

Title Chat

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Homestead, Part 6,



Marital Agreements

This will be our last *Chat* on questions regarding the need to have a titleholder's spouse join in the execution of a deed for the purpose of waiving any homestead interest the spouse may have. Following the hypothetical format of earlier *Chats*, the titleholder tells the closing agent that his or her spouse does not have to join in the conveyance of the homestead because they had executed a pre-marital agreement before they got married which provided that each spouse waives any right, title or interest in the property of the other spouse for all purposes.

Before we consider anything else, consider how a title agent can determine whether such an agreement was and is valid and binding on both spouses, especially if it was executed years ago? Will the original agreement be produced for the settlement agent to read and review? Even if the original signed agreement is produced, how can it be determined that, when it was signed, the parties were legally competent, and/or full disclosure was made by both spouses of their financial condition, and/or that something may have happened after it was executed that may render it unenforceable at the present time?

You may ask, "what if the spouse is willing to sign a statement that the agreement is valid and in full force and effect?" If the spouse would be willing to sign such a statement, why not just join in the execution of the conveyance?

The law on agreements of this nature is not entirely clear in Florida. Consider and compare *F.S. 732.702* which purports to allow for the waiver of homestead and other rights by marital agreements, with *Article 10 Section 4*, of the Florida Constitution, which requires the spouse to join in the conveyance of homestead property.

In Texas, *Tex. Fam. Code § 5.001* provides that the homestead, whether the separate property of either spouse, or community property, may only be conveyed with joinder of spouse.

Again if you become involved in a factual situation like this, it should be submitted to counsel or to the title insurer for consideration.

Next month's *Chat* will summarize the amendments to RESPA that have recently been proposed by HUD.

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