

THE FOWLER LAW FIRM PC



Photograph by Holly Reed Photography

HOW TO AVOID A TRAIN WRECK WITH YOUR REAL ESTATE TRANSACTIONS

By John Lione, Laura Fowler, and Will Cabler

For a full, printer-friendly version of this Electronic Alert, or if you cannot view it, please [click here](#).

For a mobile-friendly or website version of this Electronic Alert, please [click here](#).

Dear Readers: We are very pleased to announce that over the next three months our most experienced real estate attorneys will present in various settings in Central Texas –Austin invaluable information and strategies that will help any licensed real estate professional, their clients and real estate investors to plan so their closings will not blow up. Nothing about the Central Texas –Austin real estate market is slowing down. Most believe it is speeding up! Contact us for details about our upcoming training. See: www.thefowlerlawfirm.com

THE FOWLER LAW FIRM, P.C.

Multiple-Choice Quiz

If each time you find yourself considering purchasing or buying or assisting others to purchase or buy real estate, whether commercial or residential or for the use of a governmental unit, you ask yourself and your client the following questions and get the best answer you can before listing a property or making an offer to purchase, you will avoid most of the painful mistakes that slow down or destroy many real estate transactions. This time we don't give the answer because the question is the answer. For all property, assume the location is Texas. For example:

1. Is this:

a) Community Property:

Do you and your spouse appear on the deeds or other title documents and was the property acquired with community property funds or credit while married and paid for with community funds.

b) Separate Property:

Did you acquire the property as:

i) a gift;

ii) inheritance- *will or intestate succession*;

iii) as a property you purchased before you married.

c) Separate Property converted inadvertently to Community Property:

Property that started out as your separate property either because you were single or received as a gift, or inheritance, *described in 1 (b) above*, but was converted into community property because you married and spent the money you or your spouse earned during your marriage to maintain, improve, insure, or pay taxes on the property;

d) Property governed by a Partition Agreement*

****that someone that actually knows something about drafting a legally enforceable document in Texas prepared.***

e) Property involved in a divorce action in a county in Texas which issues orders halting all transfers or changes in interest in the property without approval of the court.

THE FOWLER LAW FIRM, P.C.

2. If the property to be sold was a part of a divorce, what actions did the court in which the divorce was pending take:

- a) ordered sold;
- b) decreed to one spouse;
- c) decreed to spouse with reimbursement;
- d) decreed to spouse with Owelty Lien; or
- e) accidentally omitted from the divorce decree because of *do-it- yourselfer* parties with badly drawn documents?

3. Never list for sale or offer to buy until you ask*:

- a) who can buy or sell the property?
 - i) husband
 - ii) wife
 - iii) executor, trustee or guardian or other legal agent
- b) who can sell property?
 - i) husband
 - ii) wife
 - iii) executor, trustee or guardian or other legal agent
- c) was the property acquired before marriage?
- d) was the property acquired after divorce (if yes, *which divorce*)
- e) is the property the subject of a pending divorce?

**If nobody in a position of authority seems to have a clue, take a deep breath and refrain from action until you get a satisfactory answer. This happens to be the Number One reason most routine transactions that should have sailed through closing fail.*

4. Questions to ask the Listing Agent*:

- a) what names appear as record title holders in the deed records and:

THE FOWLER LAW FIRM, P.C.

- i) *are any of them dead;*
- ii) *if any are dead, what is the status with the probate of the property;*
- iii) *are they married to one another;*
- iv) *were they ever married to one another;*
- v) *if a business entity, what actions are required to list for sale by the governing board of the business entity?*

** If you are thinking right about now, this is what I pay the title company so much money to do, that's true but the title company will perform this function much later in the process. Do you have that much time to wait and find out in a booming market like this?*

- b) when was it acquired?
 - i) if before marriage, is it separate? Can funds be tracked?
 - ii) if after marriage and divorce, how handled?
- c) are parties, who are unmarried, cohabitating in a manner that might lend itself to a claim of common law marriage,
- d) is property being sold by an heir or relative and if "Yes", ask "Why".
- e) is the property being listed pursuant to one of those new magic *Transfer on Death Deed*

5. Who can file a lien or other action halting a sale against the property*

- a) construction contractor, subcontractor or supplier who provided work if under written contract;
- b) judgment creditor;
- c) lis pendens by a party with a dispute pending;
- d) a party in an action such as bankruptcy or divorce who believes the orders of the court related to the property have been violated.

** It's true that many of these claims even if filed in the public deed records are not effective due to the intricacies of filing. However, to attempt to sale or transfer in a manner that disregards a filed claim of this type carries serious civil and criminal penalties depending upon the applicable*

THE FOWLER LAW FIRM, P.C.

In your every real estate adventure, we wish you the very best.

The Fowler Law Firm Education Law Section is nationally ranked as a 2016 US News and World Reports Best Law Firm in the United States, as a 2016 Martindale Hubbell AV Rated Preeminent Law Firm and as an American Institute of Family Attorney 2016 10 Best in Client Satisfaction. For more information about our firm and our services please contact us at www.thefowlerlawfirm.com, or at (512) 441-1411.

Receipt of this Electronic Alert or printer-friendly version does not establish or constitute an attorney-client relationship. This information is not intended as a substitute for careful review by legal counsel of your own choosing. As with any legal issue, please consult your attorney with questions.

919 Congress Avenue, Suite 900
Austin, Texas 78701
Tel: (512) 441-1411
Fax: (512) 469-2975

www.thefowlerlawfirm.com
Follow us on Twitter @FowlerLawAustin

312 W. University Ave.
Georgetown, Texas 78626
Tel: (512) 441-1411
Fax: (512) 469-2975