## 54th Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute

# MaritalProperty

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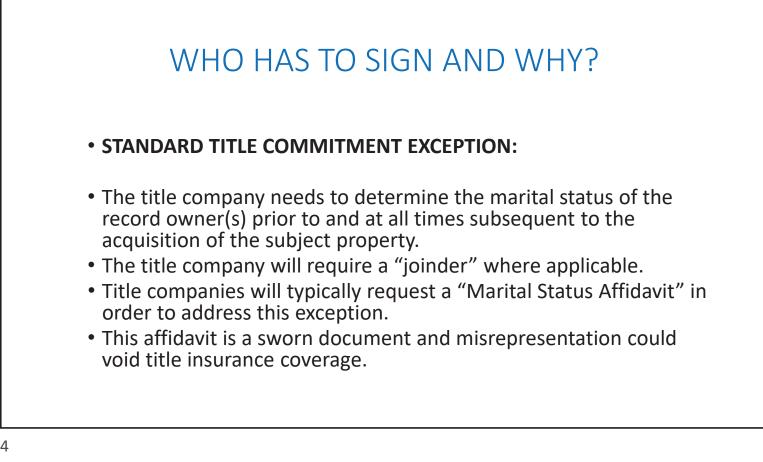
## AGENDA

- WHY DO I NEED TO KNOW THIS?
- WHO HAS TO SIGN?
- COMMUNITY VS. SEPARATE PROPERTY
- COMMON QUESTIONS

### WHY DO YOU NEED TO KNOW ABOUT THIS?

You are likely going to be the **FIRST** to know if a problem exists.

- You are the first point of contact.
- You will likely be the one to see red flags.
- The sooner you know, the sooner we can work together to resolve.
- Many times, issues do not come up until it is time to sell a property.
- Listing Appointment- what should you be asking? What information would prompt you to ask additional questions?



#### WHO HAS TO SIGN AND WHY?

#### • MARITAL AFFIDAVIT CONTAINS:

- Marital Status when property was acquired
- Each divorce and subsequent divorce
- Present marital status

#### IF IT IS SEPARATE PROPERTY, WHY DOES THE SPOUSE HAVE TO SIGN?

- Because Article 16, Section 50(b) of the Texas Constitution requires joinder of both spouses in order to:
- Sell the homestead (Execute a Deed); or
- Encumber the homestead with a lien (sign a Deed of Trust)
- The Texas Family Code, Section 5.001 states:
  - "Whether the homestead is the separate property of either spouse or community property, <u>neither</u> spouse may sell, convey, or encumber the homestead <u>without the joinder of the other spouse</u>..."

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#### Title search: Marital Property

Also available as part of the eCourse Special Topics in Residential Mortgage Lending

First appeared as part of the conference materials for the 2020 Special Topics in Residential Mortgage Lending session "Marital Property"