

Maintaining Separate Property



From the Law Office of

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Taking care of good people during difficult times

If you, your client, friend or family member has a family law issue, please call us.

Recently married? Know a family member or friend thinking about getting married? If the answer is yes to either case, take time to understand the importance of keeping assets separate.

Divorce and property disputes are not thoughts newly engaged or newlyweds like to think about, let alone discuss. Nevertheless, the spouse who owns property prior to marriage should know about separate property issues.

What is separate property?

- Property that is owned by *either* the husband or the wife before marriage or
- Property that is acquired during marriage by gift or inheritance.

Separate property continues to be separate property so long as no other legal proceeding changes the title and so long as there is proof it is separate property.

How do you lose your separate property?

One common way that a spouse loses their separate property is when they allow a separate property asset to become titled in both their name and that of their new spouse. For example, a house owned prior to marriage is separate property. If the new couple moves into that house, the house is still the separate property of the original owner. But, if the

couple decides to refinance the house, the original-owner-spouse should be careful **not** to sign a *warranty deed* which includes both the new spouse and the original-owner-spouse. The loan company or the title company where the documents are signed, may put both spouse's names on the *warranty deed and the deed of trust*. Then, in the midst of signing the many documents required in the refinancing, the original owner doesn't notice or is too embarrassed to question the fact that the new warranty deed has both the original owner's name and the new spouse's name on it when it should only have the original-owner's name. It is necessary when refinancing that both spouses sign the *deed of trust*. This protects the loan company if the loan is not repaid. But, it is **not** normally necessary that a new spouse sign a new warranty deed for the separate property of the original-owner-spouse. The effect of both the original owner and the new spouse signing a new *warranty deed* is that the original owner has given one-half of their separate property house to their new spouse as that spouses's separate property.

Conclusion

Texas community and separate property laws are unique and detailed. There are many different situations that affect distribution of property. The example above is simply one of the most common problems. Hopefully divorce and property disputes are not a part of your life. Unfortunately, they are reality for many. If you or someone you know needs assistance with the complex community property laws in Texas, please contact us.

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