Focus | *Family Law*

The Top 10 Family Law Issues Every Lawyer Needs to Know

BY CAROL WILSON

Family lawyers—just like ER doctors—have seen it all. And if we weren't bound by our client confidentiality, oh, the stories we could tell. But we are bound, so we don't tell. Instead, we just offer our best advice for avoiding the worst of what we have seen.

1. Because separate property is everything you acquired prior to marriage or during marriage as a gift or inheritance, ignore those snowy "December to Remember" car commercials. Don't put a bow on that very nice car when you bring it home to your spouse, and don't put the keys to that very nice car under the Christmas tree in a box addressed to your spouse.

2. Community property is everything you have, except what is separate property. It doesn't matter if the asset is in your name or your spouse's. That property, which is not separate property, is as much yours as your spouse's.

3. Income from separate property is community property. That means dividends, rent income, and interest income from separate property are all community property. Appreciation of assets is not income. If you owned stock at $100 per share when you got married and the value of the stock is now $150 per share, that increase in value is not community income.

4. The Texas Supreme Court holds that there is fiduciary duty between spouses. An easy definition of fiduciary duty is the Golden Rule: Treat your spouse as you would want to be treated. In practical terms that means 1) do not get your spouse to sign a post-marital property agreement that is highly beneficial to you and gives little or nothing to your spouse; 2) do not take business opportunities during your marriage that favor your separate property in a large way and hurt or hinder the community property.

5. Look at the check books, credit card records, and tax returns at least annually for all of the household. You are 100 percent jointly liable on all joint federal income tax returns. You are liable on all joint debts. You ought to know how the household income is being spent.

6. If you and your spouse are each running your own businesses, keep separate checking accounts. Keep your separate property separate and only in your own name. This limits the ability of creditors to get all of the property of you and your spouse (see # 5).

7. Do not sign a personal guarantee for your spouse's business. Let's say your spouse signs an office lease for their business. Because the business is small or new, you and your spouse are each asked to personally guarantee that lease. Don't! If for any reason your spouse's business defaults on the lease, the landlord may get a judgment against the business and your spouse. If you have not signed a personal guarantee, then the creditor can get assets in your spouse's name or in your and your spouse's names jointly. But the creditor cannot get your separate property and cannot get community property solely in your name if you have not signed the personal guarantee.

8. Look carefully at the recommendations of your financial advisor dealing with your separate property accounts. Because dividends on separate property are community property, dividend reinvestments are mixing community and separate property. If you keep the records, you can trace your separate and community property in the future if needed, but you have built in the need for record-keeping and increased your need for a forensic CPA.

9. If you owned separate property before you married or received it during your marriage, keep good records of that property. Banks are only required to keep records for five years; the IRS, seven years; the SEC eight years. Keeping your own records in a fireproof file cabinet is the best self-protection of your own separate property assets.

10. Do not put anything in a text or email to your spouse or your child that you would not want to read back to you in court. Demeaning, bullying, hypercritical, and profane speech should not be said, and certainly not be put into writing. You could not send that type of message at the office, and you should not with your family either.

Bonus advice: Try not to get a divorce. Even amicable divorces cost a lot of money and usually leave both partners worse off financially. Spouses are human, and all humans are at least a little bit irritating and more than occasionally disappointing. Of course, some marriages cannot be saved, and abusive relationships should end. But many of the divorces my family law colleagues and I see could have been prevented with hefty doses of grace, humility, and hard work. **HN**

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