

## **Non Vested Spouse**

**Q Title to a single family residence is vested in a married woman individually. Does her husband have to sign the deed?**

A Probably.

New Jersey law gives the non-vested spouse the right of joint possession in the principal matrimonial residence. (NJSA 3B:28-3) Among other things, the vested spouse cannot mortgage or convey the principal matrimonial residence without involving the non-vested spouse.

Determining whether the land in question is the principal matrimonial residence is the first step. If it is not, this is accomplished by obtaining an affidavit from the non-vested spouse stating that the land in question is not their principal matrimonial residence and providing the street address for their principal matrimonial residence. It is beneficial for that affidavit to also acknowledge the transaction being insured. (Such as, "I understand that my spouse is selling/refinancing her real property at \_\_\_\_\_ to \_\_\_\_\_ for \$\_\_\_\_\_ and give this affidavit in connection with that transaction.") It is not acceptable to obtain this affidavit from the vested spouse.

If the land in question is the principal matrimonial residence, the non-vested spouse must sign the deed (for a sale) or mortgage (for a refinance). If they are unwilling or unable to do so, the non-vested spouse may extinguish the right of joint possession by a contemporaneous deed to the vested spouse specifically reciting the statute and their intention to extinguish any interest, including the right of joint possession, in the subject land created by it.