

Title Alert 2014-05

May 29, 2014

Whitewood v. Wolf Establishes Marriage Equality in Pennsylvania

Purpose: This communication will discuss the effect of *Whitewood v. Wolf*, (hereinafter, the "case") effective immediately for the underwriting and issuance of title insurance policies in Pennsylvania.

Background: On May 20th, Pennsylvania became the 19th state to legalize same-sex marriage under the U.S. District Court for the Middle District of Pennsylvania's ruling in *Whitewood v. Wolf*. The opinion declares that "same-sex couples seeking to marry in Pennsylvania may do so, and already married same-sex couples will be recognized as such in the Commonwealth." Accordingly, this decision affords equal application of all laws relating to marriage, married spouses or their children to both same-gender or different-gender married spouses and their children in the Commonwealth of Pennsylvania.

Guideline: Effective immediately, same-sex couples who marry in Pennsylvania as well as same-sex couples legally married in other jurisdictions will have all of the same rights, benefits, protections and responsibilities as do any married persons under Pennsylvania law.

1. What is the preferred nomenclature for same-sex couples to take title?

In Pennsylvania, absent intent otherwise specified, a conveyance, release or sale of land to a husband and wife creates an estate by the entirety, and not joint tenancy or tenancy in common. See *In re Burns Estate*, 40 D. & C.2d 64 (1966). The preferred nomenclature for both opposite-sex and same-sex couples would be acknowledgment that the individuals are married to one another and are taking title "as tenants by the entirety." It is not necessary to identify the couple as "same-sex."

2. Does Pennsylvania recognize same-sex couples who were married in other states and nations?

Yes, same-sex couples who were or are married in other states and nations that permit same-sex marriage are now considered married in Pennsylvania.

3. Are all the other Pennsylvania title and encumbrance principles applicable to same-sex couples?

Yes, all existing title principles apply equally to same-sex marriages. For example, both spouses who are in title must be identified as borrowers on any insured mortgage and must

execute the mortgage.

4. Will an owner's policy of title insurance that was issued to same-sex partners vested as joint tenants with the right of survivorship, continue to insure them when they subsequently marry that partner?

Yes, because the policy will continue to provide coverage to an insured for as long as they own an interest in the property.

5. Does a same-sex couple that holds title as joint tenants with the right of survivorship have to take affirmative steps to convert their ownership interest to tenants by the entirety?

Yes, a tenancy by the entirety can be created only by married persons who own property together as a single legal entity. A joint tenancy is not automatically converted by a change in marital status, so the couple must record a new deed to themselves converting their ownership to a tenancy by the entirety. Same-sex couples who enter into marriage where one spouse holds title to real estate do not automatically take joint title to such property; the real estate owning spouse must convey the property to both members of the couple, the same as for opposite-sex couples.

For reference, the full text of the Middle District case may be found at: <http://www.pamd.uscourts.gov/?q=news/judge-jones-has-released-opinion-whitewood-v-wolf-113-cv-1861>.

If you have any questions, please feel free to contact us and alert us if you hear of any further developments.

Note: Under the Approved Attorney system, the scope of our relationship is limited to the functions of underwriting and the issuance of title insurance policies on your behalf and does not include closing or escrow services. We sometimes provide information and recommendations with regard to your closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Advisory is being provided to you with those considerations in mind.

WARNING: This Underwriting Communication is intended solely for the employees of Penn Attorneys/Ohio Bar Title Insurance Company and its Approved Attorneys, and is not to be distributed to third parties, and any reliance by any other person or entity is unauthorized. This Underwriting Communication is intended solely for the purpose of underwriting policies of Ohio Bar Title Insurance Company.

900 State Street, Suite 320, Erie, PA 16501
(800) 352-2216 FAX (800) 234-2352