

MARITAL SIGNATORY REQUIREMENTS

If both husband and wife appear on title, both must sign documents (mortgage, rescission and TIL).

If only one spouse is on title to property being mortgaged, the following applies:

- (i) If the state is a community property state (property is owned in common by husband and wife), then both husband and wife must sign documents (mortgage, rescission and TIL).
- (ii) If the state retains dower or curtesy rights (rights in estate of husband/wife), both husband and wife must execute documents (mortgage, rescission and TIL).
- (iii) If the state is a common law jurisdiction (what's her's is her's, what's his is his), both parties do not need to sign documents. However, many states have additional requirements for property that is homestead (owner-occupied). Check for these additional requirements.

In other words, unless a state is a common law jurisdiction without applicable homestead exemptions, a non-owner/non-borrower spouse must sign.

In all other states the general rule is to have both spouses execute the security instrument. Exceptions to this general rule are footnoted below. However, such exceptions should be considered on a case by case basis as additional issues may arise. For example, in community property states it can be difficult to determine whether property is truly "sole and separate" or whether it belongs to the community. Even if record title to real property is held by one spouse as his or her sole and separate property, the other spouse can at a later date allege that the real property was previously commuted to community property by action or agreement

STATE	COMMUNITY PROPERTY	DOWER/CURTESY RIGHTS	COMMON LAW JURISDICTION	HOMESTEAD REQUIREMENTS/OTHER*
Alabama			X	Both spouses must sign
Arizona	X ¹			Consent of a non-owner spouse is not required where homestead property is conveyed or encumbered by an owner spouse who holds title to the property as sole and separate property.
Arkansas		X		Both spouses must sign.
California	X ²			Borrower's homestead rights in CA do not defeat a consensual lien
Colorado			X	Both spouses must sign. ³

¹ Consent of a nonowner spouse is not required to convey or mortgage property by an owner spouse who holds title to the property as his sole and separate property. In such case, the nonsigning spouse should execute a disclaimer of interest (Quitclaim Deed, Interspousal Transfer Deed, etc.) in the property. However, if lender is looking to community property, such as wages or salary of the borrower spouse, for repayment of a mortgage loan, the non-borrower spouse must execute a marital community joinder to legally bind the marital community to the repayment of the mortgage loan.

² Both husband and wife must execute deed of trust which is to encumber property of the community. If record title to real property is held as a spouse's sole and separate property, signature of nonowner spouse is not required. However, nonowner spouse should execute a disclaimer of interest in the property (Quitclaim Deed, Interspousal Transfer Deed, etc.)

³ Automatic homestead exemption is waived as to both spouses even if only one spouse signs the deed of trust (i.e. non-owner spouse's signature not required). Title Company will sometimes require a written waiver of homestead. However, if non-owner spouse has recorded a declaration of homestead in the real estate records (should be reflected on commitment), the signature of both spouses is required on the deed of trust or there must be a separate written waiver of homestead rights signed by the non-owner spouse.

STATE	COMMUNITY PROPERTY	DOWER/CURTESY RIGHTS	COMMON LAW JURISDICTION	HOMESTEAD REQUIREMENTS/OTHER*
Connecticut			X	
Delaware			X	
District of Columbia		X		*Spousal signatures required, regardless of how title is held.
Florida			X	Both spouses must sign.
Georgia			X	
Idaho	X			Both spouses must sign. ⁴
Illinois			X	Both spouses must sign.
Indiana			X	
Iowa			X	Both spouses must sign.
Kansas			X	Both spouses must sign.
Kentucky		X		Both spouses must sign.
Louisiana	X ⁵			
Maine			X	
Maryland			X	
Massachusetts			X	Both spouses must sign. ⁶
Michigan		X		Both spouses must sign if a non-purchase money mortgage (for example, refinance).
Minnesota			X	Both spouses must sign, unless a purchase money mortgage (applies regardless of whether property is homestead or non-homestead).
Mississippi			X	Both spouses must sign.
Missouri			X	Both spouses must sign.
Montana			X	Both spouses must sign. ⁷
Nebraska			X	Both spouses must sign.
Nevada	X			Both spouses must sign.
New Hampshire			X	Both spouses must sign unless a purchase money mortgage.
New Jersey				*Both spouses should sign. While dower and curtesy rights have been abolished as to property acquired after 5/29/80, a new right, known as the right of joint possession of the principal marital residence attaches to property acquired on or after 5/29/80.
New Mexico	X ⁸			
New York			X	
North Carolina			X	*Both spouses must sign to waive elective life estate.
North Dakota			X	Both spouses must sign. ⁹
Ohio		X ¹⁰		
Oklahoma				Both spouses must sign. ¹¹

⁴ Non-owner spouse need not sign deed of trust if property is individually owned and not the marital residence. In such case, the nonsigning spouse should execute a disclaimer of interest (Quitclaim Deed, Interspousal Transfer Deed, etc.) in the property to also ensure waiver of community property interest.

⁵ Some title companies may require spouse to intervene under the mortgage, even if property is listed as sole and separate property.

⁶ Non-owner spouse need not sign if he or she has not declared a homestead estate. Title Company will sometimes require a written waiver of homestead. If non-owner spouse has recorded a declaration of homestead in the real estate records (should be reflected on commitment), the signature of both spouses is required on the deed of trust or there must be a separate written waiver of homestead rights signed by the non-owner spouse.

⁷ Non-owner spouse need not sign so long as neither spouse has executed and filed a Declaration of Homestead on the real property. Title Company will sometimes require a written waiver of homestead. If non-owner spouse or owner spouse has recorded a declaration of homestead in the real estate records (should be reflected on commitment), the signature of both spouses is required on the deed of trust.

⁸ If property is community property or separate property held by the spouses as cotenants, both spouses must sign the mortgage in order to perfect the lien, except in the case of purchase-money mortgages. If title is held individually, usual practice is to have non-applicant spouse quitclaim property to applicant.

⁹ Homestead rights may be waived with specific language in the mortgage. Our standard FNMA docs do not include such language; therefore, the non-owner/non-applicant spouse must sign security instrument.

¹⁰ There is a homestead exemption at Ohio Rev. Code § 2329.66. However, it does not affect or invalidate or impair the lien or a judgment rendered on a mortgage. *Id.* at § 2329.661.

STATE	COMMUNITY PROPERTY	DOWER/CURTESY RIGHTS	COMMON LAW JURISDICTION	HOMESTEAD REQUIREMENTS/OTHER*
Oregon			X	
Pennsylvania			X	
Rhode Island			X	
South Carolina			X	
South Dakota			X	Both spouses must sign.
Tennessee			X	Both spouses must sign. ¹²
Texas	X			Both spouses must sign.
Utah			X	Both spouses must sign. ¹³
Vermont			X	Both spouses must sign. ¹⁴
Virginia			X ¹⁵	
Washington	X ¹⁶			Both spouses must sign.
West Virginia			X	Both spouses must sign. ¹⁷
Wisconsin			X	Both spouses must sign, except for purchase money mortgage transactions.
Wyoming			X	Both spouses must sign.

¹¹ A lender may not rely on an affidavit stating the property is not homesteaded. Hensley v. Fletcher, 172 Okla 19, 44 P2d 63 (1935). Therefore, a lender must obtain signature of both spouses, even if property is purportedly not the borrower's homestead.

¹² Waiver of homestead rights should include waiver language in the mortgage. Our standard FNMA docs do not include such language; therefore, both spouses should sign the security instrument if the property to be mortgaged is the principal residence of either spouse or the spouse's children. If the property is not the homestead of the aforementioned parties, it is advisable to have parties execute a written waiver of homestead.

¹³ Both spouses must sign if they have homestead rights. Such rights must be made of record and would be disclosed on a title report.

¹⁴ A non-borrowing spouse must join in the mortgage in order to perfect the lien, except in the case of a purchase money mortgage. However, even in the case of a PM mortgage, any future advances or "accruals" will have priority over the lender's lien.

¹⁵ Some title companies will require both spouses to sign the security instruments because a spouse has the option to take a statutory interest in the property of the deceased spouse in lieu of taking under the decedent's will.

¹⁶ It is very difficult in Washington to prove the separate character of property, therefore, both husband and wife should always execute the security instrument.

¹⁷ Both signatures are required, unless the debtor owning the property has notified his or her spouse prior to thirty (30) days of the time of conveyance. W. Va. Code § 43-1-2(b), (c).