



5 Things Couples Need to Know Before Buying Real Estate

Buying a house can be an exciting, and overwhelming, time. For couples purchasing real estate there are some legal consequences they should be aware of. All too often these consequences are not considered until the relationship has soured and a court case is imminent. Here are 5 things that couples need to know before buying real estate.

1. **Being married changes everything.**

If you are legally married, your spouse has a "marital interest" in your property - regardless of whether the spouse is listed on the deed. The marital interest starts at the time of marriage. Your spouse can make a claim on your property in the case of divorce or your death. If you were to divorce, the court will divide "marital property" "fairly and equitably." If you were to die, your spouse may be able to make a claim against your estate.

2. **Where the money comes from (and what it pays) makes a difference.**

In the case of an unmarried couple, if one party makes the mortgage payment, while the other party takes care of other joint bills, the party paying the mortgage could be better off than the other party if the relationship ends. In the case of a married couple, a down payment that comes from pre-marital funds or a "non-marital" source could mean that one spouse is awarded a greater share of the equity in a divorce. But pre-marital or non-marital funds spent on routine home maintenance, utilities, or other expenses could be lost.

3. **Being on the mortgage and being on the deed are two different things.**

The mortgage is the debt. Being on the mortgage means you are legally obligated to make payments. The deed documents ownership. Being on the deed means you have a legal ownership interest in the property. It can be very easy to give up your ownership interest in property (a *Quit Claim Deed* is one way to accomplish this), but it is much more difficult to get out of the legal obligation to pay the mortgage (usually requires a sale or refinance).

4. **"Tenants in common" and "joint tenants" have different results.**

"Tenants in common" means that each owner has an individual interest that can be sold or transferred without the other owners' consent. Upon death, the interest will pass to the deceased owner's estate. "Joint tenants," also known as "joint tenants with rights of survivorship" means that you own the property together, no owner can transfer an interest in property without the other's consent. Upon one owner's death, his or her share automatically passes to the surviving owner(s).

5. **Owning property with another could put you at risk.**

You could find yourself dealing with a lien against the property if your co-owner has questionable financial circumstances (child support arrears, tax debt, judgments) or if your co-owner receives Medicaid (nursing home) benefits.

It is important to know your options before things get messy.

There are several different ways to protect yourself and your loved ones from unintended consequences and contested court battles if you are proactive. A properly drafted prenuptial agreement, cohabitation agreement, contract regarding property ownership, and/or estate plan can save you from a huge expensive mess down the road.