

**New Jersey
N2K Hour:**

**Marital Rights
in New Jersey**

**Webex Presentation:
September 12, 2019**

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Civil Unions

- Pursuant to N.J.S.A 37:1-20, a civil union means the legally recognized union of two eligible individuals of the same sex established pursuant to this act. Parties to a civil union shall receive the same benefits and protections and be subject to the same responsibilities as spouses in a marriage.
 - Just like a marriage, a civil union license must be obtained. There are not “informal civil unions”.
 - Same concepts as marriage regarding divorce, separation, child support, etc.

Domestic Partnerships

- Domestic Partnerships are NOT the same as Civil Unions.
 - Pursuant to N.J.S.A. 26:8A-1 et. seq., two persons of the same sex and at least 18 years old OR persons of different sexes who are at least 62 years old may enter into a domestic partnership.
 - Affidavit of domestic partnership must be filed with the local registrar (N.J.S.A. 26:8A-4).
 - A domestic partnership does not create dower, curtesy, or the right of joint possession. There is also not an automatic presumption of joint tenancy without specific language.

Overview of Property Ownership

- In New Jersey, a married couple or civil union partners automatically take title as tenants by the entirety unless the deed specifically states otherwise.
 - The deed doesn't need to say as a “married couple” or “husband and wife”. However, this is a best practice principal from a conveyance perspective.
- If property was owned as tenants in common or joint tenants with the right of survivorship before the marriage or civil union, a new deed into the couple must go on record to create a tenancy by the entirety.

Dower and Curtesy: The “old way”

- Dower relates to the wife’s right to land in which her husband held an interest.
 - At common law, it was 1/3 of all land. Now, pursuant to N.J.S.A. 3B:28-1, it is 1/2 of all land.
 - Dower requires a (1) valid marriage, (2) property acquired by the husband individually either prior to or during the marriage, and (3) Coverture (marriage was in effect at the time of death).
 - Effectively it is a life estate held by the widow.
- Pursuant to N.J.S.A. 3B:28-1,2, dower estates only applies to estates established prior to May 28, 1980.

Dower and Curtesy: The “old way”

- Conceptionally speaking, curtesy is very much the same as dower (except it applies to the husband’s interest).
 - Statutorily, the husband is entitled to a 1/2 interest in property owned by his deceased wife.
 - Requires the same three items as dower.
 - Only applies to estates established prior to May 28, 1980.
- Both dower and curtesy can be extinguished by
 - Joinder of the non-titled spouse, specific release in a deed, divorce, death of titled spouse, court order, etc. (N.J.S.A 37:2-18.1)

Joint Possession (N.J.S.A. 3B:28-3)

- Today, a married person is entitled to joint possession with their spouse of any real property which they occupy jointly as the principal matrimonial residence and to which neither dower or curtesy applies.
- One who acquires an estate or interest in real property from an individual whose spouse is entitled to joint possession thereof does so subject to such right of possession, unless such right of possession has been released, extinguished or subordinated by such spouse or has been terminated by order or judgment of a court of competent jurisdiction or otherwise.

Joint Possession (N.J.S.A. 3B:28-3)

- The right of joint possession can be released or subordinated by a premarital agreement, separation agreement, or other written instrument.
 - This includes deeds from one spouse to the other. Specific language regarding the right must be included.
- The right of joint possession shall be extinguished by the consent of both parties, by the death of either spouse, by judgment of divorce, separation or annulment, by other order or judgment which extinguishes same, or by voluntary abandonment of the principal matrimonial residence.

Joint Possession and Mortgage Liens (N.J.S.A. 3B:28-3.1)

- The right of joint possession to the principal matrimonial residence is subject to the lien of a mortgage, irrespective of the date when the mortgage is recorded, provided:
 - The mortgage is placed upon the matrimonial residence prior to the time that title to the residence was acquired by the married individual; or
 - The mortgage is placed upon the matrimonial residence prior to the marriage; or
 - The mortgage is a purchase money mortgage; or
 - The parties to the marriage have joined in the mortgage; or
 - The right of joint possession has been subordinated, released or extinguished by pursuant to N.J.S.A. 3B:28-3.

Joint Possession – What does it mean for title?

- When property is owned by an individual, always require their spouse to join the deed, mortgage, or lease.
 - A person may provide an affidavit stating they are not married to satisfy this requirement. However, if anything in your search shows that they might be married, you must confirm it.
- Reminder – all individuals in title (married or not) must join in deeds and mortgages. Doesn't matter if only one is signing the Note.
 - This does not apply to a married person purchasing property individually. The non-titled spouse does NOT have to join the mortgage in this case.

Divorce and Equitable Distribution.

- Divorce is governed by statutory law and cases are heard in the Superior Court, Chancery Division, Family Part.
- Equitable distribution is the statutory right of the Court to distribute property in connection with the final judgment of divorce (N.J.S.A. 2A:34-23).
- The Court can distribute property without regard to general principles of property ownership.
 - Court orders can effectively do the same thing as a deed without the need of the parties consent.

Divorce and Equitable Distribution.

- What type of real property is subject to equitable distribution?
 - Generally speaking, property acquired jointly during the marriage is subject to equitable distribution.
- Property not subject to equitable distribution?
 - Property acquired by one spouse prior to the marriage.
 - Property acquired and held by only one spouse during the marriage.
 - Property acquired after a formal separation agreement (signed by both parties, approved by the Court) or divorce complaint.

Divorce and Equitable Distribution.

- Just like fraudulent transfers to avoid a civil judgment, the Court can void a fraudulent transfer from one spouse to a third party to avoid equitable distribution.
- From a title standpoint, a divorce must be finalized and a final judgment entered before property can be conveyed or otherwise encumbered.
 - Watch out for ongoing divorce proceedings – this does NOT mean the parties are divorced.
 - Living separately (unless there is a formal separate agreement) does NOT mean that only one spouse has to sign.

Reviewing Divorce Documents

- You must always require the final judgment of divorce in the title commitment.
- The final judgment of divorce will include the required course of action regarding the distribution of real property.
 - The Court can require that one spouse retain the real property individually. This usually requires the other spouse to execute a deed for their interest.
 - Alternatively, the Court may require that the marital property be sold and the proceeds will be divided between the spouses in accordance with a Property Settlement Agreement.

Reviewing Divorce Documents

- Remember! A final judgment of divorce is a court order and therefore must not be deviated from.
 - If applicable, carefully review the Property Settlement Agreement to confirm how the proceeds should be distributed (e.g. the parties, to a trust, to the Court, etc.).
 - In some cases, a Property Settlement Agreement will give one spouse a limited power of attorney to sign on the other's behalf regarding the sale of the property.
 - Any change must be approved by the Court – even if both parties say they agree to the change.
 - Watch out for foreign (different state or country) divorces.
- When in doubt, contact your Underwriter.

Annulments (Judgments of Nullity)

- An annulment is known as a “judgment of nullity” in New Jersey.
- Judgments of Nullity invalidates a marriage.
 - This is different than a divorce which terminates a marriage.
 - The effect is that a person was never married.
 - Any marital rights that the ex-spouse obtained terminate because its as if they were never married.
- Require a copy of the judgment of nullity if parties say there was an annulment.

Liens and Marital Property

- If the final judgment of divorce requires one spouse (grantor) to convey the property to the other spouse (grantee), judgments entered against the grantor **AFTER** the entry of the judgment but **BEFORE** the conveyance date will not attach to the property.
 - If a judgment was entered before the final judgment of divorce, it would attach to the property.
 - This also applies to Civil Unions.
- If property is held as tenants by the entirety and a judgment is entered against only one spouse **AND** that judgment is not executed on before that spouse dies, the judgment dies with them.

Liens and Marital Property

- Federal tax lien against one spouse attaches to the delinquent taxpayer/spouse's interest in the property and can be enforced by non-judicial sale of the property or by judicial foreclosure.
 - Federal tax liens are extinguished upon the death of the delinquent taxpayer/spouse and do not transfer to the surviving spouse.
- Child Support Liens will show up on your Upper Court search.
 - If one spouse has a lien against the other, you can require a release of the property.

Spousal Transfer and Realty Transfer Fees

- Conveyances between husband and wife/civil union partners are not subject to Realty Transfer Tax (Section 8(j) of the RTF-1 Form).
 - This also includes transfers from parent to child.
- The Realty Transfer Tax does not apply if a deed is recorded within 90 days following the entry of a divorce/dissolution decree which dissolves the marriage/civil union partnership between the grantor and grantee (Section 8(p) of RTF-1 Form).
 - 90 Days is 90 Days. Not 91!

Wrap up and Review

- Always require the marital status for any individual and set up your commitment accordingly.
- Whenever possible, include the marital status on the new documents.
- If there is a divorce – you must review the final judgment of divorce.
- Relationships are complicated, especially when it comes to their affect on title – Contact your Underwriter if you have questions about title.

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Example : Absentee

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THANK YOU FOR JOINING US

See you next month on

October 8, 2019

Tuesday

11:00AM

New Jersey Transfer Taxes