

LEGAL MOJO

Recognizing the Ever-Growing Presence of Women Owning Property

By Soledad M. Valenciano

Don't tell anyone, but my favorite clients are my female clients.

I'm an eminent domain attorney, so my clients are Texas property owners. This brings me in regular contact with very old deeds and easements, a fair number that reflected the invisibility of women, often reduced to "*et ux*" – "and his wife" on legal documents. To say that women have come a long way in terms of owning and making decisions about real property is an understatement. Whether strides in property ownership are properly attributed to archaic tradition failing out of favor, changes in social norms, new laws, education or sheer necessity, the bottom line is that understanding which of these have impacted your female client will position you to better serve her legal needs. Women have become a client base that one simply cannot ignore, especially if you are probate, family, tax, oil and gas, or business law attorney – or like me, an eminent domain attorney. Women are playing an increasingly larger role in making important decisions that directly impact day-to-day finances and the hope for generational wealth.

Primogeniture – the right by law or custom to leave one's entire estate to the firstborn child (typically the male child) over a shared inheritance among many – permeates early property ownership norms. This preference toward the firstborn son was not entirely rooted in sexism. Although there was concern that primogeniture favoring a daughter could lead to "duress" on the woman, there was also the practical reality that women were at high risk of death due to poor healthcare and the risks associated with childbirth, leaving property exposed to the grasp of the widower. In contrast, sons could be expected to produce heirs – namely, male heirs – thereby ensuring property would stay within a family line.

Strictures like coverture and dower also prevailed. Coverture required that a married woman did not have a separate legal existence apart from her husband. Dower rights were the only property rights American women had, and it was a consequence of *marriage*. Dower entitled a widow to a portion of her husband's estate in absence of a will, thereby providing some means for a widow to provide for herself and any children born during the marriage (and not otherwise become a "burden" on society). In most circumstances, a widow was granted up to a one-third interest in her husband's assets.

Interestingly, unmarried women enjoyed a range of rights, including the right to make contracts, own property and sue or be sued, yet, single women had a limited inheritance rights.

Coverture and dower rights eroded in the first half of the nineteenth century. For example, New York's Married Women's Property Act of 1848 was an early model for other states that sought to allow women to own and control property. The Republic of Texas passed its version of a married woman's property act in the mid-1800s. It was believed to be some of the most expansive legislation enacted in the South and allowed a married woman

Cont'd on page 8

to enter certain contracts, write a will, and sue for divorce. A woman could veto the sale of her property, and she could veto the sale of the family homestead even if she was not its owner. It was believed the law protected the wife and children from irresponsible husbands. A community of property regime evolved in Texas, such that a woman's property was held communally with that of her husband, but such property could only be managed by the wife in the event of her husband's death.

Robust skepticism in a woman's competence to manage property led to creative end runs around changing legislation. For example, wealthy fathers and husbands often left their daughters' estates in a trust. The assumption was that women would be better off with the only the "fruits of the estate" rather than with power over money or property that could be taken from them through marriage before their *sons* were old enough to take charge of the estate.

One must remember that American women did not have the right to vote until 1920. Eventually, women's equality became more accepted, an equality that eventually considered women of color. Yet, it wasn't until the mid 1970s that a married woman could access a line of credit without having a man cosign her application. The Equal Credit Opportunity Act of 1974 prohibited discrimination on the basis of "race, color, religion, national origin, sex, marital status, or age" in credit transactions. Court decisions like *Reed v. Reed* in 1971 (thank you, Associate Justice Ruth Bader Ginsburg), which said it was unconstitutional to prefer men over women in the appointment of estate administrators, helped move our nation in the right direction.

So, things are changing. According to a 2019 study by McKinsey, by 2030, American women are expected to control much of the \$30 trillion in financial assets that baby boomers will possess. This is considered "a potential wealth transfer of such magnitude that it approaches the annual GDP of the United States." The study adds, "[a]fter years of playing second fiddle to men, women are poised to take center stage."

Women are also increasing their presence as business owners. According to reports by Forbes and American Express, 42% of all U.S.-owned companies (amounting to nearly 13 million companies) are owned by women, and these businesses generate \$1.9 trillion annually. This extends to small family-owned businesses, which account for the bulk – some 80-90% -- of U.S. businesses. According to studies by Mass Mutual American (2007) and Gaebler (2017), in 2007, 24% of family business surveyed were led by a woman; over 30% of family businesses surveyed reported a female successor was planned; and from 2012-2017, women-owned family businesses increased by 37%.

The face of the family farm is also changing. A 2017 U.S. Department of Agriculture report states that 56% of farms had females making farm operation decisions. According to a study by *The Atlantic*, women are increasingly taking the helm because men, who traditionally ran the family farm, do not outlive their spouses and have fewer children in general, and thus, fewer children who might be interested in taking over the farm. More and more, the responsibility for the family farm is being placed on the shoulders of wives and daughters. According to the American Farmland Trust, by 2030, older women, including many "farming widows," may own 75% of transferred farmland. This is a big shift as law and custom would often favor to a son who was presumed the best or only choice.

Women are also making strides, albeit much slower ones, in male-dominated industries like commercial real estate and investments firms. And of course, there is that which is near-and-dear to our hearts, the progress of women in the law and efforts to retain us as active, successful and fulfilled members of the profession.

How does this tie together? Women lawyers bring with them the unique perspective of what it takes to prosper in what sometimes feels like a male-dominated field. Let me tell you the story of Tessye, my 90+ year old client. She was the only child of a land-rich, cash poor family. Born in 1924, four years after women could vote, five years before the Great Depression, and at a time that female lawyers were just becoming a reality (thank you, Edith Locke and Hortense Ward). Tessye's parents died young, leaving Tessye as the trustee to thousands of acres

raw land. Fortunately, Tessye was tough as nails and not bound by societal norms. She was able to hang on to that property for decades. So having me as her condemnation lawyer in 2020 fit her progressive view on the world – after all, she witnessed the Civil Rights Era. I was able to help her with a complex eminent domain matter that affected miles of her road frontage, while planning for the inevitable next condemnation of her property for water and sewer for the surrounding community. Tessye definitely knew I respected and admired her, in large part because we were able to connect in a way that only women can.

But, not every female client has had Tessye’s life experience, and some that have lived just as long, were just raised differently and with different expectations of what women could and should do. And of course, there is everything in between, because women are complex and amazing and bring with them so many different life experiences. But where women tend to converge, no matter their life experience, is that when they are put in a role of responsibility, they take it seriously, and because they want to do well, they seek advice from people they trust. All this to say that we, as women lawyers, are in the best position to be that source of trust and advice. If we remember our shared history as women, and consider our client’s life experience, we will find our common ground.

My clients are female business owners, female trustees, female executors, female partners, female managers, and many are entities with in-house counsel that are – yes – female. Women are fulfilling Associate Justice Ruth Bader Ginsburg’s credo that “women belong in all places where decisions are being made” and they are doing it with an eye toward establishing and maintaining generational wealth. We, as women lawyers, should be on standby, with an understanding of how far we have all come, to advise women in their business, succession, tax, real estate, and estate planning needs. Women as property owners are here, and they are here to stay.



Soledad Valenciano represents property owners across Texas in complex eminent domain matters and select routing cases before the Texas Public Utility Commission. She is a founding partner of Spivey Valenciano, PLLC in San Antonio Texas. Soledad can be reached at svalenciano@svtxlaw.com.

Visit the State Bar of Texas Women and the Law Section at
www.txwomenlawsection.org

