

New Jersey Civil Unions - State and Local Tax Consequences

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The New Jersey Supreme Court's unanimous 2006 decision in *Lewis v. Harris* required that "committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by married opposite-sex couples." The Legislature responded with passage of the Civil Union Act that took effect on February 19, 2007. Under this new law, "legal benefits, protections and responsibilities of spouses shall apply in like manner to civil union couples including laws relating to taxes imposed by the State or a municipality...." Below is an overview of the state and local tax benefits afforded Civil Union couples.

New Jersey Gross Income Tax

Starting with returns for the tax year 2007, civil union couples are entitled to the same joint filing status as married couples. Civil union couples will need to check the "Married/Civil Union Couple Joint" box on NJ-W4 form.

New Jersey Estate Tax

If a member of a civil union couple dies, the surviving partner may be able to claim the marital deduction for New Jersey Estate Tax purposes, but only if the estate is not required to file a Federal Estate Tax Return. If a Federal Estate Tax Return must be filed, then the New Jersey Estate Tax Return must be consistent with the Federal Return, which does not permit marital deductions for a civil union couple.

New Jersey Transfer Inheritance Tax

If a member of a civil union couple dies, whatever property passes to the surviving partner is not subject to Transfer Inheritance Tax.

Realty Transfer Fee

Transfers between members of a civil union are entitled to the same exemptions for recording deeds as transfers between spouses are.

Property Tax

Starting with the 2007 tax year, civil union couples are entitled to the same

property tax relief as married couples: Property Tax Reimbursement Program ("Senior Freeze"); Homestead Rebates; Disabled Veterans Real Property Tax Exemption; Veterans Real Property Tax Deduction; and Senior Citizens Real Property Tax Deduction.

While treatment of same sex relationships under New Jersey law continues to evolve, couples previously registered as domestic partners do not automatically qualify for civil union status. Individuals need to complete a Civil Union License and participate in a Civil Union ceremony officiated by an authorized government official or religious representative in order to become a Civil Union couple.

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The Impact of the New Jersey Civil Union Law on Residential Real Estate Transactions

By ALLISON S. ZANGRILLI, ESQ.

The Civil Union Law has a significant impact on the sale and purchase of residential real estate, an area of the law that most people directly experience at some point in their lives. One effect of the new law is that it has necessitated modifications to key documents relating to residential real estate transactions. Specifically, documents have been amended to include reference to civil union couples wherever reference is made to marriages or husbands and wives. The following are the immedi-

ate effects of the Civil Union Law on the key documents associated with the sale and purchase of residential real estate.

The Deed of Conveyance

The new law allows civil union couples purchasing real property to hold title as tenants by the entirety, a right previously exclusive to married couples. Civil union couples may now hold title in this manner if the deed by which they take title together specifies "a Civil Union Couple" or "Civil Union Partners." A tenancy by the entirety comes with the right of survivor-

ship which means that when one partner dies, the surviving partner becomes the sole owner by operation of law without going through probate. Both of the partners in a civil union couple selling real property will be required to sign the deed because civil union couples, like married couples, now have rights of joint ownership in real property that has been the couple's principal residence, even if the title to the property is in only one of their names.

The Affidavit of Title

Buyers/borrowers are required to sign

an affidavit of title at closing setting forth their complete marital history for the purpose of determining whether there are any parties other than the borrowers who have an interest in the property. Title companies and lenders will now require proof of civil union status. Since the new law permits civil union couples to change their surnames without first obtaining a court order, borrowers must also disclose in the affidavit of title all other names used by them so that the appropriate searches can be done. In addition, even if only one partner has qualified for the mortgage loan, a lender will require both partners to sign the affidavit of title to protect its rights to foreclose on property that is a marital residence or is jointly owned. Sellers of real property also provide an affidavit of title to the buyer's lender and title company at closing, and both partners to the civil union will be required to sign the seller's affidavit of title if it was a marital residence even if title was held by only one of them.

The Mortgage and Note

If property is jointly owned or is the principal marital residence, both partners to a civil union will be required to sign the mortgage. If only one partner qualified for the loan, the lender may require only that partner to sign the note, but will want both partners to sign the mortgage. The signature of both partners on the mortgage create a valid lien and protects the lender's rights to foreclose in the event of a default.

The Affidavit of Consideration

Transfers of real property between spouses are exempt from the realty transfer tax. The new law makes this exemption applicable to civil union couples as well.

The Civil Union Law impacts numerous areas of the law that directly affect many people, same-sex and opposite-sex couples alike, such as adoptions, health and pension benefits, inheritances, taxes, and real estate transactions. While the laws regarding same-sex couples will likely continue to evolve, for now this newest law mandates that same-sex couples be granted the same rights as married couples with regard to the sale and purchase of residential real estate.

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