



Title Topics



January 2007

Special Report

Civil Unions

How Will They Affect Real Estate Practice? New law to take effect in February

In response to the decision of the NJ Supreme Court in *Lewis v. Harris*, 188 N.J. 415 (2006), which held that although there is no right to same-sex marriage under the state Constitution, it is unconstitutional to deny to same-sex couples the same rights and benefits as are provided by law to married couples, the Legislature has enacted P.L. 2006, c. 103, effective *ca.* February 19, 2007, which permits the formation of civil unions. Therefore, the Legislature chose to “...establish civil unions by amending the current marriage statute to include same-sex couples [, thus] providing same-sex couples with the same rights and benefits as heterosexual couples who choose to marry”. P.L. 2006, c. 103, §1(f). Under the statute, civil union means “the legally recognized union of two eligible individuals of the same sex ...”; civil union couple means “two persons who have established a civil union ...”; and one partner in a civil union couple means “a person who has established a civil union ...”. P.L. 2006, c. 103, §2.

In order to form a civil union, the parties must meet the following criteria: (a) not be a party to another civil union, domestic partnership or marriage; (b) be of the same sex; and (c) be at least 18 years of age. P.L. 2006, c. 103, §3. As suggested above, the intent of the statute is to provide same-sex couples who enter into a civil union “...all of the same benefits, protections and responsibilities under law ... as are granted to spouses in a marriage”. P.L. 2006, c. 103, §4. Civil unions are solemnized in the same fashion as marriages. The laws of divorce, separation, annulment, pre-marital or antenuptial agreements, child custody, etc., also apply to civil unions. Of particular interest to title

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Vested Title Inc.
648 Newark Avenue
Jersey City NJ 07306
201-656-9220 800-637-0251 in NJ 201-656-4506 Fax

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insurers is P.L. 2006, c. 103, §5, which states that:

The following list of legal benefits, protections and responsibilities of spouses shall apply in like manner to civil union couples, but shall not be construed to be an exhaustive list of such benefits, protections and responsibilities: (a) laws relating to title, tenure, descent and distribution, intestate succession, survivorship, other incidents of the acquisition, ownership or transfer, *inter vivos* or at death, of real or personal property, including but not limited to eligibility to hold real and personal property as tenants by the entirety; ... (c) probate law and procedure, including non-probate transfer; ...

In sum, civil unions are the same as marriages, except that the parties must be of the same sex, rather than of different sexes.

As for domestic partnerships, once the new law goes into effect, no new domestic partnerships may be created (except by couples aged 62 or older), but existing domestic partnerships are unaffected. Domestic partners may convert their existing domestic partnerships into civil unions, if they so choose.

Practical application- Since the new statute is intended to make it clear that civil union partners enjoy the same rights and responsibilities as couples in a marriage, we will be treating civil union partners in the same manner as we currently treat husbands and wives. For example, when civil union partners acquire title to realty, they should be deemed to have acquired title as tenants-by-the-entireties (unless the deed or will otherwise provides). A surviving civil union partner should be able to convey realty (held in a tenancy-by-the-entireties or joint tenancy) free of the interest of the deceased partner's heirs or devisees.

If title to the principal residence is vested in only one partner, the non-title-holding partner presumably enjoys a joint possessor right. Thus, our commitment will require that the deed or mortgage be executed by "X and spouse (if any) or civil union partner (if any)".

With regard to inheritance, a surviving civil union partner should stand in the same position as a surviving spouse. Thus, with respect to transfer inheritance tax, a surviving partner should be considered to be a Class A beneficiary. However, since the Internal Revenue Code does not recognize same-sex marriages or civil unions, a surviving partner may not stand in the same position as a surviving spouse for federal estate tax purposes. Because New Jersey estate tax is computed with reference to federal estate tax, it is unclear to what extent the civil union law will benefit surviving partners in this respect.

A full copy of the statute may be found at www.njleg.state.nj.us/2006/Bills/AL06/103_.PDF (Thanks to Larry Fineberg of Chicago Title for providing the background on this material.)

How to Contact Us:**Vested Title Inc.****648 Newark Avenue****P.O. Box 6453****Jersey City, NJ 07306****201-656-9220 201-656-4506 Fax****800-637-0251 in New Jersey****On the Web at****www.vestedtitle.com****vti@vested.com****Susan L. Kruger - President****Stephen M. Flatow - Vice Pres. & Counsel****Paul D. Kruger - Vice President & Manager****Diane R. Menard, - Vice President-Sales****Vincent Bellucci - Vice President- Sales****Jackie Stevens - Sales****Christina Cavadas- Sales****Michael Bellucci - Sales****Paula Tamburo - Title Officer****Edward Buonopane - Title Officer**