

Homestead Rules & Marriage: Key Considerations

Under Texas Constitution, a homestead cannot be sold or borrowed against without the consent of both the owner and their spouse, regardless of property classification, or even if the spouse is not on title.

The Texas Constitution, Article XVI, Section 50(b) states the following:

"An owner or claimant of the property claimed as homestead may not sell or abandon the homestead without the consent of each owner and the spouse of each owner, given in such manner as may be prescribed by law."

This requirement is not due to Texas community property laws, which state that any property acquired by a couple during their marriage (with a few exceptions) is equally owned by both spouses. This requirement is due to the Texas Constitution's homestead protections that require **both** the owner and their spouse to give consent before a homestead can be sold or borrowed against.

Why Married Spouses Must Sign Closing Docs:

At closing, the title company determines if the seller is married. If married, the spouse must typically sign a document at closing, and the document changes depending on the classification of the property:

1. Homestead acquired **BEFORE** marriage:

- a. When a spouse owns a piece of property before they get married, that property is **separate property**, but if the spouse *lives* in the property, it is their homestead, which constitutional law requires the spouse's consent.
- b. The spouse signs the warranty deed at closing to show consent to the sale. This "pro forma" signature doesn't confirm ownership, but simply fulfills the constitutional requirement.

2. Homestead acquired **DURING** marriage:

- a. In Texas, property acquired by married couples is presumed to be community property and are considered joint owners, and both must sign at closing. If they also occupy the property, they also must sign. A **pre- or post-nuptial agreement** may alter ownership classification to a separate property, but the spouse is still required to sign to consent to the sale of their homestead.

3. Investment property acquired by one spouse only:

- a. If one spouse owns property not used as homestead, the non-owning spouse may avoid signing the deed by providing a Non-Homestead Affidavit, verifying they don't occupy the property, but they must own other property that can be claimed as a homestead.

Pre-Nuptial and Post-Nuptial Agreements:

While a pre- or post-nuptial agreement can classify the property as **separate** or **community property** for ownership purposes, these agreements cannot override homestead laws requiring spousal consent and participation in the sale. If the seller is married, their spouse has to join in the transaction in most cases. This does not always mean they have to sign the deed or that they are asserting legal ownership. The spouse is required to sign certain documents simply to show they agree to the sale, as required by Texas homestead laws, even if they don't legally own the property.

