

SUBJECT: Required Signatures on Homestead Loans

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INTRODUCTION

This release applies to all credit unions granting real estate mortgage loans. It describes the signature requirement for a valid mortgage of a married couple's homestead property.

EXECUTIVE SUMMARY

Wisconsin Statutes § 706.02(1)(f) provides that a mortgage (or other conveyance) of a married person's homestead shall not be valid unless the document is signed by or on behalf of each spouse. The sole exception is for a purchase money mortgage, where only the purchasing spouse need sign the mortgage. The idea behind the law is that a homestead should not be conveyed without the spouse's consent.

For purposes of this law, a homestead is defined as the dwelling and as much land surrounding it as is reasonably necessary to use the dwelling as a home. It is at least one-fourth acre (if available) but no more than 40 acres.

The law only applies if:

- It is a conveyance of real estate (including a mortgage, other than a purchase money mortgage), and
- It is the homestead of a married person.

The practical impact of this signature requirement is as follows. Normally, a mortgage should be signed by all of the owners of the real estate parcel, and no other person's signature is necessary. However, this law requires that, when taking a non-purchase money mortgage against property that is a married person's homestead, the credit union must obtain signatures of both spouses on the mortgage. This applies even if only one of them is on the deed.

Let's apply this to Mary Smith, who owns her own home, and John Jones, her fiancé, in several situations:

- If Mary takes out a home equity loan, only her signature is needed on the mortgage. There is no need for John or any other person besides Mary to sign the mortgage. This is true even if John lives in the home.
- Suppose Mary and John wed, she keeps the home in her own name, and she applies for a home equity loan at the credit union. The credit union must require both Mary and John to sign the mortgage in order for it to be valid. This is the impact of § 706.02(1)(f). The home is now homestead property of married people, and the loan is not a purchase money mortgage, so the law applies.
- If Mary wants to sell the home after the wedding and buy another, she does not need John's signature for the mortgage on the new home, because of the purchase money exception. However, she will need to have John join in signing the deed conveying the old home, since that is a non-purchase money conveyance of their homestead.

As mentioned above, the mortgage should also bear the signature of any titled owner of the property. Although it is true that joint tenants, tenants in common, or owners of a life estate may legally mortgage or sell their interest apart from the other owners of the estate, such partial ownership interests are typically of little value as collateral.

Please note that this release relates only to the signatures on the mortgage. Regulation B and Wisconsin's Marital Property Act govern whose signature may be required on a note. Most attorneys conclude that only the applicant and any cosigner may be required to sign the note. Remember that a cosigner may not be required if the applicant is creditworthy, and a spouse cannot be required to cosign.

Courts strictly enforce the statute. In a *2017 opinion*, the Wisconsin Court of Appeals determined that a mortgage on homestead property could not be enforced against either spouse because only one spouse had signed it. The court agreed with the plaintiff that “the entire conveyance [was] invalid from the start and absolutely void.”

Wisconsin's requirement that both spouses consent to a mortgage on their homestead applies even if the property is titled in the name of a trust, because the homestead law protects the interests of both spouses in the home. The trustee would sign on behalf of the trust, and each spouse would sign individually to alienate their homestead interests. In addition, it is best to obtain title insurance, especially when a trust is involved. It lists the owners of the property being mortgaged and the names of all individuals required to sign the mortgage, giving the credit union additional reassurance about obtaining the proper signatures.

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Legal Affairs Department

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