



Faggio Financial

EQUITABLE SOLUTIONS AND PROSPERITY PLANNING
Professional Guidance for Divorcing Individuals

John A. Faggio, CPA, CFP® *Financial Divorce Specialist*

DID YOU KNOW

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That mortgage interest and taxes are not always deductible by the spouse or ex-spouse who paid the mortgage ?

Who's paying the mortgage? Who gets the interest and tax deductions? Can the mortgage be considered alimony? The same questions come up in almost every case, and the answer is, it depends.

Generally, if each spouse files separately, then each is eligible to deduct the mortgage interest and taxes each actually paid. Absent an *agreement* stipulating otherwise, the source of the funds used to pay the mortgage dictates who is entitled to the deduction: payments from a joint account are presumed to be made by each spouse, 50/50; payments from a spouse's separate account are presumed to have been made by that spouse.

What about use and possession? Suppose Mom, *with two children*, is staying in the jointly-owned home and Dad is required to make the mortgage payments? The problem here is that only Qualified Residence Interest (QRI) is deductible. QRI is deductible when paid on the principle residence and one other residence used by the taxpayer as such. IRS regulations permit the personal use by any family member to inure to another family member when determining whether it qualifies as a residence. In this situation, since the spouse's children live in the house, Dad would be entitled to the interest and tax deduction. If there were not any children, Dad could not deduct those expenses. Alternatively, you could structure the settlement so that Dad could claim half the mortgage payment as deductible alimony and take a deduction for one-half of the interest and taxes.

What about payments made after the divorce? Where there's a transfer of interest in the family home and the nonresident spouse is required to make payments associated with the home, the paying spouse may be able to deduct the payments as alimony, provided all other requirements for alimony are met. The resident spouse has taxable income but can take the itemized deductions for mortgage interest and taxes.

The issues regarding deductibility of mortgage related expenses and alimony can be very challenging. They intersect the areas of eligible deductions, title, state law, spousal agreement, and consistent tax treatment of the parties. This is the reason why CPAs hesitate in giving an immediate answer to these questions. "Can we do this?" It depends!