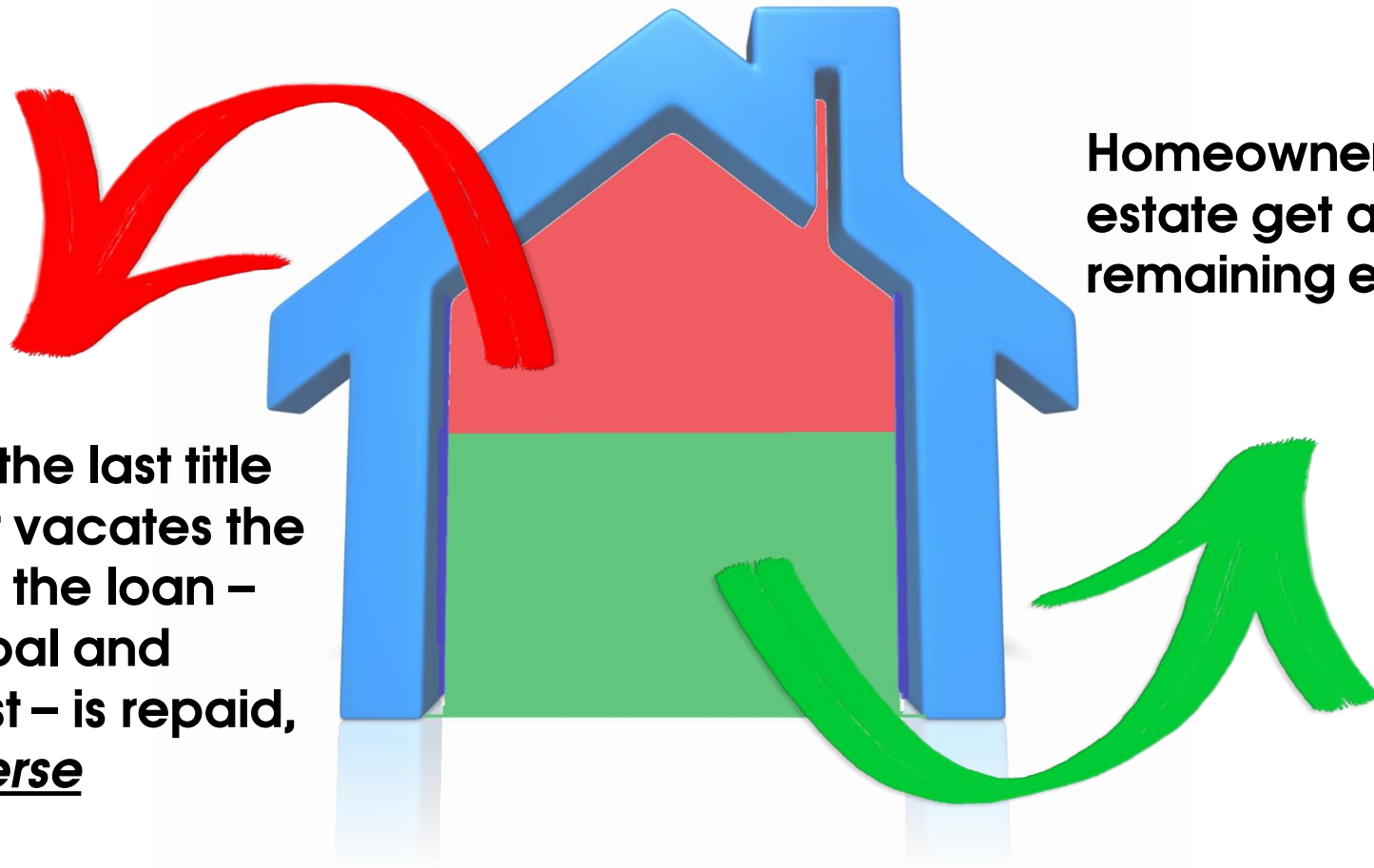


# There is NEVER a monthly repayment obligation

No required monthly mortgage payment is very important in a season when circumstances have changed and income may be permanently reduced.



# How the loan gets repaid



When the last title holder vacates the home, the loan – principal and interest – is repaid, in reverse

Homeowner, heirs, or estate get all remaining equity

# Loan details

- Party remaining in the home must be 62 years of age or older
- Party remaining in the home must use subject property as primary residence
- Must remain current on property taxes and homeowner's insurance
- No employment requirements
- No minimum or maximum income requirements
- No maximum debt ratios
- No minimum credit score
- All titleholders must attend a federally-mandated phone counseling session



# But... what if you're the Departing Party?



# Two kinds of Reverse Mortgages: Refi and Purchase

Refinance

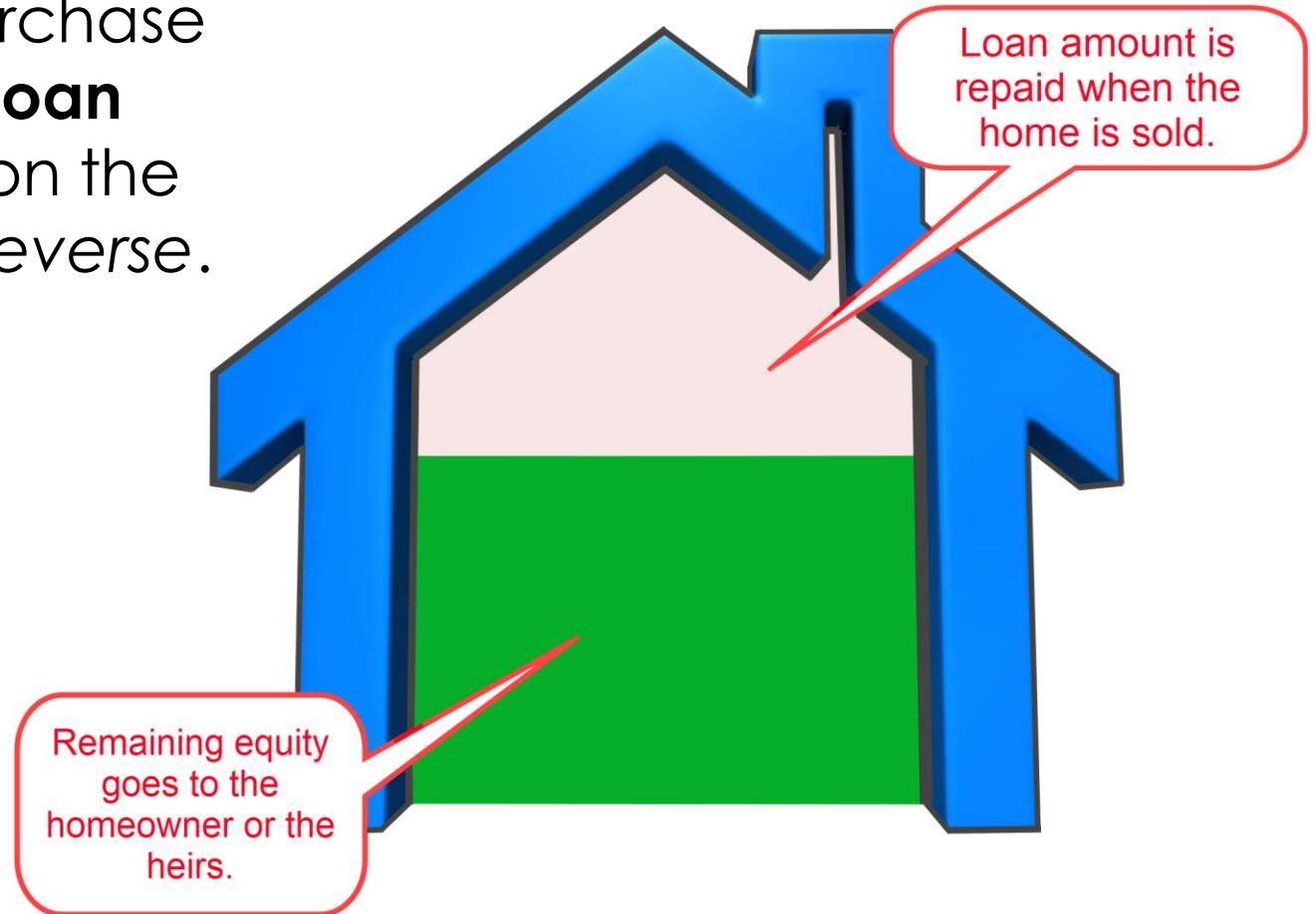


Purchase



# What IS Reverse for Purchase?

Reverse for Purchase is a **purchase loan** that is repaid on the back-end, *in reverse*.



# Reverse for Purchase: How it works

- You bring a downpayment, the size of which is determined by your age
- Loan amount makes up the rest of the home's purchase price

And...

- You're done – you've made the only payment due until you permanently leave the home





# Why use Reverse for Purchase?

- Retain more cash from the distribution vis-à-vis an all-cash purchase
- MUCH easier qualifying
- Afford more home
- *NO monthly mortgage payment*



# WHO owns the home?

## THE HOMEOWNER

**The homeowner** owns the home.

Punto.

Always.

End of story.



# “I know a lady....”

Can you lose your home if you have a reverse mortgage?

**Yes.**

Just like with ANY mortgage – or with *no mortgage at all* – property taxes must be paid.

Remember: property taxes are a function of homeownership, NOT of a mortgage.

Unless the homeowner is property tax exempt, “If you pay you stay; if you don’t, you won’t.”

# FAQ's

## What if the value of the home increases?

No matter if - or by how much - the property appreciates in value, only the outstanding balance is due on the reverse mortgage at the time the home is sold. Any additional proceeds from the sale of the home belong to the homeowner or to the estate.

# FAQ's

## What if the value of the home decreases?

No matter if - or by how much - the property decreases in value, the home repays what it can. Any shortage is made up by the mandatory FHA insurance; neither the homeowners nor the heirs are responsible for any shortfall.

# Imagine **Your** Tomorrow

*MacNaughton*  
TEAM

REVERSE MORTGAGE SPECIALISTS

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