



Refinancing A Separate Property Home During Marriage

House refinancing is common in Texas. Usually it is done for a lower interest rate, a home equity loan, or other reason benefiting both spouses. The San Antonio Court of Appeals has given a new argument to this age-old fact pattern. Below is a common scenario and a description of the cases.

Case Scenario Facts: - the House is the separate property of the Husband. During marriage the couple decides to refinance. In the many documents placed before them at the closing, the Husband does not see the new Warranty Deed and Deed of Trust with both Husband and Wife's names on them. He signs both documents.

One set of cases hold that in this scenario the Husband has given one half of his separate property house to Wife as her separate property. TFC 3.005: Raymond v Raymond, 190 S.W.3d 77, 81 (Tex. App.-Houston [1st Dist.] 2005, no pet.); In the Matter of the Marriage of Skarda, 345 S.W.3d 665 (Tex. App. - Amarillo 2011, no writ).

A more recent case holds that unless there is evidence sufficient to support that the separate property owner intended to give one half of his separate property to his spouse, the refinance and new deed does NOT change the character of the separate property to community property. Haynes v Haynes, 2017 WL 2350970 (Tex.App.-San Antonio, 2017).

If you or your client is refinancing a home, remember that it is NOT necessary to sign a new deed for a house refinancing. It is only necessary to sign a Deed of Trust. A new Deed of Trust does not change the character of the separate property house. Rivera v. Hernandez, 441 S.W. 3d 413, (Tex. App. - El Paso) 2014, denied.

However, this is a situation that depends on whether you are the home owner or not. Our homestead laws are what causes the lender to want both spouses to sign the deed of trust so that the lender can foreclose on the house if payment is not made. If

you do not have an ownership interest in the house, you likely would not want to be liable on the debt for the house. It would take a good, fact specific legal reason to be willing to be liable on a debt for a property you do not own.

Many times the original separate property owners assume they continue to own all of their separate property house but in fact they gave one half of their house to their spouse. **The Haynes case gives an opportunity, with the right facts, to actually retain the separate property house as their own separate property.**

Attorney Carol Wilson has skillfully litigated and tried complex divorce, property division, and child custody cases for more than 30 years. Carol provides expertise, focus and compassion in times of family turmoil. She believes in the Golden Rule: treat your clients as you expect to be treated. Carol is a graduate of SMU, JD. 1985, became Board Certified in Family Law by the Texas Board of Legal Specialization, 1992, and established her firm in the Turtle Creek area in 1995. Law Office of Carol A. Wilson, PLLC, principal office in Dallas, Texas.



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