

# When do Spouses Need to Sign Deeds and Mortgages in PA

[On behalf of Dornish Law Offices, PC](#) | Jun 15, 2010 | [All, Real Estate Practice](#)

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A familiar scene unfolds every day at real estate closings across Pennsylvania. John Smith, a married man, shows up at closing to buy a house in his own name. He's getting a mortgage from ABC Mortgage Company, for which he applied in his own name. He has received a message from the closing company to make sure that his wife attends the closing. He does not understand why, since he is purchasing the property in his own name and mortgaging the property in his own name. At the closing, his wife is asked to sign either a Spousal Waiver, waiving her interest in the property in general or waiving her interest in the property only in favor of the mortgage company. In the alternative she, may be asked to sign the Mortgage itself. Why is this the case?

In Pennsylvania, the law still recognizes spousal rights in lieu of the ancient doctrines of dower and curtesy. Basically, a spouse has an interest in real estate owned by the other spouse, to the extent of the use of marital assets for the purchase of the property, and to the extent of any appreciation of the property during the marriage. Since Pennsylvania title insurance companies do not want to determine the nature or extent of the use of marital assets in purchase of property, or the extent of appreciation of property during a marriage, the insurers require the execution of either a Waiver or the Mortgage by the spouse.

Note that the execution of the Mortgage by the spouse does not create an obligation of the spouse to make the payments on the Note. People often indicate that they are paying on their Mortgage. Really, the obligation being paid is the obligation on the Promissory Note to the lender. The Mortgage is simply the security interest granted to the bank in real estate. So, the spouse signing the Mortgage but not signing the Loan Agreement does not have the liability to pay the Loan. Rather, the spouse signing the Mortgage simply agrees that they will not interpose their spousal rights in opposition to a foreclosure action on the Mortgage. Otherwise, if a Mortgage is granted

by one spouse alone and the other spouse did not sign a Spousal Waiver, the mortgage company may not be able to complete a foreclosure on the property because it may not be able to eliminate the other spouse's rights in the property in the foreclosure action.

These situations become more complicated in the process of separation and divorce. Although Pennsylvania does not recognize the legal status of separation for most purposes, there is Pennsylvania law that provides that assets acquired post separation without the use of marital funds are considered separate property of the spouse acquiring them, and are not subject to the claims of the other spouse. However, the status of separation can be changed by even the shortest reconciliation between the spouses, so lenders are not comfortable with an Affidavit that spouses have been separated, even if for a year or longer. If, pursuant to such an Affidavit, one separated spouse acquired the property and did not have the other sign the Waiver or sign off on the Mortgage, the interest of that spouse could still interfere with the lender's Mortgage position if the separated spouses reconciled. In that event, the reconciled spouse would have spousal rights in the dower and curtesy as described above, which could still interfere with a subsequent foreclosure.

Even a Final Divorce Decree does not terminate insurer's concern about spousal rights. This is because the Divorce Decree does not necessarily include the equitable distribution of property, including real estate owned during the marriage. Therefore, the title insurers want to see both the entry of a Divorce Decree and a Property Settlement Agreement finally resolving the spouses' property rights before they are comfortable accepting that a former spouse has no interest in real estate owned during the marriage. Of course, the execution of a Waiver as to the particular property or the signature of the former spouse on the Mortgage can resolve those issues even in the absence of a Property Settlement Agreement.

The same issues regarding spousal signatures arise when a property is being sold. In that case, even if one spouse owns the property in his own name, the Deed will need to be executed by both spouses to eliminate the spousal rights in lieu of dower or curtesy as a potential title claim in the future.

For investors, one good way to avoid these problems is to use an entity for the ownership of the property. If the spouse who is buying the property uses an entity, the other spouse's marital interest is not a direct interest in the property, but is rather an interest in the entity that owns the property.

Therefore, if the spouse who plans on attending closing alone is the Officer of the Corporation, Trustee of the Trust or Manager of the LLC for example, that spouse can execute the necessary documents to transfer title without the presence of the other spouse. The spousal rights attach to the ownership interest of the other spouse in the Corporation, Trust or LLC, not the property. Of course, the elimination of the title issues concerning the spouse brings with it the necessity for providing documentation concerning the ownership, management, and operation and tax payments by the entity. However, those items can be prepackaged, and can definitely avoid the need to have a spouse at every closing.

Another mechanism which can be used to avoid having a spouse at every closing is a Power of Attorney. Most lenders and title companies will accept the Power of Attorney from one spouse for the other spouse for execution of Deeds, Mortgages and Loan documents as necessary, as long as the form is approved in advance. This is particularly true if the general Power of Attorney has previously been recorded and remains on Record at the Courthouse. If the Power of Attorney has not previously been recorded, it will be necessary to have that Power recorded to be able to use it in connection with the real estate transfer or a loan transaction. Some lenders have been harmed by use of fraudulently obtained Powers of Attorney, and prefer that title agents obtain the direct signatures of both spouses on the necessary loan documents, rather than accepting the Power of Attorney. You should check with your individual lender on this prior to closing, and should not assume that your Power of Attorney will be adequate. Of course, you can always plan on bringing your spouse to every closing, and thereby avoid being concerned with any of these problems.