



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

## MaritalProperty

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1

### AGENDA

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

2

## 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?

- **STANDARD TITLE COMMITMENT EXCEPTION:**

- The title company needs to determine the marital status of the record owner(s) prior to and at all times subsequent to the acquisition of the subject property.
- The title company will require a “joinder” where applicable.
- Title companies will typically request a “Marital Status Affidavit” in order to address this exception.
- This affidavit is a sworn document and misrepresentation could void title insurance coverage.

## WHO HAS TO SIGN AND WHY?

- **MARITAL AFFIDAVIT CONTAINS:**

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

5

## 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, **neither** spouse may sell, convey, or encumber the homestead **without the joinder of the other spouse...**”

6

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[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"