

# Compliance Journal

## Special Focus

### Who Must Sign The Mortgage?

When originating a mortgage loan, banks often find themselves asking “who needs to sign the mortgage”. It’s a great question and the trite, lawyerly answer, is “it depends”! Given the fact that Wisconsin is a community property state and has a marital property act which includes homestead protections, the answer is not necessarily easy.

There are, of course, certain straightforward scenarios that follow the “General Rule”. The General Rule is this: only those parties in title to the property securing the loan are required to sign the mortgage. Of course, there is an exception to the General Rule – when you have a *married* person(s) in title to the property securing the loan, the spouse of the titled individual *may* be required to sign the mortgage.

The following hypotheticals demonstrate application of the General Rule.

1. Mom and Daughter, both unmarried individuals, are borrowers on a loan. The loan will be secured by Mom’s home, for which Mom is the sole titleholder. Though Mom and Daughter are both borrowers, only Mom must sign the mortgage as the sole titleholder.
2. Same facts as (1) above, except both Mom and Grandma are in title to the property. Grandma is unmarried. In this case, though Mom and Daughter are borrowers, Mom and Grandma must sign the mortgage because they are both titleholders.
3. Son and Son’s Wife are borrowers on the loan and Dad is a Guarantor. The loan will be secured by a home

in which Son and Son’s wife permanently reside, but Dad and Uncle are the titleholders. Dad and Uncle are both unmarried. In this case, Dad and Uncle must sign the mortgage. Son and Son’s Wife are not required to sign the mortgage despite the fact that they are married and the property is their permanent residence – in this case, neither spouse is in title to the property and thus no exceptions to the General Rule apply, as described in further detail below.

Of course, every good rule has exceptions. In this case, the exception to the General Rule is as follows: If a *married* person is in title to the property securing the loan, the spouse of that individual will also be required to sign the mortgage if the conveyance alienates either or both spouses’ homestead interest, even if the spouse is not in title. *See* Wis. Stats §706.02(1)(f). This requirement to obtain the spouse’s signature (the “exception”), however, does not apply to purchase money mortgages. *See* Wis. Stats §706.02(1)(f). In other words, if the mortgage is a purchase money mortgage, you’re back to the General Rule and the spouse of the married titleholder will not be required to sign the mortgage if the spouse is not going to be listed as an owner of the property, even if the property is homestead property or either or both spouses.

Thus, assuming the bank is not originating a purchase money mortgage, the bank must require signatures of all titleholders PLUS the spouse of a married titleholder if the property is the homestead property of either or both spouses.

Banks should note that a “homestead” is defined under Wis. Stats. § 706.01(7) as “the dwelling, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one-fourth acre, if available, and not exceeding 40 acres.” Customers should indicate to the Bank whether the property is homestead property and such information should be contained on the mortgage itself.

If the bank does not obtain the signature of the married titleholder and the spouse of the titleholder, the mortgage is void and unenforceable. This interpretation of Wis. Stats. § 706.02(1) and (1)(f) was recently confirmed in a 2017 court case – *U.S. Bank National Association v. Charles E. Stehno III*, 2017 WI App. 57 (August 30, 2017). In *Stehno*, the Bank attempted to foreclose on mortgages signed by Charles Stehno in December 2002 and April 2003. The property was Stehno’s homestead at the time he signed the mortgages. However, the mortgages were not signed by his then-spouse, Candice Wells. Therefore, according to the court, the mortgages were invalid from the start against both spouses because only Stehno signed them.

The following hypotheticals demonstrate application of the Exception to the General Rule:

1. Husband and Wife are refinancing their homestead property. They are both listed as borrowers on the loan. Husband is the sole titleholder on the property. Both Husband and Wife must sign the mortgage because it’s conveying an interest in the homestead property of both spouses on a non-purchase money loan.



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2. Daughter and Daughter's Husband are borrowers on second mortgage loan. The property securing the loan is titled in Dad's name only and it's Dad's homestead property. Dad is married to Stepmom who does not live in the property. Both Dad and Stepmom must sign the mortgage because this is a non-purchase money loan which conveys the homestead interest of one spouse.
3. Daughter and Son are refinancing their parents' homestead property and are borrowers on the loan. Dad is married to Mom and the property securing the loan is both Dad's and Mom's homestead. Dad and Grandma are in title to the property. Grandma is unmarried. Dad, Mom, and Grandma must sign the Mortgage. Dad and Grandma must sign

because they are titleholders. Mom must sign because this is a non-purchase money loan which conveys the homestead interest of Mom and Dad.

4. Husband and Wife are looking to originate a purchase money mortgage loan for which they will both be borrowers. The loan will be secured by property held by husband only. Husband only will live in the property as his homestead. In this case, only husband must sign the mortgage because this is a purchase money loan and, therefore, the Exception to the General Rule does not apply.

In summary, taken altogether, the signatures needed on a mortgage are as follows: (1) All titleholders and (2) if the loan is not secured by a purchase money mortgage,

the spouse of any married titleholder to the extent the property is the homestead of one or both spouses.

Finally, it's best to obtain a title insurance policy that lists the owners of the property being mortgaged. Title insurance companies will also list the names of all individuals required to sign the mortgage so banks may have additional comfort that the correct individuals are signing the mortgage.

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*Learn more about the Wisconsin Marital Property Act at the [June session of the WBA Compliance Forum](#). ■*

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## Regulatory Spotlight

### Agencies Propose Revisions to the Supplementary Leverage Ratio To Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping and Asset Servicing Activities.

The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) issued a proposal to implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Section 402 directs these agencies to amend

the supplementary leverage ratio of the regulatory capital rule to exclude certain funds of banking organizations deposited with central banks if the banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities. Comments are due **07/01/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-04-30/pdf/2019-08448.pdf>. *Federal Register*, Vol. 84, No. 83, 04/30/2019, 18175-18186.

### Agencies Request Comment on Information Collections.

- The Board of Governors of the Federal Reserve System (FRB), the Federal Depos-

it Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) announced they seek comment on the information collection titled Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices. The Agencies also gave notice that they sent the collection to OMB for review. Comments are due **06/18/2019**. The notice may be viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-04-19/pdf/2019-07841.pdf>. *Federal Register*, Vol. 84, No. 76, 04/19/2019, 16560-16567.

- The Board of Governors of the Federal Reserve System

