

THE FOWLER LAW FIRM PC



Photograph by Holly Reed Photography

EVERYTHING YOU EVER WANTED TO KNOW ABOUT FAMILY LAW BUT WERE AFRAID TO ASK

By John Lione, David Oliver, and Elizabeth Beyer

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Dear Readers: You are cordially invited to attend a stimulating presentation on the topic of Family Law and how what you don't know can slow down or speed up your real estate closings. Williamson County Association of Realtors Lunch with Laura Fowler on Tuesday, October 25, 2016 from 11:30AM-1:00PM will provide you with invaluable practical information and a delicious lunch. See: <http://www.wcrealtors.org/Calendar/events/6126/> to reserve a space. Seating is limited.

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Multiple-Choice Quiz

You and everyone else in Central Texas who owns land is rejoicing. You have listed for sale the home in which you grew up, then allowed your husband to move into, then divorced and asked your husband to move out. Along the way, you borrowed money using the home as security and several times remodeled the home.

Everything just seems swell until the Title Company calls and says: "*We are very sorry but there are several problems with the title to your home which are going to have to be corrected before we can issue a title policy and close. Your challenges are:*

1. *you and your former husband appear to be delinquent on a debt that is secured by the home;*
2. *a contractor filed a lien on the home for the construction of a structure that has never been removed, and*
3. *City of Round Rock issued a construction permit and there never was a close out.*

The total to correct all this appears to be about \$100,000.00. What do you do?

1. Review the extradition treaties of neighboring countries; murdering your ex-husband may be justified by not defensible and you will need to live somewhere;
2. Call your ex-husband and yell at him; after all, he is the one who talked you into a pro se divorce proceeding to avoid paying all that money and spending all that time with lawyers;
3. Yell and scream at the title company; after call they need to do something to earn their charges;
4. Take a deep breath, rejoice in the fact that property values all over Central Texas are exploding and be grateful that even if you won't get as much as you hoped for, there probably will be something to satisfy all the debt and some left over. If you and your husband can agree, the rest will probably turn out fine.

The Correct Answer Is..... (4).

While we would not have had such a happy answer for most of our friends as recently as two years ago, the simple fact is, those who are selling their land are finding the bids and proposals often greatly exceed the tax appraisal district value. What you don't want to do is get into a situation where you have a great offer and only then discover that it is going to take some time to resolve the matters in dispute and the angry buyer then sues you for breach of contract.

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Let's discuss a best case solution for each of the above.

1. If there is equity in the home sufficient to exceed the amount claimed by the lender, skilled title companies and their team do a simply amazing job of resolving these difficulties, charging you absolutely nothing beyond the customary closing charges. This makes title companies services in our opinion extraordinary bargains.

Someone – that would be you if the debt is in your name- needs to call the lender quickly and explain you are about to close and discharge the debt so the lender, unaware of this, does not start foreclosure proceedings which drive up the cost to resolve the unpaid debt. Lenders are well aware of how strong our real estate market is and will eagerly hold off on formal foreclosure if they believe a closing is eminent and that there will be funds from the sale sufficient to satisfy the debt. If a title company is involved, this is much more convincing to a lender, simply because a title policy issued which has not resolved the debt creates liability for the title policy issuer.
2. Contractors, subcontractors and suppliers sometimes file liens and forget to remove them. This one probably should be turned over to a lawyer with true depth of knowledge in Texas construction lien law which is a fairly complicated area of law. However, many liens can be removed quickly and inexpensively with a basic amount of investigation and one demand letter.
3. Every city has its own unique building code requirements, in the form of municipal ordinances. These change often. What is true today may change tomorrow. Most city ordinances related to construction carry criminal penalties. A homeowner should not disregard them.

The worst part about this often is not the cost; it is the time. With this booming construction market, many city building inspectors and their staffs are at full capacity. A close out permit or occupancy permit or whatever the unique permit in your city requires, may cost very little to complete or correct. The minute you learn this is a problem, crawl on your hands and knees to the City Building Inspector, beg for mercy and see what you are going to have to do to get into compliance so you can close.
4. Last, but not least, if you haven't killed your ex-spouse, what rights do you have? Well, since you already filed something to get that divorce, you will not have to file a new lawsuit. You most likely would seek relief from the court where your divorce was filed, in effect and suit for money, which is quite different than a suit for divorce. You can luxuriate with lawyers for as long as you like, reliving whatever terrible facts led you to divorce your spouse to begin with, or you can pick up the phone and try to come to some reasonable resolution that recognizes that not all of this should be borne by just one of you.

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In your every residential family law adventure, we wish you the very best!

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