



CHICAGO TITLE
INSURANCE COMPANY



TITLE TALK By: Katie Button

HOMESTEAD RIGHTS IN NEW HAMPSHIRE



Call or email
anytime with
questions!

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Check out our website for
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Homestead Rights are an issue we see on a daily basis and claims paid due to insufficient release of Homestead are overwhelming in the context of foreclosure and bankruptcy. The best way to avoid these claims is to make sure you and your staff have a firm grasp on how to effectively release Homestead Rights.

HOMESTEAD RIGHTS IN NEW HAMPSHIRE MUST ALWAYS BE ADDRESSED IN EVERY DEED AND MORTGAGE. Homestead Rights apply to a primary residence and exist for the deeded property owner and any non-titled spouse (NTS) automatically. Homestead Rights have priority over mortgages and liens, other than property tax liens, which means we must be careful to properly release them or identify them as not applicable in each transaction. Releasing Homestead requires the Agent to first identify the type of property and the marital status of each Grantor. Outlined below are different scenarios with Bob and Jane as a married couple. The term "married" includes Civil Unions which existed from 2008-2010 and automatically converted to Married after 2010.

Property is not the primary residence of the owner or their spouse.

This is the easiest to deal with by including a statement in the deed or mortgage such as "The Property is Not Homestead Property". See TS 5-2. Keep in mind, this statement can only be used when homestead rights do not exist in any person and specific inquiry of the parties is needed to confirm. This statement must also be included in a refinance mortgage of a second home or investment property, generally typed on the first or second page or at the end of the legal description.

Primary residence property.

This is where things get complicated. Marital Status of the Grantor(s) ALWAYS needs to be included. Match each Grantor to one of the categories below and ALWAYS handle accordingly. You may have multiple Grantors with a combination of different types and each must be identified and released as described below for both Deeds and Mortgages.

Grantor(s) are single

Recite "single" after the Grantor's name and no further recitation is needed. If there are multiple Grantors and all are single, include "single", after each of their names. If you have a combination of single and married, see the other sections on married Grantors to determine how to handle the married ones.

Grantors Married to Each Other

Grantors should ONLY be identified as husband and wife or a married couple. Homestead is automatically released without any further recitation when Grantors married to each other execute the deed or mortgage. See TS 5-4 and 6-1. Reciting "married" after Grantor name is faulty because it does not identify who they are married to.

Grantor is married to a NTS

If a Grantor has a NTS, the NTS must join in the deed or mortgage to release their Homestead Rights. The Grantor's marital status still needs to be identified as "married" after their name. To release the NTS homestead there are two options. The first is at the end of the deed or mortgage, usually between the Grantor's signature and the notary clause, add a line reciting "Jane Smith, Spouse of Bob Smith releases her Homestead Rights to the within conveyed property". The second simpler option is to include the NTS in the first paragraph of the deed or mortgage – Bob Smith and Jane Smith, husband and wife. Jane's signature also needs to be notarized along with Bob's for either option. See TS 5-2.

Special situations

Purchase Money Mortgage

A Purchase Money Mortgage always takes precedence over Homestead Rights of the Buyer(s) and their NTS. See TS 6-2.

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Homestead, Continued:

If Jane is purchasing the property in just her own name Bob, the NTS, does not need to sign the purchase money mortgage. But, you need to identify the mortgage as a purchase money mortgage by typing "This is a Purchase Money Mortgage" onto the mortgage or legal description and this recitation can be relied upon under TS 3-1. If Jane is taking out a traditional 1st mortgage and a 2nd mortgage to purchase the property, special care should be taken to determine if the 2nd mortgage is fully disbursed at the purchase closing and if it is, type "This is a Purchase Money Mortgage" on it. If it is not fully disbursed, Bob should sign the mortgage as a NTS (see Grantor is married to a NTS).

Revocable Trust

Bob and Jane transfer their property to Bob and Jane as Trustees of the Bob and Jane Revocable Trust. Their individual Homestead Rights are retained unless they expressly release them in the deed and let's assume they did not release. Later Bob and Jane as Trustees of the Revocable Trust sell the property, Bob and Jane need to join the deed individually to release their homestead rights and their marital status needs to be recited also. This can be handled a few different ways but the easiest is to prepare the deed with the Trustees of the Trust as the Grantors with a signature and notary in the Trustee capacity and then include a recitation "Bob and Jane, husband and wife, release their Homestead Rights to the within conveyed property" along with a separate signature line and notary clause as individuals. This also applies to a mortgage secured by a property owned by a trust. The individual homestead rights need to be released by the individuals signing the mortgage.

Divorce

A deed pursuant to divorce will generally include a recitation of the divorce to avoid transfer tax but the deed also needs to address Homestead rights and marital status. This can be a tricky situation because often these deeds are delayed and one spouse may have remarried already or they could still be married to each other at the time of the deed. Be careful to identify if the property is Homestead of the Grantor and address Homestead rights according to their actual marital status.

Civil Unions during 2008-2010

Civil Unions existed from 1/1/2008-12/31/2010 and are treated the same as marriage for determining Homestead Rights. This time period created some terminology issues. Partner, Civil Unionnee or spouse all indicate a civil union. The term Unmarried is ambiguous as the Grantor may have been in a civil union. If you encounter this during the 2008-2010 time period, review the section below for possible solutions. All Civil Unions automatically converted to marriage as of 1/1/11.

How to Fix a Homestead Issue

These issues come up every day but we often can pull together information to cure it.

First, take a look at recorded documents both before and after the document in question. For example, a deed from Bob and Jane in 2016 with no marital status recited, but the deed into them in 2008 recited them as husband and wife and the deed for their replacement property later in 2017 identifies them as husband and wife, you can assume they were husband and wife for the 2016 deed. See TS 5-3. It is good practice to always recite the marital status of the Grantees in a deed as well for this very reason. *Second*, Homestead Rights are abandoned either upon death of the person who could claim them or the departure from the property with no intent to return. Both can be established by an affidavit setting forth satisfactory evidence of departure and intent. See TS 5-2. Call our office for guidance. Lastly, Homestead Rights are presumed abandoned after 20 years from the date of conveyance. See TS 5-2.

Always recite marital status of every party in deeds and mortgages and always determine how to release the homestead rights.

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Homestead Rights are held by the record title holder(s) and any non-titled spouse(s) in a primary residence. The rights include a protection from creditors up to \$120,000 per person and the right to occupy the property.

Statute:

RSA 480:1.

Every person is entitled to \$120,000 worth of his or her homestead, or of his or her interest therein, as a homestead. The homestead right created by this chapter shall exist in manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person but shall not exist in the land upon which the manufactured housing is situated if that land is not also owned by the owner of the manufactured housing.

Title Standards:

TS 5-2 through 5-7

TS 6-1 and 6-2