

by Ilyce_Glink

Q: In 1986, my husband and I bought a home. Now, after 32 years of marriage, we have separated. My husband wanted to refinance the property last year before our separation, but I opposed this. I told him I would only refinance if he quitclaimed the property to me. Mind you, he was having some financial problems and really needed to refinance the loan to get a lower interest rate. Months later, he moved out and I went to record the deed. We might reconcile in the future. My question is: Is the property now legally mine? And if we divorce, would my ex have any rights to the house? A: For all practical purposes, once the quitclaim deed was filed, the home became yours. But just because the house is yours doesn't mean your husband may not have certain rights to the home. In a divorce, the court has discretion in determining which assets should be considered joint assets and which should be considered assets of only one spouse. If you had inherited property from a parent and kept it separate from your other assets, generally that type of an asset will be excluded from the marriage, and at the time assets are split up, the inherited assets would be excluded. Certainly, there are many possible scenarios in a divorce, and different things can and do happen. In your case, you and your husband bought a home 20 years ago that is now yours, but the judge in your divorce might consider the home part of the assets in the marriage. In deciding what money and property your husband should keep, the home could be a factor. For more details on assets in a divorce, talk to an attorney.

Q: We purchased a home but did not pay for a survey because the prior owners had supposedly just surveyed the property and showed us a map. We figured it would be a waste of money to do another survey. However, we just found out that our driveway does not connect to the road, a large shed we thought was ours is not even on our land, and our boundaries are not where we were told they were. Developers are moving in who want us to move the shed and who want to take over our driveway. The Realtor for the seller claims these problems were disclosed to us, but we don't have a copy of the disclosure. What can we do? A: You've now discovered what can happen when you take shortcuts in the home buying process. Leaving things like a survey to chance can cause huge problems in the future. First, demand a copy of the disclosure document the real estate agent claims you signed. This won't fix your problem but at least you can find out what the form said. Whenever you sign legal documents, be sure you know what you're signing. If the information was not disclosed, that doesn't mean you're in the right. There might not have been a duty on the seller to disclose these issues to you. Some states may require this information to be disclosed, while others may not. In some states, seller disclosure laws relate to the structure and defects in construction. The seller disclosure laws leave it to the buyer to determine the status of title and things that would pop up with a proper survey. If you had obtained your own survey, you should have been able to determine that the shed was not on your property, and that the access road to your home did not connect to the street. You said you saw a survey of the property from the seller. Did you look it over and review it with your attorney? A map of the property is different from a plat of survey. The map may have been a sketch of the property without regard to the actual property lines. A plat of survey should have followed the actual property lines on the basis of the legal description for the property. Each property has its own unique legal description. This description can then be shown on a piece of paper by a surveyor and would indicate the location of all improvements on the property. If your state's seller disclosure laws required your sellers to disclose these matters and they did, you may be out of luck. If they did not disclose them, they should have, and you may be able to sue the sellers for their failure to disclose. You'll have to spend some time (and perhaps money) with an attorney to review your documentation and determine whether you have a case or not. If the seller disclosure laws did not require the seller to disclose this information, and the contract does not address the issue, it's "buyer beware." You buy something and take the risks associated with that purchase. If you fail to take advantage of the resources available to you in making your decision to purchase a home, you run the risk that if something goes wrong, you'll have to suffer the consequences. Seek competent help to find a solution to this significant problem. Consult an attorney as soon as possible. © 2006 Tribune Media Services