



UNDERWRITING BULLETIN

To: All Florida Agents of WFG National Title Insurance Company
From: WFG Florida Underwriting Department
Date: August 26, 2015
Bulletin No.: FL2015-10
Re: Same-Sex Marriage Update

In our prior Bulletin, FL2015-02, we advised that an update would be issued after the U.S. Supreme Court ruled on the issues.

In *Obergefell v. Hodges* (2015), the U.S. Supreme Court held that the 14th Amendment requires a state to: (a) license a marriage between two people of the same sex; and (b) recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in any state (or outside of the country). In some cases, this change may have title implications where title was acquired by a same-sex couple prior to the U.S. Supreme Court's ruling in *Obergefell*.

Vesting On Acquisition

With respect to how title will be held by a same-sex couple on acquisition, a same-sex married couple should be treated no differently than any married couple. Parties acquiring an interest in property should be placed into title in the manner as instructed in the purchase agreement or a separate writing signed by the purchasers.

If a same-sex couple has requested that title be put in their names as spouses or have otherwise stated that they want to hold title as tenants by the entirety, vest the title as follows: "*A and B, a married couple*"; or "*A and B, a married couple as tenants by the entirety*".

On Mortgage or Sale

A conveyance by one or both same-sex partners should be handled in the same manner as for any married couple. Spousal joinder is to be required on both deeds and mortgages of homestead property owned by one spouse joined on the deed or mortgage by the non-titled spouse. When conveying jointly held property, the grantors should be described as, "*A and B, a married couple*"; and when conveying

homestead property held solely by A, the grantor clause should be, "A, joined by [his/her] spouse, B". For non-homestead property, the usual "non-homestead" recitation should be included in the deed.

Entireties and Other Creditor Protections - Survivorship & Estates

Same-sex couples are afforded the same creditor protections as any married couple, including protections under estates by the entireties, homestead or other exemption laws.

Likewise, the surviving spouse of a same-sex marriage will be treated in the same manner as any surviving spouse for purposes of survivorship, inheritance, intestacy, spousal election, and rights to be appointed as personal representative.

Areas Requiring Caution

It is not yet clear whether title previously acquired by a same-sex couple as "joint tenants with rights of survivorship," or without stating a type of tenancy, will have their title automatically "adjusted" to an estate by the entireties following this ruling or if the married couple will need to execute a deed to themselves to create an estate by the entirety. In the great majority of situations, it will not matter because both spouses will be available to join in a current transaction. Please contact your WFG underwriter if faced with a situation where the manner in which title was held prior to the Supreme Court's ruling may affect property rights of a same-sex couple or a surviving spouse.

Don't Insure Marital Status or Type of Tenancy

While it is important to show marital status and the type of tenancy being created in deeds and mortgages, we don't insure that a couple really is married or that they have created a particular type of tenancy under Florida law.

To avoid any argument that you are insuring either the marital status or type of tenancy, show ONLY the names of the insured owners without any reference to marital status or type of tenancy on Schedule A of your commitment and policy.

As an example:

1. Name of Insured: John Smith and Susan Smith [Not: John Smith and Susan Smith, a married couple, as Joint Tenants or Tenants by the Entireties, etc.].
3. Title is vested in: John Smith and Susan Smith

We have noticed that certain software packages, when set up incorrectly, will auto-populate the commitment and title policy with exactly the same language used in the deed, sometimes with embarrassing results. So please check this in your systems.

If you have any questions, please contact your WFG underwriter.