

- ASK DAVE -



QUESTION:

Do I always need both spouses' signatures when taking a mortgage on a residential property?

ANSWER:

The old adage "it takes one to buy and two to sell or mortgage" is true **except** in the case of a purchase money mortgage. A purchase money mortgage is a mortgage where the loan proceeds are used to purchase the property. A true purchase money mortgage only requires one spouse's signature. The burden is on the mortgagee to prove a purchase money mortgage transaction. A statement in the mortgage declaring it to be a purchase money mortgage satisfies the burden of proof. In any refinancing situation, both spouses should execute the mortgage. The ***best business practice*** is to always have both spouses join in the execution of the mortgage so there can be no question of enforceability.

When it comes to selling real property, both spouses must sign a deed to convey out their interest in the property.

At Anastasi & Associates, we give advice and create documents to limit lack of enforceability issues in the future. Call us if you have any questions.