

The Carol A. Wilson Newsletter

Board Certified Family Law, Texas Board of Legal Specialization

Of Counsel to Siebman, Reynolds, Burg & Phillips, L.L.P.,
Sherman & Plano, Texas
3131 Turtle Creek, Blvd., Suite 918, Dallas, Texas 75219
Phone: 214-303-0142; Fax: 214-599-2149
carol@cawilsonlaw.com



How to Keep the Family Property in the Family

January, 2008

Dear Colleagues:

Is it important that the family ranch or lake house or cash used for a down payment on a relative's house stay in the family? In Texas, it is critical to use the correct terms when transferring property and to keep all the records associated with the transaction to ensure that the "right" person receives the property.

Separate property is property which falls into one of these categories: owned before marriage; inherited; or received as a gift. All other property obtained during the marriage is community property, i.e. owned by both spouses together. It is important to remember that community property does **not** have to be in both spouses' names to be community property. The "Inception of Title Rule" in Texas means that property continues to be separate or community, depending on the way it was acquired, as long as no other legal proceeding changes the title and proof exists that it is separate property.

For instance, in order to retain that family ranch house in the family, the deed, will or other estate planning document transferring ownership should name **ONLY** the designated relative (i.e. not the spouse). Done properly, the house becomes the separate property of the gift recipient only. **No** Divorce Court can take separate property away from the owner, as long as the owner can prove it is separate property and no other legal transaction has changed the title. If instead the legal document named both the designated recipient and the spouse, half of the property would belong to each spouse as their separate property.

Or suppose you want to give a relative the money for a down payment on a new house. Follow these steps: 1) make the check payable to that person alone; 2) keep a copy of the check ; 3) keep a copy of the closing statement and bank records in a safe place and 4) tell the recipient to do likewise. Without these records the gift of money could be considered community property simply because no evidence exists to prove it was separate property. Keep these records even *after* the house is sold and replaced with another one. The original ownership interest created by the separate property down payment "rolls" when the proceeds from the sale of the first house are used to purchase the next one. By following these steps the separate property gift is preserved, even if the deed to the house names both the husband and wife.

Texas community laws and separate property laws are unique and detailed. There are many other situations that could affect the distribution of property. The examples given above are simply two of the most common. Hopefully divorce and property disputes are never a part of your life. Unfortunately, they are reality for many of us. It is always better to plan for the worst and live for the best.

If you, your client, friend or family member has a family law issue please call us. We strive for excellence in all things, and custom tailor every case to meet your needs, the facts and the law.