
COMMUNITY PROPERTY

Question: Our buyer wrote and signed the P&SA with the intention of purchasing the home as his separate estate. He did not inform the agent he was married. The issue came up during financing application. Listing agent (from another company) wants to void the contract. The buyer's wife is willing and able to sign. Where do we stand? Is the contract void?

Answer: A purchase and sale agreement to buy or sell community real property signed by only spouse is voidable by the non-signing spouse only. A purchase and sale agreement to buy or sell separate real property is not legally required to be signed by the non-participating spouse at all. However, a title insurance company or lender involved generally requires a quit claim deed from the non-participating spouse in a separate property transaction. Use JLS Form 307 for this purpose. Therefore, in this case, the sellers are bound by the agreement.

Question: Can a husband buy an investment property as his separate property, if his wife is agreeable to signing a quit claim deed?

Answer: A married person may buy separate real property using community funds and/or credit, if the non-purchasing spouse consents to the transaction. The title insurance company will require a quit claim deed from the spouse to the buyer. The sellers should require the spouse's consent and agreement to be bound by the purchase and sale agreement. Use JLS Form 307 for this purpose.

Question: A married woman makes an offer without including her husband or indicating her marital status. If she backs out of the deal, can she get back her earnest money because her husband did not sign the agreement? The earnest money has been released to the seller/builder and is nonrefundable.

Answer: A married person cannot use community funds or community credit to purchase *separate* real property without the non-signing spouse's consent. An agreement signed by only one spouse is voidable by the *non-signing* spouse. However, the *signing* spouse is bound by the agreement to the extent of her *separate* property, unless the agreement is conditioned upon the non-signing spouse's review and approval. No portion of community property can be used to satisfy a separate *contractual* debt of either spouse; however, the participating spouse's half interest in community property can be used to satisfy a separate *tort* claim (civil wrong other than breach of contract).

Here, if the earnest money deposit came from community funds, then the husband can recover from the seller (a) the entire deposit, unless the husband joined in, consented to, or ratified the transaction; or (b) his half of the earnest money, if the wife misrepresented her marital status to the seller as an inducement to accept the offer. In either case, the *wife* is liable to the seller for breach of contract, but the seller can only collect damages from the wife's separate property, unless the wife misrepresented her marital status, in which case the seller can collect damages from the wife's half of community property based on fraud.

A buyer's agent is required to disclose to the seller the fact that the purchaser is married, if the agent has knowledge of that fact at the time of the offer, because it substantially adversely affects the purchaser's ability to perform her obligations in the transaction.

Question: A woman wants to buy a home, but does not yet have a property settlement with her husband whom she is divorcing. How can she buy a house without involving him? If her parents buy it for her, can they then quit claim it to her after the divorce? Will the parents have to pay excise tax? Is there any viable way for her to buy a house without her husband's signature?

Answer: The title company will require a final divorce decree, property settlement agreement, or quit claim deed from the husband. I am not aware of any way around these requirements. The parents would have to pay excise tax if they bought the house, then deeded it to their daughter after the divorce is final.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.