



## UNDERWRITING BULLETIN

**To:** All Florida Agents of WFG National Title Insurance Company  
**From:** WFG Florida Underwriting Department  
**Date:** February 3, 2015  
**Bulletin No.:** FL 2015-2  
**Re:** Same-sex Marriage

Florida's Constitutional and statutory definitions of marriage, as being between a man and a woman, have been challenged in Federal court in the consolidated cases of *James Domer Brenner et al. v. Rick Scott et al.*, Case Number: 4:14cv107-RH/CAS (N.D. Fla.) and *Sloan Grimsley et al., v. Rick Scott et al.*, 4:14cv138-RH/CAS (N.D. Fla.). In those cases, the District Court held that Florida's "same-sex marriage provisions violated the Due Process and Equal Protection Clauses" of the U.S. Constitution and granted a preliminary injunction prohibiting certain Florida Officials from enforcing these laws. The District Court entered a stay of its preliminary injunction to allow the parties to appeal to the 11<sup>th</sup> Circuit and the United States Supreme Court. The stay expired at midnight on January 5, 2015, and local officials have begun issuing marriage licenses to same-sex couples.

But since appeals are pending, the issue remains in a state of uncertainty. The U.S. Supreme Court has accepted jurisdiction of a similar case out of a different circuit.

Until the U.S. Supreme Court has made a final determination on the issue, the legal status and resulting property rights will remain uncertain. WFG requires the following during this period of uncertainty:

**1. Vesting.** If a same-sex couple has requested that title be put in their names as husband and wife 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 as tenants by the entirety with full rights of survivorship.*"

**2. Joinder.** On homestead property, 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. The grantors should be described either as, "*A and B, a married couple*" when conveying jointly held property; or as "*A, joined by [his/her] spouse, B*" when conveying property held solely by A. For non-homestead property, the usual "non-homestead" recitation should be included in the deed.

**3. Judgments against one spouse.** Even if a same-sex couple holds title as described in #1 above, until the Supreme Court has clarified the issues, WFG will not rely on entireties ownership as a shield to preclude a judgment against one spouse from attaching to the property. A release of the judgment, or a judicial determination, will be required unless other protections, such as homestead, apply.

**4. Probate and homestead property.** Unless resolved by the probate court in an order, WFG will require deeds [or mortgage] from both the beneficiaries who would take if the decedent was survived by a spouse and from those beneficiaries who would take if the decedent was not survived by a spouse.

**5. Death of one spouse.** If a same-sex couple holds title as described in #1 above or as Joint Tenants with Right of Survivorship, and one spouse dies, WFG will recognize the “survivorship” aspect of the vesting and will require a death certificate be recorded for the deceased spouse and an affidavit of continuous marriage be recorded. However, if the same-sex couple hold title as “*A and B, a married couple*” without survivorship language; or as “*A and B, a married couple an estate by the entirety*” without survivorship language, WFG will require a probate on the deceased title holder.

This Bulletin will be updated when and if the U.S. Supreme Court provides clarification of these issues.

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