

# Divorce & Real Property (house or land)



## My spouse & I own a house together, do I need a lawyer?

Real estate law is very technical. You are likely to make a costly mistake without the help of a lawyer.

In most cases you will need to hire a **private lawyer** to give you advice, add additional language to your *Final Decree of Divorce* and draft any real estate documents needed for your case.

**The law library lawyers cannot help with real property issues.**

## My spouse & I own a house together, what are our options?

A private lawyer can explain the options available in your particular case and help you decide which option is best for you. Here are some common options to discuss with your lawyer:

- Sell the house and split the proceeds.
- One spouse keeps the house and refinances the mortgage if money is still owed on the property.
- One spouse keeps the house and pays the other spouse for his or her share of the equity in the house.
- One spouse keeps the house and the other spouse has the right to live in the home for a period of time.
- Both spouses keep an undivided 50% interest in the house.

Each option will require that additional language be added to your *Final Decree of Divorce* form. Most options will also require separate real estate documents.

## If my spouse keeps the house, what happens with the mortgage?

Your *Final Decree of Divorce* will usually order your spouse to pay the mortgage. However, the mortgage company is not bound by your *Final Decree of Divorce*.

So, if your name is on the mortgage and your spouse keeps the house but doesn't pay the mortgage, the mortgage company could seek payment from you. A foreclosure on the house would also severely damage your credit.



Even if your spouse pays the mortgage, just having your name on the mortgage may affect your ability to get a loan to buy your own house or car or even get a credit card.

To avoid these problems, you may want your *Final Decree of Divorce* to order your spouse to refinance the mortgage by a certain date and order that the house must be sold if your spouse doesn't refinance.

## What real estate documents do I need?

Here are some common real estate documents and additional language used in a divorce:

- Special Warranty Deed** - This real estate document is signed by the spouse not keeping the house to transfer ownership of the house to the spouse keeping the house.
- Deed of Trust to Secure Assumption of Mortgage** – This real estate document is used if the mortgage will remain in the names of both spouses. It is signed by the spouse keeping the house. If the mortgage isn't paid, it gives the spouse not keeping the house the opportunity to pay the mortgage and take back title to the house.
- Additional language for your *Final Decree of Divorce* that orders the spouse keeping the house to refinance the mortgage by a certain date or sell the house if unable to refinance.
- Additional language for your *Final Decree of Divorce* that (1) orders the spouse keeping the house to pay the other spouse a specific amount of money by a certain date to reimburse the other spouse for his or her share of the equity in the house; (2) orders a lien (called an owelty lien) placed on the house to make sure the money is paid and (3) orders the spouse keeping the house to sign a Real Estate Lien Note.



# More Real Property FAQs

## What is real property?

Real property is land and anything permanently attached to it, such as a house or other buildings. Real property includes mineral interests. Real property does not include mobile homes.

## What is the “legal description” of our property?

The “legal description” is used to officially identify real property. Your *Final Decree of Divorce* **must** include the complete legal description of your property. If it doesn't, your *Final Decree of Divorce* will not be sufficient to pass title to the property.

The legal description is NOT the physical address of your property.

The legal description may describe the property by its lot number, block and subdivision. Or it may describe the property in metes-and-bounds. The legal description may also include a volume and page number, film code number, or county clerk file number.

## Where can I find the legal description?

You can find the legal description on the deed or deed of trust for the property. For a copy of the deed or deed of trust, contact the county clerk in the county where the property is located.

For property in Travis County, go to the Travis County Clerk's Office at 5501 Airport Blvd. or search online at <http://www.tccsearch.org/RealEstate/SearchEntry.aspx>.

**WARNING!** Do NOT use the legal description on your tax bill or the tax appraisal website because it is usually incomplete and may be incorrect.

## How do I find a lawyer?

There are private lawyers you can hire for a reasonable fee just to help with the issues involving your house. You may then handle the rest of your divorce case yourself.

If you need help finding a lawyer, call the **Lawyer Referral Service at 512-472-8303**. Ask for a lawyer willing to provide “limited scope representation.”

## When is real property community property?

Real property purchased *during* the marriage is usually considered to be **community property** owned by both spouses. This is true even if only one spouse is on the deed.

## When is real property separate property?

Real property purchased by one spouse *before* the marriage or inherited or received as a gift during the marriage is usually considered to be that spouse's **separate property**. However, the other spouse may be entitled to a percentage of the equity based on the length of the marriage and other factors. Talk to a lawyer if this is an issue.

## How do I calculate the equity in our property?

To calculate the equity in your property:

- 1) Determine the fair market value of the property (you may need to hire an appraiser);
- 2) Subtract what is owed on the property (mortgage, liens, taxes, etc.); and
- 3) Subtract what it would cost to sell the property.

## Where do I file my real estate documents?

Real estate documents, including deeds and deeds of trust, must be filed at the county clerk's office where the property is located.

The Travis County Clerk's Office is located at 5501 Airport Blvd., Austin, Texas.