

## Feature

# The Adjustable-Rate Marriage

Skip the wedding and head to a Realtor's office. In the East Bay, mortgage is the new matrimony.

By *Justin Berton*

Article Published Feb 22, 2006



Rob's parents weren't big on mortgage before marriage, but Alexis' folks took the pragmatic view.

The original plan of Alexis Tjian and Rob Madison was to start thinking about marriage after she finished college. Both were in their late twenties, deeply committed, and sharing an Emeryville loft with their two dogs. Most of their coupled friends had already hitched up, and after nearly two years of dating they figured they'd take the plunge, too.

So they took it -- into a Realtor's office.

Like a lot of young couples in the real-estate-obsessed Bay Area, Alexis and Rob's biological clock was chiming "Buy a House" much louder than it was tolling "Get Married." In a soaring real-estate market, the wedding could wait.

"The bottom line is, around here, I felt more pressure to buy a house and find a place to live than to find a wife," says Rob, a 29-year-old bartender and budding contractor. "I figured if I didn't buy now, by the time I was 35 a regular house would cost us, what, \$2 million?"

All they needed was the down payment. It wasn't easy to come by. Like 75 percent of first-time buyers in California, the couple needed help with the initial cash. Naturally, they thought of their Baby Boomer parents. Rob, a third-generation East Bay resident who was troubled by the thought of being priced out of his own hometown, pitched the idea to his mom and dad.

But Rob's parents had raised him Catholic and sent him to parochial schools. They were wary of this break in cultural tradition. Homes come after weddings, not before. Rob's mother even offered to take him to a jeweler to find an engagement ring. The folks never did come around. Neither did Alexis and Rob.

So the couple turned to Alexis' family. "I laid out a business proposal for my parents, and said, 'We're not ready to get married yet, but we want to buy a house,'" recalls Alexis, currently a student and freelance photographer.

Her parents considered this new type of arrangement. "We thought of it from a practical standpoint," says Claudia, Alexis' mom. "It was a way for us to help the kids -- and a way for us to diversify."

Eight months later, with her parents' help and blessing, Alexis and Rob purchased their El Cerrito home.

At a time when Bay Area real estate has been regarded as a golden investment, and couples are delaying marriage longer than ever before, more and more unmarried couples are heading to a Realtor's office. Consider this: Unmarried couples buying homes were so uncommon in 1990 that they accounted for less than 1 percent of all homeowners, according to the National Association of Realtors. In 2004, they made up a robust 10 percent of the market -- and in California, 12 percent, both all-time highs. In fact, the state's percentage of unmarried homebuyers is more than twice as large as its share of cohabiting unmarried couples in general -- 5.9 percent.

Apparently, nothing quite replaces "I do" like a thirty-year-fixed. "I'd say that buying a house is putting a ring on the finger," Rob opines.

While the decision to buy property was Alexis and Rob's first step into an official, paper-trailed union, the actual househunting process -- and the setbacks that came with getting outbid -- served as the stand-in for an engagement. After all, what is the smartest time to get to a peek at your partner's credit score -- before or after the honeymoon? And when's a better time to learn if granite countertops are a dealbreaker?

"It was stressful, but it was good for us," Alexis says. "Now we know we can get through anything together. We know we see eye-to-eye on the important things."

The risk of replacing nuptials with home ownership is the legal havoc that ensues if the couple splits. In the eyes of the courts, a marriage license is still the distinction between an economic union and a pair of individuals.

During the past two decades, changes in divorce laws have made things fairer for married people who want out; in general, they take what they brought in, and divide the rest. But unmarried relationships often involve creative financial arrangements that are more reflective of the times. In the case of Alexis and Rob, her parents loaned her the down payment, but he will do most of the renovation work, even though he's not on the title. The couple views this resourcefulness and teamwork as part of their bond -- each partner brings something to the table.

But how would a court of law recognize the agreement if they broke up? Not well. For the 5.5 million unmarried couples who cohabit in the United States, tax codes and estate laws have largely overlooked their status, even as they steadily increase their share of the home ownership market. In the absence of a marriage license, courts seldom recognize the joint economic interests that unite many unmarried homeowners.

"Being unmarried has become an alternative to marriage," says Frederick Hertz, an Oakland attorney who specializes in legal agreements between such couples. "But if you don't like what that deed says right now, you better have an agreement."

### The Facts of Life

Time has been unkind to the institution of marriage. By 2003 the median age of first marriage had risen to 27 for men and 25 for women -- both all-time highs, according to the US Census Bureau. And first marriages are shorter than ever, a mere eight years on average. Meanwhile, the number of unmarried cohabitants has increased by 1,200 percent since 1960, according to a report from the National Marriage Project, a nonpartisan, nonsectarian pro-marriage think tank at Rutgers University. In this state, three of the four counties showing the greatest percentage increase -- San Francisco, Sacramento, and Alameda -- are in Northern California.

Research suggests that such unmarried relationships promote an equality between partners not common in the wedding-first generation. In their 2002 book *Continuity and Change in the American Family*, sociologists Lynn M. Casper and Suzanne M. Bianchi found that unmarried partners tend to share responsibilities more equally than married couples. Women in unmarried relationships are better educated and earn more than their married counterparts. They're also more likely to be designated as the "householder" -- the person who pays the rent or the mortgage. In fact, the Census Bureau has found that the woman is considered the breadwinner in 42 percent of unmarried households.

The rise of female breadwinners and the corresponding growth of women homeowners has helped to mask the surge in unmarried homeowning. Observers have long noted that single women comprise the second largest block of homeowners after married couples -- one in every five houses purchased last year was by a single woman. But what this data doesn't reveal is that many of these "female homeowners" are actually just the more creditworthy member of an unmarried couple.

Corey Weinstein and her partner, Chris Davis, bought their first home four years ago, when she was 29. Corey and Chris were the sort of artsy Oakland couple who once might not have considered buying a home; she worked at a small nonprofit and played in a band, while Chris lived in a West Oakland warehouse, worked as a carpenter, and had a band of his own.

Yet after a few years of dating, when they reached the critical point in their relationship, the talk passed over wedding invitations and headed straight to hardwood floors. Neither necessarily opposed marriage; the wedding discussion just took a backseat to home ownership, Corey says.

"It was just never a goal of mine to get married," she says now. "But buying a house felt like it would be a sign of where our commitment was. ... People certainly treated it like that."

Chris agrees. "It felt like it was time to do something," he says. "And if the bond was already there, it was okay to buy a house. A wedding seemed like ... something you'd do for your family and friends. A house was for us."

Corey was the organized one in their relationship. "If I wasn't pushing," she says, "I'm not sure he would have ever done it." Meanwhile, Chris' credit rating was too low to help the couple secure a loan. To qualify, they relied solely on Corey's credit rating. If they had been married, a loan officer would have averaged their scores, which actually would have made it harder and more costly for them to buy a home.

Still, Corey had to borrow from her grandparents for the down payment. "The elder generation was not so understanding," as she diplomatically put it. "Ultimately, there was no real drama, but *a lot* of conversations took place."

Once Corey got the loan, the couple began their search with a simple agreement: Chris would put his carpentry skills to use and they'd share the mortgage.

The ensuing house hunt kicked up the feelings normally associated with a wedding. "There's nothing like going out and seeing a house and envisioning your life with this person," Corey says. "It's a very emotional experience." Each home visit seemed to cement that vision. After a few missed bids, Corey and Chris finally found a place in Oakland's Adams Point neighborhood.

How did the commitment compare to getting married?

"Maybe bigger," Chris says. "You can always get a divorce. But a house? That's difficult to split."

### Ah, the Honeymoon

Clark Wallace, 72, who studied real estate at UC Berkeley and graduated in 1958, remembers a time when common folk could afford local houses. "Back then, women didn't buy a house, much less sell them," he says. "The men did all the bidding, and we did all the selling."

Wallace, a former president of the National Association of Realtors, continues to dabble in real estate, but he's mostly retired now. As he's watched local properties turn into miniature mints, he's also noticed how laypeople have become more savvy. Just fifteen years ago, many people viewed real-estate investments as a risk, he says. Now they are viewed as a can't-miss commodity by everyone, and the weekend real-estate section has become a must-read part of the paper.

"The awareness that a home is a great investment is at an all-time high," Wallace says. "Everyone knows it's a plum investment."

The blemish on the plum is the lack of affordability -- particularly in California. Only 18 percent of adult residents, a national low, can afford to buy a home here, according to the California Association of Realtors. This exclusivity has helped fuel the trend of unmarried mortgages, according to Walter Molony, a spokesman for the National Association of Realtors.

"Couples are getting more creative on how to get into the tight markets," Molony says. "If they have to turn to a brother or a sister to go in with, they will. ... If they have to do it before they get married, they'll go for it."

Wallace concurs. "They see their friends building equity in homes and sure, they want to catch that train for themselves," he says. "They may not be able to wait to get married. They've got to do it now."

In California, a recent survey of first-time homeowners reflects this change in attitude. In 2000, early in the boom, only 9 percent listed "investment" as the primary reason for purchasing a home. In 2004, it was up to 16 percent. Still, topping out the survey at 17 percent was the ubiquitous motivation: "tired of renting." Although rents in the Bay Area have not kept pace with home prices, they are still steep enough to make renters plenty anxious about spending vast sums of money without building any equity in return.

For Jen Fawcett and Philip Tiffin of Oakland, moving in together made financial sense. Jen lived with roommates in a Berkeley rental near San Pablo Park, while Phil shared a warehouse in Oakland. One day Jen passed an adorable cottage on her street and noticed it was up for sale. It was tiny, but affordable. The couple headed to a loan officer: Both were self-employed artists, yet both had good credit. They got approved.

But the market was ultracompetitive, and their bid was declined. "After that, we got the bug," Jen says. "The idea of buying a home had put us in a new reality."

It also changed the nature of their relationship. Jen had never lived with a boyfriend before, but the excitement of owning a home together produced a new sense of commitment.

A few months later, the couple bought a place on West and 42nd streets in Oakland. "Looking back, I definitely thought I'd get married before I bought a house," Jen says. "But that's the way it worked out."

If the urge to own was a whirlwind engagement, settling into the routines of homeownership served as their post-honeymoon reality check. Even though Jen and Phil had dated for two years before pooling their finances, a new awareness settled in.

"After a month, the reality of the responsibility of owning a home sunk in," Jen says. "And you just think: You're really joined to this person's financial reality for better or worse."

### Breaking Up Is Hard to Do

When "worse" arrives, Frederick Hertz sees it happen. Hertz, an attorney who co-wrote *Living Together: A Guide for Unmarried Couples*, drew up his first contract for an unmarried couple in 1985. Now they account for 70 to 80 percent of his clients. Hertz also specializes in same-sex agreements, and says his work with both types of unmarried couples has "increased dramatically" in the last five years.

"We see a certain kind of couple walk through our door," Hertz says of his clients. "They are planning for the future wisely."

But Hertz also knows the war stories of the unwise. A woman borrows a \$100,000 down payment from her parents and the couple breaks up before they even move in -- and the man still gets half after the sale. An off-title partner dies and, despite paying into the home for decades, his family gets nothing. A couple breaks up and the partner who put down the original down payment is forced to sell and move out.

In one recent dispute, the clients even ended up in criminal court. A young couple bought an East Bay home after a few years together. One partner borrowed the down payment from a parent and made all the mortgage payments, with a promise that the other partner would do renovations. After enjoying a massive increase in their property value following fifteen years of couplehood, the couple split. The partner responsible for renovations hadn't upheld his end of the deal, yet he still wanted half. Both partners refused to move out of the house -- even during a six-day trial. An argument at home turned into a fistfight, and now there's a criminal case to accompany their civil dispute -- which still isn't settled.

Hertz says the dispute in 90 percent of his dissolution cases revolves around one partner claiming that he or she was the "excess contributor." Either she came up with more money, or he did all the repairs, and one of them "owns" more than the other. If both names are on the title, it can cause all sorts of bad blood in the end.

"With unmarried couples, some inequality at first is typical," Hertz says. "If we were in a more affordable market, you might see people coming in fifty-fifty. But here, things work differently."

In Alexis and Rob's case, Alexis' parents agreed to lend her the down payment if she kept the title solely in her name -- at least until the couple got married. If things go bad, the contingency plan for Alexis is to keep the house and rent out the rooms to cover the mortgage.

"No matter what," Alexis says of her parents' choice, "my parents felt owning property was a good investment."

Alexis and Rob chose to eschew any formal paperwork. "I suppose if I looked at it strictly as a business proposition I would have," Rob says. "But we didn't see it that way."

Perhaps the healthiest aspect of the unmarried couple's journey into buying a home is that they're forced, unlike dreamy-eyed newlyweds, to consider the option of their relationship's demise.

"Unmarried couples who buy a home are not the ones I'm worried about," says Dorian Solot, cofounder of the Alternatives to Marriage Project, a nonprofit that promotes equality for unmarried people, and author of *Unmarried to Each Other*. "If they're going through this incredibly difficult decision, mixing legal and finances, then they've thought it through. They're confident in their relationship and they're mature enough to stick together." Solot worries far more about couples who get married impulsively, without similar premeditation.

After a decade together, Corey and Chris have interwoven their finances, but still lack formal paperwork. If they ever broke up, it could cause a tangle of litigation -- what divorce doesn't?

Then again, if they ever were to marry, Corey's credit rating would be dragged down by Chris' score. Borrowing for her business might become more difficult. "I don't know what I'd do if we broke up," she says with a laugh. "If I married this person, I think about what it would do to my credit rating. Could I ever buy a house again?"

**How About Kids?**

If couples continue to get married later and later, and buying a home as soon as possible continues to feel urgent for young couples, will the Bay Area eventually be overrun by terminally unwed couples -- just as the National Marriage Project fears?

"Buying a home is something to be celebrated," says author Solot. "If we want stable, economically sound households, then homebuying is something that promotes this trend. A thirty-year mortgage payment is not something couples take lightly. ... It's a much more serious commitment than taking a trip down to City Hall on a whim." Still, 70 percent of all Americans will marry at least once in their lifetimes, according to the Census Bureau.

"I'm thinking we're going to want to get married in two or three years," Alexis says. "I can't see us not getting married." She pauses and laughs. "But I don't want to have to ask my parents for another expensive gift."

For Jen and Phil, marriage kept getting pushed aside after their home purchase. But not winning the bid for that tiny cottage turned out to be a blessing. When they had their first child, they realized that the house would have been too small for a family.

"I used to have this horrible guilt every time we talked to our parents," Jen says. "Here we were, not married, owning a home -- and now we're pregnant!" Still, the wedding notion lingers. "It's still in the background," she says. "It's just not high on the list."

For Corey and Chris, the real-estate purchase was just the first step on the road to building a family. "The first year was definitely the honeymoon period," Corey says. "It's all warm and fuzzy living together as a couple, and then ... we remodeled our kitchen." The remodel pressed the couple to their wits' end, as it does for many. But after they'd survived it, they found their property value on the high side of the boom. The equity had skyrocketed, and they now had a nest egg.

So they took the plunge again. They borrowed against the first house and bought a neglected Victorian across the street from Chris' workshop. For two years the couple renovated the aging property. In the meantime, Corey got her real-estate license. Now they rent out the Victorian and have had their first child, which prompts Corey to wisecrack: "With two houses and a kid, I'm really not giving him a reason to marry me now."

*And yes, Justin Berton and his girlfriend recently purchased a home in Oakland's Laurel neighborhood.*

## Fixer-Upper

Ten questions to ask before you buy.

*By Justin Berton*

*Article Published Feb 22, 2006*

According to Frederick Hertz, coauthor of *Living Together: A Legal Guide for Unmarried Couples*, any unwed couple considering buying a home together should sign a written agreement covering their co-ownership. Key issues to consider are:

1. How much is each partner contributing to the purchase, and if one is contributing more than the other, is that excess a gift or a loan?
2. How are the ongoing costs to be allocated, and how is any excess contribution to be treated?

3. How are decisions to be made about renovation or repair?
4. Have both parties agreed on how to use the house?
5. What will occur if either partner wants to sell the property?
6. In the event of a breakup, who gets first right of purchase if both partners want to keep the house?
7. How will proceeds of any sale be distributed?
8. What happens to each partner's equity if one dies unexpectedly?
9. How is the couple taking title to the property?
10. If the couple subsequently gets married, will this change the ownership arrangement?