Imminent Sale Doctrine - Closing Costs in Florida Divorce

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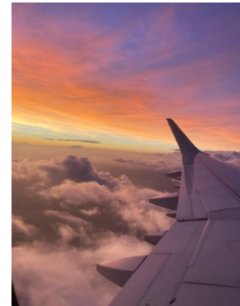
Divorce can feel overwhelming, especially when it's time to divide the marital home. In Florida, whether realtor fees and closing costs come off its value depends on the Imminent Sale Doctrine and solid evidence.

Courts stick to strict guidelines, but the collaborative process offers couples flexibility. Let's explore the imminent sale doctrine, considering fees, closing costs, and tax consequences on the sale of marital residence. What's at stake? How might you move forward? What if there is no imminent sale?

Closing Costs and Realtor Fees: The Imminent Sale Doctrine: Evidence



In Florida, splitting property in divorce follows section 61.075, Florida Statutes. The *Imminent Sale Doctrine* acts like a checkpoint at an airport —only those with a boarding pass (proof of an impending sale) can get through the gate to deduct realtor fees or closing costs. Without it, the distribution value of the marital residence stands firm, with no such deductions.

Florida courts have shaped this standard. They say, for the judge to deduct these fees and closing costs from the value of the marital residence, there must be proof of an "imminent sale" - one about to happen - and reliable cost estimates.

For example, in *Goodwin v. Goodwin,* 640 So. 2d 173 (Fla. 1st DCA 1994), the First District Court of Appeal held:

> "The estimated cost of selling may be deducted from the value of the property where there is evidence as to the estimated sale costs."

The court cited a foreclosure case, *Savers Federal Savings and Loan Ass'n v. Sandcastle Beach Joint Venture,* 498 So. 2d 519 (Fla. 1st DCA 1986), and a divorce case, *Taber v. Taber,* 626 So. 2d 1089 (Fla. 1st DCA 1993).

Savers Federal Savings and Loan Ass'n v. Sandcastle Beach Joint Venture: Failure to Consider Sales Costs

In the foreclosure case, *Savers Federal Savings and Loan Ass'n*, the First DCA received a real estate appraiser's expert opinion about the fair market value of condo project. The S&L foreclosed on the project, then sought a deficiency judgment for the difference between the foreclosure sale price and the FMV of the project.

The trial judge denied the lender's deficiency claim based on a finding the value of the property on the date of the foreclosure sale exceeded the debt owed. But the judge accepted an overstated value for the property, by not considering sales costs.

The appraiser used two different appraisal methodologies – the cost approach and the market analysis approach. Both approaches assumed imminent sale of the units.

Under the cost approach, he arrived at a replacement cost for the condo units as new, less depreciation, and adjusted that for profit, overhead, and the owner's paying selling costs to individual purchasers over 18 months.

Under the market approach, the expert compared the subject townhouses to sales of similar units. He arrived at a gross price, then presumed the seller would sell each unit individually over 18 months based on then-current sales rates.

Under both approaches, the expert testified items that hadn't yet occurred, including sales expenses, should come off the value. The judge acknowledged the condo project would be sold – an implicit imminent sale – yet failed to deduct associated sales costs. That was wrong.

Taber v. Taber – No Imminent Sale

In contrast, in *Taber*, the divorce case First DCA cited in *Goodwin*, the court considered if the trial court abused its discretion by awarding the former husband an unequal distribution of marital assets.

There, a real estate agent testified about the fair market value of the marital home. Then the judge deducted closing costs at .083 percent to which a real estate sales expert testified. Yet there was no evidence of an imminent sale of the home. The Taber court reasoned:

> In determining the value of real estate, it is entirely appropriate to deduct the estimated cost of selling the property where the value of the property is based on the prospective sale of the property, and the witness as to value indicates such a deduction is appropriate. *Savers Fed. Savings and Loan Ass'n v. Sandcastle Beach Joint Dev.*, 498 So. 2d 519 (Fla. 1st DCA 1986). Absent such evidence, however, a further deduction of value for selling costs is inappropriate. *Shaw v. Charter Bank*, 576 So. 2d 907 (Fla. 1st DCA 1991). In the instant case, there appears to be no evidence that sale of the property was imminent or that the value was based solely on the ability to sell the property. It is, therefore, unclear from the record on what basis the judge allowed a deduction for closing costs.

Reed v. Reed – 2025 – No Imminent Sale - Deducting Closing Costs Disallowed

Following *Taber,* the court in *Reed v. Reed,* Case No. 4D2023-2584 (Fla. 4th DCA Feb. 19, 2025) likewise tossed out an 8% closing cost deduction. No sale was planned, unless the former wife's payment default triggered a sale.

Speculative Evidence Won't Cut It

Under the imminent sale doctrine, guessing at realtor fees and closing costs when no sale is imminent is like planning a grocery budget without a shopping list. It's so much guessing and wandering up and down the aisles. Courts don't allow that without competent substantial evidence to support deducting these fees and costs.

Instead, judges follow a clear line: no deduction without solid evidence of an imminent sale or court order, as seen in Reed and Goodwin. In Reed, the wife wanted to keep the home and property on which she ran a bed and breakfast for years, so no sale was imminent. The court disallowed an 8% cost cut, unless she missed a deadline for paying an equalizing payment.

Daubert – Expert Opinions Must Be Based on Data Not Hunches

Solid evidence to support claimed deductions isn't just a suggestion—it's key. Regarding expert opinion, *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), raises the bar. This US Supreme Court case, the evidentiary standard from which Florida adopted, demands expert testimony be based on tested, reliable methods, not on guesses. See Section 90.702, Florida Statutes; *In re Amendments to the Florida Evidence Code*, 278 So. 3d 551 (Fla. 2019); *Holland v. Holland*, 360 So. 3d 1176 (Fla. 5th DCA 2023).

Florida Statutes Codifies Daubert

Section 90.702, Florida Statute, adopting the *Daubert* standard, provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:
>
> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and

> (3) The witness has applied the principles and methods reliably to the facts of the case.

Daubert is flexible, but courts must still perform their gatekeeping function. [*Walsh, Attorney Ad Litem v. Department of Children and Families*, 393 So. 3d 718 (Fla. 4th DCA 2024)]; [*Andrews v. State*, 181 So. 3d 526 (Fla. 5th DCA 2015)].

The *Daubert* standard demands estimates be solid and reliable, demanding data like recent market fees, not hunches. Thus experts must show hard data, like recent sales fees, on which they ground their opinions, not hunches.

Tax Consequences: Courts May Consider Evidence, Even With No Imminent Sale

Taxes, like depreciation recapture, are different from realtor fees and closing costs associated with an imminent sale. The trial court may consider evidence of tax consequences even without an imminent sale. *Bathke v. Costley*, 332 So. 3d 1076 (Fla. 5th DCA 2021), *affirmed* 368 So. 3d 540 (Fla. 6th DCA June 30, 2023). So the imminent sale doctrine doesn't preclude a judge from considering tax consequences.

Indeed, "[a] trial court is required to consider the consequences of income tax laws on the distribution of marital assets and alimony ordered by it, and failure to do so is ordinarily reversible error." *Nicewonder v. Nicewonder*, 602 So. 2d 1354 (Fla. 1st DCA 1992).

Judge Zehmer on considering tax consequences

In *Nicewonder*, Judge Zehmer, concurring, wrote:

> It is obvious that some of these properties, having provided income tax deductions taken during the marriage as a means of deferring the tax due on marital income to a date in the future when the properties are sold, will give rise to substantial income tax liabilities immediately upon their disposition pursuant to the recapture provisions of the Internal Revenue Code. It cannot be said, therefore, that the valuation of these investment properties without considering such tax consequences is fairly reflective of their correct fair market value to the parties to this marriage. In determining the value of the properties being equitably distributed, the trial court's use of a perceived fair market value without considering potential income tax consequences and including the effect of such contingent income tax

> liabilities generated during the marriage simply ignores the value of both assets *and liabilities* created during the marriage, a determination obviously necessary to equitably allocate *both* between the parties.
>
> *Nicewonder v. Nicewonder*, 602 So. 2d 1354 (Fla. 1st DCA 1992) (Zehmer, J., concurring)

Fisher and Bendeck on the Imminent Sale Doctrine: Taxes

Unlike speculative closing costs and realtor fees when no sale is imminent, taxes (like recapture) are built into the property's story. Fisher, J. and Bendeck, O., *Beyond the Imminent Sale Doctrine: Valuing Assets with Imbedded Tax Consequences*, 84 Florida Bar Journal No. 6, June 2010. The authors conclude:

> Concurrent with this development in the federal courts, Florida state law has evolved over time and now adheres to the principle that all tax consequences, including contingent tax liabilities, must be taken into consideration to achieve a fair and equitable distribution of assets. Both federal and state courts have recognized that this approach is necessary to properly value assets, whether for purposes of equitable distribution in dissolution proceedings or otherwise, and is required even if a sale or liquidation is not imminent.

Fisher and Bendeck point out taxes, which sooner or later must be paid, are a virtual certainty. *Eisenberg v. Commissioner*, 155 F. 3d 50 (2d Cir. 1998) (approved applying tax impact of shares of a closely held corporation gifted, when no imminent sale, liquidation, or distribution was pending, because it was a virtual certainty capital gains taxes would ultimately have to be paid). In *Estate of Dunn v. Commissioner*, 301 F. 3d 339 (5th Cir. 2002), built in gains tax liability of business assets had to be considered as a dollar for dollar reduction, even if there was no planned or imminent liquidation of the corporate assets. See also *Jelke v. Commissioner*, 507 F. 3d 1317 (11th Cir. 2007) (discounting stock held in an investment holding company, even though no sale was planned or imminent).

Realtor Commissions Change

Tax consequences are not guesses, unlike realtor fees, which shift with market rules —making them unreliable without a deal. See, for example, the 2024 commission changes, discussed in Ostrowski, J., *What the real estate commission changes mean for homebuyers and sellers*, Bankrate, February 12, 2025, available at https://www.bankrate.com/real-estate/real-estate-commission-changes.

Example 1: The Young Parents’ Rush - No Imminent Sale

Jake and Mia, 32, with two kids, want their $400,000 home split fast. They are divorcing. Jake says cut $32,000 for fees and costs, claiming a future sale. There's no listing. The judge, following *Goodwin* and *Reed*, keeps it at $400,000, split evenly. Speculating and arguing about cutting value with evidence of an imminent sale wastes time and runs counter to the couple's shared goal of moving on quickly. Proof keeps things moving—locking in positions based on guesses stalls the process.

Collaborative Divorce, Imminent Sale, and Daubert: Your Plan, Your Rules

Collaborative divorce changes who controls the rules determining your future. Instead of a judge’s power to determine your fate, you and your spouse write your story. Collaborative divorce is private, flexible, and creative. The collaborative process lets you handle fees, costs, and taxes your way.

Example 2: The Middle-Aged Couple Selling in Two Years

Lauren and David, 48, own a $600,000 home. Their privacy is a priority. They’re not selling now but plan to sell in two years. After exploring options in the collaborative process, they agree to deduct $48,000 (8%) and $15,000 for taxes, splitting the $537,000—Lauren gets 60% ($322,200), David 40% ($214,800). They control the terms quietly, with no public court battles.

Real-Life Stakes

Divorce hits close to home—your home. Here’s how the issues of imminent sale of your home could unfold.

In *Reed*, Cheryl and Thomas’s $3.325 million property faced a 90-day pay-or-sell deadline. Cheryl wanted to stay; Thomas pushed for an 8% cut for closing costs. With no sale imminent, the judge had to use the $3.325 million value, less future taxes if the judge were to consider deducting them appropriate. But, if Cheryl were to miss a 90-day deadline to pay an equalizing payment, closing costs could be deducted from the sale price before the equitable division of proceeds.

Competent Evidence of Imminent Sale: Out-of-State Cases

Washington and Minnesota: Berg and Aaron

Out-of-state cases echo this result: Washington's *In re Marriage of Berg*, 47 Wash. App. 754, 737 P. 2d 680 (1987) rejected sale cost deductions without evidence of an imminent sale and estimated costs. The court followed its decision in *In re Marriage of Martin,* 32 Wn. App. 92, 645 P. 2d 1148 (1982), and Minnesota's *Aaron v. Aaron,* 281 N.W.2d 150 (Minn. 1979), which refused commissions and closing costs absent a sale plan.

The *Berg* court held, to justify deducting costs of selling the marital residence, there had to be record evidence of both (1) the receiving spouse's intent to sell imminently, and (2) the estimated costs of such sale. Including speculative costs in valuing the property would be an abuse of discretion. *Dowden v. Allman,* 696 N.E.2d 456 (Ind. Ct. App. 1998).

Kentucky and Arizona: Farrar and Kohler

Kentucky's *Farrar v. Farrar*, Case Nos. 2013-CA-000180-MR, 2013-CA-000253-MR (Ky. Ct. App. Dec. 12, 2014), in a case of first impression, reversed the trial court's deduction of closing costs and realtor fees when no sale was imminent, adopting a similar evidence-based standard. The court drew guidance from *Kohler v. Kohler,* 211 Ariz. 106, 118 P. 3d 621 (Ariz. Ct. App. 2005) ("In the absence of evidence that a sale is likely to occur in the near future, it is speculative to allow a deduction of the costs of a hypothetical sale from the share of the equity awarded to the spouse not receiving the property.")

Other States and Closing Costs

Other state courts have similar standards. *See Farrar*, *supra* at n. 5 (citing, among other states, **Alaska** (*Virgin v. Virgin,* 990 P. 2d 1040 (Alaska 1999)); **California** (*In re Marriage of Stratton,* 46 Cal.App.3d 173 (Cal.Ct.App.1975)); **Colorado** (*In re Marriage of Finer,* 920 P. 2d 325 (Colo.App.1996)); **Illinois** (*In re Marriage of Benkendorf,* 624 N.E.2d 1241 (Ill. App. 1993)); **Maryland** (*Coviello v. Coviello,* 91 Md.App. 638, *5 (Md.Ct.Spec.App.1992)); **Missouri** (*M.A.Z. v. F.J.Z.* 943 S.W.2d 781 (Mo.Ct.App.1997)); **Nebraska** (*Matter of Adoption of G-,* 618 S.W.2d 462 (Neb. Ct.App. 2000)); **North Carolina** (*Carlson v. Carlson,* 127 N.C.App. 87, 487 S.E.2d 784 (1997)); **Oregon** (*In re Marriage of Kopplin,* 74 Or.App. 368, 703 P. 2d 251 (1985)); and **South Carolina** (*Pruitt v. Pruitt,* 389 S.C. 250 (S.C.Ct.App.2010)).

Discretion to Award or Deny a Deduction for the Costs of Sale

A Washington trial court did not abuse its discretion to order the husband to sell the marital residence without reducing its value by the costs associated with the sale, which was not sufficiently definite or imminent, because it was uncertain when the home would be placed on the market and at what price. *In re Marriage of Funke*, Case No. 27906-5-III (Wash. Ct. App. July 29, 2010).

Example 3: The Retired Couple

Edna and Frank, 67 and 70, own a $300,000 marital home. She wants it, but she seeks a $24,000 haircut for closing costs and realtor fees. If a judge were to agree with Edna, her buyout of Frank's 50 percent interest would be $138,000, rather than $150,000.

But, because no sale is planned, the judge, following *Reed*, would likely hold the value at $300,000, splitting the value 50/50 in equitable distribution. The judge could consider tax consequences (under *Bathke*). With reasonable expectations of such a result in court, the couple could avoid squandering time they'd prefer spending on more enjoyable, post-divorce activities.

And, in the collaborative process they could agree on an acceptable financial settlement package that requires no "all or nothing" inclusion or exclusion of closing costs, realtor fees, and tax consequences.

Your Divorce, Your Power - Collaborative Options

Courts look to *Goodwin*, *Reed*, and *Daubert*—no fees or costs without an imminent sale and reliable evidence. Even with no imminent sale, taxes can be considered, per *Bathke*.

Instead of looking to a judge, however, the collaborative process lets you steer. To make things smoother, gather sales proof, tax records, or cost data.

Speed up with collaboration—skip court delays. Safeguard your assets and privacy—make *your* deal. Talk to a collaborative attorney.

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