



# HOMESTEADS

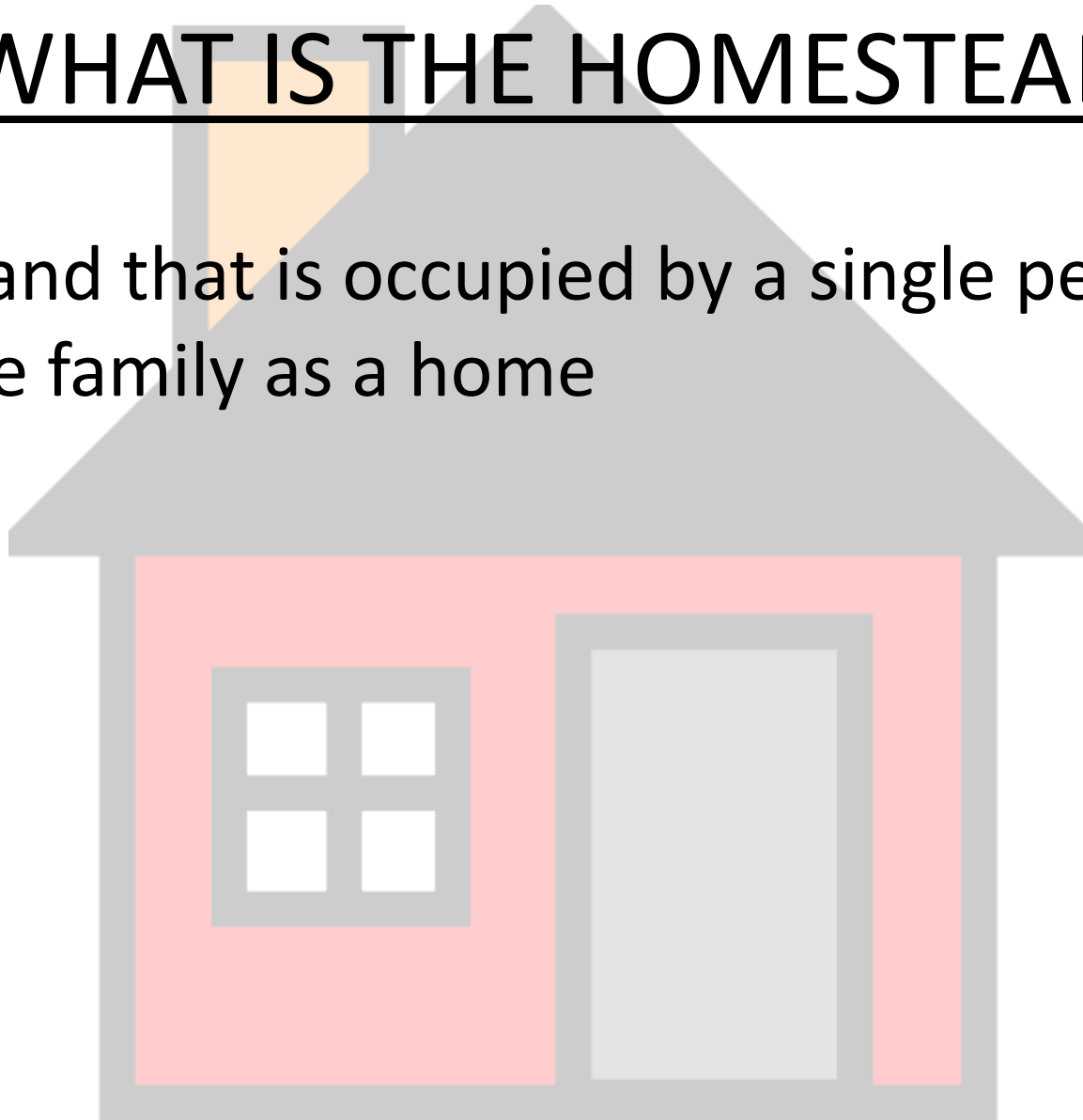
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# WHAT IS THE HOMESTEAD

- The land that is occupied by a single person or by the family as a home



# GENERAL



- Two Natures:
  - Personal right in land
  - Exemption from collection
- Not visible in public land records
- Overlaid on record ownership (fee simple; co-tenancies)
- Creature of Oklahoma Constitution and statutes

# HISTORICAL

- Protect family from eviction for general debts
- Protect widow on husband's death
- Protect wife from husband's ill deeds



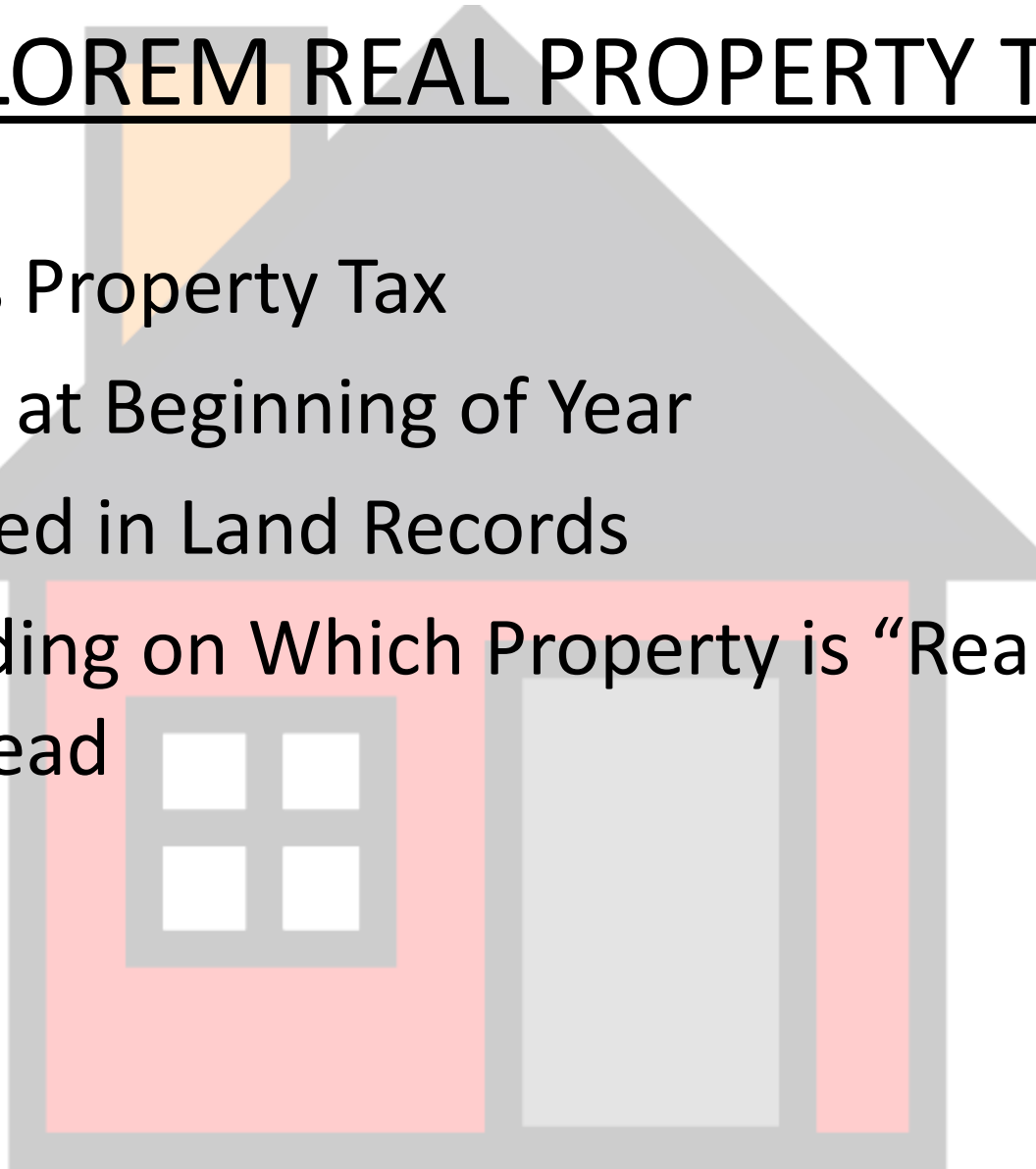


# TYPES

- Ad Valorem tax exemption
- Exemption from general execution
- Preserve life estate for non-owning surviving spouse and minor children
- Protect spouse's homestead from title-holding spouse's deeds and mortgages

# AD VALOREM REAL PROPERTY TAXES

- Reduces Property Tax
- Claimed at Beginning of Year
- Not Noted in Land Records
- Not Binding on Which Property is “Real” Homestead

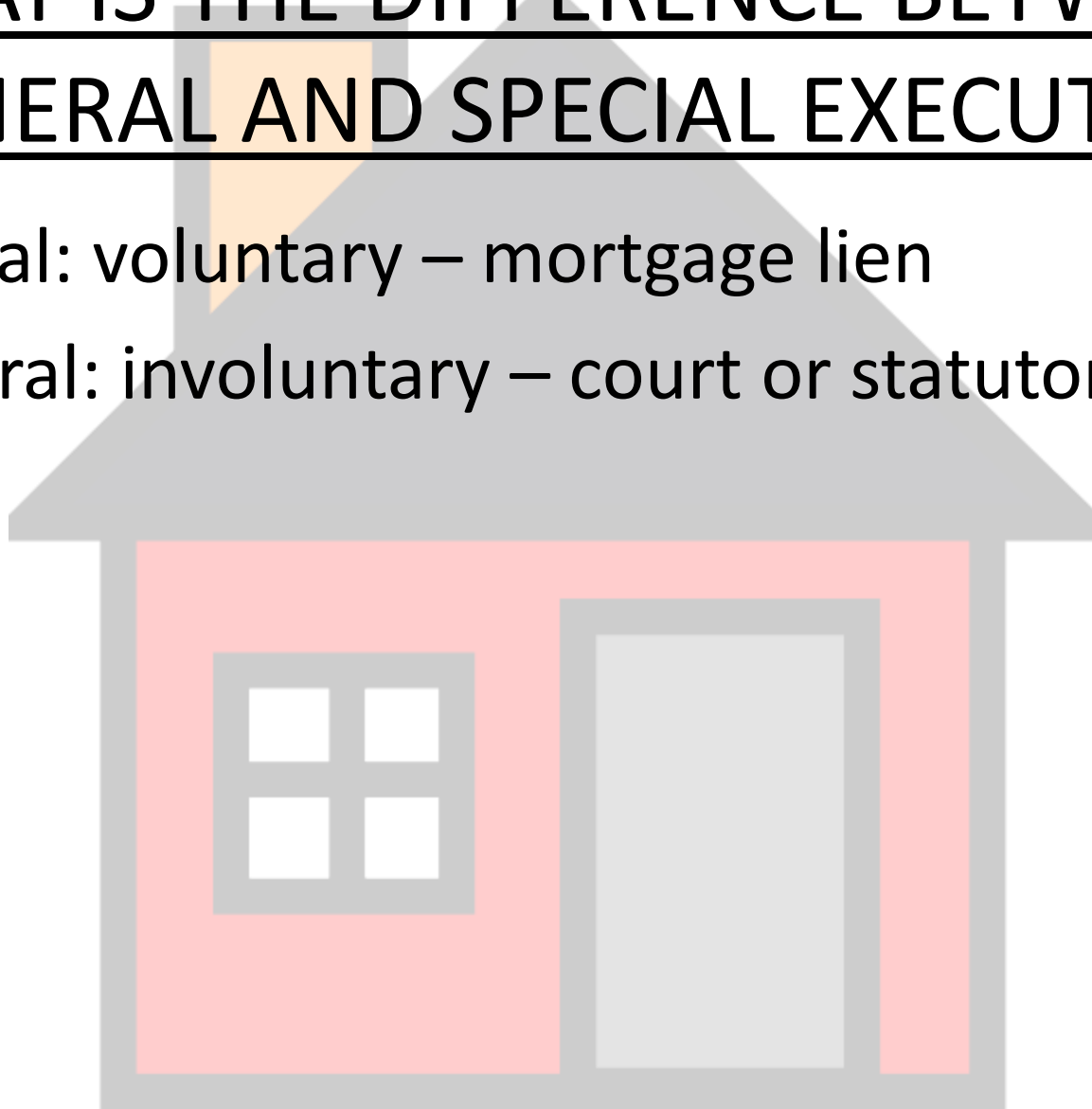


# CONSTITUTIONAL FRAMEWORK

- Art. 12, §2: The homestead of the family shall be, and is hereby protected from forced sale for the payment of debts, except for the purchase money therefore or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon;
- nor shall the owner, if married, sell the homestead without the consent of his or her spouse, given in such manner as may be prescribed by law; Provided, Nothing in this article shall prohibit any person from mortgaging his homestead, the spouse, if any, joining therein; nor prevent the sale thereof on foreclosure to satisfy any such mortgage.

# WHAT IS THE DIFFERENCE BETWEEN GENERAL AND SPECIAL EXECUTION

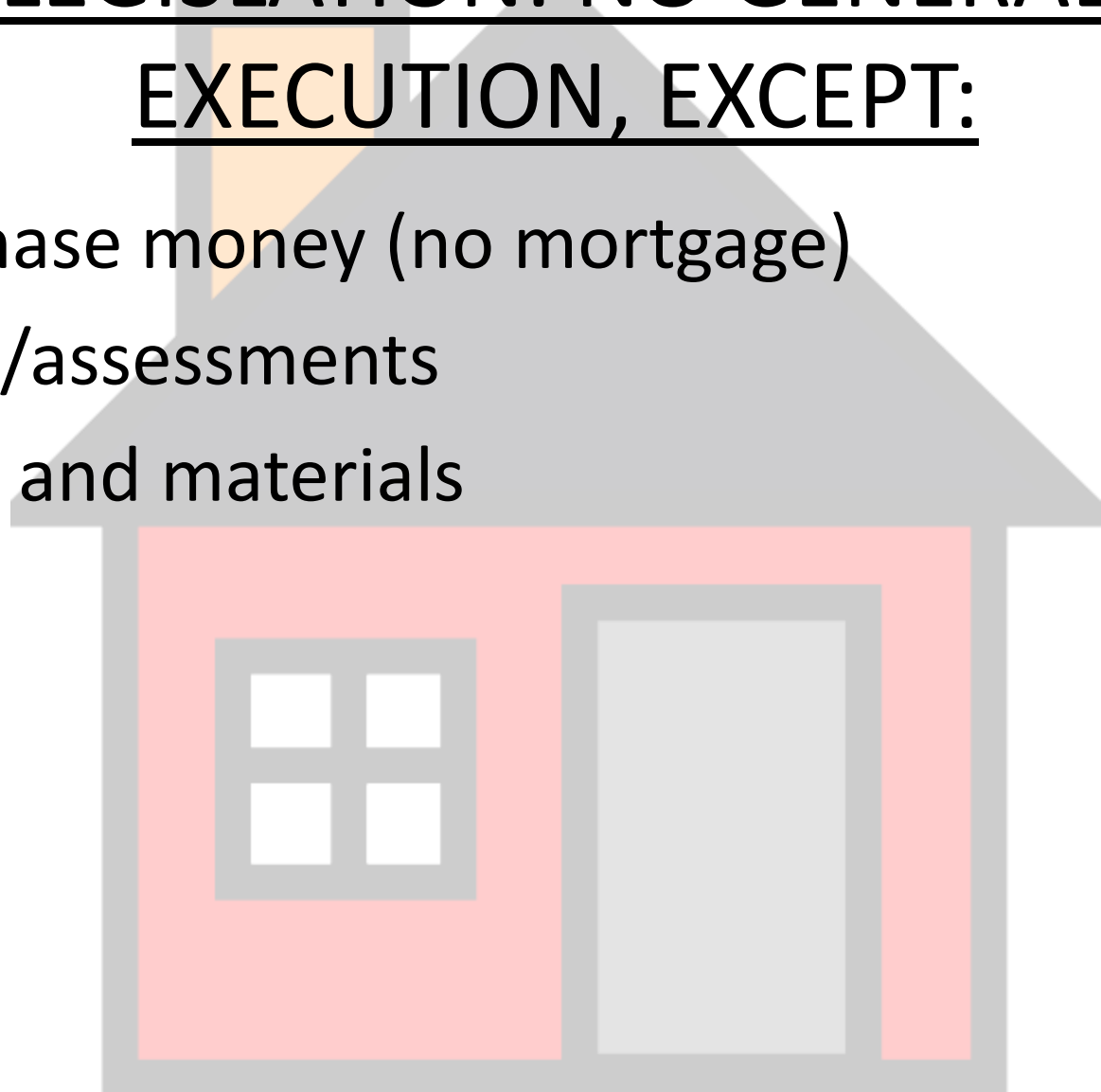
- Special: voluntary – mortgage lien
- General: involuntary – court or statutory lien





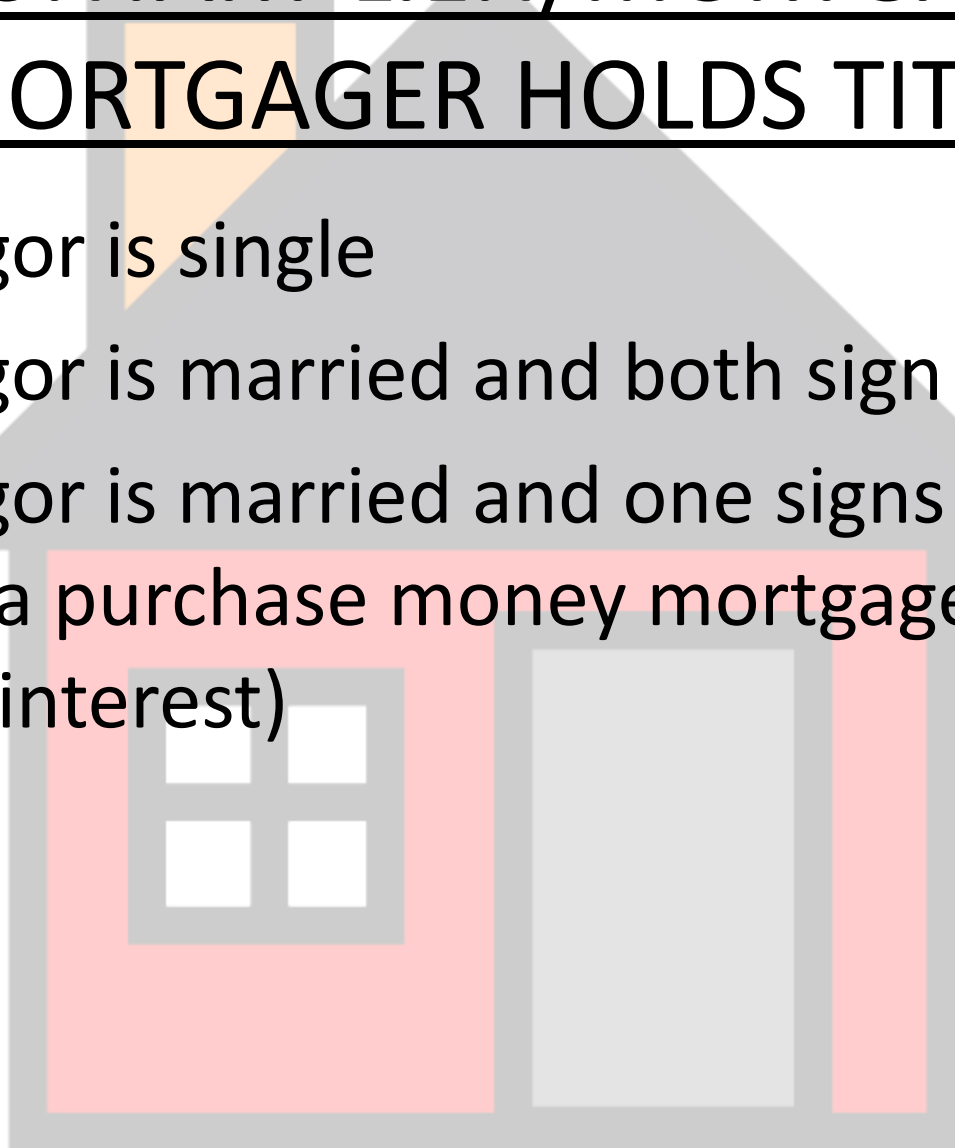
# LEGISLATION: NO GENERAL EXECUTION, EXCEPT:

- Purchase money (no mortgage)
- Taxes/assessments
- Work and materials



# VOLUNTARY LIEN/MORTGAGE – MORTGAGER HOLDS TITLE

- Mortgagor is single
- Mortgagor is married and both sign mortgage
- Mortgagor is married and one signs mortgage, but it is a purchase money mortgage (loan created interest)



# SIZE OF HOMESTEAD

- Only one for family
- Rural – up to 160 acres
- Urban – up to 1 acre (Up to \$5,000) [owner receives first \$5,000 from sale]



# ATTACHMENT WITH BARRED EXECUTION

- Pre-1997 – Judgment did not attach to homestead
- Post-1997 – General Money Judgment attaches to homestead, but cannot be executed until sold or adopts another homestead
- If sold, does lien become executable on land and/or does it follow the proceeds?

# PROBATE HOMESTEAD

- Exclusive right to possession
- Held by surviving spouse and minor children (until maturity)
- Continues until abandoned
- Supersedes claims of co- and joint tenant, and heir/devisee

# MARITAL HOMESTEAD



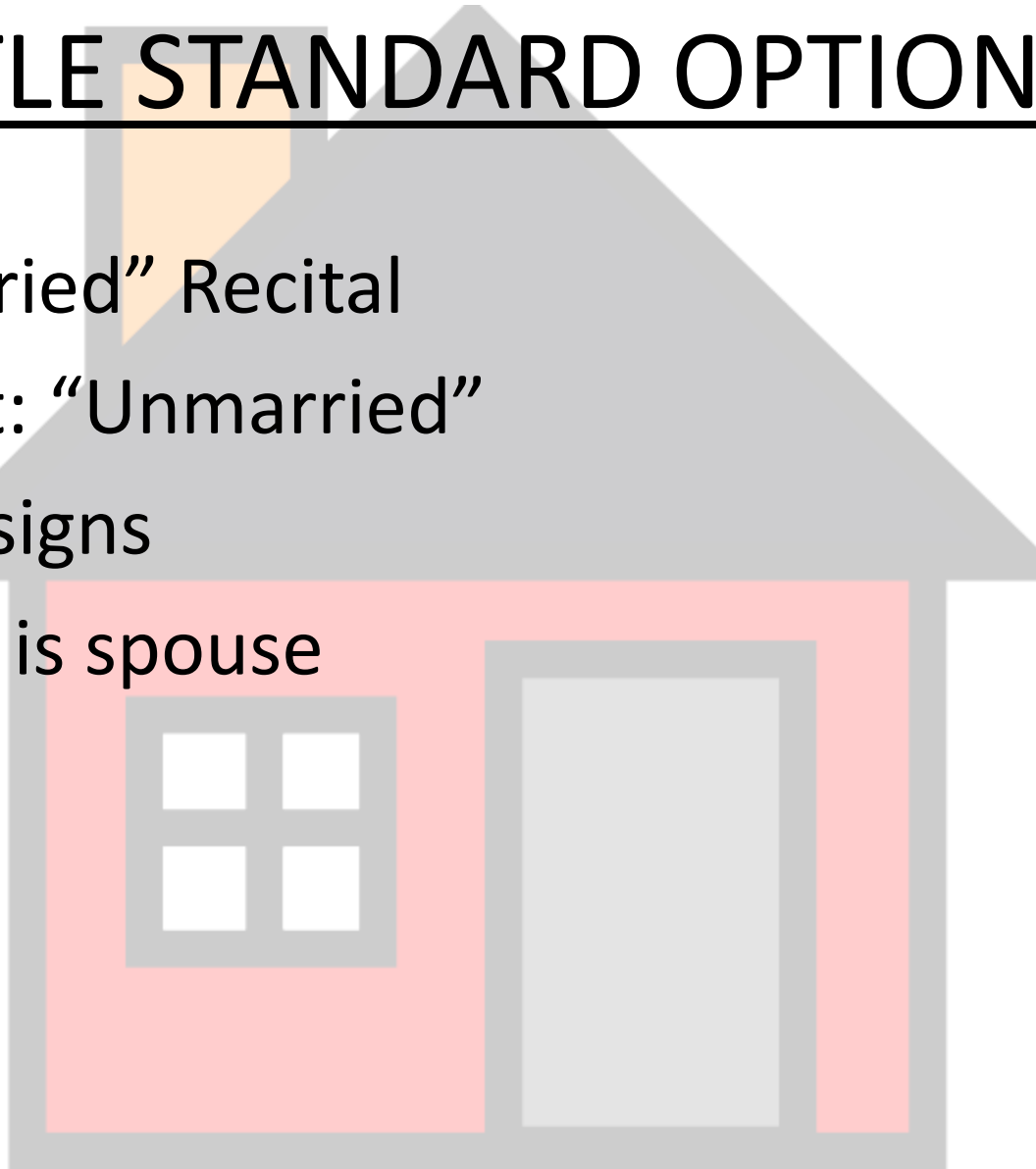
- Constitution and Statutes
- Not able to convey or mortgage homestead to third party without joinder of spouse
- Absent spousal signature: “Void” (for 10 years)
- Not protect against purchase money mortgage even without second spouse’s signature

# ASSUMPTION OF MARITAL HOMESTEAD STATUS

- Sole owner can convey non-homestead by self (But not marketable title)
- Includes residential and non-residential
- Public Records silent on homestead
- Show marital status on document: accept “single” recital
- Include signature of spouse
- Legislature failed to adopt request to declare homestead of record

# TITLE STANDARD OPTIONS

- “Unmarried” Recital
- Affidavit: “Unmarried”
- Spouse signs
- Grantee is spouse





# RECITAL/AFFIDAVIT



- Unmarried – OK
- Non-homestead – not OK
- How/where to recite on deed/mortgage
- Single, unmarried, widowed, divorced v. married
- Granting clause, habendum clause
- Limit warranties/representations

# EXCEPTIONS TO JOINDER



- Determine facts of record or thru court case
- Remaining spouse holds title alone
- One spouse abandons other for over one year or leave state
- Incapacity – court order allowing conveyance

# SUBSCRIBE SAME INSTRUMENT

- Cannot sign separate deeds/mortgages
- Can sign same instrument on different date
- Spouse can adopt other spouse's signing for them
- Pre-mature delivery of deed is invalid
- Both must sign sales contract
- May use P.O.A.

# INTEREST



- Husband and wife occupying a homestead they are buying – seller cannot give oil and gas interest
- If document initially void, it does not become valid by abandonment
- Only affects surface interest and unsevered minerals

# NEW CASE (2008) HILL v. DISCOVERY

## CARD - FACTS

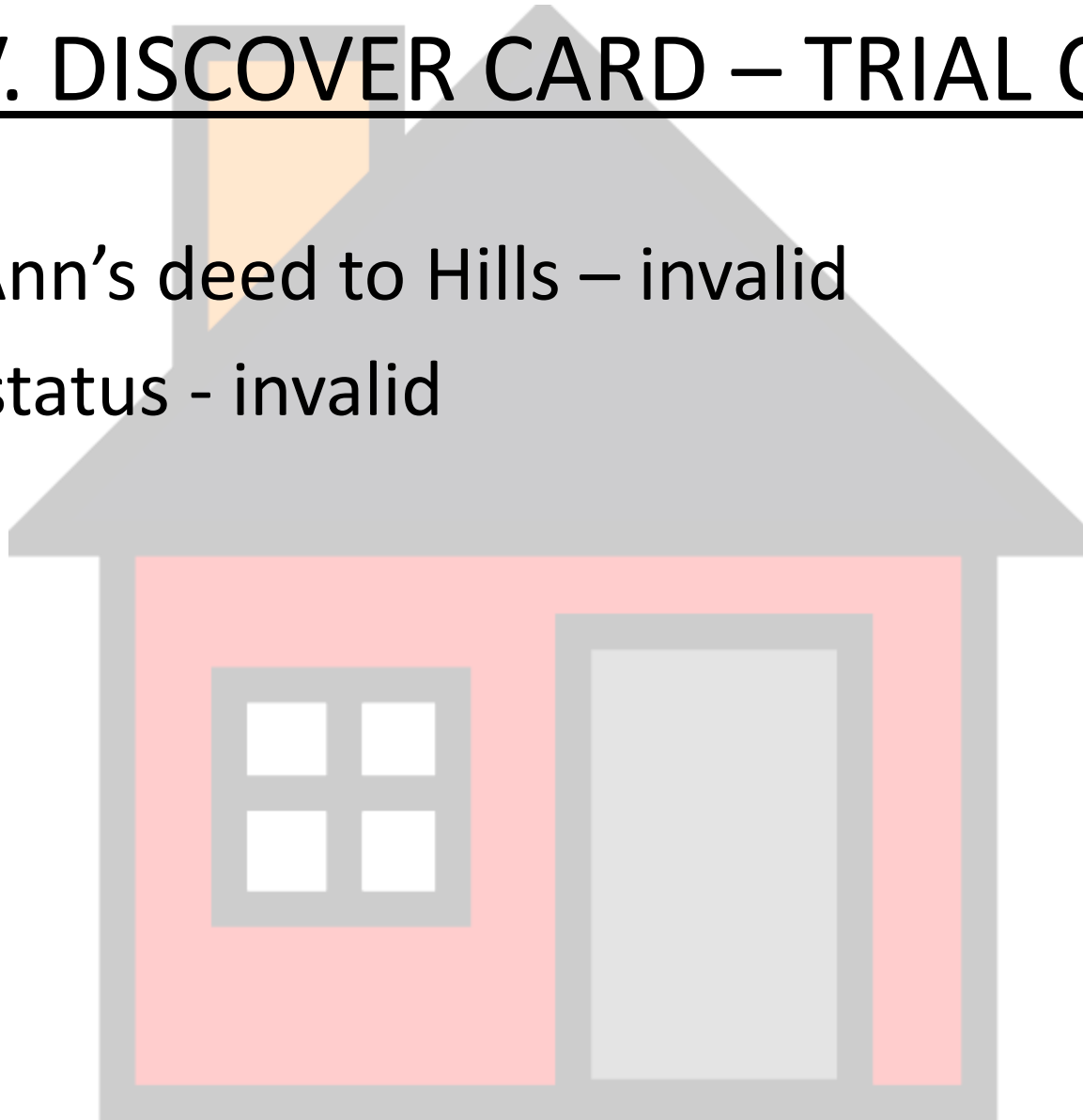
- Larry Jennings and Sue Ann Jennings Hold as Joint Tenants
- Larry Jennings, without Sue Ann's signature, deeds to Sue Ann
- Sue Ann, claiming "single" deeds to Hills
- Discover Card files money judgment against both Jennings
- Both Jennings sign (as husband and as wife) and record another deed to Hills
- Hills sue Discover Card to extinguish lien

# HILL v. DISCOVER CARD – QUESTIONS

- Was the transfer of title from Larry to wife Sue Ann valid?
- Did Larry's transfer include future marital homestead claims?
- Was Sue Ann's conveyance to Hills without husband Larry's signature valid/invalid
- Did lien attach to land?

# HILL V. DISCOVER CARD – TRIAL COURT

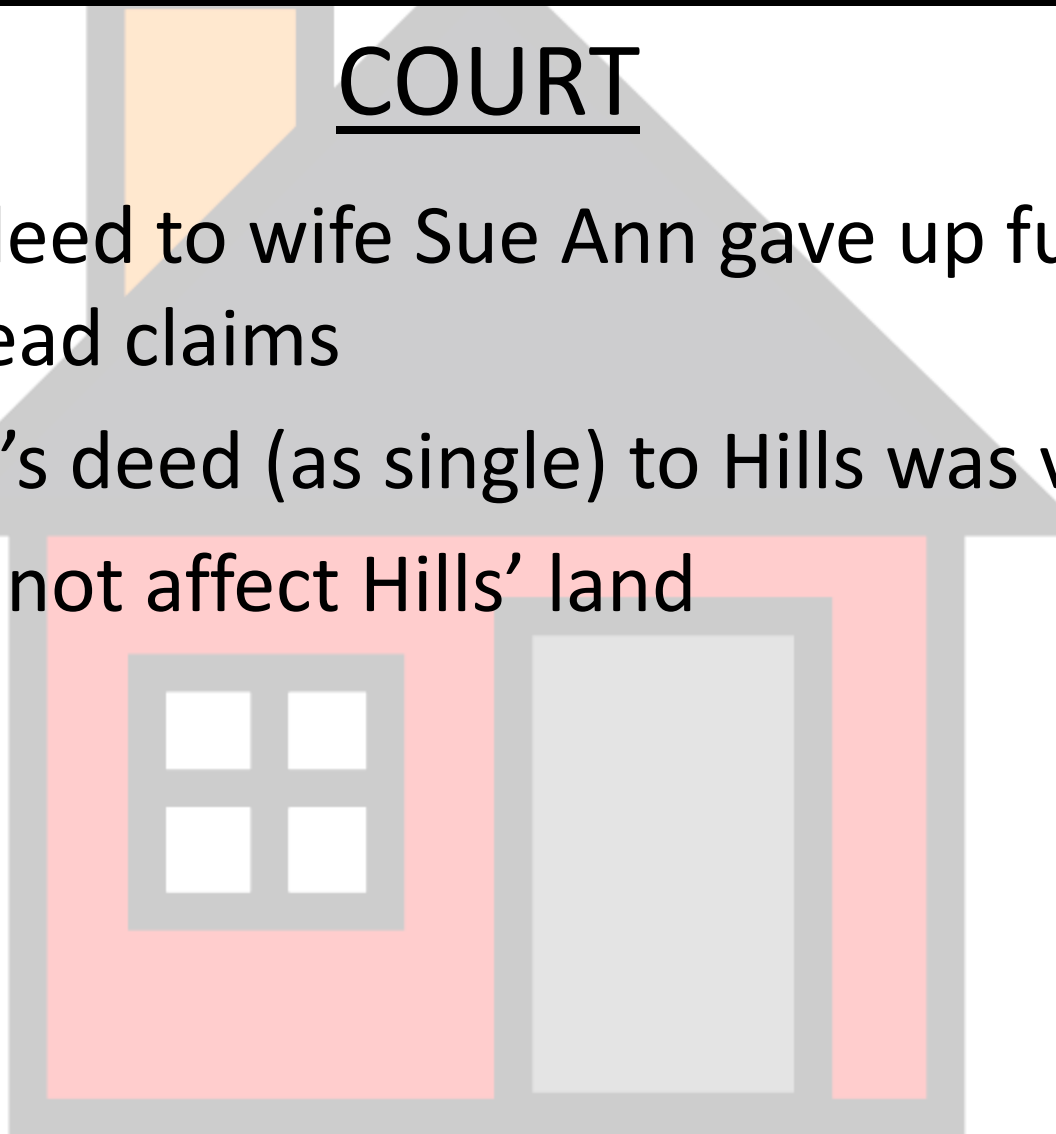
- Sue Ann's deed to Hills – invalid
- Lien status - invalid



# HILL v. DISCOVER CARD – APPEALS

## COURT

- Larry's deed to wife Sue Ann gave up future homestead claims
- Sue Ann's deed (as single) to Hills was valid
- Lien did not affect Hills' land





# HILL v. DISCOVER CARD – WRONG DECISIONS

- Conveyance of title to spouse does not give up future homestead claims
- Law does not allow conveyance to third party without both spouses signing

