

Same-Sex Marriage and Real Property Rights Survey - By Jurisdiction

Executive Summary

SAME-SEX MARRIAGE AND REAL PROPERTY RIGHTS

EXECUTIVE SUMMARY

August 2014

Overview

Laws regarding same-sex marriage are currently undergoing significant changes in many parts of the country and at both federal and state levels. Several state legislatures have recently enacted laws permitting same-sex marriage, and the Internal Revenue Service ruled in 2013 that it will recognize same-sex marriages for federal income tax purposes, even if the couple's state does not. Many state laws and constitutional amendments banning same-sex marriage are being challenged in both state and federal courts. Numerous holdings have found state bans on same-sex marriage to be unconstitutional, but most of those decisions are currently on appeal.

Status of Same-Sex Marriage

At the time of this survey, [20 jurisdictions](#) permit same-sex marriage, and [33 jurisdictions](#) do not. (Guam's laws are silent on the issue.) However, the status of same-sex marriage is evolving and uncertain in many jurisdictions. Courts have found same-sex marriage bans to be unconstitutional in [12 jurisdictions](#), and the holdings in [11 of those jurisdictions](#) are stayed pending appeal. (It is not yet known whether Virginia will repeal the recent decision against its same-sex marriage ban.)

Furthermore, higher federal court rulings could affect the laws in several jurisdictions. For example, the Tenth Circuit Court of Appeals' recent affirmation of a lower court's holding that Utah's same-sex ban was unconstitutional serves as a precedent for Colorado, Kansas, and Wyoming. Virginia's recent ban is a precedent for North Carolina, South Carolina, and West Virginia, if it is not stayed and appealed. Utah's case has already been appealed to the Supreme Court, which stayed the lower

court's decision pending appeal, and Virginia's case may soon follow suit. A Supreme Court decision could be a landmark ruling, potentially affecting laws in many states.

Several states permit other unions that resemble marriage. [Nine states](#) provide for domestic partnerships under specified circumstances, and [another nine states](#) permit civil unions. In [six of those 18 states](#), same-sex marriage is now permitted, and the other relationships may be converted into marriages by choice or, in some cases, by operation of law.

Fair Housing Laws

States' anti-discrimination laws vary in the characteristics and traits that are protected. Typically, a state has a general civil rights law that creates protected classes, frequently including sex and marital or familial status. However, only [21 states](#) explicitly protect against discrimination based on sexual orientation. Most states also have fair-housing laws that protect against discrimination in housing based on numerous characteristics, but [only 22](#) explicitly address sexual orientation. Only [six states](#) expressly prohibit restrictions or covenants that are based on sexual orientation.

Real estate licensees in all jurisdictions have guidance from the National Association of REALTORS' ethics code. The code provides that REALTORS may not discriminate against any person because of sex, familial status, sexual orientation, or gender identity when providing services or advertising.

Financing and Insurance Access

Most states' laws prohibit lenders and insurers from discriminating because of an applicant's, borrower's, or insured's race or disabilities, but fewer address discrimination based on sexual orientation. Lenders are expressly prohibited from discriminating because of a person's sexual orientation [in 22 states](#).

Even fewer states ([only seven](#)) explicitly prohibit insurers from discriminating because of a person's sexual orientation when issuing, contracting for, or canceling property insurance. However, another [10 jurisdictions](#) have provisions that generally prohibit unfair discrimination in the insurance business, and, in some circumstances, a court could interpret those provisions as prohibiting discrimination based on sexual orientation.

Property Titling

The methods available for titling property vary by jurisdiction, but most states offer a form of joint tenancy, tenancy in common, and tenancy by the entirety. Typically, only spouses may enter into a tenancy by the entirety, so same-sex couples may enter into a tenancy by the entirety only if the state either recognizes same-sex marriage or gives individuals in another formal same-sex relationship the rights of married spouses. The relevant laws are generally silent as they apply to same-sex couples, but all titling forms should be available to same-sex couples in [24 states](#). (In Nebraska, spouses are treated like any other persons when titling property.) In [30 jurisdictions](#), any title form that require the parties to be spouses or husband and wife are not likely to be available to same-sex couples.

Real Estate Transfer Taxes

Most of the surveyed jurisdictions have substantial legislative and regulatory regimes related to a real estate transfer tax, which is generally calculated as a percentage of the consideration in a property transaction or a flat fee per unit of value. Most of those jurisdictions also have substantial exemption provisions. These exemptions typically include transfers ordered by a court, via testamentary document, or for low consideration, among others, and, most relevant to this survey, transfers between spouses.

Generally, if a state has a transfer tax and recognizes same-sex marriage, it grants all rights and obligations of marriage to same-sex married couples. Therefore, any exemptions that relate to transfers between different-gender spouses should apply equally to transfers between same-gender spouses, even if the statutory language references a "husband" and a "wife." The same is true in states that grant most of the benefits of marriage to domestic partnerships or civil unions. Accordingly, in [20 jurisdictions](#), any transfer-tax exemption that generally relates to transfers between spouses applies equally to transfers between spouses in a same-sex marriage or parties to a domestic partnership or civil union. [Eighteen jurisdictions](#) do not recognize same-sex marriages or another similar unions, so no exemption related to transfers between spouses is likely to apply. [The other 16 jurisdictions](#) do not have specific state-wide provisions regarding transfer taxes, although some of those states have a state-level mandate to local authorities to collect recording fees.

Rights Upon Death and Dissolution

A same-sex spouse's rights upon the other spouse's death and upon dissolution of their marriage are similar. In both cases, a same-sex spouse's rights and obligations depend on whether the jurisdiction recognizes their marriage or gives their formal union the same rights and obligations as a marriage.

A surviving same-sex spouse and, in most cases, a surviving member of a formal same-sex partnership or union, that lives in a state that recognizes his or her marriage or relationship, is generally treated in the same manner as any other surviving spouse. As such, the surviving spouse or partner typically has the right to elect against his or her spouse's will and to receive a share of the deceased spouse's estate if the decedent died without a will. [Twenty-three states](#) apply their inheritance laws to same-sex individuals in a marriage, domestic partnership, or civil union in the same manner as the laws are applied to surviving spouses from different-gender marriages. The other [31 jurisdictions](#) do not recognize same-sex relationships and do not give a surviving same-sex spouse or partner any of the rights or obligations that a husband or wife have upon his or her spouse's death.

States' laws related to dissolution apply equally to same-sex couples. If the couple lives in a state that recognizes same-sex marriage or formal domestic partnerships or civil unions, the state's dissolution laws are generally applied to the same-sex couple's relationship in the same manner as they are applied to any marriage. Therefore, [23 jurisdictions](#) apply their dissolution laws to same-sex couples, and [31 jurisdictions](#) do not.

The scenario becomes more complicated if a same-gender couple is married in a state that recognizes their marriage, but moves to a state that does not permit same-sex marriages. Most states have a residency requirement before they will allow an individual or couple to file for a dissolution, so an individual in a same-sex marriage cannot simply go back to the state of marriage for their divorce, and states that do not recognize same-sex marriage typically will not apply their dissolution laws to a same-sex couple. Thus, the same-sex couple is left without a venue for their divorce. [Ten jurisdictions](#) have resolved this issue by providing an exception to their residency requirements for same-sex couples that were married, or whose domestic partnerships were created, in their jurisdiction, but who have moved to a jurisdiction that does not recognize their formal relationship.

Tax Treatment

The treatment of same-sex couples' income taxes is evolving and, in some cases, becoming more complicated, as more states and the Internal Revenue Service recognize their marriages. The Internal Revenue Service recently issued Revenue Ruling 2013-17, which provides that same-sex

couples legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. Since that ruling was issued, most states that do not permit or recognize same-sex marriages have published tax guidance regarding the filing status of same-sex married spouses who have moved to their jurisdictions.

[Twenty states](#) that permit same-sex marriages or other formalized same-sex relationships require the taxpayers to file their state income taxes using a "joint" or "married" filing status. [Twenty-two](#) states that do not allow same-sex marriages require same-sex spouses to file using a "single" filing status. Missouri and Utah allow same-sex married couples to file joint returns, even though they do not recognize the couples' relationships to be valid. (Utah's ruling was limited to the 2013 tax year.) No guidance was located for the three territories, and [seven states](#) do not subject their residents to a state personal income tax.

The current situation regarding federal and state differences in the treatment of same-sex spouses has created a dilemma that many jurisdictions addressed in tax-guidance documents issued in 2013. As a result, in [18 states](#) that do not permit same-sex marriage, same-sex spouses must create a mock federal return using a "single" status or complete a separate schedule or worksheet, and use the information from those documents to create their state returns. Conversely, individuals in a civil union in Illinois must create a mocked up federal return using a "married" status before they complete their joint state returns.

Alabama

Alabama, Fair Housing Laws

PROTECTED CLASS

Alabama law does not address discrimination based on sexual orientation or gender identity.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Alabama's Fair Housing Law prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 24-8-4 enacted 1991; ethics code issued 2014.

See [Ala. Code § 24-8-4 \(2013\)](#); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Alabama, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located.

PROPERTY INSURANCE

No relevant provisions were located.

Alabama, Property Titling

No provisions were located that address the titling of a same-sex couples' property. Alabama does not recognize same-sex relationships of any form.

Constitutional amendment ratified 2006.

[Ala. Const. amend. 774](#)

Alabama, Real Estate Transfer Tax

Alabama imposes a transfer tax on each deed, bill of sale, or other instrument that is received for record and conveys real property in Alabama, unless an exception applies. Alabama does not recognize same-sex marriage or other same-sex relationships in any form, but research located no real estate transfer tax exemptions that explicitly apply to spouses in any event. However, the following exceptions may be relevant:

- the transfer of mortgages on real or personal property upon which the mortgage tax has been paid; and
- deeds or instruments executed for nominal consideration to perfect title.

Section 40-22-1 amended 2012; constitutional amendment ratified 2006.

[Ala. Code § 40-22-1 \(2013\)](#); [Ala. Const. amend. 774](#)

Alabama, Rights Upon Death

INHERITANCE

Because Alabama law does not recognize same-sex marriage or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Alabama law does not recognize same-sex marriage or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, because Alabama law does not recognize same-sex marriage or any other form of same-sex relationships, no statutes or regulations were located that apply any of the state's estate or inheritance taxes in any special manner to same-sex couples.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

[Alabama, Rights Upon Dissolution](#)

Because Alabama does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

[Alabama, Status of Same-Sex Marriage](#)

Alabama does not recognize same-sex marriage. The state's Marriage Protection Act specifically provides that marriage is "inherently a unique relationship between a man and a woman" and a "sacred covenant, solemnized between a man and a woman." Therefore, Alabama will not issue a marriage license to parties of the same sex.

Alabama also does not recognize a marriage of same-sex parties that occurred under another jurisdiction's law. Any marriage contracted between individuals of the same sex is invalid Alabama.

Furthermore, Alabama does not recognize a common-law marriage of parties of the same sex, and a "union replicating marriage of or between persons of the same sex" in any jurisdiction has no legal force or effect in Alabama and is not recognized by the state. Therefore, the state effectively bans same-sex marriage, civil unions, and domestic partnerships.

Section 30-1-19 enacted 1998; constitutional amendment ratified 2006.

[Ala. Code § 30-1-19 \(2013\)](#); [Ala. Const. amend. 774](#)

Alabama, Tax Treatment

STATE INCOME TAX STATUS

Although same-sex couples may file a joint federal income tax return, Alabama law explicitly does not recognize same-sex marriages. Therefore, individuals in a same-sex couple cannot file a joint Alabama income tax return. Each member of a same-sex couple must file his or her Alabama income tax return separately, filing as single or, if appropriate, as head of household.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between Federal and State Taxes

For Alabama state tax returns for tax years 2013 and after, same-sex couples who file a joint federal income tax return must "allocate the federal income tax liability shown on the couple's joint federal return to each individual, based on the ratio of the individual's separate federal adjusted gross income (AGI) to the combined federal AGI."

Although taxpayers in a same-sex couple may choose to file amended federal returns to change their federal filing statuses to a married status, the couple may not file amended state returns to similarly change their Alabama filing status.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Amendment 774 adopted 2006; § 40-18-27 amended 2012; state tax guidance issued 2013; revenue ruling issued 2013.

[Ala. Code § 40-18-27 \(2013\)](#); [Ala. Const. amend. 774](#); [Ala. Dep't of Rev., Tax Guidance: Alabama Income Tax Filing Status for Same-Sex Couples \(Dec. 5, 2013\)](#); [Rev. Rul. 2013-17](#)

Alaska

Alaska, Fair Housing Laws

PROTECTED CLASS

Alaska's civil rights laws prohibit discrimination in the sale, lease, or rental of real property because of sex or marital status, but they do not address sexual orientation or gender identity. Accordingly, the state does not declare the opportunity to obtain housing accommodations without discrimination because of sexual orientation or gender identity to be a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Unlawful Practices

Alaska's law addressing unlawful practices in housing prohibits discrimination based on sex or marital status, but it does not protect against discrimination based on sexual orientation or gender identity. Similarly, the state's restriction on blockbusting explicitly prohibits a real estate licensee from representing only "that a change has occurred or will or may occur from a

composition with respect to race, religion, color, or national origin" of an area's owners or occupants and that this change may result in undesirable consequences.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 18.80.200, 18.80.210, and 18.80.240 amended 1987; § 18.80.300 amended 2014.

[Alaska Stat. §§ 18.80.200, .210, .240, .300 \(2013\)](#) (as amended by [2014 Alaska Sess. Laws ch. 9 \(H.B. 292\)](#)); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Alaska, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Alaska's unlawful financing laws prohibit discrimination based on sex or marital status when extending credit or receiving a loan application, but they do not protect against discrimination based on sexual orientation.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, a person may not arbitrarily or unfairly discriminate between insureds or property with "like insuring or risk characteristics," in the premium or rates charged for a property or casualty insurance policy. An insurer also may not discriminate in dividends or other benefits payable on the insurance or in any other of terms and conditions of the insurance policy.

Section 18.80.250 amended 1987; § 21.36.090 amended 2007.

[Alaska Stat. §§ 18.80.250; 21.36.090 \(2013\)](#)

Alaska, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Alaska does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, a conveyance made to two or more persons, other than to executors and trustees, is deemed to be a tenancy in common. However, a husband and wife who acquire title in real property hold an estate as tenants by the entirety, except as otherwise provided or unless expressly declared otherwise in the conveyance or devise.

Alaska has abolished joint tenancy, with the exception of interests in personalty and tenancy by the entirety. Persons with undivided interests in real property are considered tenants in common. A spouse may convey to himself or herself and the other spouse as tenants by the entirety or as tenants in common.

Section 34.15.140 amended 1984; 34.15.110 34.15.130 amended 1998.

[Alaska Stat. §§ 34.15.110, .130, .140 \(2013\)](#)

Alaska, Real Estate Transfer Tax

No applicable provisions were located. Alaska does not impose a transfer tax on real property transfers.

Alaska, Rights Upon Death

INHERITANCE

Because Alaska law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to inheritance to same-sex couples.

OTHER RIGHTS

Because Alaska does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

No provisions relevant to a state estate or inheritance tax were located. For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Alaska, Rights Upon Dissolution

Because Alaska does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples. Contractual rights granted to same-sex couples by virtue of marriage, including its termination, are not enforceable in Alaska.

Section 25.05.013 enacted 1996.

[Alaska Code § 25.05.013 \(2013\)](#)

Alaska, Status of Same-Sex Marriage

Alaska does not recognize same-sex marriages. A valid marriage in Alaska exists "only between one man and one woman." Also, "[m]arriage is a civil contract entered into by one man and one woman that requires both a license and solemnization."

A same-sex marriage that is recognized by another state or foreign jurisdiction is void in Alaska. Contractual rights granted by virtue of the marriage are not enforceable in Alaska. The state does not recognize a same-sex relationship as being entitled to the benefits of marriage.

No provisions in Alaska's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Section 25.05.011 amended 1996; § 25.05.013 enacted 1996; history of constitutional section unknown.

[Alaska Stat. §§ 25.05.011, .013; Alaska Const. art. 1, § 25](#)

Alaska, Tax Treatment

STATE INCOME TAX STATUS

Alaska residents are not subject to a state personal income tax.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Alaska residents are not subject to a state personal income tax.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

State tax information dated 2014; revenue ruling issued 2013.

See [Alaska Dep't of Revenue, Tax Div., Personal Income Tax \(2014\)](#); [Rev. Rul. 2013-17](#)

Arizona

Arizona, Fair Housing Laws

PROTECTED CLASS

Arizona's laws generally prevent discrimination in the sale or rental of a dwelling because of a person's sex or familial status, but the laws do not address sexual orientation, marital status, or gender identity.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Arizona's Fair Housing Law prohibits a person whose business includes engaging in residential real estate related transactions from discriminating because of a person's sex, but it does not protect against discrimination based on sexual orientation or marital status. Similarly, the state's laws explicitly prohibit a person from inducing a person, for profit, "to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, disability, familial status or national origin."

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 41-1491.14 amended 1991; §§ 41-1491.17 and 41-1491.20 enacted 2002.

[Ariz. Rev. Stat. §§ 41-1491.14, .17, .20 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Arizona, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Arizona's laws prohibit discrimination against an

individual because of his or her sex or familial status when extending credit or receiving a loan application related to a residential real estate transaction, but they do not protect against discrimination based on sexual orientation or marital status.

PROPERTY INSURANCE

Generally, an insurer may not use an insurance score that is calculated using a consumer's gender or marital status to determine property or casualty premiums. Also, an insurer may not deny availability of any insurance policy or limit the coverage amount on the basis of the insured's gender or marital status. However, no statutes or regulations were located that address discrimination on the basis of sexual orientation.

Section 20-2110 amended 2003; regulation 20-6-207 amended 2007; § 41-1491.20 amended 2002.

[Ariz. Rev. Stat. §§ 20-2110; 41-1491.20 \(2013\); Ariz. Admin. Code § 20-6-207 \(2014\)](#)

Arizona, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Arizona does not recognize same-sex relationships in any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, all real property grants and devises to two or more persons create estates in common and not in joint tenancy, except grants or devises in trust, to executors, or to a husband and wife.

Section 33-431 amended 2013.

[Ariz. Rev. Stat. § 33-431 \(2013\)](#)

Arizona, Real Estate Transfer Tax

No applicable provisions were located. Arizona does not impose a state transfer tax on real property transfers.

Arizona, Rights Upon Death

INHERITANCE

Because Arizona law does not recognize same-sex marriages or any other form of same-sex

relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Arizona does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Arizona, Rights Upon Dissolution

Because Alabama does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Arizona, Status of Same-Sex Marriage

Arizona does not recognize same-sex marriages. Pursuant to Arizona's constitution, the state recognizes as a valid marriage "only a union of one man and one woman." The state's statutes also prohibit marriages of same-sex couples.

Same-sex marriages are void in Arizona, even if they are valid by the laws of the place where contracted. Parties residing in Arizona may not evade the state's marriage laws by going to another state or country to solemnize the marriage.

No provisions in Arizona's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Sections 25-101 and 25-112 amended 1996; constitutional section amended 2008.

[Ariz. Rev. Stat. §§ 25-101, -112 \(2013\); Ariz. Const. art. 30, § 1](#)

Arizona, Tax Treatment

STATE INCOME TAX STATUS

Arizona taxpayers of the same sex who are considered married for federal income tax purposes and who filed their federal returns as "married, filing joint" must:

- each file a separate Arizona income tax return;
- each file as either single or head of household; and
- use the Arizona tax rates that correspond to the single or head of household filing status, as applicable.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Income reported on a person's federal income tax return is the starting point for calculating Arizona's income tax. On a couple's joint federal return, one income amount is attributed to two separate taxpayers. Same-sex couples must complete "Arizona Schedule S" to identify which individual earned which portion of the income reported on their joint federal return. Those

amounts will become the new starting point for completing their two separate Arizona tax returns. A couple must complete only one Schedule S, and each must attach that document to his or her Arizona individual income tax return.

Deductions

If a person in a same-sex relationship is taking Arizona's standard deduction, each taxpayer must use the Arizona standard deduction corresponding to the single or head of household filing status, whichever applies.

For a same-sex couple that filed a joint federal income tax return and claimed itemized deductions, each taxpayer that chooses to claim itemized deductions for Arizona must complete another federal Schedule A, as if each taxpayer had filed a federal income tax return with the same filing status as used on his or her Arizona individual income tax return. Each taxpayer must attach this document to his or her Arizona income tax return.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Press release, filing instructions, and revenue ruling issued 2013.

[Ariz. Dep't of Rev., 2013 Arizona Individual Income Tax Filing Requirements for Same-Sex Couples \(2013\)](#); [Ariz. Dept. of Rev., Press Release \(Oct. 11, 2013\)](#); [Rev. Rul. 2013-17](#)

Arkansas

Arkansas, Fair Housing Laws

PROTECTED CLASS

The state legislature has declared that "the opportunity to obtain housing and other real estate without discrimination because of religion, race, color, national origin, sex, disability, or familial

status . . . is recognized and declared to be a civil right." Arkansas law does not address discrimination based on gender identity or sexual orientation.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

In the following contexts, the state's Fair Housing Law prohibits discrimination based on sex or familial status (among other factors), but it does not protect against discrimination based on sexual orientation or marital status:

- the sale or rental of housing;
- publications regarding the sale or rental of a dwelling;
- inducing a person, for profit, to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular sex or familial status;
- engaging in residential real estate-related transactions; or
- access to or membership or participation in brokerage services.

Similarly, the state's laws provide that it is an offense if a person intimidates or interferes with another person with regard to their protected rights based on their sex or familial status. Again, sexual orientation is not addressed.

A person engaging in a real estate transaction or a real estate licensee may not discriminate on the basis of the sex or familial status of a person or of a person residing with that person. The relevant statute does not address sexual orientation.

The state's blockbusting prohibition similarly addresses only representations regarding changes in an area's composition with respect to owners' or occupants' "religion, race, color, national origin, sex, disability, or familial status."

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located. The state's law regarding prohibited contractual provisions refers to those that limit "the use or occupancy of real property on the basis of religion, race, color, national origin, sex, disability, or familial status." It does not address sexual orientation or marital status.

Sections 16-123-204, 16-123-206, and 16-123-207 amended 1995; § 16-123-203 amended 2001; §§ 16-123-311, 16-123-313, 16-123-315, and 16-123-316 enacted 2001; §§ 16-123-310 and 16-123-344 amended 2003; ethics code issued 2014.

Ark. Code §§ 16-123-203, -204, -206, -207, -310, -311, -313, -315, -316, -344 (LexisNexis 2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Arkansas, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. The state's unlawful financing laws prohibit discrimination based on sex or marital status when extending consumer credit, but they do not protect against discrimination based on sexual orientation.

A person to whom another person has applied for financial assistance or financing in connection with a real estate transaction may not discriminate against the applicant because of his or her sex or familial status. The statute does not protect against discrimination based on sexual orientation. Similarly, a person whose business includes engaging in residential real estate related transactions may not discriminate because of a person's sex or familial status. Again, neither sexual orientation nor marital status are mentioned. In this context, "residential real estate related transaction" includes making or purchasing loans or providing other financial assistance that is:

- to be used to purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, it is an unfair or deceptive act for an insurer to unfairly discriminate. It is unfair discrimination for an insurer:

- to make or permit "any unfair discrimination between individuals or risks of the same class and of essentially the same hazards";
- to refuse to insure, to continue to insure, or to limit the available coverage amount because of an individual's marital status; or

- to refuse to insure or continue to insure risks "solely because of the individual's race, color, creed, national origin, citizenship, status as a victim of domestic abuse, or sex."

An insurer that uses credit information to underwrite or rate risks may not use a credit score that is calculated using a consumer's gender or marital status as a factor.

The relevant statutes do not protect against discrimination based on sexual orientation.

Section 4-87-104 amended 1975; § 16-123-205 amended 1995; § 16-123-315 enacted 2001; § 23-67-405 enacted 2003; § 23-66-206 amended 2011.

Ark. Code §§ 4-87-104; 16-123-205; -315; 23-66-206; 23-67-405 (LexisNexis 2014)

Arkansas, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Arkansas does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, a real estate interest granted or devised to multiple persons, other than executors and trustees, is a tenancy in common, unless it is expressly declared to be a joint tenancy.

Section 18-12-603 amended 1947.

Ark. Code § 18-12-603 (LexisNexis 2014)

Arkansas, Real Estate Transfer Tax

Arkansas imposes a transfer tax on each deed, instrument, or writing, provided the consideration exceeds \$100. Because the state does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses are likely to apply. However, the following exceptions may be relevant:

- a deed given solely to correct or replace a previously recorded instrument with the tax paid with the previous recording; or
- a beneficiary deed under § 18-12-608.

Section 26-60-102 amended 2007; § 26-60-105 amended 2011.

Ark. Code §§ 26-60-102, -105 (LexisNexis 2014)

Arkansas, Rights Upon Death

INHERITANCE

Because Arkansas law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Arkansas does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Arkansas, Rights Upon Dissolution

Because Arkansas does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Any contractual or other rights granted by virtue of a same-sex marriage license issued in another jurisdiction, including those regarding the relationship's termination, are not enforceable in Arkansas courts.

Section 9-11-208 amended 2011.

Ark. Code § 9-11-208 (LexisNexis 2014)

Arkansas, Status of Same-Sex Marriage

Arkansas does not recognize same-sex marriages. The state's constitution provides that "[m]arriage consists only of the union of one man and one woman." Arkansas also does not recognize a legal status for same-sex unmarried persons that is "identical or substantially similar to marital status."

Arkansas statutes similarly require a marriage to be "only between a man and a woman." A marriage between same-sex individuals is void. Same-sex marriages contracted outside Arkansas are not valid in Arkansas. No same-sex marriage is entitled to the benefits of marriage.

No provisions in Arkansas statutes or regulations indicate that the state recognizes civil unions or domestic partnerships, except that Ark. Code § 9-11-208 expressly provides that nothing in the section prevents an employer from extending benefits to a person who is an employee's domestic partner.

Although case law is outside the scope of this survey, it is important to note that the Arkansas circuit court in *Wright v. Arkansas*, No. 60CV-13-2662 (Pulaski County Cir. Ct. Ark. May 9, 2014), recently found the state's same-sex marriage ban to be unconstitutional. The Arkansas Supreme Court in *Smith v. Wright*, No. CV-14-427 (Ark. May 16, 2014), stayed the lower court's decision pending resolution of the appeal before the state supreme court. Therefore, no further same-sex marriages may occur in Arkansas during the appeal process.

Section 9-11-107 amended 1997; § 9-11-109 enacted 1997; § 9-11-208 amended 2011.

Ark. Code §§ 9-11-107, -109, -208 (LexisNexis 2014)

Arkansas, Tax Treatment

STATE INCOME TAX STATUS

No state-tax guidance for same-sex couples was located. The state's income tax return does not require the taxpayer to start with his or her federal income. Presumably, individuals in a same-sex marriage should file as single or head-of-household.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Although the Arkansas individual tax return references some federal schedules and credits, it does not require the taxpayer to start his or her tax calculations using his or her federal adjusted gross income.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Tax return dated 2013; revenue ruling issued 2013.

[Ark. Dep't of Fin. and Admin., 2013 AR1000F, Arkansas Individual Income Tax Return \(2013\); Rev. Rul. 2013-17](#)

California

California, Fair Housing Laws

PROTECTED CLASS

Unruh Civil Rights Act (Civ. Code § 51)

Sexual orientation is a protected class in California. For example, the Unruh Civil Rights Act provides that all persons in California are "free and equal," and "no matter what their sex, . . ., marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." "Sexual orientation" means "heterosexuality, homosexuality, and bisexuality."

Fair Employment and Housing Act (Civ. Code §§ 12920 and 12921)

It is against California's public policy to discriminate because of sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status. The opportunity to seek, obtain, and hold housing without discrimination because of those characteristics is a civil right.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

Domestic Partnerships (Fam. Code § 297.5)

Registered domestic partners "have the same rights, protections, and benefits" and are "subject to the same responsibilities, obligations, and duties under law" as are granted to and imposed on spouses.

HOUSING DISCRIMINATION

Fair Housing Laws (Gov't Code § 12955)

It is unlawful:

- for the owner of a housing accommodation to discriminate against or harass a person because of his or her sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status;
- for the owner of a housing accommodation to make an inquiry concerning the sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status of a person seeking a housing accommodation;
- for a person to make, print, or publish a notice, statement, or advertisement related to the sale or rental of housing that indicates any preference, limitation, or discrimination based on sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status;
- for persons subject to the provisions of Civ. Code § 51, as that section applies to housing accommodations, to discriminate because of a person's sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status;
- for a housing-accommodation owner to harass, evict, or otherwise discriminate against a person when the owner's "dominant purpose" is to retaliate against a person who has opposed the lawful and protected practices described above, has informed law enforcement agencies of practices believed to be unlawful, has testified or assisted in a related proceeding, or has aided or encouraged a person to exercise or enjoy his or her protected rights;
- for a person to "aid, abet, incite, compel, or coerce" any acts or practices prohibited by Cal. Gov't Code § 12955;

- for a person, for profit, to induce another to sell or rent a dwelling by representations regarding the entry into the neighborhood of person of a certain sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status;
- for a person or entity whose business involves real estate-related transactions to discriminate because of a person's sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status;
- to deny a person access to, or membership or participation in, a multiple listing service or real estate brokerage organization or service because of his or her sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status; or
- to "otherwise make unavailable or deny a dwelling based on discrimination" because of a person's sex, gender, gender identity, gender expression, sexual orientation, or familial status.

In this context, "sexual orientation" means "heterosexuality, homosexuality, and bisexuality."

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity"; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

Discriminating Restrictions (Civ. Code § 53)

A provision in a real property instrument that "purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging" of the real property to a person because of any characteristic set forth in § 51(b) or (e), which include sex, marital status, and sexual orientation, is void. A restriction or prohibition regarding the use or occupation of real property based on those characteristic is also void, as is a restriction or prohibition related to those characteristics, whether by way of covenant, condition upon use or occupation, or condition upon transfer of the property's title.

Housing Discrimination (Gov't Code § 12955)

It is unlawful to discriminate "through public or private land use practices, decisions, and authorizations" because of a person's sex, gender, gender identity, gender expression, sexual orientation, familial status, or marital status. In this context, discrimination "includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law . . . that make housing opportunities unavailable."

The existence of such a restrictive covenant is discriminatory, even if it is accompanied by a statement that the covenant is repealed or void.

Cover Page or Stamp (Gov't Code § 12956.1)

A "county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed" must place a cover page or stamp on the first page of a previously recorded document stating the following:

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions

under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

This requirement does not apply to documents being submitted for recording to a county recorder.

Section 53 amended 2005; § 297.5 amended 2006; § 12927 amended 2010; § 51 amended 2011; § 12955 amended 2012; §§ 12920, 12921, 12926, and 12956.1 amended 2013; ethics code amended 2014.

[Cal. Civ. Code §§ 51, 53; Fam. Code § 297.5; Gov't Code §§ 12920, 12921, 12926, 12927, 12955, 12956.1 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

California, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is unlawful:

- for a person, bank, mortgage company, or other financial institution that provides financial assistance for the purchase, organization, or construction of housing accommodations to discriminate because of a person's sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status; and
- for a person or other entity whose business involves real estate-related transactions to discriminate because of a person's sex, gender, gender identity, gender expression, sexual orientation, marital status, or familial status.

A "real estate-related transaction" includes making or purchasing loans or providing other financial assistance that is:

- to be used to purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real estate.

PROPERTY INSURANCE

No licensed admitted insurer may refuse to accept an application for, fail to issue, or cancel an insurance policy "under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code." Those characteristics include sex, marital status, and sexual orientation. None of those characteristics "in itself" may constitute a condition or risk that requires a higher rate, premium, or charge. No insurance application or investigation report that an insurer furnishes for use in determining an applicant's insurability may identify or require any of those characteristics. These provisions apply to insurance policies, other than automobile insurance and workmen's compensation insurance, that insure any of the following contingencies:

- loss of or damage to real property that is predominantly used for residential purposes;
- loss of or damage to certain personal property in which natural persons in a residence have an insurable interest; and
- a natural person's legal liability for loss of, or damage or injury to, persons or property.

Section 679.70 enacted 1973; §§ 679.71 and 679.72 amended 2008; § 12927 amended 2010; § 51 amended 2011; § 12955 amended 2012.

[Cal. Civ. Code § 51](#); [Gov't Code §§ 12927, 12955](#); [Ins. Code §§ 679.70, .71, .72 \(2013\)](#)

California, Property Titling

Because California allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Spouses may hold property as:

- joint tenants or tenants in common;
- as community property; or

- as community property with a right of survivorship.

California law appears to presume the creation of a tenancy in common. A joint tenancy is created when "expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants." A joint ownership may be created by transferring from "a husband and wife, when holding title as community property," among others, if it is "expressly declared in the transfer to be a joint tenancy."

Section 682 enacted 1872; § 683 amended 1990; § 750 amended 2014.

[Cal. Civ. Code §§ 682, 682.1, 683; Fam. Code § 750 \(2013\)](#) (as amended by [2014 Cal. Laws ch. 82](#))

California, Real Estate Transfer Tax

No provisions applicable to a state-level transfer tax were located.

California, Rights Upon Death

INHERITANCE

Because California law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under the state's inheritance laws. Therefore, generally:

- when a transfer document expressly declares property to be community property with right of survivorship, the property passes to the surviving spouse upon the other spouse's death, without administration, subject to the same procedures as property held in joint tenancy;
- if a spouse dies without a will, the surviving spouse's intestate share equals one-half of the community property that belongs to the decedent, one-half of the quasi-community property that belongs to the decedent, and the entire intestate estate of separate property if the decedent did not leave any surviving issue, parent, sibling, or issue of a deceased sibling; and
- a surviving spouse may waive the following: his or her right to property that would pass by intestate succession or by will; a probate homestead; the right to have exempt property or

an estate set aside; the right to elect to take community or quasi-community property against the decedent's will; or the right to take a statutory share as an omitted spouse.

A surviving registered domestic partner has "the same rights, protections, and benefits" and is subject to "the same responsibilities, obligations, and duties" under law as are "granted to and imposed upon a widow or a widower."

OTHER RIGHTS

Appointment as a Personal Representative

Because California law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located. A surviving spouse in California has the right to be appointed the personal representative of the decedent's estate. A surviving registered domestic partner has "the same rights, protections, and benefits" and is subject to "the same responsibilities, obligations, and duties" under law as are "granted to and imposed upon a widow or a widower."

Funeral Arrangements

Because California law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located. A surviving registered domestic partner has "the same rights, protections, and benefits" and is subject to "the same responsibilities, obligations, and duties" under law as are "granted to and imposed upon a widow or a widower."

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No specifically relevant state laws were located.

Section 141 amended 1992; § 682.1 enacted 2000; § 6401 amended 2002; § 297.5 amended 2006; revenue ruling issued 2013.

[Cal. Civ. Code § 682.1](#); [Fam. Code § 297.5](#); [Prob. Code §§ 141, 6401 \(2013\)](#); [Rev. Rul. 2013-17](#)

California, Rights Upon Dissolution

Because California allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple are generally the same as for other married couples. However, the state's residence requirement for a dissolution judgment may not apply to same-sex couples. Generally, a court may not enter a marriage-dissolution judgment unless one of the spouses has been a resident of California for six months and of the county in which the proceeding is filed for three months immediately before the petition was filed. However, a court may enter a judgment for the dissolution of a same-sex marriage, even if neither spouse is a California resident at the time the proceedings are filed, if:

- the parties entered into the marriage in California; and
- neither spouse resides in a jurisdiction that will dissolve the marriage. (If the jurisdiction does not recognize same-sex marriage, there is a rebuttable presumption that the jurisdiction will not dissolve the marriage).

California registered domestic partnerships have all the rights and responsibilities of a marriage under California law. A couple entering into a registered domestic partnership in California consents to the California courts' jurisdiction over their partnership, even if neither domestic partner resides in the state. Therefore, there is no residency requirement for the dissolution of a registered domestic partnership. A registered domestic partnership may be terminated by filing a Notice of Termination of Domestic Partnership with the Secretary of State, provided several specified conditions are met.

The California Franchise Tax Board notes that upon divorce of a same-sex married couple:

- if the court awards alimony, the payor typically deducts the alimony amount and the payee typically includes that amount in income on his or her state tax returns, but "federal treatment of these payments is uncertain"; and
- if the court orders a division of mutually acquired property, California tax law considers it to be "a property transfer by a married individual," but "federal treatment of these transactions is uncertain."

Section 297.5 amended 2006; § 299 amended 2010; § 2320 amended 2011; history of state-tax guidance unknown.

[Cal. Fam. Code §§ 297.5, 299, 2320 \(2013\); Cal. Franchise Tax Bd., *Claiming Income, Exemptions, and Deductions* \(2014\) \(FAQ\)](#)

California, Status of Same-Sex Marriage

California permits same-sex marriage. On July 7, 2014, Governor Brown signed a bill that replaces the state's statutory ban on same-sex marriage with provisions that do not require spouses to be of different sexes. As of January 1, 2015, the state's marriage statute will simply provide, "Marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary." Also as of January 1, 2015, a marriage contracted outside of California that is valid in the jurisdiction in which the marriage was contracted is valid in California.

The status of same-sex marriage in California has been unsettled over the past few years. In May 2008, the California Supreme Court held in *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), that California's statutory ban against same-sex marriage was unconstitutional. However, in November of that year, California voters passed Proposition 8, approving a constitutional amendment that defined marriage as being between a man and woman. The California Supreme Court upheld that constitutional provision in *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009), but the District Court for the Northern District of California and the Ninth Circuit Court of Appeals found the constitutional ban to be unconstitutional in *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *aff'd sub nom Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *cert. granted sub nom Hollingsworth v. Perry*, No. 12-144 (2012). On June 26, 2013, the United States Supreme Court held in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), that the *Perry* petitioners did not have standing to bring the case. Therefore, the California Supreme Court's decision in *Strauss* is the current rule, and California's constitutional and statutory bans (as they exist before the changes set forth in 2014 Cal. Laws ch. 82 become effective) are unconstitutional.

California also permits domestic partnerships. "Domestic partners" are defined as "two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring." To qualify for a domestic partnership:

- both partners must be the same sex; or

- one or both of the partners must meet the eligibility criteria for old-age insurance benefits or social security, and persons of opposite sexes may not be domestic partners unless one or both of them are 62 years of age.

California recognizes as a valid domestic partnership a legal union, other than a marriage of two same-sex persons, that was validly formed in another jurisdiction and that is "substantially equivalent to a domestic partnership," regardless of whether it is called a domestic partnership.

Section 299.2 enacted 2003; § 308 amended 2009; § 297 amended 2011; §§ 300 and 308 amended 2014; constitutional provision held unconstitutional 2013.

[Cal. Fam. Code §§ 297, 299.2, 300](#) (as amended by [2014 Cal. Laws ch. 82](#)), [308 \(2013\)](#) (as amended by [2014 Cal. Laws ch. 82](#)); [Cal. Const. art I, § 7.5](#) (held unconstitutional)

California, Tax Treatment

STATE INCOME TAX STATUS

Legally married same-sex couples generally must file their 2013 federal income tax return using either the "married filing jointly" or the "married filing separately" filing status, and California taxpayers generally must use the same filing status that they used for federal tax purposes.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

California permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples.

Registered domestic partners who are prohibited under federal law from filing a joint federal income tax return, must either:

- file a joint state income tax return; or
- file separate state income tax returns "by applying the standards applicable to spouses who file separately pursuant to Section 6013 of the Internal Revenue Code."

A domestic partner's separate return is "subject to the same conditions and limitations applicable to the separate return of a spouse."

Deductions

California tax laws apply to same-sex spouses in the same manner as any other married couple. Therefore, same-sex married couples should use the same rules regarding community deductions and separate expenses paid with community property funds as apply to all spouses filing a "married filing separately" California return.

Several statements set forth in the California Franchise Tax Board's FAQ document are based on the premise that same-sex married couples may not file joint federal returns and appear to have been made before the IRS issued Rev. Ruling 2013-17. Since same-sex couples may now file joint returns, those provisions are not summarized here.

Home Sale Exclusion

California tax laws apply to same-sex spouses in the same manner as any other married couple. Therefore, a spouse in a same-sex marriage who files a California "married filing jointly" return may exclude up to \$500,000 of capital gain on the sale of his or her principal residence if the couple meets the capital gain exclusion rules that apply to a married individual filing a joint return.

Withholding

No specifically relevant provisions were located. California tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. California tax laws apply to same-sex spouses in the same manner as any other married couple.

Section § 18521 amended 2006; history of state-tax guidance unknown; revenue ruling issued 2013.

[Cal. Rev. & Tax Code § 18521 \(2013\)](#); [Cal. Franchise Tax Bd., *Same-Sex Married Couples* \(2014\)](#); [Cal. Franchise Tax Bd., *Claiming Income, Exemptions, and Deductions* \(2014\) \(FAQ\)](#); [Rev. Rul. 2013-17](#)

Colorado

Colorado, Fair Housing Laws

PROTECTED CLASS

The "rights, benefits, protections, duties, obligations, responsibilities, and other incidents" that are granted to or imposed on spouses, apply to the parties to a civil union, including all prohibitions against discrimination based on spousal status. As used in the state's anti-discrimination statutes (as amended effective August 6, 2014), "marital status" means "a relationship or a spousal status of an individual, including but not limited to being single, cohabitating, engaged, widowed, married, in a civil union, or legally separated, or a relationship or a spousal status of an individual who has had or is in the process of having a marriage or civil union dissolved or declared invalid." Although that statute does not address sexual orientation, discrimination based on sexual orientation is prohibited in housing practices, as described below.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Unfair Housing Practices (§ 24-34-502(1))

It is an unlawful and unfair housing practice for a person to act as follows:

- to refuse to show, sell, transfer, rent, or lease housing because of a person's sex, sexual orientation, marital status, or familial status;
- to refuse to receive and transmit a bona fide offer to buy, sell, rent, or lease housing because of a person's sex, sexual orientation, marital status, or familial status;
- to make unavailable or withhold housing because of a person's sex, sexual orientation, marital status, or familial status;
- to discriminate in a housing transaction's terms, conditions, or privileges (or in the furnishing of related facilities or services) because of a person's sex, sexual orientation, marital status, or familial status; or
- to cause to be made a written or oral inquiry or record regarding a person's sex, sexual orientation, marital status, or familial status;
- to make, print, or publish a notice or advertisement related to a housing transaction that indicates a preference, limitation, specification, or discrimination based on sex, sexual orientation, marital status, or familial status;
- to aid, abet, or coerce another to do any act defined as an unfair housing practice;
- to obstruct or prevent a person from complying with the provisions listed above;
- to attempt to commit an unfair housing practice;
- to discriminate against a person because he or she has opposed an unfair housing practice, filed a charge with the commission, or participated in an investigation;

- to coerce, intimidate, threaten, or interfere with a person exercising or enjoying (or who aided or encouraged another person exercising) any protected right;
- to deny another person access to or membership or participation in a multiple-listing service, real estate brokers' organization or service, organization, or facility related to selling or renting dwellings because of the person's sex, sexual orientation, marital status, or familial status;
- to discriminate in the terms or conditions of access, membership, or participation in a real estate organization, service, or facility because of a person's sex, sexual orientation, marital status, or familial status;
- to induce a person, for profit, to sell or rent a dwelling by representations regarding the entry or prospective entry into the area of persons of a particular sex, sexual orientation, or familial status; or
- to represent, because of a person's sex, sexual orientation, or familial status, that a dwelling is not available when it is available,

Exemptions (§§ 24-34-502(3), (8); 24-34-301)

A religious or denominational institution, or an organization that is operated or controlled by a religious or denominational organization, may limit the sale, rental, or occupancy of dwellings it owns or operates for other than a commercial purpose to persons of the same religion or give a preference to persons of the same religion or denomination. This exemption does not apply if membership in the religion is restricted by race, color, or national origin.

A private club that incidentally provides lodgings that it owns or operates for other than a commercial purpose may limit the rental or occupancy of the lodgings to its members. The club may also give its members preference.

With respect to familial status, the unfair housing practices described above do not apply to a single-family house sold or rented by its owner if the individual owner does not own more than three single-family houses at any one time. Additional restrictions apply if the owner is not residing

in the house. The sale or rental of a single-family house is excepted only if the house is sold or rented:

- without the use of a real estate licensee's facilities or services; and
- without the publication, posting, or mailing of an advertisement or written notice that violates the state's unfair-housing provisions.

Rooms or units in dwelling that contain living quarters for up to four independent families are also exempt if the owner maintains and occupies one of the living quarters as his or her residence.

Effective August 6, 2014, the term "housing," as used in the state's fair housing laws, does not include a "room offered for rent or lease in a single-family dwelling maintained and occupied in part" by the dwelling's owner or lessee, as his or her household. "Housing accommodation" does not include a "single family residence, the occupants of which rent, lease, or furnish for compensation not more than one room in that residence."

Definition

"Sexual orientation" means an individual's "orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another an individual's perception thereof."

Housing and Business Development and Financing

Before the Colorado housing and finance authority makes a housing facility loan, the authority must find, among other things, that no restrictions are imposed as to the occupants' sex or sexual orientation.

Real Estate Licensees

Colorado statutes provide that a person whose business includes selling, brokering, or appraising residential real property may not discriminate against a person because of sex, sexual orientation, marital status, or familial status.

The National Association of REALTORS' ethics code also provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

It is an unlawful and unfair housing practice for a person to honor or include in any housing transaction a restrictive covenant that limits the transfer, rental, or lease of housing because of a person's sex, sexual orientation, marital status, or familial status.

Sections 24-34-501 and 29-4-717 amended 2008; § 24-34-301 amended 2013; § 14-15-107 enacted 2013; § 24-34-502 amended 2014.

Colo. Rev. Stat. §§ 14-15-107; 24-34-301 (as amended by [2014 Colo. Sess. Law ch. 250](#)), -501 (as amended by [2014 Colo. Sess. Law ch. 250](#)), -502 (as amended by [2014 Colo. Sess. Law ch. 250](#)); ; 29-4-717 (2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Colorado, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is an unlawful and unfair housing practice for:

- a person to whom application is made for financial assistance to acquire, construct, rehabilitate, repair, or maintain housing to inquire concerning the applicant's or a prospective tenant's sex, sexual orientation, marital status, or familial status;
- a person to whom application is made to discriminate, because of an applicant's or prospective tenant's sex, sexual orientation, marital status, or familial status, in the terms, conditions, or privileges related to financial assistance; or
- a person whose business includes residential real estate-related transactions that involve making or purchasing loans secured by residential real estate or providing other financial assistance to purchase, construct, improve, repair, or maintain dwellings to discriminate against a person when making available such a transaction or when fixing the transaction's terms or conditions, because of a person's sex, sexual orientation, marital status, or familial status.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, rights that are granted under Colorado law to spouses also apply to parties to a civil union, including the right to insurance policies that provide coverage relating to joint ownership of property. This provision applies to plans issued, delivered, or renewed on or after January 1, 2014.

Generally, it is an unfair method of competition and an unfair or deceptive act or practice in the insurance business:

- to discriminate unfairly between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of an insurance policy's premium, fees, rates, benefits, terms, or conditions;

- to make "any classification solely on the basis of marital status or sex, unless such classification is for the purpose of insuring family units or is justified by actuarial statistics";
- to inquire about or make an investigation concerning an applicant's, insured's, or beneficiary's sexual orientation in an application for coverage or an investigation conducted in connection with an application;
- to use "information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation";
- to use sexual orientation in the underwriting process or when determining insurability; or
- to make adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to AIDS by seeking health-care counseling.

Section 14-15-107 enacted 2013; §§ 10-3-1104 and 24-34-502 amended 2014.

Colo. Rev. Stat §§ 10-3-1104 (as amended by [2014 Colo. Sess. Law chs. 78](#) and [387](#)); 14-15-107; 24-34-502 (LexisNexis 2014) (as amended by [2014 Colo. Sess. Law ch. 250](#))

Colorado, Property Titling

The rights granted to spouses under Colorado law apply in like manner to the parties to a civil union, including the laws relating to titling property. Therefore, a real property conveyance or devise to two or more persons that does not create or is not presumed to create a joint tenancy is a conveyance or devise in tenancy in common. A conveyance of Colorado real property executed on or after July 1, 2006, that purports to create a tenancy by the entirety creates a joint tenancy.

Section 38-31-201 enacted 2006; § 38-31-101 amended 2008; § 14-15-107 enacted 2013.

Colo. Rev. Stat. §§ 14-15-107; 38-31-101, -201 (LexisNexis 2014)

Colorado, Real Estate Transfer Tax

Because Colorado law provides that parties to a civil union are treated like spouses, the state's real estate documentary fee applies to parties in a civil union in the same manner as spouses in a marriage. Colorado imposes a documentary fee on any deed or instrument conveying title to Colorado property, unless an exception applies. The documentary fee does not apply to the following:

- a deed conveying title to real property as a gift;
- an instrument that confirms or corrects a previously recorded deed;
- a court decree or order determining or vesting title; or
- a document necessary to transfer title to property as a result of the owner's death.

Section 39-13-102 amended 1985; § 39-13-104 amended 1991; § 14-15-107 enacted 2013.

Colo. Rev. Stat. §§ 14-15-107; 39-13-102, -104 (LexisNexis 2013)

Colorado, Rights Upon Death

INHERITANCE

All rights, benefits, and protections granted to spouses under Colorado law apply in like manner to the parties to a civil union, including "matters concerning decedents' estates, wills, trusts, intestate succession, nonprobate transfers, wards, protected persons, and priority for appointment as a conservator, guardian, or personal representative." Therefore, a surviving partner in a civil union may generally elect to take up to 50 percent of the value of the marital-property portion of the augmented estate, depending on the length of time the couple was in the civil union.

OTHER RIGHTS

Appointment as a Personal Representative

The priority among persons seeking appointment as personal representative is as follows:

- first, the person with priority determined by a probated will;
- second, the decedent's surviving spouse who is the decedent's devisee;
- third, the surviving party to a civil union who is the decedent's devisee; and
- then, other specified relatives and acquaintances.

Funeral Arrangements

The rights, duties, obligations, and responsibilities granted to or imposed on spouses under Colorado law apply in a like manner to the parties to a civil union, including:

- rights concerning the disposition of a deceased partner's remains; and
- laws related to making, revoking, and objecting to anatomical gifts.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Colorado's Estate Tax does not apply to decedents whose date of death was on or after January 1, 2005.

Sections 15-10-102 and 15-12-203 amended 2013; § 14-15-107 enacted 2013; §§ 15-11-202 and 15-11-203 amended 2014; revenue ruling issued 2013.

Colo. Rev. Stat. §§ 14-15-107; 15-10-102; 15-11-202, -203 (as both are amended and renumbered by [2014 Colo. Sess. Laws ch. 296](#)); 15-12-203 (LexisNexis 2014); [Colorado Department of Revenue Taxpayer Service Division, FYI: Estate 1, Colorado Estate Tax \(May 2005\)](#); [Rev. Rul. 2013-17](#)

Colorado, Rights Upon Dissolution

Generally, Colorado requires at least one spouse or civil union partner to have been domiciled in Colorado for more than 90 days before filing for divorce. However, a person who enters into a civil union in Colorado consents to the jurisdiction of the Colorado courts for the purpose of any action relating to the civil union, including dissolution, even if one or both of the parties to the civil union no longer lives in Colorado.

Colorado law explicitly provides that the "law of domestic relations, including but not limited to declaration of invalidity, legal separation, dissolution, child custody, allocation of parental responsibilities, parenting time, child support, property division, maintenance, and award of attorney fees, applies to civil unions."

Either party to a recorded designated beneficiary agreement may unilaterally revoke the agreement. A designated beneficiary agreement is deemed revoked upon either party's marriage or civil union.

Section 15-22-111 amended 2013; §§ 14-10-106, 14-10-106.5, 14-15-107, and 14-15-115 enacted 2013.

Colo. Rev. Stat. §§ 14-10-106, -106.5, -107; 14-15-115; 15-22-111 (LexisNexis 2014)

Colorado, Status of Same-Sex Marriage

Colorado does not recognize same-sex marriages. Pursuant to Colorado's constitution, the state recognizes "only a union of one man and one woman" to be a valid marriage. The state's statutes also prohibit marriages of same-sex couples. Colorado also does not recognize a same-sex marriage contracted outside of Colorado.

However, as of May 1, 2013, Colorado recognizes civil unions. The parties in a civil union are entitled to receive spouses' benefits and protections and are subject to spouses' responsibilities. The Colorado General Assembly has declared that the Colorado Civil Union Act was enacted "to protect individuals who are or may become partners in a civil union against discrimination in

employment, housing, and in places of public accommodation." The parties to a civil union are included in the definition or use of terms that denote a familial or spousal relationship, such as "family," "heir," "next of kin," or "spouse," as used throughout Colorado's statutes.

A same-sex marriage, civil union, domestic partnership, or substantially similar legal relationship between two persons that was legally entered into in another jurisdiction is deemed to be a civil union in Colorado.

Colorado also permits a couple to become designated beneficiaries. A "designated beneficiary" is a person who has entered into a designated beneficiary agreement, which is an agreement by "two people for the purpose of designating each person as the beneficiary of the other person and for the purpose of ensuring that each person has certain rights and financial protections based upon the designation."

Although case law is beyond the scope of this survey, it is important to note that the United States District Court for the District of Colorado held that Colorado's same-sex marriage ban is unconstitutional, but the court stayed its order pending appeal. *Burns v. Hickenlooper*, No. 14-cv-01817-RM-KLM (D.C. Colo. July 23, 2014). Also, Colorado is subject to the precedent set by the Tenth Circuit Court of Appeals in *Kitchen v. Herbert*, 961 F. Supp. 2d 1181 (D. Utah 2013), *aff'd*, No. 13-4178 (10th Cir. June 25, 2014), *stay granted*, 134 S. Ct. 893 (2014), which is a federal case challenging Utah's constitutional ban on marriage for same-sex couples. That court's decision is stayed pending action by the Supreme Court.

Section 14-2-104 amended 2006; § 15-22-103 amended 2013; §§ 14-15-102, 14-15-103, 14-15-107, and 14-15-116 enacted 2013; § 2-4-401 amended 2014.

Colo. Rev. Stat. §§ 2-4-401 (as amended by [2014 Colo. Sess. Laws ch. 391](#)); 14-2-104; 14-15-102, -103, -107, -116; 15-22-103 (LexisNexis 2014)

Colorado, Tax Treatment

STATE INCOME TAX STATUS

Colorado taxpayers must file their state income tax returns using the same filing status that they elected on their federal income tax returns.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between Federal and State taxes

Colorado's state tax code is tied directly to the federal tax code. The state uses an individual's federal taxable income as the starting point for the state's income tax return. Therefore, every Colorado taxpayer must file their state income tax return using the same filing status that they elected on their federal income tax return.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Section 14-15-117 repealed and reenacted 2014; guideline issued 2013; emergency regulation adopted 2013; revenue ruling issued 2013.

Colo. Rev. Stat. § 14-15-117 (LexisNexis 2014) (as repealed and reenacted by [2014 Colo. Sess. Law ch. 10](#)); [Colo. Dep't of Revenue, *Income Tax Filing Status for Same-Sex Couples* \(Nov. 29, 2013\)](#); [Colo. Emergency Reg. 39-22-104.1.7 \(Nov. 29 2013\)](#); [Rev. Rul. 2013-17](#)

Connecticut

Connecticut, Fair Housing Laws

PROTECTED CLASS

Sexual orientation is a protected class. For the purposes of the state's sexual orientation discrimination laws, "sexual orientation" is defined as "having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference," except for any criminal behavior. However, the statutory provisions that address sexual orientation discrimination, including those that apply to housing, do not apply to certain religious entities "with respect to matters of discipline, faith, internal organization or ecclesiastical rule, custom or law which are established" by the entity.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Sexual Orientation Discrimination in Housing (§ 46a-81e)

It is a discriminatory practice:

- to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny," a dwelling because of a person's sexual orientation or civil union status;
- to discriminate in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith," because of a person's sexual orientation or civil union status;
- to make, print, or publish a notice, statement, or advertisement, regarding the sale or rental of a dwelling if the notice, statement, or advertisement indicates a "preference, limitation, or discrimination based on sexual orientation or civil union status, or an intention to make any such preference, limitation or discrimination";

- to represent to a person because of sexual orientation or civil union status, that a dwelling is not available for inspection, sale, or rental when the dwelling is available;
- to restrict or attempt to restrict a buyer's or renter's choices to purchase or rent a dwelling (a) to an area that is substantially populated by persons of the same sexual orientation or civil union status as the buyer or renter, (b) while the person is authorized to offer for sale or rent another dwelling that meets the buyer's or renter's expressed housing criteria, and (c) that other dwelling is in an area that is not substantially populated by persons of the same sexual orientation or civil union status as the buyer or renter;
- to induce or attempt to induce a person to sell or rent for profit a dwelling "by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sexual orientation or civil union status";
- for a person engaging in residential real estate transactions to discriminate against a person in making available a transaction, or in the transaction's terms or conditions, because of sexual orientation or civil union status;
- to deny a person access to or membership or participation in a multiple-listing service, real estate brokers' organization or other service, organization, or facility related to the business of selling or renting dwellings because of sexual orientation or civil union status, or to discriminate against a person in the terms or conditions of such access, membership or participation; or
- to coerce, intimidate, threaten, or interfere with a person "in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right" protected by Conn. Gen. Stat. § 46a-81e.

These provisions do not apply to:

- the rental of a room in a dwelling if the owner maintains and occupies part the dwelling as his or her residence; or

- a unit in a dwelling containing no more than four units, if the owner maintains and occupies one of the other units as his or her residence.

Disposition of Property by Urban Homesteading Agency (§ 8-169s)

No person may be discriminated against in the sale or rental of property acquired by the urban homesteading agency, because of that person's sex or gender identity or expression.

Connecticut Housing Finance Authority Act (§ 8-265c)

The Connecticut Housing Finance Authority must require that occupancy of all housing it finances is open to all persons regardless of sex or gender identity or expression.

Disposition of Property by Urban Rehabilitation Agency (§ 8-294)

No person may be discriminated against in the sale or rental of abandoned industrial and commercial property acquired by the urban homesteading agency because of the person's sex or gender identity or expression.

Municipal Housing Finance Act (§ 8-315)

A municipality must take all necessary steps to insure that occupancy of housing financed by the state's municipal housing finance act is open to all persons regardless of sex or gender identity or expression.

Prohibited Discriminatory Housing Practices (§ 46a-64c)

It is a discriminatory housing practice:

- to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny," a dwelling because of a person's sex, gender identity or expression, marital status, or familial status;
- to discriminate in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith," because of a person's sex, gender identity or expression, marital status, or familial status;
- to make, print, or publish a notice, statement, or advertisement, regarding the sale or rental of a dwelling if the notice, statement, or advertisement indicates a "preference, limitation, or discrimination" based on sex, gender identity or expression, marital status, or familial status (or an intention to make any such preference, limitation or discrimination);
- to represent to a person because of sex, gender identity or expression, marital status, or familial status, that a dwelling is not available for inspection, sale, or rental when the dwelling is available;
- to restrict or attempt to restrict a buyer's or renter's choices to purchase or rent a dwelling (a) to an area that is substantially populated by persons of the same protected class as the buyer or renter, (b) while the person is authorized to offer for sale or rent another dwelling that meets the buyer's or renter's expressed housing criteria, and (c) that other dwelling is in an area that is not substantially populated by persons of the same protected class as the buyer or renter;
- to induce or attempt to induce a person to sell or rent for profit a dwelling "by representations regarding the entry or prospective entry into the neighborhood of a person or persons" of a particular sex, gender identity or expression, marital status, or familial status;
- for a person engaging in residential real estate transactions to discriminate against a person in making available a transaction, or in the transaction's terms or conditions, because of sex, gender identity or expression, marital status, or familial status;

- to deny a person access to or membership or participation in a multiple-listing service, real estate brokers' organization or other service, organization, or facility related to the business of selling or renting dwellings because of sex, gender identity or expression, marital status, or familial status, or to discriminate against a person in the terms or conditions of such access, membership or participation; or
- to coerce, intimidate, threaten, or interfere with a person "in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right" protected by Conn. Gen. Stat. § 46a-64c.

These provisions do not apply to:

- the rental of a room in a dwelling if the owner maintains and occupies part the dwelling as his or her residence; or
- a unit in a dwelling containing no more than four units, if the owner maintains and occupies one of the other units as his or her residence.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or

- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

Density Limits (§ 8-2g)

A zoning commission may provide by regulation for a special exemption from density limits established for any zoning district, or special exception use, in which affordable-housing multifamily dwellings are permitted, in accordance with specified requirements. However, the program's method of selecting persons that satisfy the program's income criteria to purchase or rent the affordable-housing units may not discriminate on the basis of gender or marital status.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 46a-81p enacted 1991; §§ 8-2g, 8-169s, 8-265c, 8-294, and 8-315 amended 2011; §§ 46a-64c and 46a-81e amended 2012; § 46-81a amended 2013; ethics code amended effective 2014.

[Conn. Gen. Stat. §§ 8-2g, -169s, -265c, -294, -315; 46a-64c, -81a, -81e, -81p \(2013 and Supp. 2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Connecticut, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

Sexual Orientation Discrimination in Credit Practices (§ 46a-81f)

It is a discriminatory practice for a creditor to discriminate on the basis of sexual orientation or civil union status against a person over the age of eighteen in a credit transaction.

Other Prohibited Discriminatory Credit Practices (§ 46a-66)

It is a discriminatory practice for a creditor to discriminate on the basis of sex, gender identity or expression, or marital status against any person at least eighteen years of age in any credit transaction.

PROPERTY INSURANCE

No relevant provisions were located.

Sections 46a-66 and 46a-81f amended 2011.

[Conn. Gen. Stat. §§ 46a-66, -81f \(2013\)](#)

Connecticut, Property Titling

Because Connecticut allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, a conveyance to more than one party creates an estate or interest as tenants in common unless the words "as joint tenants" are added after their names.

Section 47-36a amended 2000.

[Conn. Gen. Stat. § 47-36a\(b\)\(2\) \(2013\)](#)

Connecticut, Real Estate Transfer Tax

Because Connecticut allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Connecticut imposes a transfer tax on each deed, instrument or writing conveying realty, provided the consideration for the transfer is at least \$2000. However, the taxes do not apply to the following deeds, among others:

- pursuant to a decree of the Superior Court under §§ 46b-81 (regarding assignment of property and transfer of title upon dissolution) or 52-495 (regarding the partition of joint and common estates);

- between spouses;
- conveying realty as a gift; or
- confirming title, such as a quitclaim deed to correct a title flaw.

Section 12-498 replaced 2010; § 12-494 amended 2011; regulation effective 1987.

[Conn. Gen. Stat. Ann. §§ 12-494, -498 \(2013\)](#); [Conn. Agencies Regs. § 12-494-2 \(2013\)](#)

Connecticut, Rights Upon Death

INHERITANCE

Because Connecticut law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Connecticut's inheritance laws. Therefore, generally,

- the Probate Court may allow out of a deceased person's estate, the amount it judges as necessary for the surviving spouse's or family's support during the estate's settlement process;
- upon the death of a spouse, the surviving spouse may elect to take a statutory share of the real and personal property passing under the deceased spouse's will;
- if the deceased spouse has by will devised a portion of his or her property to his or her surviving spouse, the spouse must take that portion unless the contrary is expressly stated or clearly appears in the will or the surviving spouse elects to take the statutory share; and
- if there is no will, the surviving spouse takes the entire estate (determined after payment of any support allowance) if the decedent has no surviving issue or parent. Other provisions apply if the decedent is survived by a parent or surviving children.

OTHER RIGHTS

Appointment as a Personal Representative

Because Connecticut law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no relevant provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

Because Connecticut law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no relevant provisions specifically relevant to same-sex marriages were located.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Connecticut law permits same-sex marriages and imposes a state estate tax, a same-sex spouse is presumably also treated no differently than any other spouse under Connecticut's estate-tax laws.

Section 45a-320 amended 1988; § 45a-437 amended 1992; § 45a-436 amended 1998; § 12-391 amended 2013.

[Conn. Gen. Stat. §§ 45a-320, -436, -437 \(2013 and Supp. 2014\)](#); see [Conn. Gen. Stat. §§ 12-391 \(Supp. 2014\)](#) (tax on estate transfers)

Connecticut, Rights Upon Dissolution

Because Connecticut law permits same-sex marriages, Connecticut's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples.

However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A Connecticut divorce may not be possible because Connecticut generally has a 12-month residency requirement before parties may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages. However, note that Connecticut may also permit a dissolution if:

- one of the parties was domiciled in Connecticut at the time of the marriage and returned to Connecticut "with the intention of permanently remaining" before filing the complaint; or
- the cause for the marriage dissolution arose after either party moved to Connecticut.

If neither of those conditions apply and the couple has moved to a state that does not recognize same-sex marriages, it may not be possible to dissolve the marriage until one member of the couple moves to a place that respects the marriage and lives there long enough to meet that state's or country's residency requirement for divorce.

Either party to a valid civil union performed in a foreign jurisdiction may bring an action for dissolution in Connecticut. The procedures and requirements for marriage dissolution or requirements for enforcement or modification of a foreign matrimonial judgment apply. Connecticut substantive law that applies to the dissolution of a marriage also applies to the dissolution of a valid civil union performed in another jurisdiction.

Section 46b-tt amended 1992; 46b-38tt amended 2013.

[Conn. Gen. Stat. §§ 46b-38tt, -44 \(2013 and Supp. 2014\)](#)

Connecticut, Status of Same-Sex Marriage

Connecticut allows same-sex marriage. "Marriage" is defined as "the legal union of two persons." Thus, wherever the terms "husband", "wife", "groom", "bride", "widower" or "widow" are used in Connecticut laws, the terms are deemed to include one party to a same-sex marriage.

Connecticut also recognizes marriages and other relationships entered into in another jurisdiction. A marriage, or a relationship that is substantially similar to a marriage, entered into in another jurisdiction and recognized as valid by that other jurisdiction is a valid marriage in Connecticut, as long as the relationship is not expressly prohibited by Connecticut statute. Therefore, same-sex marriages, civil unions, and domestic partnerships from other jurisdictions are treated as marriages in Connecticut.

A valid marriage entered into in Connecticut may be recognized as a marriage, or a substantially similar relationship, in another jurisdiction if one or both persons travel to or reside in that other jurisdiction.

Civil unions that were not dissolved, annulled, or merged into a marriage as of October 1, 2010, were deemed to be married on that date. All civil unions were merged into marriages by operation of law.

Section 46b-20 amended 2009; §§ 46b-28a, 46b-28b, 46b-38rr, and 1-1m enacted 2009.

[Conn. Gen. Stat. §§ 1-1m; 46b-20, -28a, -28b, -38rr \(2013\)](#)

Connecticut, Tax Treatment

STATE INCOME TAX STATUS

Form 2013-CT1040 instructions note, that "[b]ecause same-sex marriages are now recognized for federal and Connecticut income tax purposes, the filing status options on Form CT-1040, Form CT-1040NR/PY and Form CT-1040X were revised to match the federal filing status options."

The state's attorney general has opined that parties to a same-sex marriage must be accorded the same tax treatment afforded parties to other marriages, so they may file jointly as married couples.

Many of Connecticut's statutes determining its personal income tax depend on the taxpayer's federal filing status. For example, the personal income tax rate is determined by the status the taxpayer uses when he or she files his or her federal income tax return.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Connecticut permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income and then applies the state's income tax rates and income brackets.

State personal income tax statutes were also tied to a taxpayer's federal income tax status when the state recognized only civil unions. Connecticut law requires state tax law to be construed as if civil unions were recognized under federal law. Parties to a same-sex marriage are also accorded the same tax treatment as parties to civil unions or other marriages.

Deductions

No specifically relevant provisions were located. Connecticut's tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Connecticut's tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Connecticut's tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Connecticut's tax laws apply to same-sex spouses in the same manner as any other married couple.

Section 46b-38pp enacted 2005; § 12-700 amended 2011; tax return instructions dated 2013; attorney general's opinion issued 2008; revenue ruling issued 2013.

[Conn. Rev. Stat. §§ 12-700; 46b-38pp \(2013\)](#); [Conn. Dep't of Rev. Serv., Connecticut Resident Income Tax Return and Instructions at 3 \(2013\)](#); [Att'y Gen., Richard Blumenthal, Attorney General's Opinion \(Oct. 28, 2008\)](#); [Rev. Rul. 2013-17](#)

Delaware

Delaware, Fair Housing Laws

PROTECTED CLASS

Sexual orientation is a protected class. "Sexual orientation" means "heterosexuality, homosexuality, or bisexuality."

The Delaware Fair Housing Act is generally "intended to eliminate, as to housing offered to the public for sale, rent or exchange," discrimination based on sex, marital status, familial status, sexual orientation, or gender identity, among other things.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Discrimination in the Sale or Rental of Housing (§ 4603)

Unlawful discrimination against a person on the basis of a specified protected status includes the protected status of:

- a buyer, renter, or aggrieved person;
- a person residing in or intending to reside in a dwelling after it is sold, rented, or made available; or
- a person associated with the buyer or renter.

Unless an exemption applies, it is unlawful:

- to "discriminate in the sale or rental, to refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person" because of sex, marital status, familial status, sexual orientation, or gender identity;
- to discriminate against a person in the "terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith," because of sex, marital status, familial status, sexual orientation, or gender identity;
- to make, print, or publish (or cause to be made, printed or published) a notice, statement, or advertisement regarding a dwelling's sale or rental that indicates a "preference, limitation or

discrimination" based on sex, marital status, familial status, sexual orientation, or gender identity or disability (or an intention to make such a preference, limitation, or discrimination);

- to represent to a person because of sex, marital status, familial status, sexual orientation, or gender identity that a dwelling is not available for inspection, sale, or rental when the dwelling is available; or
- to induce or attempt to induce a person to sell or rent a dwelling using representations regarding the entry or prospective entry into the neighborhood of persons of a particular sex, marital status, familial status, sexual orientation, or gender identity.

Discrimination in Residential Real Estate-Related Transactions (§ 4604)

It is unlawful for a person or other entity engaged in residential real estate-related transactions to discriminate against a person in making a transaction available or in the terms or conditions of a transaction, because of sex, marital status, familial status, sexual orientation, or gender identity, among others. "Residential real estate-related transaction" includes "the selling, brokering or appraising of residential real property."

Discrimination Providing Brokerage Services (§ 4605)

It is unlawful to deny a person access to, membership in, or participation in the following because of the person's sex, marital status, familial status, sexual orientation, or gender identity:

- a multiple-listing service;
- a real estate brokers' organization or service; or
- an organization or facility related to the business of selling, exchanging, or renting dwellings.

It is also unlawful to discriminate against a person in the terms or conditions of such access, membership, or participation, because of sex, marital status, familial status, sexual orientation, or gender identity.

Aiding discriminatory practices (§ 4606)

It is unlawful to "assist, induce, incite or coerce another person to commit any of the discriminatory housing practices" described above.

Exemptions (§ 4607)

A religious organization, or a nonprofit organization operated, supervised, or controlled by a religious organization, may limit the sale, rental, or occupancy of dwellings it "owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons."

A reasonable local, state, or federal restriction may limit the number of occupants permitted to occupy a dwelling as long as they are applied to all occupants and do not discriminate on the basis of sex, marital status, familial status, sexual orientation, or gender identity.

Section 4603, except paragraph (b)(3) (regarding discriminatory statements in notices, statements, or advertisements) does not apply to the rental of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four independent families, if the owner maintains and occupies one of the living quarters as his or her residence.

Intimidation (§ 4619)

A person may be subject to a fine, imprisonment, or both if he or she threatens, coerces, intimidates, or interferes with anyone exercising a fair housing right or assisting others who exercise that right.

Residential Landlord-Tenant Fair-Housing (§ 5116)

A person who is an "owner or agent of any real estate, house, apartment or other premises" may not refuse or decline to rent, subrent, sublease, assign, or cancel an existing rental agreement to or of any person because of his or her marital status, sex, sexual orientation, or gender identity. Also, no person may demand or receive a greater rent for a premises' use and occupancy because the tenant is of a particular marital status, sex, sexual orientation, or gender identity.

As used in this context, "'sexual orientation' exclusively means heterosexuality, homosexuality, or bisexuality."

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 4606 amended 1992; §§ 4601, 4602, 4603, 4604, 4605, 4607, 4619, 5116, and 5141 amended

2013.

[Del. Code tit. 6, §§ 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4619; tit. 25 §§ 5116, 5141 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Delaware, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

Delaware's Fair Housing Laws define "residential real estate-related transaction" to include the "making, brokering or purchasing of loans or providing other financial assistance":

- for a dwelling's purchase, construction, improvement, repair, or maintenance; or
- secured by residential real estate.

It is unlawful for a person or entity whose business includes residential real estate-related transactions to discriminate against a person because of sex, marital status, familial status, sexual orientation, or gender identity in:

- making a residential real estate-related transaction available; or
- in the transaction's terms or conditions.

Also, no person or entity may discriminate in appraising property.

PROPERTY INSURANCE

Property Insurance Discriminatory Practices

Delaware law prohibits declining or terminating a property insurance policy if the act is based on the applicant's or named insured's sex or marital status.

Unfair Practices in the Insurance Business

It is an unlawful practice for an insurance company licensed in Delaware:

- to discriminate in any way because of an insured's sexual orientation or gender identity; or
- to make, publish, or disseminate (or cause to be made, published, or disseminated), or to include in any policy or application, an advertisement or statement that discriminates because of an insured's sexual orientation or gender identity; or
- to classify or refer to any individual on the basis of his or her sexual orientation or gender identity.

In this context, "'sexual orientation' exclusively means heterosexuality, homosexuality, or bisexuality."

Section 4124 amended 1985; §§ 2304, 4602, and 4604 amended 2013.

[Del. Code tit. 6, §§ 4602, 4604; tit. 18, 2304, 4124 \(2013\)](#)

Delaware, Property Titling

Because Delaware allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, except for transfers to executors or trustees, a joint tenancy exists only if the premises are expressly granted, devised, or conveyed to

persons as joint tenants and not as tenants in common. Thus, presumably, if not expressly so stated, a transfer is as tenants in common.

Delaware law explicitly provides that parties to a same-gender marriage are included in the definition or use of terms such as "husband," "wife," "spouse," and "tenants by the entirety," as those terms are used throughout Delaware law.

Section 701 amended 1953; § 129 amended 2013.

[Del. Code tit. 13, § 129; tit. 25, § 701 \(2013\)](#)

Delaware, Real Estate Transfer Tax

Because Delaware allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, unless an exception applies, any person who makes, executes, delivers, accepts or presents for recording any document must pay a realty transfer tax.

The following deeds, among others, are not considered a "document" subject to the tax:

- a conveyance between husband and wife;
- a conveyance between persons who were previously husband and wife, but who have divorced, provided the conveyance is made after the final decree and the real estate was acquired before the final decree;
- a conveyance between parent and child or his spouse;
- a conveyance to a trustee, nominee, or straw party for the grantor; and
- correctional deeds without consideration.

Section 5401 amended 2006; § 5402 amended 1998.

[Del. Code tit. 30, §§ 5401, 5402\(b\) \(2013\)](#)

Delaware, Rights Upon Death

INHERITANCE

Because Delaware law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Delaware's inheritance laws. Therefore, generally,

- if a person dies without a will, a surviving spouse receives an intestate share of the intestate estate (which equals the entire estate if the deceased had no surviving issue or parents); and
- if a married person domiciled in Delaware dies with a will, his or her surviving spouse has the right to take an elective share of the estate.

OTHER RIGHTS

Appointment as a Personal Representative

Because Delaware law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

The right to control a deceased's remains and to make ceremonial arrangements vests first in a decedent acting through a declaration instrument, and then, before numerous others, in the decedent's surviving spouse, if not legally separated from the decedent.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Delaware law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under Delaware's estate-tax laws.

Section 502 amended 1975; § 264 amended 2010; § 901 amended 2004; § 1502 amended 2013.

[Del. Code tit. 12, §§ 264, 502, 901](#); see [Del. Code tit. 30, § 1502 \(2013\)](#) (provides Delaware's estate tax)

Delaware, Rights Upon Dissolution

Because Delaware allows same-sex marriage, Delaware's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A Delaware divorce may not be possible because Delaware generally has a six-month residency requirement before parties may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages. However, the Delaware Family Court may dissolve a same-gender marriage or civil union entered into in Delaware if both parties live in a state in which the courts will not dissolve the marriage or civil union.

If a same-gender marriage or civil union was not solemnized Delaware, a couple should file their petition for dissolution in the Delaware county in which at least one party last resided.

All persons who enter into same-gender marriages that are solemnized in Delaware or were created by conversion from a civil union under Delaware law consent to the Delaware Family Court's nonexclusive jurisdiction for all proceedings for divorce and annulment, even if one or both parties no longer reside in Delaware.

Note that the automatic conversion to marriage on July 1, 2014, did not occur if a dissolution, annulment, or legal separation proceeding started before and was ongoing as of July 1, 2014. A civil union is dissolved in the same form and manner as other marriages, except that the Family Court has jurisdiction over all proceedings for divorce and annulment of civil unions that are solemnized in Delaware, even if the parties are not domiciled or do not reside in Delaware, if the other jurisdiction does not by law affirmatively permit such a proceeding to be brought in that jurisdiction's courts.

Section 216 enacted 2012; §§ 129, 218, and 1504 amended 2013.

[Del. Code tit. 13, §§ 129, 216, 218, 1504 \(2013\)](#)

Delaware, Status of Same-Sex Marriage

As of July 1, 2013, Delaware allows same-sex marriage. All Delaware laws that apply to marriage or married spouses or the children of married spouses apply equally to same-gender and different-gender married couples and their children.

Civil unions were available until July 1, 2013. On or after July 1, 2013, but before July 1, 2014, both parties to a civil union could elect to have their civil union legally converted to a marriage by operation of law, if their civil union had not been previously dissolved or annulled and was not subject to a pending proceeding for dissolution, annulment, or legal separation. As of July 1, 2014, the parties to a civil union that had not been converted to a marriage were deemed married, and the civil union was automatically converted to a marriage by operation of law.

Delaware also recognizes marriages of same-sex couples from other jurisdictions. For purposes of all Delaware laws, two persons of the same gender who are parties to a legal union other than a marriage, such as a civil union, or domestic partnership, that is established in another jurisdiction have the "same rights, benefits, protections, responsibilities, obligations and duties as married spouses, if the legal union:

- was validly entered into in the other jurisdiction;
- would not be prohibited as a marriage under Delaware law; and
- gives the individuals under the other jurisdiction's laws substantially the same rights, benefits, protections, responsibilities, obligations, and duties as a marriage.

Section 202 amended 2011; §§ 101, 129, and 218 amended 2013.

[Del. Code, tit. 13, §§ 101, 129, 202, 218 \(2013\)](#)

Delaware, Tax Treatment

STATE INCOME TAX STATUS

In 2012, Delaware's Revenue Division clarified that partners of civil unions must file as joint, married/civil union and filing separate, or married/civil union and filing combined separate returns. Partners in a civil union could not file as single or head of household. Research located no Delaware filing guidance for married same-sex couples, but same-sex couples are treated the same as other married couples in all contexts, so they are treated the same as all married couples when determining Delaware individual income tax status.

Delaware's 2013 Resident Individual Income Tax Return booklet provides some guidance for non-residents. A non-resident of Delaware who works in Delaware and who has entered into a civil union or same-sex marriage in another state that is recognized as a civil union in Delaware, is "taxed as if the taxpayer were a nonresident married spouse who worked in Delaware." A Delaware resident who has entered into a civil union in Delaware and becomes a non-resident, but who works in Delaware, is taxed as if he or she is a "nonresident married spouse who worked in Delaware, irrespective of whether the State where they are now domiciled recognizes Civil Unions or Same Sex Marriages."

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Delaware permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by Delaware's statutes, and then applies the state's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. Delaware's tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Delaware's tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Delaware's tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Delaware's tax laws apply to same-sex spouses in the same manner as any other married couple.

Sections 129 and 1102 amended 2013; revenue ruling issued 2013; FAQ dated 2013; income tax instructions dated 2013.

[Del. Code tit. 13, § 129; tit. 30, § 1102 \(2013\); Del. Dep't of Finance: Div. of Revenue, FAQs: Civil Union Tax Rules in Delaware \(Mar. 27, 2013\); Del. Div. of Revenue, Delaware's 2013 Resident Individual Income Tax Return General Instructions, at 2; Rev. Rul. 2013-17](#)

District of Columbia

District Of Columbia, Fair Housing Laws

PROTECTED CLASS

The District of Columbia's intent with its anti-discrimination laws is to secure an end to discrimination for any reason other than individual merit, including, among other things, discrimination because of sex, marital status, sexual orientation, gender identity or expression, or familial status. In this context, "sexual orientation" means "male or female homosexuality, heterosexuality and bisexuality, by preference or practice."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Discriminatory Practices

Generally, every individual must have an "equal opportunity to participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life," including in housing.

It is an unlawful discriminatory practice to do any of the following acts for a discriminatory reason based on a party's actual or perceived sex, marital status, sexual orientation, gender identity or expression, or familial status:

- to interrupt or terminate, refuse, or fail to initiate or conduct a real property transaction;
- to require different terms for a real property transaction;
- to represent falsely that a real property interest is not available;
- to include a discriminatory clause, condition, or restriction in a real property transaction;
- to "refuse or restrict facilities, services, repairs or improvements for a tenant or lessee";
- to make, print, or publish (or cause to be made, printed, or published) a notice, statement, or advertisement related to a real property transaction or financing, if the "notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination" based on an individual's sex, marital status, sexual orientation, gender identity or expression, or familial status;
- to limit access to, or membership or participation in, a multiple-listing service, a real estate brokers' organization, or another service, organization, or facility related to the business of selling or renting residential real estate; or

- to discriminate against a person in the terms or conditions for access, membership, or participation in an organization, service, or facility related to the business of selling or renting residential real estate.

Blockbusting and Steering

It is an unlawful discriminatory practice for a person to engage in the practices of blockbusting or steering, including the following acts:

- to "promote, induce, influence, or attempt to promote, induce, or influence" a real property transaction through any representation, means, or device calculated to induce a person to discriminate or to engage in a transaction in response to "discriminate, prejudice, fear or unrest adduced by such means, device or representation"; or
- to "place a sign, or display a device, purporting to offer or tending to lead to the belief that an offer is being made" for a real property transaction that is not available or offered for transaction, or that purports that any real property transaction has occurred when it has not.

Discrimination by Broker or Salesperson

The Real Estate Commission considers a real estate broker or salesperson who commits a prohibited discriminatory act to have endangered the public interest, if:

- the act or property is within the District of Columbia, or
- the act occurs outside of the District of Columbia, in a place where the act is prohibited by state or local law, without regard to the property's location.

Exceptions

The anti-discrimination provisions described above do not apply to the rental or leasing of housing accommodations in a building in which the owner or the owner's family members occupy one of the living units and in which there are, or the owner intends that there be, accommodations for no more than:

- four families, and "only with respect to a prospective tenant, not related to the owner-occupant, with whom the owner-occupant anticipates the necessity of sharing a kitchen or bathroom"; or
- two independent families.

The above provisions also do not apply to the sale or rental of a single-family home by an owner if, among other conditions,:

- the owner does not own more than three single-family homes at any one time, or have right to all or a portion of the proceeds from the sale or rental of more than three single-family homes at any one time (this exemption applies only to one sale within a 24-month period); or
- the home was sold or rented without the use of the facilities or services of a real estate licensee and without the publication, posting, or mailing of a discriminatory advertisement.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;

- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

It is an unlawful discriminatory practice to include in a real property transaction's terms or conditions, a discriminatory clause, condition, or restriction for a discriminatory reason based on a party's actual or perceived sex, marital status, sexual orientation, gender identity or expression, or familial status.

Sections 2-1402.01 and 2-1402.22 enacted 1977; § 2-1402.23 amended 1983; § 2-1402.24 amended 1999; § 2-1401.01 amended 2007; § 2-1402.21 amended 2009; § 2-1401.02 amended 2010.

[D.C. Code §§ 2-1401.01, .02; 2-1402.01, .21, .22, .23, .24 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

District Of Columbia, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

Prohibited Housing-Related Discrimination

It is an unlawful discriminatory practice to do any of the following acts for a discriminatory reason based on a party's actual or perceived sex, marital status, sexual orientation, gender identity or expression, or familial status:

- to "appraise a property, refuse to lend money, guarantee a loan, purchase a loan, accept residential real property as security for a loan, accept a deed of trust or mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property";

- to impose different conditions on real property financing;
- to refuse to provide title or other insurance related to owning or using real property; or
- to make, print, or publish (or cause to be made, printed, or published) a notice, statement, or advertisement related to a real property transaction or related financing, if the "notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination" based on an individual's sex, marital status, sexual orientation, gender identity or expression, or familial status.

PROPERTY INSURANCE

Prohibited Housing-Related Discrimination

It is an unlawful discriminatory practice to refuse to provide title or other insurance related to the ownership or use of any real property interest for a discriminatory reason based on a party's actual or perceived sex, marital status, sexual orientation, gender identity or expression, or familial status.

Property, Casualty, and Surety Insurance Discrimination

An insurer may not unfairly discriminate between insured property having like insuring or risk characteristics, in:

- the premium or rates charged;
- the dividends or other benefits payable thereon; or
- any other of the insurance policy's terms and conditions.

An insurer may not make a differential in ratings, premium payments, or dividends based on an applicant's or a policy-holder's marital status, sexual orientation, or gender identity or expression, unless there is an actuarial justification for the differential.

General Insurance Discrimination

A person may not refuse to insure, refuse to continue to insure, or limit the coverage available to an individual because of marital status, sexual orientation, or gender identity or expression.

Section 31-2231.13 amended 2008; § 2-1402.21 amended 2009; § 31-2231.11 amended 2012.

[D.C. Code §§ 2-1402.21; 31-2231.11, .13 \(2013\)](#)

District Of Columbia, Property Titling

Because the District of Columbia allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, an estate granted or devised to multiple persons, including to spouses or domestic partners, is a tenancy in common, unless expressly declared to be a joint tenancy. A tenancy by the entirety may be created in any real property conveyance to spouses or domestic partners. A couple may hold property in a tenancy in common, joint tenancy, or tenancy by the entirety.

Section 42-516 amended 2009.

[D.C. Code § 42-516 \(2013\)](#)

District Of Columbia, Real Estate Transfer Tax

Because the District of Columbia allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, the District of Columbia generally imposes a tax on the transfer of all real property, unless an exemption applies. The following transfers, among others, are exempt from the transfer tax:

- transfers without actual consideration between spouses, parent and child, grandparent and grandchild, or domestic partners;
- transfers without additional consideration, that confirm, correct, modify, or supplement a previously recorded transfer;
- transfers pursuant to a divorce or separate maintenance decree; or
- transfers pursuant to a written instrument incident to a divorce or separation.

Section 47-903 amended 2012; § 47-902 amended 2013.

[D.C. Code Ann. §§ 47-902, -903 \(2013\)](#)

District Of Columbia, Rights Upon Death

INHERITANCE

Wills

Because the District of Columbia permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under the District's inheritance laws. Therefore, generally, if the deceased has a will,

- unless otherwise expressed in the will, a devise of real estate to a surviving spouse or surviving domestic partner bars his or her share in the decedent's estate;
- property specifically devised may not be used to satisfy rights to homestead allowance or exempt property, but, subject to this restriction, a surviving spouse or domestic partner may select estate property as homestead allowance and exempt property;

- a surviving spouse or domestic partner who does not renounce a will is entitled to the benefit of all provisions in his or her favor in a deceased spouse's or domestic partner's will; and
- a surviving spouse or domestic partner who does not renounce a will must share any estate of the deceased spouse or domestic partner not disposed of by the will.

Intestate shares

A deceased person's real estate, if not devised, descends in fee simple, and the surplus of the deceased's personal estate is distributed to the surviving spouse or surviving domestic partner, children, and other persons as provided by statute. The intestate share of a decedent's surviving spouse or surviving domestic partner is the entire intestate estate, if no descendant or parent of the decedent survives the decedent. Other provisions apply if a descendant or parent survives the decedent.

OTHER RIGHTS

Appointment as a Personal Representative (§ 20-303)

Generally, a court must appoint personal representatives with the priority going first to the personal representative or representatives named in a will admitted to probate, and then, before numerous others, to "the surviving spouse, domestic partner, or children of an intestate decedent or the surviving spouse or domestic partner of a testate decedent."

Funeral Arrangements (§ 3-413)

Unless the decedent left other directions, the right to control the disposition of a deceased person's remains, the interment's location and conditions, and funeral arrangements vests first in a competent surviving spouse or domestic partner.

Homestead Allowance and Exempt Property (§§ 19-101.02, .03)

A decedent's surviving spouse or surviving domestic partner is entitled to a homestead allowance. In addition to the homestead allowance, a decedent's surviving spouse or surviving domestic

partner is entitled from the estate to "a value, not exceeding \$10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects."

Family Allowance (§ 19-101.04)

A decedent's surviving spouse or surviving domestic partner and certain minor children are entitled to a "reasonable allowance" out of the estate for maintenance during the administration period.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because the District's laws permit same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under the District's state estate-tax laws. "Taxable estate" means:

- for a decedent whose death occurred before January 1, 2008, the meaning set forth in § 2501 of the Internal Revenue Code; and
- for a decedent whose death occurs on or after January 1, 2008, the meaning defined set forth in § 2501 of the Internal Revenue Code, "except that for the purpose of calculating District estate taxes, taxable estate shall be calculated as if federal estate tax law recognized a domestic partner in the same manner as a spouse."

Sections 19-101.02, 19-101.03, 19-101.04, 19-101.05, 19-114, 19-301, 19-302, and 19-305 amended 2006; §§ 19-112 and 20-303 amended 2007; § 47-3701 amended 2008; § 3-413 amended 2009.

[D.C. Code §§ 3-413; 19-101.02, -101.03, -101.04, -101.05, -112, -114, -301, -302, -305; 20-303; 47-3701 \(2013\)](#)

District Of Columbia, Rights Upon Dissolution

Because the District of Columbia allows same-sex marriage, the District's laws regarding rights upon dissolution of a married same-sex couple are generally the same as for other married couples. The District requires that at least one spouse be a bona fide resident for at least six months before initiating a divorce, and, if a couple has moved, the couple's current state may not grant a divorce if

it does not recognize same-sex marriages. However, a divorce action by persons of the same gender, even if neither party to the marriage is a bona fide resident of the District of Columbia at the time the action is brought, is maintainable if:

- the marriage was performed in the District of Columbia; and
- neither party to the marriage resides in a jurisdiction that will maintain a divorce action.

The District's laws provide that it is a rebuttable presumption that a jurisdiction will not maintain a divorce action for a same-sex couple if the jurisdiction does not recognize the marriage.

In a proceeding between parents in which a child's custody is raised as an issue, the child's best interest is the primary consideration. A party's sex, sexual orientation, or gender identity or expression, "in and of itself, shall not be a conclusive consideration."

Section 16-902 amended 2012; § 16-914 amended 2013.

[D.C. Code §§ 16-902, -914 \(2013\)](#)

District Of Columbia, Status of Same-Sex Marriage

As of March 3, 2010, the District of Columbia allows same-sex marriage. Marriage is the "legally recognized union of 2 persons," and any person may enter into a marriage with another person in the District, regardless of gender, unless the marriage is otherwise expressly prohibited. Gender-specific terms in the District's laws are construed to be "gender neutral for all purposes throughout the law."

The District recognizes any same-sex marriage legally entered into in another jurisdiction, as long as the marriage is recognized as valid in that jurisdiction and is not expressly prohibited or illegal under the District's laws.

Domestic partnerships are also available in the District of Columbia. To establish a domestic partnership, the parties must register as domestic partners by executing a declaration of domestic partnership and filing it with the Mayor.

Sections 32-702 and 46-405.01 amended 2010; § 46-401 enacted 2010.

[D.C. Code §§ 32-702; 46-401, -405.01 \(2013\)](#)

District Of Columbia, Tax Treatment

STATE INCOME TAX STATUS

The District of Columbia allows legally married same-sex couples to file their tax return using the married filing jointly or the married filing separately status. The taxpayer starts with his or her federal gross income, adjusted as required by the District's statutes, and then applies the District's rates and brackets.

Domestic partners may file either a joint return or separate returns on a combined form prescribed by the Mayor, as if the federal government recognizes domestic partners' right to file jointly.

District law provides that a marriage legally entered into in another jurisdiction between two persons of the same sex that is recognized as valid in that jurisdiction, will be recognized as a marriage in the District.

In the case of a resident taxpayer, statutory exemptions are granted for the taxpayer with an additional exemption for the taxpayer's spouse or domestic partner, if the spouse or domestic partner has no gross income and is not another taxpayer's dependent.

An individual not living with a spouse or domestic partner on the last day of the taxable year is considered a single person. Also, if spouses or domestic partners living together file separate returns, each is treated as a single person.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes,

the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between Federal and District Taxes

The District of Columbia permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for District-tax purposes starts with its federal adjusted gross income, adjusts it as required by the District's laws, and then applies the District's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. The District's tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. The District's tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No provisions specifically relevant to withholding were located. The District's tax laws apply to same-sex spouses in the same manner as any other married couple.

In the case of estimated taxes for married individuals or recorded domestic partners, the partners may make a single declaration jointly, in which case the liability with respect to an estimated tax is joint and several. If the partners make a joint declaration, but do not file a joint return for the taxable year, that year's estimated tax may be treated as the estimated tax of either spouse or domestic partner, or it may be divided between them.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. The District's tax laws apply to same-sex spouses in the same manner as any other married couple.

Sections 47-1805.01 and 47-1806.02 amended 2010; §§ 47-1806.03 and 47-1806.08 amended 2012; § 47-1803.02 amended 2013; tax notice issued 2010; revenue ruling issued 2013.

[D.C. Code §§ 47-1803.02, -1805.01, -1806.02, -1806.03, -1806.08 \(2013\)](#); [Gov't of the D.C., Office of the Chief Fin. Officer, Office of Tax and Revenue, D.C. Income Tax Return Filing Obligations of Same-Sex Spouses Married in Other Jurisdictions, OTR Tax Notice 2010-01 \(Jan. 12, 2010\)](#); [Rev. Rul. 2013-17](#)

Florida

Florida, Fair Housing Laws

PROTECTED CLASS

Florida's Civil Rights Act prohibits discrimination because of sex or marital status, among other traits, but it does not address discrimination because of sexual orientation.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Florida's Fair Housing Law prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or

- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 760.23 amended 1989; § 760.01 amended 1992; ethics code dated 2014.

[Fla. Stat. §§ 760.01, .23 \(2013\)](#); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Florida, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Florida's general laws regarding unenforceable contracts prohibit discrimination based on sex or marital status when loaning money or granting credit, but they do not protect against discrimination based on sexual orientation.

PROPERTY INSURANCE

No relevant provisions were located. Generally, an insurer may not refuse to insure or continue to insure any individual or risk solely because of "[r]ace, color, creed, marital status, sex, or national origin."

Section 725.07 enacted 1973; § 626.9541 amended 2014.

[Fla. Stat. §§ 626.9541](#) (as amended by [2014 Fla. Laws chs. 103](#) and [180](#)); [725.07 \(2013\)](#)

Florida, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Florida does not recognize same-sex relationships in any form, so an estate by the entirety, which requires a couple to be "husband and wife," is not available to same-sex couples.

Except for estates by entirety, a devise, transfer or conveyance to two or more parties creates a tenancy in common, unless the instrument expressly provides for the right of survivorship.

Section 689.15 amended 1973; § 689.115 amended 1991; § 741.212 enacted 1997.

[Fla. Stats. §§ 689.115, .15; 741.212 \(2013\)](#)

Florida, Real Estate Transfer Tax

Florida levies a tax on deeds, instruments, or writings conveying real property, unless an exception applies. Because Florida does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses apply to same-sex couples. However, the following exceptions, among others, may be relevant:

- a conveyance of unencumbered realty as a gift;
- a conveyance made to correct a deficiency in a previous deed on which the tax has been paid;
- a deed given by a personal representative in accordance with the terms of a will; or
- a partition deed, unless for consideration some of the parties take shares greater in value than their undivided interest.

Section 201.02 amended 2010; regulation amended 2013.

[Fla. Stat. §§ 201.02; Fla. Admin. Code Ann. r. 12B-4.014 \(2013\)](#)

Florida, Rights Upon Death

INHERITANCE

Because Florida law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Florida does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Florida, Rights Upon Dissolution

Because Florida does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to marriage dissolution to same-sex couples.

Florida, Status of Same-Sex Marriage

Florida does not recognize same-sex marriages. The state's constitution provides, "Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized."

Florida also does not recognize for any purpose:

- marriages between persons of the same sex entered into in any jurisdiction; or
- relationships between persons of the same sex that are treated as marriages in any jurisdiction.

When interpreting Florida laws, "the term 'marriage' means only a legal union between one man and one woman as husband and wife, and the term 'spouse' applies only to a member of such a

union."

No provisions were located indicating that the state recognizes civil unions or domestic partnerships.

Section 741.212 enacted 1997; constitutional section amended 2008.

[Fla. Stat. § 741.212 \(2013\)](#); [Florida Const. Art. I, § 27](#)

Florida, Tax Treatment

STATE INCOME TAX STATUS

Florida residents are not subject to a state personal income tax.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Tax guide issued 2014; revenue ruling issued 2013.

[State of Fla., Florida Tax Guide, Florida Taxes \(2014\); Rev. Rul. 2013-17](#)

Georgia

Georgia, Fair Housing Laws

PROTECTED CLASS

Research located no laws providing that sexual orientation is a protected class.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Georgia's fair housing law prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

The state's fair housing laws similarly provide that it is unlawful for a person or entity engaged in residential real estate related transactions to discriminate against a person because of sex or familial status, but, again, they do not protect against discrimination because of sexual orientation or marital status. In this context, the term "residential real estate related transaction" includes selling, brokering, or appraising residential real property.

Real Estate Organizations

Georgia's laws prohibit discrimination in connection with a multiple-listing service, a real estate brokers' organization, or another real estate service, organization, or facility because of a person's sex or familial status, but they do not protect against discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located. A covenant that prohibits a property's use or ownership within a subdivision may not discriminate based on race, creed, color, age, sex, or national origin. The restriction does not address "sexual orientation."

Section 8-3-203 amended 1995; § 44-5-60 amended 2012; § 8-3-202 amended 2014.

Ga. Code §§ 8-3-202, -203; 44-5-60 (LexisNexis 2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Georgia, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Georgia's financing laws prohibit discrimination based on sex or marital status when extending credit, among other traits, but they do not protect against discrimination based on sexual orientation.

The state's fair housing laws similarly provide that it is unlawful for a person or entity engaging in residential real estate related transactions to discriminate against a person because of sex or familial status, but, again, they do not protect against discrimination because of sexual orientation or marital status. In this context, "residential real estate related transaction" includes making or purchasing loans or providing other financial assistance:

- to be used to purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located.

Section 7-6-1 enacted 1975; § 8-3-204 amended 1990.

Ga. Code § 7-6-1; § 8-3-204 (LexisNexis 2014)

Georgia, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Generally, unless otherwise specifically provided by statute and by the relevant document or instrument, a tenancy in common is created if two or more persons are entitled to the simultaneous possession of property. Title in favor of two or more persons creates interests in common without survivorship between or among the owners unless the instrument expressly describes the parties as "joint tenants" or as taking "jointly with survivorship."

Section 44-6-120 amended 1980; § 44-6-190 amended 1985; § 19-3-3.1 enacted 1996.

Ga. Code §§ 19-3-3.1; 44-6-120, -190 (LexisNexis 2014)

Georgia, Real Estate Transfer Tax

Georgia imposes a transfer tax on each deed, instrument, or other writing by which realty is conveyed, if the consideration or value (excluding any liens or encumbrances) is greater than \$100, unless an exception applies. Because Georgia does not recognize same-sex marriage or other same-sex relationships in any form, the real estate transfer tax exemption that explicitly applies to spouses does not apply to same-sex couples. However, the following exceptions may be relevant:

- a gift; or
- a deed or other writing that divides real property among joint tenants or tenants in common, provided the transaction does not involve any consideration other than the division.

Section 19-3-3.1 enacted 1996; § 48-6-1 amended 1998; § 48-6-2 amended 2011.

Ga. Code §§ 19-3-3.1; 48-6-1, -2 (LexisNexis 2014)

Georgia, Rights Upon Death

INHERITANCE

Because Georgia law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Georgia does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, because Georgia law does not recognize same-sex marriage or any other form of same-sex relationships, no statutes or regulations were located that apply any of the state's estate or inheritance taxes in any special manner to same-sex couples.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Georgia, Rights Upon Dissolution

Because Georgia does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Georgia's courts have no jurisdiction:

- to grant a divorce or separate maintenance with respect to a relationship between persons of the same sex that is treated as a marriage under another state's or jurisdiction's laws; or
- "otherwise to consider or rule on any of the parties' respective rights arising as a result of or in connection with such relationship."

Section 19-3-3.1 enacted by 1996; constitutional section amended 2004.

Ga. Code § 19-3-3.1 (2014); Ga. Const. Art. I, § IV, ¶ I

Georgia, Status of Same-Sex Marriage

Georgia prohibits and does not recognize same-sex marriages. Georgia recognizes "only the union of man and woman" as a marriage.

No union between persons of the same sex is entitled to the benefits of marriage. Georgia does not recognize any "public act, record, or judicial proceeding" of another state or jurisdiction that treats persons of the same sex as being married. A same-sex marriage entered into in another state or foreign jurisdiction is void in Georgia. Contractual rights granted by virtue of a same-sex marriage license from another jurisdiction are not enforceable in Georgia courts.

No provisions in Georgia's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Section 19-3-3.1 enacted 1996; constitutional provision amended 2004.

Ga. Code § 19-3-3.1 (LexisNexis 2014); Ga. Const. Art. I, § IV, ¶ I

Georgia, Tax Treatment

STATE INCOME TAX STATUS

Although Georgia's income tax laws do not directly require a taxpayer to use the same filing status as he or she used for federal purposes, a taxpayer's federal adjusted gross income is the starting point when computing Georgia taxable income. Persons in a same-sex marriage who may file their federal return using the married filing jointly or married filing separately status must continue to file their Georgia returns as single or head of household.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

A taxpayer's federal adjusted gross income is used as a taxpayer's starting point in computing Georgia taxable income. Therefore, persons in a same-sex marriage who can file a federal return using a married status must continue to file their Georgia returns using the single or head of household filing status.

Deductions

If a person in a same-sex marriage used a married filing status on their federal return, the person must, for Georgia tax purposes, recompute their federal adjusted gross income and any itemized

deductions as if the person had filed a single federal return, using the single or head of household exemption and standard deduction amount (if applicable).

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Informational bulletin issued 2013; revenue ruling issued 2013.

[Ga. Dep't of Revenue, *Informational Bulletin IT-2013-10-25: U.S. Supreme Court and the Defense of Marriage Act* \(Oct. 25, 2013\); Rev. Rul. 2013-17](#)

Guam

Guam, Fair Housing Laws

PROTECTED CLASS

No provisions were located that define sexual orientation as a protected class or address discrimination on the basis of sexual orientation.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Guam's statutes regarding discrimination in housing accommodations prohibit discrimination based on sex, but they do not protect against discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 70.45 and 70.46 enacted 1981; ethics code issued 2014.

[Guam Code tit. 9, §§ 70.45, .46 \(2014\); Nat'l Assoc. of REALTORS®, *Code of Ethics and Standards of Practice of the National Association of REALTORS®*, art. 10 \(Jan. 1, 2014\)](#)

Guam, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Guam's unlawful financing laws prohibit discrimination based on sex, but they do not protect against discrimination based on sexual orientation.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not set rates or use a rating bureau's rates or systems that are excessive, inadequate, or "unfairly discriminatory."

Section 70.47 enacted 1981; §§ 18502 and 18503 history unknown.

[Guam Code tit. 9, § 70.47; tit. 22, §§ 18502, 18503 \(2014\)](#)

Guam, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Guam does not recognize same-sex relationships of any form, so any title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, an interest created in favor of several persons is an interest in common, unless:

- acquired in partnership for partnership purposes;
- declared to be a joint interest; or
- acquired as community property by a husband and wife.

Section 1214 and 1218 history unknown.

[Guam Code tit. 21, §§ 1214, 1218 \(2014\)](#)

Guam, Real Estate Transfer Tax

Guam imposes a transfer tax on conveyances, deeds, or instruments that sell, grant, transfer, or otherwise convey land. No relevant exemptions were located.

Section 20101 amended 2007.

[Guam Code tit. 11, § 20101 \(2014\)](#)

Guam, Rights Upon Death

INHERITANCE

Because Guam law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Guam does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant territory laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Guam, Rights Upon Dissolution

Because Guam does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's marriage-dissolution laws to same-sex couples.

Guam, Status of Same-Sex Marriage

Guam's laws do not address same-sex marriages.

No provisions in Guam's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Guam, Tax Treatment

STATE INCOME TAX STATUS

No guidance regarding a same-sex couple's filing status for their Guam income taxes was located. Generally, the U.S. Congress created the Territorial Government of Guam as a separate taxing

jurisdiction by enacting the Organic Act of Guam in 1950. Section 31 of the Act provides that the income tax laws in force in the United States are the income tax laws of Guam, substituting Guam for the United States where necessary and omitting any inapplicable or incompatible provisions. The U.S. Internal Revenue Code with such changes constitutes the Guam Territorial Income Tax Law. Therefore, the appropriate filing status for individuals in same-sex marriages is unclear. The filing status available to same-sex couples for their federal taxes may also be available to same-sex couples in Guam for their Guam taxes, despite the fact that Guam does not legally recognize same-sex marriages.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

History of tax-structure information unknown; revenue ruling issued 2013.

[Guam Dep't of Rev. & Tax., Guam Tax Structure \(last visited 08/6/2014\); Rev. Rul. 2013-17](#)

Hawaii

Hawaii, Fair Housing Laws

PROTECTED CLASS

Sexual orientation, which is a protected class, includes:

- having a "preference for heterosexuality, homosexuality, or bisexuality";
- having a history of one or more of these preferences; or
- being "identified with" one or more of these preferences.

Hawaii's legislature declares that discrimination because of sex, gender identity or expression, sexual orientation, or marital status in housing or access to services receiving state financial assistance is against public policy. Also, the Hawaii Public Housing Authority serves families with same-sex partners without discrimination.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Discriminatory Practices

It is a discriminatory practice for "an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson," to act as follows because of sex, gender identity or expression, sexual orientation, marital status, or familial status:

- to refuse to engage in a real estate transaction with a person;

- to discriminate in a real estate transaction's terms, conditions, or privileges;
- to discriminate when furnishing facilities or services in connection with a real estate transaction;
- to refuse to receive or to fail to transmit a bona fide offer;
- to refuse to negotiate for a person;
- to represent to a person that real property is not available when it is available;
- to fail to bring a property listing to a person's attention;
- to refuse to permit a person to inspect real property;
- to "steer a person seeking to engage in a real estate transaction";
- to "offer, solicit, accept, use, or retain" a real property listing with "the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction";
- to require a buyer, renter, or lessee be tested for human immunodeficiency virus infection;
- to discriminate against or deny a person access to, or membership or participation in, a multiple listing service, real estate broker's organization, or another service, organization, or facility involved in real estate transactions; or

- to discriminate against a person in the terms or conditions of access, membership, or participation in a multiple listing service, real estate broker's organization, or another service, organization, or facility involved in real estate transactions.

Exemptions

The above provisions do not apply:

- to the rental of a housing accommodation in a building that contains accommodations for no more than two families living independently, if the owner or lessor resides in one of the housing units; or
- to the rental of up to four rooms in a housing accommodation by an owner or lessor, if the owner or lessor resides in the housing accommodation.

The provisions also do not prohibit the refusal because of sex, gender identity or expression, sexual orientation, or marital status, to rent or lease housing accommodations that are:

- owned or operated by a religious institution and used for church purposes; or
- part of a religiously affiliated institution of higher education's housing program on property the institution owns, controls, or operates for its students pursuant to Title IX of the Higher Education Act of 1972.

Blockbusting

It is a discriminatory practice for a person or a real estate licensee, for the purpose of inducing a real estate transaction from which the person or licensee may benefit financially, to act as follows because of sex, gender identity or expression, sexual orientation, marital status, familial status, or human immunodeficiency virus infection:

- to represent that a change has occurred or will or may occur in the composition of owners or occupants in the block, neighborhood, or area in which the real property is located; or
- to represent that this change will or may result in the lower property values, increased criminal or antisocial behavior, or a decline in school quality.

Conspiracies

It is a discriminatory practice for a person, or for two or more persons to conspire, as follows:

- to retaliate, threaten, or discriminate against a person because he or she exercised a right protected by chapter 515, opposed a discriminatory practice, made a charge, filed a complaint, or participated in an investigation or hearing under chapter 515;
- to "aid, abet, incite, or coerce a person to engage in a discriminatory practice";
- to interfere with a person exercising a protected right;
- to obstruct or prevent a person from complying with chapter 515;
- to intimidate or threaten a person engaging in activities designed to make others aware of protected rights;
- because of a person's sex, gender identity or expression, sexual orientation, marital status, familial status, or human immunodeficiency virus infection of that person or his or her associates, to threaten, intimidate, or interfere with the person's enjoyment of a housing accommodation; or

- to "print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction," that indicates an intent to make a limitation or discriminate because of sex, gender identity or expression, sexual orientation, marital status, familial status, or human immunodeficiency virus infection.

An attempt to commit a discriminatory practice is also a discriminatory practice.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

An oral or written provision related to real property that "purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease" to individuals because of sex, gender identity or expression, sexual orientation, marital status, familial status, or human immunodeficiency virus infection, among other factors, is void.

A condition, restriction, or prohibition that limits a real property's use or occupancy on the basis of sex, gender identity or expression, sexual orientation, marital status, familial status, or human immunodeficiency virus infection, among others, is generally void, except for a limitation, based on religion, on the use of real property that is:

- held by a "religious institution or organization or a religious or charitable organization operated, supervised, or controlled by a religious institution or organization"; and
- used for religious or charitable purposes.

It is also a discriminatory practice:

- to insert in a written instrument related to real property, a provision that is void as provided above; or
- to honor such a provision in the chain of title.

Section 515-17 enacted 1967; §§ 515-2, 515-6, and 515-7 amended 2005; §§ 368-1, 515-3, 515-4, and 515-16 amended 2011; FAQ issued 2014.

[Haw. Rev. Stat. §§ 368-1; 515-2, -3, -4, -6, -7, -16, -17 \(2013\); Governor of the State of Hawai'i, Neil Abercrombie, *Marriage in Hawaii – FAQ* \(Mar. 14, 2014\); Nat'l Assoc. of REALTORS®, *Code of Ethics and Standards of Practice of the National Association of REALTORS®*, art. 10 \(Jan. 1, 2014\)](#)

Hawaii, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is a discriminatory practice for a person or a real estate licensee, to whom an inquiry or application is made for financial assistance in connection with a real estate transaction to construct, rehabilitate, repair, maintain, or improve real property, to act as follows because of sex, gender identity or expression, sexual orientation, marital status, familial status, or human immunodeficiency virus infection:

- to discriminate against the applicant;

- to use a financial assistance application form or to make or keep a record regarding financial assistance applications that indicates an intent to discriminate, unless the records are required by federal law;
- to discriminate in the making or purchasing of loans or providing other financial assistance to purchase, construct, improve, repair, or maintain a dwelling;
- to discriminate in the making or purchasing of loans or providing other financial assistance secured by residential real estate; or
- to discriminate when selling, brokering, or appraising residential real property.

PROPERTY INSURANCE

Generally, insurance rates may not be "unfairly discriminatory."

Also, it is unfair discrimination:

- to make or permit unfair discrimination in favor of particular individuals, or between insureds or subjects of insurance having substantially similar insuring, risk, and exposure factors, in any insurance contract's terms, conditions, rates, premiums, or benefits; or
- to refuse to insure or to continue to insure, or to limit the coverage amount available to an individual because of the individual's sex or marital status, except that an insurer may take marital status into account when defining persons eligible for dependent benefits.

Section 431:14-103 amended 1997; § 515-5 amended 2005; § 431:13-103 amended 2014.

[Haw. Rev. Stat. §§ 431:14-103](#) (as amended by [2014 Haw. Sess. Laws ch. 45](#)), [:13-103](#); [515-5 \(2013\)](#)
[Hawaii, Property Titling](#)

Because Hawaii allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, all "grants, conveyances, and devises of

land, or of any interest therein" made to multiple persons are deemed to create estates in common, unless it "manifestly appears" from the instrument's "tenor" that it was intended to create a joint tenancy or tenancy by the entirety.

Property interests may be conveyed as follows, among other situations:

- by a person to oneself and others as joint tenants;
- by a person to "oneself and one's spouse or reciprocal beneficiary, or by spouses to themselves, or by reciprocal beneficiaries to themselves," as tenants by the entirety; and
- by one tenant by the entirety to the tenant's spouse or reciprocal beneficiary of all of the tenant's interest, without the necessity of conveying through a third party.

A valid instrument creates a "joint tenancy, tenancy by the entirety, tenancy in common, or single ownership, as the case may be, if the tenor of the instrument manifestly indicates such intention."

Property held in tenancy by the entirety by a couple, whether married, in a civil union, or reciprocal beneficiaries, is subject to § 509-3. Pursuant to §509-3, if two individuals who hold property as tenants by the entirety enter into a different legal relationship that also allows them to hold property as tenants by the entirety, their ownership as tenants by the entirety is continuous if the new legal relationship is entered into:

- simultaneously with the earlier legal relationship's termination; or
- within 90 days after the earlier legal relationship is terminated,

provided that no liens were perfected and attached to the property in the interim.

This continuity of a tenancy by the entirety applies to couples married under chapter 572, civil union partners under chapter 572B, and reciprocal beneficiaries under chapter 572C.

Section 509-1 amended 1976; 509-2 amended 2012; 509-3 enacted 2012; 572-1.7 enacted 2013.

[Haw. Rev. Stat. §§ 509-1, -2, -3; 572-1.7 \(2013\)](#)

Hawaii, Real Estate Transfer Tax

Because Hawaii allows same-sex marriage, the state's real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, the register of deeds collects the tax on all realty transfers or conveyances, unless an exception applies. The following documents, among others, are exempt from the transfer tax:

- documents that only confirm or correct a deed or other previously recorded or filed document;
- deeds between husband and wife, reciprocal beneficiaries, or parent and child, with only nominal consideration;
- deeds pursuant to which certain owners partition their property;
- deeds between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of a reciprocal beneficiary relationship; or
- documents conforming to a transfer on death deed.

Sections 247-1 amended 1968; § 247-3 amended 2011.

[Haw. Rev. Stat. §§ 247-1, -3 \(2013\)](#)

Hawaii, Rights Upon Death

INHERITANCE

Because Hawaii's laws permit same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Hawaii's inheritance laws. Therefore, generally,

- a decedent's surviving spouse or reciprocal beneficiary may choose to take an elective share, which is determined by applying a percentage that depends on the length of time the couple was married or in a reciprocal beneficiary relationship; and
- if there is no will, the decedent's surviving spouse or reciprocal beneficiary takes the entire estate if the decedent has no surviving descendants or parents. Other provisions apply if the decedent is survived by a parent or surviving descendants.

OTHER RIGHTS

Appointment as a Personal Representative

A married person "may be a personal representative, guardian, trustee, custodian, or other fiduciary and may bind the person's self and the estate the person represents" without the spouse's assent.

Funeral Arrangements

Because Hawaii's laws permit same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no relevant provisions specifically relevant to same-sex marriages were located.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Hawaii's tax laws apply in the same manner to married same-sex spouses as they do to married opposite-sex spouses. Hawaii's Department of Taxation has clarified the application of the state's tax laws to same-sex couples as follows:

As it relates to taxation, all same-sex couples that are legally married in Hawaii or any other jurisdiction where such marriages are valid are married for all tax purposes, including income tax, estate tax, and generation skipping tax. Unlike couples in a civil union, same-sex married couples no longer need to create a federal tax return only for the purpose of computing their

Hawaii income tax or estate and generation skipping tax liabilities because such marriages are recognized for federal tax purposes.

A civil union is treated as a married couple for Hawaii tax purposes, but is not treated as a married couple for federal tax purposes. Therefore, a couple in a civil union must create a federal tax return as if their union were considered to be a valid marriage for federal tax purposes in order to compute their Hawaii state estate and generation-skipping tax.

Sections 572-26 amended 1987; §§ 560:2-102 and 560:2-202 amended 1997; taxation announcement issued 2013; FAQ issued 2014.

[Haw. Rev. Stat. §§ 560:2-102, -202; 572-26 \(2013\); Governor of the State of Hawai'i, Neil Abercrombie, *Marriage in Hawaii – FAQ* \(Mar. 14, 2014\); Hawaii Dep't of Taxation, *Dep't of Taxation Announcement No. 2013-26* \(Dec. 23, 2013\)](#)

Hawaii, Rights Upon Dissolution

Because Hawaii allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples.

Hawaii generally requires that one spouse or civil union partner must have been domiciled or physically present in the state for at least six months before applying for a divorce. However, a party may bring an action for annulment, divorce, or separation in Hawaii even though neither party to the marriage meets Hawaii's domicile or physical presence requirements, if:

- the marriage occurred in Hawaii; and
- neither spouse may pursue an action for annulment, divorce, or separation where they spouses are domiciled because they are domiciled in jurisdictions that do not recognize their marriage.

Hawaii family courts also have jurisdiction in the same manner as marriages over all proceedings related to the annulment, divorce, and separation of civil unions entered into or recognized in Hawaii.

Section 580-1 amended 2013.

[Haw. Rev. Stat. § 580-1 \(2013\)](#)

Hawaii, Status of Same-Sex Marriage

As of December 2, 2013, Hawaii permits marriages "between two individuals without regard to gender." Also, marriages between two individuals, regardless of gender, are legal in Hawaii if they are legal where contracted. When used to implement spouses' rights, benefits, protections, and responsibilities under Hawaii law, all gender-specific terminology, such as "husband," "wife," "widow," or "widower," is to be construed in a gender-neutral manner.

Hawaii law also permits civil unions. Partners to a lawful civil union have "all the same rights, benefits, protections, and responsibilities under law" as are granted to those who marry. A party to a civil union is included in terms, such as "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote a spousal relationship, as they are used throughout Hawaii's laws. In addition, Hawaii permits couples to become reciprocal beneficiaries.

Civil union partners or reciprocal beneficiaries who seek to marry each other may marry without first terminating their civil union or reciprocal beneficiary relationship. Under the Hawaii Marriage Equality Act, a couple's civil union or reciprocal beneficiary relationship automatically terminates when the couple marries each other, and any legal rights they had from their civil union or reciprocal beneficiary relationship continue through their marriage.

Sections 572B-9 and 572B-11 enacted 2011; §§ 572B-2 and 572C-4 amended 2012; § 572-1 amended 2013; §§ 572-1.7, 572-1.8, and 572-3 enacted 2013; FAQ dated 2014.

[Haw. Rev. Stat. §§ 572-1, -1.7, -1.8, -3; 572B-2, -9, -11; 572C-4 \(2013\); Governor of State of Hawai'i, Neil Abercrombie, *Marriage in Hawaii – FAQ* \(Mar. 14, 2014\)](#)

Hawaii, Tax Treatment

STATE INCOME TAX STATUS

An individual's sex does not matter when he or she is filing a tax return. Therefore, same-sex married couples and civil union couples file their Hawaii individual income tax returns in the same way as opposite-sex married couples. Therefore, same-sex and opposite-sex married couples and civil union couples file either as "married filing a joint return" or "married filing a separate return."

They may not choose a "single" filing status. A couple's marital status on the last day of the couple's tax year determines their filing status. If a couple is married in another state that permits marriages between two individuals of the same sex, that couple must file their Hawaii tax return like any other married couple.

Hawaii's Marriage Equality Act provides that the rights of marriage are the same regardless of the spouses' gender. Therefore, Hawaii's tax laws apply in the same manner to married same-sex spouses as they do to married opposite-sex spouses. Also, provisions in Hawaii's income tax law that apply to a husband and wife, spouses or person in any legal marital relationship apply to partners in a civil union as if they were in a legal marital relationship.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Hawaii permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by Hawaii's statutes, and then applies the state's income tax rates and income brackets.

As incorporated by Hawaii law, Internal Revenue Code provisions referred to in chapter 235 that apply to a husband and wife, spouses, or person in a legal marital relationship also apply to partners in a civil union. A civil union is treated the same as a married couple for Hawaii tax purposes, but it is not considered to be a married couple for federal tax purposes. Therefore, couples in a civil union must create a federal tax return as if their union were a valid marriage for federal tax purposes in order to compute their Hawaii state income tax.

Deductions

No specifically relevant provisions were located. Hawaii tax laws apply to same-sex spouses and

civil union partners in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Hawaii tax laws apply to same-sex spouses and civil union partners in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Hawaii tax laws apply to same-sex spouses and civil union partners in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Section 235-54 amended 2011; § 235-93.4 enacted 2011; FAQ issued 2014; revenue ruling issued 2013.

[Haw. Rev. Stat. §§ 235-54, -93.4 \(2013\)](#); [Governor of the State of Hawai'i, Neil Abercrombie, *Marriage in Hawaii – FAQ* \(Mar. 14, 2014\)](#); [Hawaii Dep't of Taxation, *Dep't of Taxation Announcement No. 2013-26* \(Dec. 23, 2013\)](#); [Rev. Rul. 2013-17](#)

Idaho

Idaho, Fair Housing Laws

PROTECTED CLASS

No Idaho law explicitly addresses discrimination on the basis of sexual orientation. The state's statutes providing that freedom from discrimination constitutes a civil right creates the right to be free from discrimination only "because of race, creed, color, sex, or national origin."

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Idaho's laws provide freedom from discrimination in accommodations because of sex, but they does not protect against discrimination based on sexual orientation or marital status. Similarly, the state's laws regarding discrimination by owners engaging in a real estate transactions or by real estate licensees do not address discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located. The state's provisions that prohibit inserting real property documents certain provisions that purport to forbid or restrict the property's conveyance, encumbrance, occupancy, or lease because of certain personal traits do not address sexual orientation.

Section 18-7301 reenacted 1972; §§ 67-5901 and 67-5909 amended 2005; ethics code dated 2014.

[Idaho Code §§ 18-7301; 67-5901 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Idaho, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Idaho's laws regarding discrimination when granting real estate loans prohibit discrimination based on sex, but they do not protect against discrimination based on sexual orientation or marital status.

PROPERTY INSURANCE

No specifically relevant provisions were located.

Section 67-5909 amended 2005.

[Idaho Code § 67-5909 \(2014\)](#)

[Idaho, Property Titling](#)

No provisions were located that address the titling of a same-sex couple's property. Idaho does not recognize same-sex relationships in any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, a real estate interest granted or devised to multiple persons, other than as executors or trustees, is deemed to be a tenancy in common, unless expressly declared to be otherwise.

Section 55-508 enacted 1864.

[Idaho Code § 55-508 \(2014\)](#)

[Idaho, Real Estate Transfer Tax](#)

No applicable provisions were located.

[Idaho, Rights Upon Death](#)

INHERITANCE

Because Idaho law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Idaho does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Idaho, Rights Upon Dissolution

Because Idaho does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Idaho, Status of Same-Sex Marriage

Idaho does not recognize same-sex marriages. The state's constitution provides that a "marriage between a man and a woman is the only domestic legal union" that is valid or recognized in Idaho. The state's statutes also prohibit marriage between same-sex couples.

Foreign or out-of-state same-sex marriages are not valid in Idaho because they violate the state's public policy.

No provisions in Idaho's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Although case law is outside the scope of this survey, it is important to note that the Idaho constitutional and statutory bans on same-sex marriages were recently struck down in *Latta v. Otter*, No. 1:13-CV-00482-CWD, 2014 U.S. Dist. LEXIS 66417 (D. Idaho May 13, 2014). The Ninth Circuit Court of Appeals stayed the lower court's order pending resolution of the decision's appeal. [Latta v. Otter, No. 14-35420 \(9th Cir. May 15, 2014\) \(order granting stay\)](#).

Section 32-201 amended 1995; § 32-209 amended 1996; constitutional section amended 2006.

[Idaho Code §§ 32-201, -209 \(2014\); Idaho Const. art. III, § 28](#)

Idaho, Tax Treatment

STATE INCOME TAX STATUS

Each spouse in a same-sex marriage that was recognized in another jurisdiction must file a separate Idaho income tax return as "single" or, if qualified, "head of household."

As of January 1, 2014, for all purposes in Idaho's income tax act, a marriage is one that is considered valid under the state's constitution and as defined in Idaho Code §§ 32-201 and 32-209. Only a married couple may file a joint return.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Idaho regulations provide that, for purposes of computing taxable income, "any reference to marriage in federal or state law, including terms such as marriage, married, spouse, husband, wife, widow, or widower, shall be interpreted as referring to" a marriage between a man and a woman.

Each spouse in a same-sex marriage that is recognized in another jurisdiction must:

- file a separate Idaho income tax return, either as "single" or "head of household";
- recompute his or her federal income tax return as if he or she had used either the single or head-of-household filing status; and
- include "those computations or their recomputed federal return" with their Idaho tax return.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Section 63-3004 amended 2014; regulations 35.01.01.010 and 35.01.01.805 amended 2014; revenue ruling issued 2013.

[Idaho Code § 63-3004 \(2014\)](#); [Idaho Admin. Code r. 35.01.01.010, .805 \(2014\)](#); [Idaho State Tax Comn., December 2013 Tax Update \(Dec. 20, 2013\)](#); [Rev. Rul. 2013-17](#)

Illinois

Illinois, Fair Housing Laws

PROTECTED CLASS

Sexual orientation is a protected class in Illinois. It is the state's public policy:

- to secure for all individuals freedom from discrimination because of his or her sex, marital status, or sexual orientation, among others, in connection with real estate transactions and access to financial credit; and

- to prevent discrimination based on familial status in real estate transactions.

"Sexual orientation" means "actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Civil Rights Violations in Real Estate Transactions

It is a civil rights violation for a person engaged in a real estate transaction or a real estate licensee, to act as follows because of unlawful discrimination or familial status:

- to refuse to engage in a real estate transaction;
- to discriminate when making a real estate transaction available;
- to alter a real estate transaction's terms, conditions, or privileges;
- to discriminate when furnishing connected facilities or services;
- to refuse to receive or to fail to transmit a bona fide offer;
- to refuse to negotiate a real estate transaction;

- to represent that a real property is "not available for inspection, sale, rental, or lease" when it is available;
- to fail to bring a property listing to a person's attention;
- to refuse to permit a person to inspect real property;
- to "print, circulate, post, mail, publish or cause to be so published" a statement, advertisement, or sign that expresses a limitation founded on, or indicates an intent to, engage in unlawful discrimination;
- to use an application form or to make a record or inquiry that expresses a limitation founded on, or indicates an intent to, engage in unlawful discrimination; or
- to "offer, solicit, accept, use or retain" a real property listing with "knowledge that unlawful discrimination or discrimination on the basis of familial status in a real estate transaction is intended."

In this context, "real estate transaction" includes:

- the sale, exchange, rental, or lease of real property;
- the brokering or appraisal of residential real property;
- making or purchasing loans; and
- providing other financial assistance to purchase, construct, improve, repair, or maintain a dwelling or secured by residential real estate.

Interference, coercion, or intimidation

It is also a civil rights violation to coerce, intimidate, threaten, or interfere with a person;

- who is exercising or enjoying the rights granted or protected by Article 3 of the state's Human Rights Act;
- because he or she exercised or enjoyed those protected rights; or
- because he or she aided or encouraged another person in the exercise or enjoyment of those protected rights.

Exemptions

The provisions described above do not apply to:

- the sale of a single family home by its owner as long as (1) the owner does not own or have a beneficial interest in more than three single family homes at the time of the sale, (2) the owner or a member of his or her family were the home's "last current resident," (3) the home is sold without the use of a real estate licensee's sales or rental facilities or services; and (4) the home is sold without the publication, posting, or mailing of an advertisement or written notice that violates § 3-102(F);
- the rental of a housing accommodation in a building that contains housing accommodations for up to four independent families, if the owner resides in one of the housing accommodations; and

- the rental of a room in a private home by an owner if he or she (or a family member) resides in the home, or, while absent for no more than 12 months, he or she (or a family member) intends to return to reside in the home.

The owner of an owner-occupied residential building with four or fewer units may decide whether to rent to a person based on that person's sexual orientation.

Blockbusting

It is a civil rights violation for a person:

- to solicit for sale, lease, listing, or purchase residential real estate "on the grounds of loss of value due to the present or prospective entry into the vicinity of the property involved" of a person of any particular sex, sexual orientation, marital status, or familial status, among other things;
- to distribute written material or statements designed to induce a residential real estate owner to sell or lease his or her property because of a present or prospective change in the sex, sexual orientation, marital status, or familial status of residents in the property's vicinity; or
- to intentionally create alarm by transmitting communications designed to induce a residential real estate owner to sell or lease his or her property because of any present or prospective entry into the property's vicinity of persons of a particular sex, sexual orientation, marital status, or familial status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 5/3-102 enacted 1989; § 5/3-101 amended 1990; § 5/3-105.1 enacted 2005; § 5/3-106 amended 2008; § 5/1-102 amended 2010; §§ 5/1-103 and 5/3-103 amended 2012.

[775 Ill. Comp. Stat. 5/1-102, -103; 5/3-101, -102, -103, -105.1, -106 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Illinois, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

In the context of the real estate transaction provisions of the Illinois Human Rights Act, "real estate transaction" includes, among other things:

- brokering or appraising residential real property;
- making or purchasing loans; and
- providing other financial assistance to purchase, construct, improve, repair or maintain a dwelling or secured by residential real estate.

Therefore, the provisions set forth in ***Illinois: Fair Housing Laws*** apply to mortgage and home equity financing.

PROPERTY INSURANCE

No specifically relevant provisions were located. However, an insurer may not cancel, refuse to issue, or refuse to renew a policy solely because one or more claims have been made during the preceding 60 months for a loss that was the result of a hate crime committed against the insured person or property. The insured must provide evidence to the insurer that the act causing the loss was identified as a hate crime on a police report. In this context, a "hate crime" includes an act:

- "willfully injuring, intimidating, interfering with, oppressing, or threatening" another person in the "free exercise or enjoyment of any right or privilege secured to him or her by" federal or Illinois laws because of the other person's actual or perceived gender or sexual orientation; or
- knowingly defacing, damaging, or destroying another person's property to intimidate or interfere with the free exercise or enjoyment of any those rights or privileges because of the other person's actual or perceived gender or sexual orientation.

Section 5/3-101 amended 1990; § 5/143.24c amended 2002.

[215 Ill Comp. Stat. 5/143.24c; 775 Ill. Comp. Stat. 5/3-101 \(2013\)](#)

Illinois, Property Titling

Because Illinois allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, Illinois law presumes that a transfer to multiple parties creates a tenancy in common. Except for transfers to executors and trustees, a joint tenancy is created only if the premises are expressly declared "to pass not in tenancy in common but in joint tenancy."

Whenever a transfer of property maintained or intended for maintenance as a homestead by both husband and wife is made and the transfer instrument expressly declares that the conveyance is to tenants by the entirety, the estate is deemed to be a tenancy by the entirety. That tenancy exists only as long as the tenants are married to each other.

Section 1005/1 enacted 1990; § 1005/1c amended 2010.

[765 Ill. Comp. Stat. 1005/1, 1c \(2013\)](#)

Illinois, Real Estate Transfer Tax

Because Illinois allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, Illinois imposes a tax on the privilege of transferring:

- a real estate title;
- a beneficial interest in real property located in Illinois; and
- a controlling interest in a real estate entity that owns property in Illinois.

The following deeds, among others, are exempt from the transfer tax:

- a deed, without consideration, that confirms, corrects, modifies, or supplements a previously recorded deed; and
- a partition deed.

Section 31-45 enacted 1999; § 31-10 amended 2005.

[35 Ill. Comp. Stat. 200/31-10, -45 \(2013\)](#)

Illinois, Rights Upon Death

INHERITANCE

Because Illinois law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under the state's inheritance laws. Therefore, generally,

- if a decedent dies without a will, the entire estate goes to the surviving spouse, if the decedent had no descendant (other provisions apply if the decedent also has surviving descendants or other close relatives); and
- a surviving spouse may renounce a will, whether or not the will contains any provision for the benefit of the surviving spouse, in which case the surviving spouse is entitled to a specific share of the testator's estate after payment of all claims, which amount depends on whether the decedent leaves a descendant.

OTHER RIGHTS

Appointment as a Personal Representative

Because Illinois law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

Because Illinois law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Note that when making a request for organ or tissue donation, the following are the persons a hospital may request, in the order specified, to authorize the gift of all or any part of a decedent's body: (1) the decedent's agent under a power of attorney for health care; (2) the decedent's guardian; (3) the decedent's spouse or civil union partner; and (4) numerous other relatives or acquaintances of the decedent. A similar provision exists for decisions regarding an anatomical gift of a decedent's body for transplantation, therapy, research, or education.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Illinois also imposes a state estate taxes. Because Illinois

law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under the state's estate-tax laws.

Section 5/2-8 enacted 1976; § 5/2-1 amended 1999; § 405/3 amended 2005; §§ 50/5-5 and 50/5-25 amended 2013.

[35 Ill. Comp. Stat. 405/3](#); [755 Ill. Comp. Stat. 5/2-1, -8](#); [755 ILCS 50/5-5, -25 \(2013\)](#)

Illinois, Rights Upon Dissolution

Because Illinois allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple are generally the same as for other married couples. Illinois typically requires that one spouse be an Illinois resident for at least 90 days before petitioning for a marriage dissolution. However, when partners enter into a civil union or a same-sex marriage in Illinois, they consent to Illinois courts' jurisdiction over any action relating to the civil union or marriage, even if neither partner resides in the state. Therefore, non-resident spouses or civil union partners may seek dissolution in Illinois even if one or both partners has moved out of state.

Section 5/401 enacted 1995; § 75/45 enacted 2011; § 5/220 enacted 2013.

[750 Ill. Comp. Stat. §§ 5/220, /401](#); [750 ILCS 75/45 \(2013\)](#)

Illinois, Status of Same-Sex Marriage

Effective June 1, 2014, Illinois allows same-sex marriage. The state's Religious Freedom and Marriage Fairness Act must be "liberally construed and applied to promote its underlying purpose, which is to provide same-sex and different-sex couples and their children equal access to the status, benefits, protections, rights, and responsibilities of civil marriage."

Illinois recognizes a civil union or similar legal relationship (other than a common law marriage) that is legally entered into in another jurisdiction. The state also recognizes a marriage (other than a common law marriage) of the same or different sexes that is legally entered into in another jurisdiction.

All Illinois laws that apply to marriage apply equally to marriages of same-sex and different-sex couples and their children. Parties to a same-sex marriage and their children have the "same benefits, protections, and responsibilities under law" as parties to a different-sex marriage and their children. Parties to a same-sex marriage must be included in any definition or use of terms that

refer to or denote the spousal relationship, as those terms are used throughout the law. To the extent Illinois law adopts, refers to, or relies on federal laws, parties to a same-sex marriage and their children are treated under the state law as if the federal law recognizes the marriages of same-sex couples in the same manner as Illinois.

Parties to a civil union may marry, provided the parties are otherwise eligible to marry. For one year following the date Illinois legalized same-sex marriages, parties to a civil union may have their civil union legally designated and recorded as a marriage, effective on the date they solemnized the civil union, provided the parties' civil union has not been nor is in the process of being dissolved.

Sections 5/201 and 75/60 amended 2013; §§ 75/65, 80/5, and 80/10 enacted 2013.

[750 Ill. Comp. Stat. 5/201; 75/60, /65; 80/5, /10 \(2013\)](#)

Illinois, Tax Treatment

STATE INCOME TAX STATUS

For state income-tax returns that were due on April 15, 2014, each partner in a civil union was required to file separate *federal* returns as "single." However, Illinois recognizes civil-union couples as married for tax purposes and treats same-sex couples in a civil union the same as opposite-sex couples. Therefore, couples in a civil union as of December 31, 2013, must choose to file as "married filing jointly" or as "married filing separately" when preparing their individual income taxes. Neither civil union partner may file as "single" or as "head of household." Civil union couples are also required to complete a Schedule CU, Civil Union Income Report.

Same-sex married couples should file both their federal and Illinois tax returns as "married filing jointly" or as "married filing separately." Couples who file federal returns as "married filing jointly" or "married filing separately" do not need to file a Schedule CU.

Illinois recognized same-sex marriages as of June 1, 2014, and a couple's marital status as of December 31, 2014, will determine their status for tax filing purposes.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that

are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Illinois permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for married opposite-sex couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by state statutes, and then applies the state's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. Illinois tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Illinois tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Illinois tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Illinois tax laws apply to same-sex spouses in the same manner as any other married couple.

Section 5/201 amended 2013; information sheet dated 2014; revenue ruling issued 2013.

[35 Ill. Comp. Stat. 5/201 \(2013\); Il. Rev. Dep't, *Important Tax Information for Civil Union Couples Filing their 2013 Illinois Income Tax Returns* \(2014\); Rev. Rul. 2013-17](#)

Indiana

Indiana, Fair Housing Laws

PROTECTED CLASS

Sexual orientation is not a protected class in Indiana. The Indiana Civil Rights Act provides that it is the state's public policy to provide "all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing" based solely on sex, among other traits. Although equal opportunity for acquisition of real property is expressly declared to be a civil right, sexual orientation is not addressed.

The state's civil rights laws also provide that a person may not refuse to sell, rent, negotiate, or otherwise make unavailable a dwelling or discriminate because of a person's sex or familial status. Again, sexual orientation is not addressed.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Indiana's Fair Housing Law prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status in all of the following contexts:

- notices, statements, or advertising;
- representations regarding the availability of a dwelling for inspection;
- representations regarding the entry of certain persons into a neighborhood;
- selling, brokering, or appraising residential real property; or

- access to or membership or participation in brokers' organizations, services, or facilities.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 22-9.5-5-1, 22-9.5-5-2, 22-9.5-5-3, 22-9.5-5-4, 22-9.5-5-6, and 22-9.5-5-7 amended 1993; § 22-9-1-2 amended 2014.

[Ind. Code §§ 22-9-1-2; 22-9.5-5-1, -2, -3, -4, -6, -7 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Indiana, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. A person whose business includes engaging in "residential real estate related transactions" may not discriminate against a person because of his or her sex or familial status, but the relevant statute does not address sexual orientation. In this context, "residential real estate related transaction" includes making or purchasing loans or providing other

financial assistance to purchase, construct, improve, repair, or maintain a dwelling or to "secure residential real estate."

It is also unlawful for a creditor to discriminate against an applicant with respect to "any aspect of a credit transaction" because of the person's sex or marital status, but, again, sexual orientation is not addressed.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not use an insurance score that is calculated using gender or marital status. Similarly, an insurer may not terminate property insurance coverage if the termination is based on the applicant's or the insured's sex or marital status. "Sexual orientation" is not addressed in either context.

Section 22-9.5-5-6 amended 1993; § 27-7-12-7 enacted 2001; § 24-9-3-9 enacted 2004; § 27-2-21-16 amended 2009.

[Ind. Code §§ 22-9.5-5-6; 24-9-3-9; 27-2-21-16; 27-7-12-7 \(2014\)](#)

Indiana, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Indiana does not recognize same-sex relationships in any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples. Generally, a conveyance or devise of land to multiple persons creates a tenancy in common, not a joint tenancy, unless:

- the conveyance or devise expresses that the grantees or devisees hold in joint tenancy and to their survivors;
- the intent to create a joint tenancy "manifestly appears" from the instrument's "tenor"; or
- the instrument is a conveyance to a husband and wife.

A written contract in which a husband and wife purchase real estate creates an estate by the entirety, unless the contract expressly creates a tenancy in common or the contract's "tenor" indicates an intent to create a tenancy in common.

Sections 32-17-2-1 and 32-17-3-1 enacted 2002.

[Ind. Code §§ 32-17-2-1, -3-1 \(2014\)](#)

Indiana, Real Estate Transfer Tax

No applicable provisions were located.

Indiana, Rights Upon Death

INHERITANCE

Because Indiana law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Indiana does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Indiana, Rights Upon Dissolution

Because Indiana does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Indiana, Status of Same-Sex Marriage

Indiana does not recognize same-sex marriages. "Only a female may marry a male. Only a male may marry a female." A same-gender marriage is void in Indiana, even if the marriage is lawful in the jurisdiction in which it was solemnized.

Although case law is outside the scope of this survey, it is important to note that in *Baskin v. Bogan*, Nos. 1:14-cv-00355-RLY-TAB, 1:14-cv-00404-RLY-TAB, 1:14-cv-00406-RLY-MJD, 2014 U.S. Dist. LEXIS 86114 (S.D. Ind. June 25, 2014), the U.S. District Court for the Southern District of Indiana found that Indiana's same sex marriage ban set forth in Ind. Code § 31-11-1-1 is unconstitutional. The Seventh Circuit Court of Appeals stayed the lower court's order, pending resolution of the appeal. *Baskin v. Bogan*, No. 14-2386 (7th Cir. June 27, 2014) (order granting stay). In response to an emergency motion, the Seventh Circuit later lifted its stay for only two specific same-sex appellees, so the state is now required to recognize the validity of that one couple's marriage. *Baskin v. Bogan*, No. 2386 (7th Cir. July 1, 2014) (order granting motion to lift stay in part).

Section 31-11-1-1 amended 1997.

[Ind. Code § 31-11-1-1 \(2014\)](#)

Indiana, Tax Treatment

STATE INCOME TAX STATUS

Each spouse in a same-sex marriage who files a federal return using a married filing status must file his or her Indiana income tax return using a single filing status.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Before calculating Indiana income tax liability, same-sex spouses who file federal returns with a married filing status must each complete a sample federal return, entering information as if he or she was single. Each spouse must use the information from his or her sample federal return as a basis for completing his or her Indiana return. The taxpayers should not file the sample return with the IRS or the Department of Revenue, but should retain a copy in his or her records.

When completing the sample federal return, same-sex spouses should allocate income from joint accounts 50/50 "unless extenuating conditions exist."

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

State tax guidance issued 2013; revenue ruling issued 2013.

[Ind. Dep't of Rev., Same-Sex Marriage Tax Filing Guidance \(2013\); Rev. Rul. 2013-17](#)

Iowa

Iowa, Fair Housing Laws

PROTECTED CLASS

The Iowa Civil Rights Act of 1965 protects against discrimination based on sexual orientation and gender identity. "Sexual orientation" means "actual or perceived heterosexuality, homosexuality, or bisexuality."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing

It is an unfair or discriminatory practice for a person, including a real estate licensee, or an owner of housing or real property:

- to refuse to sell, rent, lease, negotiate, or to otherwise make unavailable any real property or housing accommodation because of a person's sex, sexual orientation, gender identity, or familial status;
- to discriminate against a person because of his or her sex, sexual orientation, gender identity, or familial status in the terms, conditions, or privileges of the real property or housing accommodation transaction or when providing related services or facilities;
- to advertise or otherwise indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation by persons of a particular sex, sexual orientation, gender identity, or familial status is "unwelcome, objectionable, not acceptable, or not solicited"; or
- to discriminate against the lessee or purchaser of any real property or housing accommodation because of the sex, sexual orientation, or gender identity of persons who may be present on the premises for lawful purposes as guests or visitors.

Real Estate Licensees

A person may not:

- induce another to sell or rent a dwelling by making representations regarding the entry or prospective entry into a neighborhood of a person of a particular sex, sexual orientation, gender identity, or familial status; or

- represent to a person of a protected class that a dwelling is not available when it is available.

A person whose business includes engaging in residential real estate related transactions may not discriminate against another when making the transaction available or in the transaction's terms or conditions because of the person's sex, sexual orientation, gender identity, or familial status.

A person may not deny another person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service related to the residential real estate business, or discriminate against a person in the terms or conditions of such access, membership, or participation because of the person's sex, sexual orientation, gender identity, or familial status.

Exceptions

The provisions of sections 216.8 and 216.8A described above do not apply to:

- a bona fide religious institution with respect to qualifications it may impose that are based on religion, sexual orientation, or gender identity, provided the qualifications are related to a bona fide religious purpose, unless the religious institution owns or operates property for a commercial purpose or membership is restricted on the basis of race, color, or national origin;
- the rental or leasing of a dwelling in a building that contains housing accommodations for no more than two families living independently, if the owner resides in one of the housing accommodations (this exception does not apply to advertising related to the transaction);
- the rental or leasing of fewer than four rooms within a single dwelling by the dwelling's occupant or owner, if the occupant or owner resides in the dwelling (this exception does not apply to advertising related to the transaction);
- the rental or leasing of a housing accommodation in a building that contains housing accommodations for no more than four families living independently of each other, if the owner resides in one of the housing accommodations and qualifies for the state's

homestead tax credit (this exception does not apply to advertising related to the transaction); or

- discrimination on the basis of sex involving the rental, leasing, or subleasing of a dwelling if residents of both sexes would be forced to share a living area.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity"; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 216.12 amended 2007; §§ 216.2, 216.8, and 216.8A amended 2009.

[Iowa Code §§ 216.2, .8, .8A, .12 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Iowa, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is an unfair or discriminatory practice for:

- a creditor to "refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended . . . to consumers of similar economic backgrounds" because of the consumer's marital status, sex, sexual orientation, gender identity, or familial status; or
- a bank, credit union, regulated loan licensee, or industrial loan company to "refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds" because of the applicant's marital status, sex, sexual orientation, gender identity, or familial status.

PROPERTY INSURANCE

An Iowa insurer that uses credit information to underwrite or rate risks for a personal insurance policy may not use an insurance score that is calculated using a consumer's gender or marital status as a factor. In this context, "personal insurance" means "personal insurance and not commercial insurance" and includes homeowners, farm owners, mobile-home owners, and noncommercial dwelling fire policies, among others, that are individually underwritten for personal, family, farm, or household use. The relevant statute does not address sexual orientation.

Section 537.3311 amended 2003; § 515.103 amended 2010; § 216.10 amended 2012.

[Iowa Code §§ 216.10; 515.103; 537.3311 \(2014\)](#)

Iowa, Property Titling

Because Iowa allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. A conveyance by a husband and wife passes all rights of either in the property conveyed, unless the contrary appears on the document's face. Where either a husband or a wife joins in a conveyance of real estate owned by the other, the husband or wife "so joining shall not be bound by the covenants of such conveyance," unless expressly stated on the document's face. A conveyance to multiple parties creates a tenancy in common, unless the conveying document expresses a contrary intent.

Section 557.12, 557.13, and 557.15 amended 1981.

[Iowa Code §§ 557.12, .13, .15 \(2014\)](#)

Iowa, Real Estate Transfer Tax

Because Iowa allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Iowa imposes a state transfer tax on each deed, instrument, or writing pursuant to which realty is transferred or conveyed for consideration, unless an exemption applies. The following deeds, among others, are exempt from the transfer tax:

- a deed that, without additional consideration, confirms, corrects, modifies, or supplements a previously recorded deed;
- a deed between husband and wife, or parent and child, without consideration;
- a partition deed without consideration; or
- a deed between former spouses pursuant to a marriage dissolution decree.

Section 428.1 amended 2003; § 428A.2 amended 1996.

[Iowa Code §§ 428A.1, .2 \(2013\)](#)

Iowa, Rights Upon Death

INHERITANCE

Because Iowa permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Iowa's inheritance laws. Therefore, generally,

- a decedent's surviving spouse may choose instead of any property the spouse would otherwise receive under the decedent's will, through intestacy, or pursuant to the terms of a revocable trust, an elective share equal to the one-third of all real estate possessed by the decedent, plus all exempt personal property, plus one-third of all personal property remaining after the payment of debts;

- if the decedent died without a will or if the surviving spouse has filed an election, the surviving spouse may, in place of the spouse's share in the real property possessed by the decedent, choose to receive a life estate in the homestead, plus all exempt personal property, plus one-third of all personal property remaining after the payment of debts; and
- if the decedent died without a will and left no issue or left only issue that are also issue of surviving spouse, the surviving spouse receives a share equal to all real property the decedent possessed, plus all exempt personal property, plus all other personal property of the decedent that is not necessary to pay debts.

OTHER RIGHTS

Because Iowa law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions related to other rights upon death that are specifically relevant to same-sex marriages were located.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. The inheritance tax implications for same-sex spouses are the same as for opposite-sex spouses in Iowa. Most of Iowa's inheritance tax laws use the term "spouse" rather than husband and wife, and, despite any gender-specific terms, "the primary determinants of tax treatment will still be based upon the relationship to the decedent."

Section 633.211 amended 1985; § 633.240 amended 2005; § 633.238 amended 2009; state tax document issued 2009, with comment added 2013; revenue ruling issued 2013.

[Iowa Code §§ 633.211, .238, .240 \(2014\); Iowa Dep't of Rev., Iowa Tax Treatment of Same-Sex Marriages \(Aug. 30, 2013\); Rev. Rul. 2013-17](#)

Iowa, Rights Upon Dissolution

Because Iowa allows same-sex marriage, Iowa's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. An Iowa divorce may not be possible because the state has a residency requirement before parties may initiate a divorce in many circumstances, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages. Iowa generally has a one-year residency requirement for the party filing for dissolution in the state. Venue for the action is the county in which either party resides.

Section 598.2 amended 1981; § 598.5 amended 2005.

[Iowa Code §§ 598.2, .5 \(2014\)](#)

Iowa, Status of Same-Sex Marriage

Iowa permits same-sex marriages. Although Iowa Code § 595.2 provides that "[o]nly a marriage between a male and a female is valid," the Iowa Supreme Court in [Varnum v. Brien, 763 N.W.2d 862 \(Iowa 2009\)](#), held the statute was unconstitutional.

Iowa's statutes provide that a marriage that was validly solemnized in another jurisdiction is generally valid in Iowa (the requirement that the parties must be of opposite sexes, as set forth in § 595.2(1), is no longer applicable).

Section 595.20 enacted 1998; § 595.2 amended 1999.

[Iowa Code §§ 595.2, .20 \(2014\)](#)

Iowa, Tax Treatment

STATE INCOME TAX STATUS

Starting with tax year 2009, same-sex spouses must file their Iowa income tax returns as married persons, filing either jointly or separately. Since same-sex spouses are married under Iowa law, they may not file as head of household.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Iowa permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. The text of *Iowa Tax Treatment of Same-Sex Marriages* was prepared before the Internal Revenue Service recognized same-sex marriage for federal tax purposes, so much of its guidance is no longer relevant.

Deductions

No specifically relevant provisions were located. Iowa tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Iowa tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Iowa tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Iowa tax laws apply to same-sex spouses in the same manner as any other married couple.

State tax document issued 2009, with comments added 2013; revenue ruling issued 2013.

[Iowa Dep't of Rev., *Iowa Tax Treatment of Same-Sex Marriages* \(Aug. 30, 2013\); Rev. Rul. 2013-17](#)

Kansas

Kansas, Fair Housing Laws

PROTECTED CLASS

Kansas civil rights laws protect against discrimination in housing because of sex or familial status, but they do not address sexual orientation or marital status. Accordingly, the state does not declare the opportunity to obtain housing accommodations without discrimination because of sexual orientation or marital status to be a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial

status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Kansas law provides that it is unlawful to discriminate in connection with the sale or rental of real property because of sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

The state's fair housing laws similarly provide that it is unlawful for a person or entity engaged in residential real estate related transactions to discriminate against a person because of sex or familial status, but, again, they do not protect against discrimination because of sexual orientation or marital status. In this context, the term "residential real estate related transaction" includes selling, brokering, or appraising residential real property.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

A homeowners' association's declaration or other governing document may not include a restrictive

covenant that violates Kan. Stat. §§ 44-1016 and 44-1017, but neither of those sections prohibits discrimination based on sexual orientation.

Section 44-1001 amended 1991; §§ 44-1016 and 44-1017 amended 1992; § 44-1017a amended 2006.

[Kan. Stat. §§ 44-1001, -1016, -1017, -1017a \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Kansas, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No specifically relevant provisions were located. The state's fair housing laws provide that it is unlawful for a person or entity engaging in residential real estate related transactions to discriminate against a person because of sex or familial status, but they do not protect against discrimination because of sexual orientation or marital status. In this context, "residential real estate related transaction" includes making or purchasing loans or providing other financial assistance:

- to be used to purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real property.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer that uses credit information to underwrite or rate risks may not use an insurance score that is calculated using a consumer's "income, address, zip code, race, religion, color, sex, disability, national origin, ancestry or marital status" as a factor. The law does not address sexual orientation.

Section 44-1017 amended 1992; § 40-5104 amended 2010.

[Kan. Stat. §§ 40-5104; 44-1017 \(2013\)](#)

Kansas, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Kansas does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Real property granted or devised to two or more persons, including a husband and wife, creates a tenancy in common unless it is clear that the parties intended a joint tenancy, except that a grant or devise to executors or trustees creates a joint tenancy unless it expressly states otherwise.

Section 58-501 amended 1955; constitutional section amended 2005.

[Kan. Stat. § 58-501 \(2013\)](#); [Kan. Const. Art. 15, §16](#)

[Kansas, Real Estate Transfer Tax](#)

No applicable provisions were located. Kansas does not impose a transfer tax on real property transfers.

[Kansas, Rights Upon Death](#)

INHERITANCE

Because Kansas law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Kansas does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state-law provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Kansas, Rights Upon Dissolution

Because Kansas does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Kansas, Status of Same-Sex Marriage

Kansas does not recognize same-sex marriages. The state's constitution provides that "[m]arriage shall be constituted by one man and one woman only." All other marriages are contrary to Kansas public policy and void. The state does not recognize any relationship, other than a marriage, as "entitling the parties to the rights or incidents of marriage."

"All marriages contracted without . . . [Kansas], which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places" in Kansas. However, it is the "strong public policy" of Kansas to recognize as valid only marriages from other states that are between a man and a woman.

No provisions were located that indicate the state recognizes civil unions or domestic partnerships.

Although case law is beyond the scope of this survey, it is important to note that Kansas is subject to the precedent set by the Tenth Circuit Court of Appeals in *Kitchen v. Herbert*, 961 F. Supp. 2d 1181 (D. Utah 2013), *aff'd*, No. 13-4178 (10th Cir. June 25, 2014), *stay granted*, 134 S. Ct. 893 (2014), which is a federal case challenging Utah's constitutional ban on marriage for same-sex couples. The court's decision is stayed pending action by the Supreme Court.

Section 23-2508 amended 1996; § 23-2501 amended 2011; constitutional section amended 2005.

[Kan. Stat. §§ 23-2501, -2508 \(2013\)](#); [Kan. Const. Art. 15, §16](#)

Kansas, Tax Treatment

STATE INCOME TAX STATUS

Individuals in a same-sex relationship may not file a Kansas income tax return using a tax status of married filing jointly or married filing separately. Even if same-sex individuals are considered married for federal income tax purposes, each individual must file a separate Kansas income tax return using the filing status of single or head of household.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

For tax years 2013 and later, same-sex individuals who file a joint federal income tax return must complete a worksheet that:

- allocates to each individual the amount of income reported on the joint federal return; and
- determines the federal adjusted gross income to be used by each individual for Kansas tax purposes.

Although Rev. Rul. 2013-17 provides that under certain circumstances, individuals in same-sex marriages may file amended federal tax returns for prior tax years to change their filing status to married filing jointly or married filing separately, "no such amended returns may be filed for Kansas to change the filing status."

Deductions

No specifically relevant provisions were located. As a single or head of household filer, an individual may either itemize or take the Kansas standard deduction. If either taxpayer in a same-sex relationship itemizes deductions on his or her Kansas return, that taxpayer should complete a federal Schedule A, as if that taxpayer had filed a federal income tax return with the same filing status as used on the taxpayer's Kansas return. The taxpayer should use that modified federal Schedule A to determine the authorized Kansas itemized deductions he or she may claim.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Notice amended 2013; worksheet instructions dated 2013; revenue ruling issued 2013.

[Kan. Dep't of Rev., Notice 13-18 \(Oct. 4, 2013\)](#); [Kan. Dep't of Rev., Instructions for Kansas Allocation of Income Worksheet \(2013\)](#); [Rev. Rul. 2013-17](#)

Kentucky

Kentucky, Fair Housing Laws

PROTECTED CLASS

Kentucky's civil rights laws prohibit discrimination based on familial status or sex, but they do not address sexual orientation or gender identity. Accordingly, the state does not declare the opportunity to obtain housing accommodations without discrimination because of sexual orientation or gender identity to be a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

It is an unlawful housing practice for a real estate operator or licensee to discriminate because of a person's sex or familial status, but the relevant statutes do not protect against discrimination based on sexual orientation or marital status. Similarly, sexual orientation is not addressed in Kentucky's statutes regarding discrimination in the context of:

- blockbusting; or

- access to a multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 344.380 amended 1992; § 344.680 enacted 1992; §§ 344.020 and 344.360 amended 1994; ethics code dated 2014.

[Ky. Rev. Stat. §§ 344.020, .360, .380, .680 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Kentucky, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Kentucky's unlawful financing laws prohibit a financial

institution whose business includes real estate-related transactions from discriminating based on sex or familial status, but they do not protect against discrimination based on sexual orientation. In this context, the term "real estate-related transaction" includes making or purchasing loans or providing other financial assistance that is:

- for purchasing, constructing, improving, repairing, or maintaining a housing accommodation; or
- secured by real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not decline or terminate an insurance policy if its action is based "solely upon the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured." It is also an unlawful practice for a person in the business of insuring against hazards to discriminate in a contract of insurance "against hazards to a housing accommodation because of the race, color, religion, national origin, familial status, disability, or sex of persons owning, or residing in or near the housing accommodation." The relevant statutes do not mention sexual orientation in either context.

Sections 344.367 and 344.370 amended 1992; § 304.20-340 amended 2000.

[Ky. Rev. Stat. §§ 304.20-340; 344.367, .370 \(2014\)](#)

Kentucky, Property Titling

No provisions were located that address the titling of a same-sex couple's property. If real estate is conveyed to a husband and wife, they take as tenants in common unless the document expressly provides for survivorship rights. However, since Kentucky does not recognize same-sex relationships of any form, title relationships that require a couple to be "husband and wife" or "spouses" do not apply to same-sex couples.

Section 381.050 amended 1980.

[Ky. Rev. Stat. § 381.050 \(2014\)](#)

Kentucky, Real Estate Transfer Tax

Kentucky imposes a transfer tax on a transferred property's consideration or value, including the amount of any liens, unless an exception applies. Because Kentucky does not recognize same-sex marriages or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses are likely to apply. However, the following exceptions may be relevant:

- deeds that confirm or correct a previously recorded deed;
- deeds on partition; or
- deeds between parent and child or grandparent and grandchild, with only nominal consideration.

Section 142.050 amended 2014.

[Ky. Rev. Stat. § 142.050 \(2014\)](#)

Kentucky, Rights Upon Death

INHERITANCE

Because Kentucky law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Kentucky does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax

purposes, including gift and estate taxes. However, because Kentucky law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance taxes in any special manner to same-sex couples.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Kentucky, Rights Upon Dissolution

Because Kentucky does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Kentucky, Status of Same-Sex Marriage

Kentucky does not recognize same-sex marriages. The state constitution provides that "[o]nly a marriage between one man and one woman" is valid or recognized as legal. Kentucky also does not recognize a "legal status identical or substantially similar to that of marriage for unmarried individuals."

The state's statutes similarly prohibit marriage between same-sex couples, defining marriage as the "civil status, condition, or relation of one (1) man and one (1) woman united in law." If a Kentucky resident marries an individual of the same sex in another state, the marriage is deemed to be against Kentucky public policy.

Although case law is outside the scope of this survey, it is important to note that the United States District Court for the Western District of Kentucky has ruled in *Bourke v. Beshear*, No. 3:13-CV-750-H, 2014 WL 556729 (W.D. Ky. Feb. 12, 2014), that Kentucky's constitutional provision and statutes banning same-sex marriages are unconstitutional. That decision is stayed pending its appeal before the Sixth Circuit. *Love v. Beshear*, No. 3:13-CV-750-H (W.D. Ky. Mar. 19, 2014) (order granting stay).

Sections 402.020 and 402.040 amended 1998; §§ 402.005 and 402.045 enacted 1998; constitutional section ratified in 2004.

[Ky. Rev. Stat. §§ 402.005, .020, .040, .045 \(2014\); Ky. Const. § 233A](#)

Kentucky, Tax Treatment

STATE INCOME TAX STATUS

Each individual in a same-sex couple that was legally married in a different state must file a separate Kentucky income tax return.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Each taxpayer must provide the same federal income tax information on his or her Kentucky state return that he or she would have provided before the IRS issued Revenue Ruling 2013-17.

Deductions

Each deduction that a same-sex couple claims jointly on a Federal Form 1040 Schedule A must be "separated in accordance with individual ownership, expenses, and/or charitable gifts when filing a Kentucky income tax return and reported on the individual's single return." The two parties must separate by agreement or some other acceptable method itemized deductions that are related to joint ownership.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Tax alert issued 2013; revenue ruling issued 2013.

[Ky. Dep't of Rev., Tax Alert, Same-Sex Married Couples Filing Guidance \(Nov. 2013\); Rev. Rul. 2013-17](#)

Louisiana

Louisiana, Fair Housing Laws

PROTECTED CLASS

Louisiana's laws against discrimination do not address sexual orientation or gender identity.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Louisiana's Equal Housing Opportunity Act prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

The state's laws similarly provide that it is unlawful for a person or entity engaged in residential real estate related transactions to discriminate against a person because of sex or familial status, but, again, they do not protect against discrimination because of sexual orientation or marital status. In this context, the term "residential real estate related transaction" includes selling, brokering, or appraising residential real property.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 51:2602 and 51: 2607 amended 2014.

[La. Rev. Stat. §§ 51:2602, :2607 \(2013\)](#) (as both are amended by [2014 La. Acts ch. 811](#)); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Louisiana, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. The state's laws provide that it is unlawful for a person or entity engaging in residential real estate related transactions to discriminate against a person because of sex or familial status, but they do not protect against discrimination because of sexual orientation or marital status. In this context, "residential real estate related transaction" includes making or purchasing loans or providing other financial assistance:

- to be used to purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real property.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, it is an unfair or deceptive act in the

insurance business to refuse to insure, to continue to insure, or to limit the coverage amount available to an individual solely because of an individual's "sex, marital status, race, religion, or national origin." Louisiana's statutes regarding unfair trade practices in the insurance business do not address sexual orientation.

Similarly, a Louisiana insurer that uses credit information to underwrite or rate risks may not use an insurance score that is calculated using a consumer's gender or marital status (among other traits) as factors. Again, the statutes do not address sexual orientation.

Section 22:1504 amended 2008; §§ 22:1964 and 51:2607 amended 2014.

[La. Rev. Stat. §§ 22:1504, :1964](#) (as amended by [2014 La. ALS 490](#) and [844](#)); [51:2607 \(2013\)](#) (as amended by [2014 La. Acts ch. 811](#))

Louisiana, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Louisiana does not recognize same-sex relationships of any form, so any title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, ownership by two or more persons is ownership in division. In the absence of "other provisions of law or juridical act," all co-owners' shares are presumed to be equal.

Section enacted 1990.

[La. Civ. Code art. 797 \(2013\)](#)

Louisiana, Real Estate Transfer Tax

A 2011 amendment to the Louisiana constitution, which was submitted to a statewide election on November 19, 2011, prohibits the levy of new taxes or fees upon the sale or transfer of immovable property, including documentary transaction taxes or fees, by the state or any of its political subdivisions after November 30, 2011.

Amendment passed 2011.

See [2011 La. Acts ch. 425](#); [La. Sec'y of State, Official Election Results \(Nov. 19, 2011\)](#)

Louisiana, Rights Upon Death

INHERITANCE

Because Louisiana law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Louisiana does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant provisions were located in Louisiana laws.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Louisiana, Rights Upon Dissolution

Because Louisiana does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Louisiana, Status of Same-Sex Marriage

Louisiana does not recognize same-sex marriages. Louisiana' "Defense of Marriage" constitutional amendment provides, "Marriage in the state of Louisiana shall consist only of the union of one man and one woman." No Louisiana official or court may construe the state's constitution or laws "to

require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman." A legal status "identical or substantially similar to that of marriage for unmarried individuals" is not valid or recognized in Louisiana. Also, Louisiana does not recognize a marriage contracted in any other jurisdiction that is not the union of one man and one woman.

The state's statutes are consistent with the state's constitutional provisions and also explicitly provide that:

- "[m]arriage is a legal relationship between a man and a woman that is created by civil contract" and a "covenant marriage is a marriage entered into by one male and one female";
- "persons of the same sex may not contract marriage with each other"; and
- a purported marriage between parties of the same sex does not produce any civil effects.

A marriage that is valid in the state where contracted or where the parties were first domiciled as husband and wife, is treated as a valid marriage "unless to do so would violate a strong public policy" of Louisiana. A purported marriage between persons of the same sex explicitly violates that strong public policy, and such a marriage contracted in another state is not recognized in Louisiana for any purpose.

Articles 86, 89, 96, and 3520 amended 1999; § 9:272 amended 2006; constitutional amendment ratified 2004.

[La. Civ. Code art. 86, 89, 96, 3520 \(2013\)](#); [La. Rev. Stat. § 9:272](#); [La. Const. art. XII, § 15](#)

Louisiana, Tax Treatment

STATE INCOME TAX STATUS

The Louisiana Department of Revenue does not recognize same-sex marriages when determining filing status. A Louisiana taxpayer in a same-sex relationship must file a separate Louisiana return as "single, head of household or qualifying widow, as applicable."

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

The Louisiana Department of Revenue does not recognize same-sex marriages when determining filing status. If taxpayers in a same-sex marriage file their federal returns using a federal filing status of married filing jointly, married filing separately, or qualifying widow pursuant to I.R.S. Revenue Ruling 2013-17, the taxpayer must file a separate Louisiana return as "single, head of household or qualifying widow, as applicable." The taxpayers may not file a Louisiana state income tax return as "married filing jointly, married filing separately, or qualifying widow." The taxpayer must provide the same federal income tax information on his or her Louisiana state return that would have been provided before the I.R.S. issued Revenue Ruling 2013-17.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Bulletin issued 2013; revenue ruling issued 2013.

[La. Dep't of Revenue, Revenue Information Bulletin No. 13- 024: Individual Income Tax Impact of the Internal Revenue Service Revenue Ruling 2013-17 \(Sept. 13, 2013\); Rev. Rul. 2013-17](#)

Maine

Maine, Fair Housing Laws

PROTECTED CLASS

The general policy behind Maine's Human Rights Act is, among other things, to prevent discrimination in:

- housing because of sexual orientation or familial status;
- the extension of credit because of sexual orientation or marital status; and
- education because of sexual orientation.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

It is unlawful to discriminate in housing or credit on the basis of sexual orientation. (Religious organizations that do not receive public funds are exempt with respect to housing.) The opportunity for an individual "to secure housing in accordance with the individual's ability to pay, and without discrimination because of . . . sex, sexual orientation, . . .or familial status" is a civil right. "Sexual orientation" is defined as a "person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression."

It is unlawful housing discrimination, for an owner, lessee, managing agent, or other person with the right to sell, rent, or manage a housing accommodation:

- to inquire concerning any prospective purchaser's, occupant's, or tenant's sex, sexual orientation, or familial status;
- to refuse to show, sell, rent, lease, or otherwise withhold a housing accommodation because of sex, sexual orientation, or familial status;
- to make, print, or publish a notice, statement, or advertisement related to a housing accommodation's sale, rental, or lease that indicates a preference, limitation, or discrimination based on sex, sexual orientation, or familial status (or that indicates the intent to make such preference, limitation, or discrimination);
- to discriminate against a person because of sex, sexual orientation, or familial status in the price, terms, conditions, or privileges of a housing accommodation transaction;
- to discriminate against a person because of sex, sexual orientation, or familial status in the furnishing of facilities or services in connection with housing accommodations; or
- to evict or attempt to evict a residential tenant because of his or her sex, sexual orientation, or familial status.

It is also unlawful housing discrimination for a real estate licensee or his or her agent:

- to fail or refuse to show a person a listed housing accommodation because of sex, sexual orientation, or familial status;
- for the purpose of discriminating because of sex, sexual orientation, or familial status, to misrepresent the availability or asking price of a listed housing accommodation or to fail to communicate to a seller or lessor an applicant's offer;
- to discriminate in "any other manner" against a housing accommodation applicant because of his or her sex, sexual orientation, or familial status;

- to make or cause to be made an inquiry or record concerning an applicant's or intended occupant's sex, sexual orientation, or familial status; or
- to accept for listing a housing accommodation if the seller or lessor has indicated that he or she intends to discriminate among prospective tenants or purchasers on the grounds of sex, sexual orientation, or familial status, provided the licensee knows or should know that the seller or lessor has "made a practice of discrimination since July 1, 1972."

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Note that an affordable housing covenant may restrict the class of persons to whom residential real estate may be sold or leased, as long as the restriction "does not discriminate based upon race, color, sex, physical or mental handicap, religion, ancestry or national origin and does not otherwise contravene the Constitution of Maine or the United States Constitution." Although sexual orientation is not specifically mentioned in this context, the fair-housing laws referenced above would presumably apply.

Section 124 enacted 1991; § 4552 amended 2005; §§ 4553, 4581, and 4581-A amended 2011; ethics code amended effective 2014.

[Me. Rev. Stat. tit. 5, §§ 4552, 4553, 4581, 4581-A; tit. 33, § 124 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Maine, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is unlawful housing discrimination for a person who receives a loan application for the purpose of acquiring, constructing, rehabilitating, repairing, or maintaining a housing accommodation:

- to inquire about the applicant's sex, sexual orientation, or familial status;
- to inquire about the sex, sexual orientation, or familial status of existing or prospective occupants or tenants of housing accommodations;
- to discriminate against an applicant because of his or her sex, sexual orientation, or familial status when granting financial assistance, or
- to discriminate in the terms, conditions, or privileges related to financial assistance because of an applicant's sex, sexual orientation, or familial status.

It is also unlawful credit discrimination for a creditor to refuse to extend credit to any person solely on the basis of sex, sexual orientation, or marital status.

The "opportunity for every individual to be extended credit without discrimination" solely because of sex, sexual orientation, or marital status is a civil right.

PROPERTY INSURANCE

No relevant provisions were located.

Sections 4595 and 4596 amended 2005; § 4851-A amended 2011.

[Me. Rev. Stat. tit. 5, §§ 4581-A, 4595, 4596 \(2013\)](#)

Maine, Property Titling

Because Maine allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, conveyances to two or more persons creates an estate in common, unless otherwise expressed. Conveyances in joint tenancy and tenancy by the entirety are also available.

As in all marriages, property acquired by either spouse after marriage and before legal separation is presumed to be marital property, whether title is held:

- individually;
- by the spouses in joint tenancy, tenancy in common, or tenancy by the entirety; or
- as community property.

Section 953 amended 2005; § 159 amended 2011.

[Me. Revised Stats. tit. 33, § 159; tit. 19-A, 953 \(2013\)](#)

Maine, Real Estate Transfer Tax

Because Maine allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, the register of deeds collects the tax when any deed is offered for recordation, unless an exception applies. The following deeds, among others, are exempt from the transfer tax:

- deeds between husband and wife, parent and child, or grandparent and grandchild, without actual consideration; and
- deeds between spouses in a divorce proceeding.

Sections 4641-B and 4641-C amended 2014.

[Me. Rev. Stat. tit. 36, § 4641-B, -C \(2013\)](#) (as both are amended by [2014 Me. Laws ch. 521](#))

Maine, Rights Upon Death

INHERITANCE

Maine's Probate Code defines "heirs" as including the "surviving spouse or surviving registered domestic partner." The intestate shares of a surviving spouse and a surviving registered domestic partner are the same. Because Maine law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Maine's inheritance laws.

OTHER RIGHTS

Appointment as a Personal Representative

A decedent's surviving spouse and surviving domestic partner each have priority among persons seeking appointment as a personal representative. However, a surviving spouse who is also a devisee has priority over other devisees, but a surviving domestic partner does not.

Funeral Arrangements

A spouse and a domestic partner, in that order, have the highest priority when a party determines "next of kin" for purposes of custody and control of the deceased, including funeral arrangements.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Maine law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under Maine's state estate-tax laws.

Sections 1-201, 2-102, and 3-203 amended 2003; § 650-A enacted 2011; § 2843-A amended 2011; revenue ruling issued 2013.

[Me. Rev. Stat. tit. 18-A, §§ 1-201, 2-102, 3-203; tit. 19-A, § 650-A; tit. 22, § 2843-A \(2013\); Rev. Rul. 2013-17](#)

Maine, Rights Upon Dissolution

Because Maine allows same-sex marriage, Maine's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A Maine divorce may not be possible because Maine has a six-month residency requirement before parties may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages.

Section 901 amended 2005; § 650-A enacted 2011.

[Me. Rev. Stat. tit. 19-A, §§ 650-A, 901 \(2013\)](#)

Maine, Status of Same-Sex Marriage

Maine allows same-sex marriage and defines "marriage" as the "legally recognized union of 2 people." The marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is "recognized for all purposes" under Maine law.

Maine also offers domestic partnerships to same-sex partners, who may register in the state's domestic partner registry. "Domestic partners" are two unmarried adults "who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare."

Section 2710 amended 2009; §§ 650-A and 650-B enacted 2011.

[Me. Rev. Stat. Ann. tit. 22, § 2710; tit. 19-A, §§ 650-A, -B \(2013\)](#)

Maine, Tax Treatment

STATE INCOME TAX STATUS

Same-sex couples who are legally married on the last day of tax years ending on or after December 29, 2012, must file their Maine individual income tax returns using either the "married filing joint return" or "married filing separate return" filing status.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriages may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Maine permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by Maine's statutes, and then applies the state's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. Maine tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Maine tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Maine tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Maine tax laws apply to same-sex spouses in the same manner as any other married couple.

Section 5121 amended 2003; § 650-B enacted 2011; § 5111 amended 2013; revenue ruling issued 2013.

[Me. Rev. Stat. tit. 36, §§ 5111, 5121; 19-A MRSA 650-B \(2013\); Me. Rev. Svcs., Tax Alert, *Maine Income Tax Issues Related to Same-Sex Marriages* \(Jan. 2013\); Rev. Rul. 2013-17](#)

Maryland

Maryland, Fair Housing Laws

PROTECTED CLASS

It is Maryland's policy:

- to provide for fair housing throughout the state to all, regardless of sex, familial status, marital status, sexual orientation, or gender identity, among others; and
- to "prohibit discriminatory practices with respect to residential housing by any person, in order to protect and insure the peace, health, safety, prosperity, and general welfare of all."

In this context, "sexual orientation" means "the identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Prohibited Acts (§ 20-705)

Unless an exception applies, a person may not:

- refuse to sell or rent after a bona fide offer, refuse to negotiate, or otherwise make unavailable or deny, a dwelling to a person because of sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity;

- discriminate against a person in a dwelling's sale or rental terms, conditions, or privileges, or in services or facilities provided in connection with a dwelling's sale or rental, because of sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity;
- make, print, or publish a notice, statement, or advertisement regarding a dwelling's sale or rental that indicates a preference, limitation, or discrimination based on sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity, or an intention to make such preference, limitation, or discrimination;
- represent to a person because of sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity, that a dwelling is not available when the dwelling is available; or
- for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of a particular sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity.

Exemptions

Generally, the provisions described above do not apply to the sale or rental of a single-family dwelling, if it is sold or rented:

- without the use of the facilities or services of a real estate licensee or another person in the business of selling or renting dwellings or without the publication, posting, or mailing of a discriminatory advertisement or written notice; and
- with respect to discrimination on the basis of sex, sexual orientation, gender identity (as of October 1, 2014), or marital status, the rental is of rooms in a dwelling the owner maintains as his or her principal residence, or of an apartment in a dwelling that contains no more than five rental units, one of which the owner maintains as his or her principal residence.

Injury, intimidation, or interference

A person may not, "by force or threat of force, willfully injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere" with:

- a person because of his or her sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity, and because the person is or has been:
 - "selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation" of a dwelling; or
 - applying for or participating in a service, organization, or facility that relates to the business of selling or renting dwellings;
- a person by intimidating him or her from:
 - participating, "without discrimination on account of" sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity, in activities, services, organizations, or facilities that relate to the business of selling or renting dwellings; or
 - affording another person the opportunity or protection to participate in those activities, services, organizations, or facilities; or
- a person, because he or she has been, or to discourage the person from:
 - lawfully aiding or encouraging other persons to participate, without discrimination on account of sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity, in activities, services, organizations, or facilities that relate to the business or selling or renting dwellings; or

- participating lawfully in speech or peaceful assembly opposing the denial of the opportunity to participate in any of those activities, services, organizations, or facilities.

Discrimination in residential real estate-related transactions (§ 20-707(b))

A person whose business includes engaging in residential real estate-related transactions may not discriminate against a person in making a transaction available, or in a transaction's terms or conditions, because of sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity.

In this context, "residential real estate-related transaction" means:

- making or purchasing of loans or providing other financial assistance to purchase, construct, improve, repair, or maintain a dwelling or of loans that are secured by residential real estate; or
- selling, brokering, or appraising of residential real property.

Discrimination in professional services or organizations (§ 20-707(c))

A person may not, because of sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity:

- deny a person access to, membership in, or participation in, a "multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings"; or
- discriminate in a membership's or participation's terms or conditions.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Sections 20-101, 20-702, 20-704, 20-705, 20-707, and 20-1103 amended 2014.

[Md. State Gov't Code §§ 20-101, -702, -704, -705, -707, -1103 \(2014\)](#) (as all are amended by [2014 Md. Laws ch. 474](#)); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Maryland, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

Discrimination in residential real estate-related transactions

A person whose business includes engaging in residential real estate-related transactions may not discriminate against a person in making a transaction available, or in a transaction's terms or

conditions, because of sex, marital status, familial status, sexual orientation, or, as of October 1, 2014, gender identity.

In this context, "residential real estate-related transaction" means:

- making or purchasing of loans or providing other financial assistance to purchase, construct, improve, repair, or maintain a dwelling, or loans that are secured by residential real estate; or
- selling, brokering, or appraising of residential real property.

PROPERTY INSURANCE

No relevant provisions were located.

Section 20-707 amended 2014.

[Md. State Gov't Code § 20-707 \(2014\)](#) (as amended by [2014 Md. Laws ch. 474](#))

Maryland, Property Titling

Because Maryland allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, one or more persons may grant a property interest to themselves alone, or to themselves and any other person in "life tenancy, with or without powers, joint tenancy, tenancy in common, or tenancy by the entirety" without using a "straw man" as an intermediate party.

A property interest held by a husband and wife in tenancy by the entirety may be granted as follows:

- "by both acting jointly, to themselves, to either of them, individually, or to themselves and any other person, in joint tenancy or tenancy in common";

- "by both acting jointly, to either husband or wife and any other person in joint tenancy or tenancy in common"; and
- "by either acting individually to the other in tenancy in severalty."

Section amended 1989.

[Md. Code, Real Prop. § 4-108 \(2014\)](#)

Maryland, Real Estate Transfer Tax

Because Maryland allows same-sex marriage, the state's real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, a transfer tax is generally imposed on a recorded written instrument, unless an exception applies.

An instrument is not subject to the transfer tax "to the same extent that it is not subject to recordation tax under" the following statutes, among others:

- § 12-108(c), regarding transfers between specified relatives, including spouses, former spouses, domestic partners, or former domestic partners among others;
- § 12-108(d), regarding transfers between spouses, former spouses, domestic partners, and former domestic partners; and
- § 12-108(e), regarding supplemental instruments.

The exemption for transfers between domestic partners or former domestic partners applies only to an instrument for residential property.

Similarly, an instrument that transfers property between spouses or former spouses or between domestic partners or former domestic partners according to a property settlement, divorce decree, or domestic partnership dissolution is not subject to a county transfer tax.

Section 13-202 amended 2000; § 13-403 amended 2008; §§ 12-108 and 13-207 amended 2014.

[Tax-Prop. §§ 12-108; 13-202, -207, -403 \(2014\)](#)

Maryland, Rights Upon Death

INHERITANCE

Because Maryland law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Maryland's inheritance laws. Therefore, generally,

- if a spouse dies without a will and there are no surviving issue or parents, the surviving spouse's share is the entire estate; and
- instead of property left to the surviving spouse by will, he or she may elect to take one-third of the net estate if there is also a surviving issue or one-half of the net estate if there is no surviving issue.

OTHER RIGHTS

Appointment as a Personal Representative

Because Maryland law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

Generally, if a decedent has not executed a document regarding the final disposition of his or her body, the decedent's surviving spouse or domestic partner has top priority regarding the right to arrange for the decedent's body's final disposition.

Power to Make Anatomical Gift

Generally, the following, in the priority indicated, may make an anatomical gift of a decedent's body for transplantation, therapy, research, or education:

- first, the decedent's agent;
- second, the decedent's guardian;
- third, the decedent's spouse or domestic partner; and
- then, numerous other specified relatives and acquaintances.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated like any married couple for all federal tax purposes, including gift and estate taxes. Because Maryland law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under Maryland's state estate- or inheritance-tax laws.

Maryland's inheritance tax does not apply to property passing from a decedent to or for the use of the decedent's spouse, among others.

If a decedent's domestic partner provides evidence of the domestic partnership, the inheritance tax does not apply to the partner's receipt of an "interest in a joint primary residence" that:

- was held in joint tenancy by the decedent and the domestic partner at the time of death;
and

- passes from the decedent to the domestic partner, or for his or her use.

Section 3-102 amended 1991; § 3-203 amended 2003; §§ 5-509 and 7-203 amended 2010; § 4-507 amended 2011.

[Md. Est. & Trusts Code §§ 3-102, -203](#); [Md. Health-Gen. §§ 4-507, 5-509](#); [Md. Tax-Gen. § 7-203 \(2014\)](#)

Maryland, Rights Upon Dissolution

Because Maryland allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce in Maryland. A Maryland divorce may not be possible because if the grounds for the divorce occurred outside of Maryland, a party may not apply for a divorce unless one of the parties has resided in Maryland for at least one year before the application is filed, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages.

Section 7-101 amended 1984.

[Md. Fam. Law Code § 7-101 \(2014\)](#)

Maryland, Status of Same-Sex Marriage

As of January 1, 2013, Maryland allows same-sex marriage. "Only a marriage between two individuals who are not otherwise prohibited from marrying is valid" in Maryland.

Maryland also offers domestic partnerships to same-sex partners who "[a]gree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship."

Section 6-101 enacted 2008; § 2-201 amended 2012.

[Md. Fam. Law Code § 2-201 \(2014\)](#); *see, e.g.*, [Md. Health-Gen. Code § 6-101 \(2014\)](#) (defines "domestic partnership" in health context)

Maryland, Tax Treatment

STATE INCOME TAX STATUS

Legally married same-sex couples may file a joint income tax return in Maryland. Generally, each individual must use the same filing status as he or she used on his or her federal income tax return. The U.S. Internal Revenue Service allows same-sex spouses to file joint federal income tax returns, and "[a]ll legally married couples who file Maryland income tax returns must select their Maryland filing status under the same rules."

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Maryland permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by Maryland's statutes, and then applies the state's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. Maryland tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Maryland tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Maryland tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Section 10-207 amended 2014; FAQ dated 2014; revenue ruling issued 2013.

[Comptroller of Md., *Spotlight on Maryland Taxes: FAQ \(2014\)*, at 29; Rev. Rul. 2013-17; see Md. Tax-Gen. Code Ann. § 10-207 \(2014\)](#)

Massachusetts

Massachusetts, Fair Housing Laws

PROTECTED CLASS

Massachusetts has a comprehensive anti-discrimination law that prohibits discrimination based on sexual orientation, among other traits, in employment, housing, public accommodations, credit, and services. "Sexual orientation" means "having an orientation for or being identified as having an orientation for heterosexuality, bisexuality or homosexuality."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing

It is an unlawful practice for the "owner, lessee, sublessee, licensed real estate broker, assignee or managing agent of publicly assisted or multiple dwelling or contiguously located housing accommodations" or an owners' organization in a condominium or housing cooperative:

- to refuse to rent, lease, sell, or negotiate or otherwise to deny accommodations, because of a person's sex, gender identity, sexual orientation, or marital status;
- to discriminate in the acquisition, terms, conditions, or privileges of such accommodations (or in related facilities and services) because of a person's sex, gender identity, sexual orientation, or marital status; or

- to make an inquiry or record regarding a person's sex, gender identity, sexual orientation, or marital status.

Similarly, it is an unlawful practice for the "owner, lessee, sublessee, real estate broker, assignee, or managing agent" of other covered housing accommodations or of land intended for certain housing accommodations or an owners' organization in a condominium or housing cooperative:

- to refuse to rent, lease, sell, or negotiate or otherwise to deny accommodations because of a person's sex, gender identity, sexual orientation, or marital status;
- to discriminate in the acquisition, terms, conditions, or privileges of such accommodations (or in related facilities and services) because of a person's sex, gender identity, sexual orientation, or marital status; or
- to make an inquiry or record regarding a person's sex, gender identity, sexual orientation, or marital status.

It is also unlawful for a person to make, print, or publish, a notice, statement, or advertisement, with respect to the sale or rental of "multiple dwelling, contiguously located, publicly assisted or other covered housing accommodations" that indicates a preference, limitation, or discrimination because of a person's sex, gender identity, sexual orientation, or marital status.

An owner, lessee, sublessee, or managing agent of commercial space may not:

- refuse to sell, rent, lease, or otherwise to deny the property because of a person's sex, gender identity, sexual orientation, or marital status; or
- discriminate in the terms, conditions, or privileges of the commercial space (or in related facilities and services) because of a person's sex, gender identity, sexual orientation, or marital status; or

- make an inquiry or record regarding a person's sex, gender identity, sexual orientation, or marital status.

A person may not induce or prevent, or attempt to induce or prevent, the sale, purchase, or rental of a dwelling by:

- representations regarding the effects or consequences of the entry into a neighborhood of persons of a particular sex or gender identity;
- unrequested communication with a person to induce the sale, purchase, or rental of a dwelling, if the person knew or reasonably should have known that the solicitation would "be associated by the persons solicited with the entry into the neighborhood of a person or persons of a particular" sex or gender identity; or
- false representations regarding the availability of suitable housing or regarding the listing or prospective sale of a dwelling.

Exemptions

A religious institution or organization, or an organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, may limit admission to or give preference to persons of the same religion or denomination.

An owner-occupied building that has two units or less is not included in the term "multiple dwelling," so provisions related to protecting individuals in a "multiple dwelling" do not apply to those buildings.

Coercion

It is an unlawful practice for a person to act as follows:

- to coerce, intimidate, threaten, or interfere with another person exercising or enjoying a protected right; or
- to coerce, intimidate, threaten, or interfere with another person who aided or encouraged a person exercising or enjoying a protected right.

Real Estate Licensees

It is an unlawful practice for a person:

- whose business includes engaging in residential real estate-related transactions to discriminate because of another person's sex, gender identity, or sexual orientation; or
- to deny another access to, or membership or participation in, a multiple listing service, a real estate brokers' organization, or another service, organization, or facility related to the business of selling or renting dwellings because of another person's sex, gender identity, or sexual orientation; or
- to discriminate in the terms or conditions of such access, membership, or participation because of another person's sex, gender identity, or sexual orientation.

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;

- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity"; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 4 amended 2011; § 1 amended 2014.

[Mass. Gen. Laws ch. 151B, §§ 1, 4 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Massachusetts, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

A person who furnishes credit may not deny or terminate credit or "adversely affect an individual's credit" because of the individual's sex, gender identity, marital status, or sexual orientation.

It is also unlawful for a person whose business includes granting mortgage loans or in real estate transactions to discriminate in the granting of a mortgage loan or in the loan's terms or conditions because of a person's sex, gender identity, or sexual orientation. These real estate transactions include:

- making or purchasing loans or providing other financial assistance to purchase, construct, improve, repair, or maintain a dwelling;
- making or purchasing loans; or
- providing other financial assistance secured by residential real estate.

PROPERTY INSURANCE

It is unlawful for a person engaged in the insurance or bonding business to inquire or record a person seeking a bond or surety bond or to use an application form that seeks information related to the person's sex, gender identity, or sexual orientation.

An insurance institution or representative may not base an adverse underwriting decision on sexual orientation. No insurer writing homeowners' insurance that is deciding whether to provide, renew, or cancel homeowners' insurance may consider the applicant's or the insured's sex, sexual orientation, or marital status.

Section 12 enacted 1991; § 4C enacted 1996; § 4 amended 2011.

[Mass. Gen. Laws ch. 151B, § 4; ch. 175, § 4C; ch. 175I, § 12 \(2014\)](#)

Massachusetts, Property Titling

Because Massachusetts allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, a conveyance or devise to two or more persons or to a husband and wife, except in trust, creates an estate in common and not in joint tenancy, unless:

- the instrument expressly provides that the parties take jointly; or
- it "manifestly appears from the tenor of the instrument" that the parties intended to create an estate in joint tenancy.

A devise to a person and his or her spouse creates a tenancy by the entirety if the instrument so states. A conveyance to a person and his or her spouse that expressly states that the grantees or devisees take jointly or as joint tenants creates a joint tenancy, not a tenancy by the entirety.

A conveyance or devise as tenants by the entirety to two persons who are not married to each other, creates an estate in joint tenancy, not a tenancy in common.

Section 7 amended 1979.

[Mass. Gen. Laws ch. 184, § 7 \(2014\)](#)

Massachusetts, Real Estate Transfer Tax

Because Massachusetts allows same-sex marriage, the commonwealth's real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. The register of deeds collects the tax when any deed is offered for recording, unless an exception applies. No exemptions that apply to spouses or other transfers between family members were located.

Section 1 amended 1992.

[Mass. Gen. Laws ch. 64D, § 1 \(2014\)](#)

Massachusetts, Rights Upon Death

INHERITANCE

Because Massachusetts permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under the commonwealth's inheritance laws. Therefore, generally,

- if a decedent dies without a will, the decedent's surviving spouse is entitled to an intestate share equal to the entire estate if the decedent has no surviving descendant or parent or if all of the decedent's surviving descendants are also descendants of the surviving spouse and if no other descendant of the surviving spouse survives the decedent; and
- the surviving spouse of a deceased person generally may choose to take an elective share of the estate, which, if the decedent left no issue or next of kin, equals \$25,000 plus 1/2 of the balance of the personal and real property.

OTHER RIGHTS

Appointment as a Personal Representative

Because Massachusetts law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

Because Massachusetts law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Anatomical Gift after Death

No provisions specifically related to same-sex marriages were located. Generally, the following persons, in the priority specified, may make an anatomical gift of a decedent's body:

- first, an agent of the decedent who could have made an anatomical gift before the decedent's death;
- second, the decedent's spouse; and
- then, other relatives and acquaintances.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Massachusetts law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under the commonwealth's estate-tax laws, and no provisions specifically relevant to same-sex marriages were located.

Section 2-102 enacted 2008; § 15 amended 1992; § 9 enacted 2012; technical information release issued 2004; revenue ruling issued 2013.

[Mass. Gen. Laws ch. 113A, § 9; ch. 190B, § 2-102; ch. 191, § 15 \(2014\); Mass. Dep't of Rev., TIR 04-17: Massachusetts Tax Issues Associated with Same-Sex Marriages \(July 7, 2004\); Rev. Rul. 2013-17](#)

Massachusetts, Rights Upon Dissolution

Because Massachusetts allows same-sex marriage, the commonwealth's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A Massachusetts divorce may not be possible because the commonwealth has a residency requirement, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages. Generally, a divorce may not occur in Massachusetts unless the husband and wife lived together in the commonwealth, and one of them lived in the commonwealth at the time the cause for the divorce occurred. However, a divorce may be brought in Massachusetts in the following situations, unless it appears that the plaintiff moved into Massachusetts in order to obtain a divorce:

- if the plaintiff lived in Massachusetts for the one year immediately before bringing the action and the cause occurred outside the commonwealth; or
- if the plaintiff is domiciled in the commonwealth at the time the action is brought and the cause occurred in the commonwealth.

Sections 4 and 5 amended 1975.

[Mass. Gen. Laws ch. 208, §§ 4, 5 \(2014\)](#)

Massachusetts, Status of Same-Sex Marriage

Massachusetts law permits same-sex couples to be married. The court in [Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941 \(2003\)](#), found that banning same-sex marriages violated the Massachusetts Constitution. The court redefined "civil marriage" to mean the voluntary union of two persons as spouses and ordered its judgment to be stayed for 180 days to permit the state legislature to act as it deemed appropriate. The legislature did not act, so same-sex marriage became legal on May 17, 2004.

Massachusetts, Tax Treatment

STATE INCOME TAX STATUS

Same-sex couples must file their Massachusetts state income tax returns as married persons filing jointly or separately. When interpreting Massachusetts tax laws, the Department of Revenue will construe references to "husband" and "wife" as "spouse," and pronouns to represent either gender.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Massachusetts permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Note that the commonwealth issued TIR 04-17 before the IRS issued Rev. Rul. 2013-17, so many of the document's statements related to differences between Massachusetts and federal taxes are no longer relevant.

Deductions

No specifically relevant provisions were located. Massachusetts tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Massachusetts tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Massachusetts tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Massachusetts tax laws apply to same-sex spouses in the same manner as any other married couple.

Technical information release issued 2004; revenue ruling issued 2013.

[Mass. Dep't of Rev., TIR 04-17: Massachusetts Tax Issues Associated with Same-Sex Marriages \(July 7, 2004\); Rev. Rul. 2013-17](#)

Michigan

Michigan, Fair Housing Laws

PROTECTED CLASS

Michigan's laws prohibit discrimination with respect to housing and other real estate because of a person's sex, familial status, or marital status, but they do not address sexual orientation or gender identity. Accordingly, the state does not declare the opportunity to obtain housing without discrimination because of sexual orientation or gender identity to be a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Michigan's fair housing laws prohibit discrimination based on sex, familial status, or marital status in the following contexts, but none of the provisions protect against discrimination based on sexual orientation:

- persons engaging in real estate transactions;
- real estate licensees;
- access to, or membership or participation in, a multiple listing service, a real estate brokers' organization, or another service, organization, or facility related to the real estate business; or
- representations that a change has occurred or will occur in an area's composition or represent that the change will or may result in lower property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools.

A listing agreement must state, among other things, that discrimination by a real estate licensee, seller, or lessor, based on a person's sex, familial status, or marital status is prohibited. No notice regarding discrimination based on sexual orientation is required. Similarly, the state's housing authority must require that housing projects and related financial assistance must be open to all, regardless of sex, marital status, or familial status, but the provision does not protect against discrimination based on sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located. Michigan law provides that any condition or restriction that limits a real property's use or occupancy on the basis of "religion, race, color, national origin, age, sex, familial status, or marital status" is void, but it does not address restrictive clauses that discriminate on the basis of sexual orientation.

Sections 37.2102, 37.2502, 37.2505, and 37.2506 amended 1992; § 339.2515 amended 1998; § 125.1446 amended 2000.

[Mich. Comp. Laws §§ 37.2102, .2502, .2505, .2506; 125.1446; 339.2515 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Michigan, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Michigan's laws prohibit discrimination based on sex, familial status, or marital status when providing financial assistance or financing in connection with a real estate transaction or in connection with the construction, rehabilitation, repair, maintenance, or improvement of real property, but they do not protect against discrimination based on sexual orientation.

Also, a person generally may not discriminate on the basis of marital status or sex when extending credit or granting a loan or when rating a person's creditworthiness.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, it is an unfair act in the insurance business for a person to discriminate because of the person's marital status or sex, but the law does not address sexual orientation.

If an insurer inspects a dwelling to determine whether the insured or applicant is eligible for home insurance, the criteria for selecting dwellings for inspection may not be based on "race, color, creed, marital status, sex, national origin, residence, age, disability, or lawful occupation." Similarly, an insurer may not use an insured's or an applicant's gender or marital status when calculating an insurance score. Sexual orientation is not addressed in either context.

Section 37.2504 amended 1992; §§ 500.2027 and 750.147a amended 1998; § 500.2121 amended 2012; § 500.2153 enacted 2012.

[Mich. Comp. Laws §§ 37.2504; 500.2027, .2121, .2153; 750.147a \(2014\)](#)

Michigan, Property Titling

No provisions were located that address the titling of a same-sex couple's property.

Michigan, Real Estate Transfer Tax

Michigan imposes a state transfer tax on the following, unless an exception applies:

- contracts for the sale or exchange of property;
- deeds or instruments conveying property for consideration; or
- contracts for the transfer of a controlling interest in an entity if the entity's real property accounts for 90 percent or more of the fair market value of the entity's assets.

Because Michigan does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses apply. However, the following exceptions may be relevant:

- a conveyance from an individual to his child, stepchild, or adopted child;
- a conveyance from an individual to his grandchild, step-grandchild, or adopted grandchild;
- a judgment or court order, unless the court orders specific monetary consideration for the transfer;
- an instrument to confirm title already vested in a grantee;
- an instrument creating a joint tenancy if at least one person already owns the property; or
- an instrument given to supplement, reform, or correct a prior written instrument, except to the extent of new consideration given for the property.

Section 207.523 amended 2008.

[Mich. Comp. Laws § 207.523 \(2014\)](#)

Michigan, Rights Upon Death

INHERITANCE

Because Michigan law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Michigan does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Michigan, Rights Upon Dissolution

Because Michigan does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Michigan, Status of Same-Sex Marriage

Michigan does not recognize same-sex marriages. The state's constitution provides that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose."

Michigan's statutes similarly provide that marriage is "inherently a unique relationship between a man and a woman," and that a marriage "contracted between individuals of the same sex" is invalid in the state. Furthermore, a man may not marry another man, and a woman may not marry another

woman. A marriage contracted according to another jurisdiction's laws that is not between a man and a woman not valid in Michigan.

Although case law is outside the scope of this survey, it is important to note that in *DeBoer v. Snyder*, 973 F. Supp. 2d 757 (E.D. Mich. 2014), the United States District Court for the Eastern District of Michigan ruled that the state's constitutional and statutory provisions that ban same-sex marriages are unconstitutional. The Sixth Circuit Court of Appeals stayed the decision pending its appeal. *DeBoer v. Snyder*, No. 14-1341 (6th Cir. Mar. 25, 2014) (order granting stay).

Sections 551.271, 551.2, 551.3, and 551.4 amended 1996; § 551.1 enacted 1996; constitutional section effective 2004.

[Mich. Comp. Laws §§ 551.1, .2, .3, .4, .271, .272 \(2014\); Const. art. I, § 25](#)

Michigan, Tax Treatment

STATE INCOME TAX STATUS

Each individual in a same-sex couple that files a joint federal income tax return must file his or her Michigan tax return using the single filing status.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

An individual who has income attributable to Michigan and who has filed a joint federal return as a same-sex couple must separately report his or her adjusted gross income for Michigan income taxes as a single filer. Each individual taxpayer must recalculate his or her federal adjusted gross income as if he or she had filed a single federal return. Filing using a single status may affect a taxpayer's eligibility for Michigan tax credits.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Notice issued 2013; revenue ruling issued 2013.

[Mich. Dep't of Treasury, Notice to Taxpayers: Same-Sex Couples Filing Joint Federal Income Tax Return Must File Michigan Income Tax Returns as Single Filers \(Sept. 19, 2013\); Rev. Rul. 2013-17](#)

Minnesota

Minnesota, Fair Housing Laws

PROTECTED CLASS

It is Minnesota's public policy to secure a person's freedom from discrimination in housing and real property because of sex, marital status, sexual orientation, and familial status, among others. The opportunity to obtain housing and other real estate without prohibited discrimination is expressly recognized as and declared to be a civil right.

In this context, "sexual orientation" means:

- "having or being perceived as having an emotional, physical, or sexual attachment to another person" without regard to that person's sex;
- "having or being perceived as having an orientation for such attachment"; or

- "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Unfair Discriminatory Practices Related to Real Property Interests

It is an unfair discriminatory practice for an owner, lessee, or other person:

- to refuse to sell, rent, or lease or otherwise withhold real property because of a person's sex, marital status, sexual orientation, or familial status;
- to discriminate because of sex, marital status, sexual orientation, or familial status in a real property transaction's terms, conditions, or privileges, or in furnishing related facilities or services; or
- to "print, circulate or post" an advertisement or sign, to use an application form for a real property transaction, or to record or inquire regarding a prospective real property transaction, if the act expresses a limitation, specification, or discrimination as to sex, marital status, sexual orientation, or familial status (or the intent to make such limitation, specification, or discrimination).

Real Estate Licensees

It is an unfair discriminatory practice for a real estate licensee:

- to refuse to sell, rent, lease, or offer real property or to negotiate for a property's sale, rental, or lease because of a person's sex, marital status, sexual orientation, or familial status;

- to represent that property is not available when it is available because of a person's sex, marital status, sexual orientation, or familial status;
- to deny or withhold real property because of a person's sex, marital status, sexual orientation, or familial status;
- to discriminate because of a person's sex, marital status, sexual orientation, or familial status in a transaction's terms, conditions, or privileges, or when furnishing related facilities or services; or
- to "print, circulate, or post" an advertisement or sign, to use an application form for a real property transaction, or to make a record or inquiry related to a prospective real property transaction that expresses a limitation, specification, or discrimination as to sex, marital status, sexual orientation, or familial status (or an intent to make such limitation, specification, or discrimination).

Real Property Transactions

It is an unfair discriminatory practice for a real estate licensee, for the purpose of inducing a real property transaction from which the licensee may benefit financially:

- to represent that a change has occurred or will or may occur in the composition of the sex, marital status, or sexual orientation of the owners or occupants in the block, neighborhood, or area in which the real property is located; and
- to represent that this change will or may result in undesirable consequences.

Interference

It is unfair discrimination to "coerce, intimidate, threaten, or interfere with" a person because he or she:

- is exercising or enjoying a protected right;
- has exercised or enjoyed a protected right; or
- aided or encouraged a third person in the exercise or enjoyment of a protected right.

Real Property Exemption

The provisions set forth in § 363A.09 (as described above) do not apply to:

- rooms in a residence home run by a nonprofit organization, if the discrimination is by sex;
- a resident owner or occupier of a one-family dwelling renting a room to another if the discrimination is by sex, marital status, or sexual orientation; or
- a resident owner renting a unit in a dwelling containing no more than two units, if the discrimination is on the basis of sexual orientation.

Religious Association Exemptions

Nothing in the statutory provisions described above prohibits a religious association, corporation, or society that is not organized for private profit to take action with respect to housing and real property in matters related to sexual orientation.

Reprisals

It is an unfair discriminatory practice for an individual who participated in alleged discrimination, a real property owner or lessor, or a real estate licensee to engage in any reprisal against a person because that person:

- opposed a forbidden practice;
- has filed a charge or participated in an investigation, proceeding, or hearing related to a discriminatory act; or
- is associated with a person who is of a different sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 363A.02 amended 1993; § 363A.21 amended 1998; §§ 363A.09 and 363A.15 amended 2001; § 363A.03 amended 2004; § 363A.26 amended 2013; ethics code issued 2014.

[Minn. Stat. §§ 363A.02, .03, .09, .15, .21, .26 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Minnesota, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is an unfair discriminatory practice for a person, insurance company, or other financial institution or lender to whom application is made for financial assistance to purchase, lease, acquire, construct, rehabilitate, repair or maintain real property:

- to discriminate because of sex, marital status, sexual orientation, or familial status when granting, withholding, extending, modifying, or renewing financial assistance;
- to discriminate because of sex, marital status, sexual orientation, or familial status in the rates, terms, conditions, or privileges of financial assistance or in the extension of related services;
- to use an application form or make a record or inquiry in connection with financial assistance applications that expresses a limitation, specification, or discrimination as to sex, marital status, sexual orientation, or familial status (or an intent to make such limitation, specification, or discrimination); or
- to discriminate against a person who desires to "purchase, lease, acquire, construct, rehabilitate, repair, or maintain" real property in a specific area solely because of the area's social, economic, or environmental conditions.

Appraisals

An appraiser must not knowingly develop a valuation conclusion that is based on discriminatory factors, including sex, marital status, sexual orientation, or familial status of a nearby

property's owner or occupants.

PROPERTY INSURANCE

Generally, an insurer may not refuse to insure, continue to insure, or submit an application for coverage, or limit the amount of coverage available, to an individual because of his or her sex or marital status.

Section 363A.09 amended 2001; § 82B.195 amended 2012; § 72A.20 amended 2013.

[Minn. Stat. §§ 72A.20; 82B.195; 363A.09 \(2013\)](#)

Minnesota, Property Titling

Because Minnesota allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, land grants and devises to multiple persons are construed to create estates in common, not in joint tenancy, unless expressly declared to be in joint tenancy. However, this presumption does not apply to mortgages, devises, or grants made in trust or to executors.

Section 500.19 amended 1994.

[Minn. Stat. § 500.19 \(2013\)](#)

Minnesota, Real Estate Transfer Tax

Because Minnesota allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, Minnesota imposes on each deed or instrument by which Minnesota real property is transferred or conveyed a tax on the net consideration (excluding liens), unless an exception applies. The following deeds, among others, are exempt from the transfer tax:

- a distribution deed by a personal representative;
- a deed partitioning an undivided interest in the same piece of real property;

- a marriage dissolution decree or a deed between the parties to the dissolution made pursuant to the decree's terms; or
- a transfer on death deed issued pursuant to § 507.071 and any document referencing a transfer on death deed.

Section 287.21 amended 2005; § 287.22 amended 2009.

[Minn. Stat. § 287.21, .22 \(2013\)](#)

Minnesota, Rights Upon Death

INHERITANCE

Because Minnesota law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Minnesota's inheritance laws. Therefore, generally,

- the intestate share of a decedent's surviving spouse is the entire estate if no descendant survived the decedent; and
- the decedent's surviving spouse has the right to elect to take an elective-share amount equal to a percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other.

OTHER RIGHTS

Appointment as a Personal Representative

Because Minnesota law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

Because Minnesota law permits same-sex marriages, a same-sex spouse is treated no differently

than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Minnesota law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under Minnesota's state estate-tax laws.

Sections 524.2-202 enacted 1994; § 524.2-101 amended 1999; news release issued 2013.

[Minn. Stat. §§ 524.2-101, -202 \(2013\)](#); [Minn. Dept. of Rev., News Release \(Sept. 3, 2013\)](#)

Minnesota, Rights Upon Dissolution

Because Minnesota allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple are generally the same as for other married couples. The state will not grant a dissolution unless:

- one of the parties has resided in Minnesota, or has been a member of the armed services stationed in Minnesota, for at least 180 days immediately before bringing the proceeding; or
- one of the parties has been domiciled in Minnesota for at least 180 days immediately before bringing the proceeding.

However, if neither party to a civil marriage resides in Minnesota at the beginning of the proceeding, a Minnesota court has jurisdiction over the dissolution if:

- the civil marriage was performed in Minnesota; and
- neither party to the civil marriage resides in a jurisdiction that will maintain an action for the couple's dissolution because of the spouses' sex or sexual orientation.

There is a rebuttable presumption that a jurisdiction will not maintain a dissolution action if the other jurisdiction does not recognize the civil marriage.

Section 518.07 amended 2013.

[Minn. Stat. § 518.07 \(2013\)](#)

Minnesota, Status of Same-Sex Marriage

As of August 1, 2013, Minnesota allows same-sex civil marriage. The state's statutes provide that a civil marriage "is a civil contract between two persons, to which the consent of the parties, capable in law of contracting, is essential."

When necessary to implement a spouse's or parent's rights and responsibilities in a civil marriage between persons of the same sex under Minnesota laws, gender-specific terminology, such as "husband," "wife," "mother," "father," "widow," and "widower," must be "construed in a neutral manner to refer to a person of either gender." Also, wherever the terms "marriage," "marital," "marry," or "married" are used in Minnesota statutes referencing a couple's rights, obligations, or privileges, the terms include civil marriage or individuals subject to a civil marriage.

Section 517.01 amended 2013; §§ 517.201 and 517.23 enacted 2013.

[Minn. Stat. §§ 517.01, .201, .23 \(2013\)](#)

Minnesota, Tax Treatment

STATE INCOME TAX STATUS

Minnesota treats all married couples the same for tax purposes. Minnesota law requires taxpayers to use the same filing status on their state income tax return as they use on their federal return. Minnesota state tax laws applicable to married persons do not apply to registered domestic partners, civil unions, or other similar relationships that are not considered marriage under federal law.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that

are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Minnesota permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by Minnesota's statutes, and then applies the state's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. Minnesota tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. Minnesota tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Minnesota tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Minnesota tax laws apply to same-sex spouses in the same manner as any other married couple.

Section 290.06 amended 2014; news release issued 2013; revenue ruling issued 2013.

[Minn. Stat. § 290.06 \(2013\)](#) (as amended by [2014 Minn. Laws chs. 150, 308](#)); [Minn. Dept. of Rev., News Release \(Sept. 3, 2013\)](#); [Minn. Dept. of Rev., Minnesota Tax Information for Same-Sex Married Couples \(Sept. 5, 2013\)](#); [Rev. Rul. 2013-17](#)

Mississippi

Mississippi, Fair Housing Laws

PROTECTED CLASS

No relevant provisions were located.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Home Corporation Act

In the context of the Mississippi Home Corporation Act, the corporation, any qualified sponsor, or any lender (or an agent or employee) may not discriminate against a person because of his or her sex, among other traits, in connection with a housing development.

No provisions were located that address housing discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or

- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 43-33-723 enacted 1989.

Miss. Code § 43-33-723 (LexisNexis 2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Mississippi, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located.

In the context of the Mississippi Home Corporation Act, the corporation, any qualified sponsor, or any lender (or an agent or employee) may not discriminate against a person because of his or her sex, among other traits, in connection with an eligible loan.

No provisions were located that address housing discrimination based on sexual orientation or marital status.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, insurance rates may not be unfairly discriminatory. "Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses."

Section 43-33-723 enacted 1989; § 83-2-3 amended 1999.

Miss. Code §§ 43-33-723; 83-2-3 (LexisNexis 2014)

Mississippi, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Mississippi does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Land conveyances or devises made to multiple persons, including to a husband and wife, are deemed to create estates in common and not in joint tenancy or entirety, unless it "manifestly appears" from the instrument's "tenor" that the parties intended to create a joint tenancy or tenancy in the entirety with survivorship rights.

Section 89-1-7 amended 1993; constitutional section adopted 2004.

Miss. Code § 89-1-7 (LexisNexis 2013); [Miss. Const. art. 14, § 263A](#)

Mississippi, Real Estate Transfer Tax

No applicable provisions were located. Mississippi does not impose a transfer tax on real property transfers.

Mississippi, Rights Upon Death

INHERITANCE

Because Mississippi law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Mississippi does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state statutes or regulations were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Mississippi, Rights Upon Dissolution

Because Mississippi does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Mississippi, Status of Same-Sex Marriage

Mississippi does not recognize same-sex marriages. The state's constitution provides that a marriage may take place and is valid under Mississippi law "only between a man and a woman."

A marriage in another state or foreign jurisdiction between persons of the same gender:

- is not recognized in Mississippi; and
- is void and unenforceable under the Mississippi law.

Mississippi's statutes add that a same-gender marriage "is prohibited and null and void from the beginning."

No provisions in Mississippi's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Section 93-1-1 amended 1997; constitutional section adopted 2004.

Miss. Code Ann. § 93-1-1 (LexisNexis 2014); [Miss. Const. art. 14, § 263A](#)

Mississippi, Tax Treatment

STATE INCOME TAX STATUS

Same sex persons living in the same household may not file joint returns. They are individual filers and must file single, or if qualified, as head of family.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between Federal and State Taxes

Even if a same-sex married couple file their federal tax return using a married status, each partner must file his or her state return as an individual.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

FAQ dated 2014; revenue ruling issued 2013.

[Miss. Dep't of Revenue, *Individual Income Tax FAQs \(2014\)*; Rev. Rul. 2013-17](#)

Missouri

Missouri, Fair Housing Laws

PROTECTED CLASS

Missouri's Human Rights Act defines "discrimination" as unfair treatment based on sex or familial status (among other traits), as it relates to housing, but it does not address sexual orientation or marital status. Accordingly, the state does not declare the opportunity to obtain housing accommodations without discrimination because of sexual orientation or gender identity to be a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Missouri's statutes addressing unlawful housing practices prohibit discrimination based on sex or familial status, but they do not protect against discrimination based on sexual orientation or marital status. The same is true of discrimination in selling or renting by real estate agencies.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or

- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 213.010, 213.040, and 213.050 amended 1998.

[Mo. Rev. Stat. §§ 213.010, .040, .050 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Missouri, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No specifically relevant provisions were located. Several financing laws prohibit lenders from discriminating because of a person's sex or marital status, among other traits, but Missouri laws do not protect against discrimination based on sexual orientation. For example, the following laws all address discrimination based on sex or marital status, but not sexual orientation:

- § 314.100 prohibits the denial of credit based on an applicant's sex or marital status;
- § 213.045 prohibits an entity that makes commercial real estate loans from discriminating because of an applicant's sex or familial status;
- § 408.575 prohibits a financial institution from denying a residential real estate loan to a person because of that person's marital status or sex;
- § 108.470 prohibits a revenue bond authority from denying a residential real estate loan to a person on the basis of marital status or sex; or

- § 443.863 provides, in the context of mortgages and mortgage brokers, that it is unlawful discrimination to refuse loans or to vary loan terms or application procedures for loans because of the borrower's gender or marital status.

PROPERTY INSURANCE

No specifically relevant provisions were located. Although Missouri's insurance laws do not address sexual orientation, it is generally an unfair trade practice and unfair discrimination in the insurance business:

- to discriminate unfairly between individuals or risks of the same class and of essentially the same hazards by refusing to insure or continue to insure or by limiting the coverage amount available to an individual because of his or her gender or marital status; or
- to cancel or refuse to insure or continue a policy solely because of the insured's gender.

Also, an insurer may not deny an insurance contract "on the sole basis" of the insured's or prospective insured's sex or marital status.

Section 314.100 enacted 1974; § 408.575 enacted 1979; § 108.470 enacted 1980; § 375.995 enacted 1985; § 375.936 amended 1991; § 213.045 amended 1998; and § 443.863 amended 2009.

[Mo. Rev. Stat. §§ 108.470; 213.045; 314.100; 375.936, .995; 408.575; 443.863 \(2013\)](#)

Missouri, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Missouri does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

A real estate interest granted or devised to two or more persons, other than executors and trustees or a husband and wife, is a tenancy in common, unless the grant or devise expressly declares the interest to be a joint tenancy.

Section 442.450 amended 1939.

[Mo. Rev. Stat. § 442.450 \(2013\)](#)

Missouri, Real Estate Transfer Tax

No applicable provisions were located. As of November 2, 2010, Missouri's constitution prohibits the state, its counties, or any political subdivision from imposing a new tax on the sale or transfer of real estate.

Constitutional section amended 2010.

[Mo. Const. art. X, § 25](#)

Missouri, Rights Upon Death

INHERITANCE

Because Missouri does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Missouri does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant provisions were located in Missouri's state laws.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Missouri, Rights Upon Dissolution

Because Missouri does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Missouri, Status of Same-Sex Marriage

Missouri does not recognize same-sex marriages. To be valid and recognized in Missouri, "a marriage shall exist only between a man and a woman."

It is Missouri's public policy to recognize marriage only between a man and a woman, so a same-sex marriage is not valid in Missouri. A marriage between same-sex persons is not recognized for any purpose, even if the marriage is valid where it was contracted.

No provisions in Missouri's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Section 451.022 amended 2001; constitutional section amended 2004.

[Miss. Rev. Stat. § 451.022 \(2013\)](#); [Miss. Const., art. I, § 33](#)

Missouri, Tax Treatment

STATE INCOME TAX STATUS

All taxpayers who properly file a joint federal income tax return must file a combined state income tax return.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

The Missouri tax code is "coupled to the federal tax code," and Missouri taxpayers must use information from their federal tax return when they are completing their Missouri state income tax return. Therefore, all taxpayers who properly file a joint federal income tax return must also file a combined state income tax return.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Executive order issued 2013; revenue ruling issued 2013.

[Mo. Dep't of Revenue, Executive Order 13-14 \(Nov. 14, 2013\); Rev. Rul. 2013-17](#)

Montana

Montana, Fair Housing Laws

PROTECTED CLASS

Montana's laws prohibit discrimination because of sex, but they do not address sexual orientation or marital status. Accordingly, the state does not declare the right to be free from discrimination because of sexual orientation or marital status to be a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Laws

Montana's housing discrimination laws prohibit discrimination based on sex, marital status, or familial status, but they do not protect against discrimination based on sexual orientation.

Similarly, it is an unlawful discriminatory practice for a person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, or familial status, among other traits, but not including sexual orientation. In this context, the term "residential real estate-related transaction" includes selling, brokering, or appraising residential real property.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 49-1-102 amended 1993; § 49-2-305 amended 2011.

[Mont. Code §§ 49-1-102; 49-2-305 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Montana, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Montana's unlawful financing laws prohibit discrimination based on sex or marital status when extending credit or receiving a loan application, but they do not protect against discrimination based on sexual orientation.

Similarly, it is an unlawful discriminatory practice for a person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, or familial status, among other traits. In this context, the term "residential real estate-related transaction" includes making or purchasing loans or providing other financial assistance:

- to purchase, construct, improve, repair, or maintain a housing accommodation or property;
or
- that are secured by residential real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not, in the context of property, casualty, and surety insurance, refuse to insure or continue to insure, or limit the amount of coverage available to a person because of his or her sex or marital status. It is an unlawful discriminatory practice for a financial institution or person to discriminate on the basis of sex or marital status when issuing or operating any type of insurance policy, plan, or coverage. Also, an insurer that uses credit information to underwrite or rate risks may not use an insurance score that is calculated using gender or marital status as a factor. However, none of these statutes address discrimination based on sexual orientation.

Sections 49-2-306 and 49-2-309 amended 1993; §§ 33-18-210, 33-18-605, and 49-2-305 amended 2011.

[Mont. Code §§ 33-18-210, -605; 49-2-305, -306, -309 \(2013\)](#)

Montana, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Montana does not recognize same-sex relationships in any form, so any title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples. Generally, if the names and addresses of more than one owner are listed on a title certificate, a joint ownership with right of survivorship, not a tenancy in common, is presumed.

Section 61-3-202 amended 2005.

[Mont. Code § 61-3-202 \(2013\)](#)

Montana, Real Estate Transfer Tax

No applicable provisions were located. As of November 2, 2010, the Montana constitution prohibits the state or any local government from imposing a tax on a real property sale or transfer.

Constitutional section amended 2010.

[Mont. Const. art VIII, § 17](#)

Montana, Rights Upon Death

INHERITANCE

Because Montana does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Montana does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant state-law provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Montana, Rights Upon Dissolution

Because Montana does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Montana, Status of Same-Sex Marriage

Montana's constitution prohibits marriage between same-sex couples. It provides that "[o]nly a marriage between one man and one woman shall be valid or recognized as a marriage" in Montana.

Montana's statutes describe a marriage as "a personal relationship between a man and a woman arising out of a civil contract." A marriage between persons of the same sex is expressly prohibited, and a contractual relationship entered into for the purpose of achieving a prohibited civil relationship is "void as against public policy."

Section 40-1-103 enacted 1975; § 40-1-401 amended 1997.

[Mont. Code §§ 40-1-103, -401 \(2013\)](#)

Montana, Tax Treatment

STATE INCOME TAX STATUS

A same-sex couple may not file a joint state tax return in Montana.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that

are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between Federal and State Taxes

Because Montana's constitution defines a marriage as a relationship between a man and a woman, the Montana Department of Revenue does not follow the federal tax guidelines for same-sex couples. The Department's memorandum provides that if the Department is asked if same-sex taxpayers can file jointly, it "will advise that this is not a valid filing option," but it also notes that Montana does not verify a taxpayer's marital status.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Memorandum dated 2013; revenue ruling issued 2013.

[Mont. Dep't of Revenue, Memorandum, Discussion of Same-Sex Marriage \(Oct. 1, 2013\); Rev. Rul. 2013-17](#)

Nebraska

Nebraska, Fair Housing Laws

PROTECTED CLASS

No provisions were located that prohibit discrimination based on sexual orientation or that declare the opportunity to obtain housing accommodations without discrimination because of sexual orientation to be a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Nebraska's laws addressing unlawful discrimination related to housing prohibit discrimination based on sex or familial status, but they do not protect against discrimination based on sexual orientation or marital status. Similarly, the state's statutes regarding cities' and villages' powers to prevent discrimination by ordinance do not include sexual orientation.

Furthermore, although it is unlawful for a person or entity that engages in transactions related to residential real estate to discriminate because of a person's sex or familial status, discrimination based on sexual orientation is not prohibited.

The state's provisions delineating real estate licensee unfair trade practices and denial or access to membership or participate in multiple listing services also do not mention discrimination based on sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;

- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

Generally, it is unlawful:

- to include in a "transfer, sale, rental, or lease of housing any restrictive covenants"; or
- to honor or exercise a restrictive covenant pertaining to housing.

In this context, a "restrictive covenant" is "any specification limiting the transfer, rental, or lease of any housing because of race, creed, religion, color, national origin, sex, handicap, familial status, or ancestry." Neither sexual orientation nor marital status are included.

Sections 18-1724, 20-318, and 20-321 amended 1991; §§ 20-317 and 20-320 enacted 1991; § 81-885.24 amended 2011.

[Neb. Rev. Stat. Ann. §§ 18-1724; 20-318, -320, -321; 81-885.24 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Nebraska, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Nebraska's statutes provide that it is unlawful for a person or other entity whose business includes engaging in transactions related to residential real estate to discriminate because of a person's sex or familial status, among other traits. In this context, a

"transaction related to residential real estate" includes making or purchasing loans or providing other financial assistance that is to be used to purchase, construct, improve, repair, or maintain a dwelling or that is secured by residential real estate. The statute does not protect against discrimination based on sexual orientation.

PROPERTY INSURANCE

No specifically relevant provisions were located.

Generally, an insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual solely because of the individual's sex or marital status. Also, an insurer that uses credit information to underwrite or rate risks may not use an insurance score that is calculated using the consumer's gender or marital status as a factor. Sexual orientation is not included in either context.

Section 20-320 enacted 1991; § 44-1525 amended 2003; § 44-7705 enacted 2003.

[Neb. Rev. Stat. §§ 20-320; 44-1525, -7705 \(2013\)](#)

Nebraska, Property Titling

No relevant provisions were located. Nebraska law generally treats married persons like any other individuals. For example, a person who owns property may effectively convey the property to himself or herself and another person as grantees, and either person "may be a married person, and any persons so mentioned may be persons married to each other." Furthermore, a married person may convey property directly to his or her spouse in the same manner and to the same extent as if he or she were unmarried.

Section 76-119 amended 1943; § 76-118 amended 1980

[Neb. Rev. Stat. Ann. §§ 76-118, -119 \(2013\)](#)

Nebraska, Real Estate Transfer Tax

Nebraska imposes a transfer tax on the grantor executing a deed for the "transfer of a beneficial interest in or legal title to real estate," unless an exception applies. Because Nebraska does not recognize same-sex marriage or other same-sex relationships in any form, the real estate transfer

tax exemption that explicitly applies to spouses and ex-spouses does not apply. However, the following exemptions may be relevant:

- deeds, without additional consideration, that confirm, correct, modify, or supplement a previously recorded deed, but that do not extend or limit the existing title or interest;
- partition deeds;
- deeds executed pursuant to a court decree; or
- deeds conveying to devisees or heirs property passing by testate or intestate succession.

Section 76-901 amended 2005; § 76-902 amended 2014.

[Neb. Rev. Stat. § 76-901, -902 \(2013\)](#) (as amended by [2014 Neb. LB 867](#))

Nebraska, Rights Upon Death

INHERITANCE

Because Nebraska law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Nebraska does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax

purposes, including gift and estate taxes. However, because Nebraska law does not recognize same-sex marriage or any other form of same-sex relationships, no statutes or regulations were located that apply any of the state's estate or inheritance taxes in any special manner to same-sex couples.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Nebraska, Rights Upon Dissolution

Because Nebraska does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Nebraska, Status of Same-Sex Marriage

Nebraska does not recognize same-sex marriages. The state's constitution provides that "[o]nly marriage between a man and a woman shall be valid or recognized in Nebraska." Nebraska's constitution also explicitly does not recognize the "uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship." (Note that although the state's constitution explicitly does not recognize same-sex relationships, its statutes could be interpreted as being inconsistent because they generally define "marriage" as a civil contract between consenting parties and recognize valid marriages from other jurisdictions.)

Sections 42-101 and 42-117 amended 1943; constitutional section amended 2000.

[Neb. Rev. Stat. Ann. §§ 42-101, -117 \(2013\)](#); [Neb. Const., art. I, § 29](#)

Nebraska, Tax Treatment

STATE INCOME TAX STATUS

Because Nebraska's constitution does not recognize same-sex marriages, each individual in a same-sex marriage must file his or her Nebraska individual income tax return separately using the single or, if qualified, head-of-household filing status.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Even though a same-sex couple may file a joint federal income tax return, individuals who entered into a same-sex marriage in a jurisdiction that recognizes same-sex marriages may not file a Nebraska individual income tax return using either a "married, filing jointly" or "married, filing separately" filing status. An individual in a same-sex marriage must:

- file a separate Nebraska income tax return using Form 1040N;
- use a single or, if qualified, head-of-household filing status; and
- use the tax rates corresponding to the single or head-of-household filing status, as applicable.

Each individual must complete a pro forma "mocked up" federal return using the single, or if qualified, head-of-household filing status, and then use the numbers from that pro forma federal return to file separate Nebraska Individual Income Tax Returns. An individual need not file a copy of the pro forma federal return with his or her Nebraska Form 1040N except in certain situations, which are noted in the Form 1040N instructions.

Deductions

Each individual in a same-sex marriage must use the deductions that correspond to the single or head-of-household filing status, as applicable, when filing his or her state tax return.

Home Sale Exclusion

Each individual in a same-sex marriage must use the credits and adjustments that correspond to the single or head-of-household filing status, as applicable, when filing his or her state tax return.

Withholding

Generally, state withholding allowances equal the number of withholding allowances the employee claims on his or her federal form W-4. If individuals in a same-sex marriages are concerned that too little Nebraska income tax will be withheld, he or she should submit a written statement to his or her employer requesting an additional amount be withheld.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

State revenue ruling issued 2013; federal revenue ruling issued 2013; FAQ history unknown.

[Neb. Dep't of Revenue, Rev. Rul. 22-13-1 \(Oct. 24, 2013\)](#); [Neb. Dep't of Revenue, Frequently Asked Questions for Individuals in a Same-Sex Marriage \(last visited July 28, 2014\)](#); [Rev. Rul. 2013-17](#)

Nevada

Nevada, Fair Housing Laws

PROTECTED CLASS

It is Nevada's public policy "to foster the right of all persons reasonably to seek and obtain housing accommodations without discrimination, distinction or restriction" because of sex, sexual orientation, or gender identity or expression, among other traits. In this context, "gender identity or expression" means "a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth." "Sexual orientation" means "having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality."

Domestic partners have the same right to be treated without discrimination as is provided to spouses. Where necessary to protect domestic partners' rights, gender-specific terms referring to spouses must be construed to include domestic partners.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status,

sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Laws

It is Nevada's public policy that all people in the state have "equal opportunity to inherit, purchase, lease, rent, sell, hold and convey real property without discrimination, distinction or restriction" because of sexual orientation, gender identity or expression, familial status, or sex.

A person may not act as follows because of another's sexual orientation, gender identity or expression, familial status, or sex:

- refuse to sell or rent, negotiate a transaction, or otherwise make unavailable a dwelling;
- discriminate in the terms, conditions, or privileges of a dwelling's sale or rental or in related services or facilities;
- make, print, or publish a notice, statement, or advertisement regarding a dwelling's sale or rental that indicates any preference, limitation, or discrimination (or the intent to make such a preference, limitation, or discrimination);
- represent to a person that a dwelling is not available when it is available;
- for profit, induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a particular sexual orientation, gender identity or expression, familial status, or sex;
- coerce, intimidate, threaten, or interfere with a person exercising or enjoying a protected right; or

- coerce, intimidate, threaten, or interfere with a person because that person aided or encouraged another person in the exercise or enjoyment of a protected right.

Criminal Acts

It is unlawful for a person to refuse to rent, lease, sell, or otherwise convey real property "solely because of race, religious creed, color, national origin, disability, sexual orientation, gender identity or expression, ancestry, familial status or sex."

It is unlawful to discriminate against a person as follows, based on sexual orientation, gender identity or expression, familial status, or sex, among other traits:

- to deny a person access to or membership or participation in a multiple-listing service, a real estate brokers' organization, or another service or facility related to selling or renting dwellings;
- to discriminate in the terms or conditions of such access, membership, or participation;
- to discriminate against a person by denying "access to any opportunity to engage in a transaction regarding residential real estate"; or
- to discriminate in such a transaction's terms or conditions.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;

- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 122A.200 enacted 2009; §§ 118.020, 118.100, 207.300, 233.010, 233.020, and 645.321 amended 2011.

[Nev. Rev. Stat. §§ 118.020, .100; 122A.200; 207.300; 233.010, .020; 645.321 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Nevada, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is unlawful for a lender to deny a loan or other financial assistance to a customer, to discriminate against a customer when fixing a loan's terms, or to refuse to purchase a loan from another lender, because of the sexual orientation, gender identity or expression, familial status, or sex of:

- the customer;
- a person associated with the customer; or
- the subject dwelling's present or prospective owners, lessees, tenants, or occupants.

In this context, a "customer" is a person who applies for a loan or other financial assistance to purchase, construct, improve or repair a dwelling, and a "lender" is "a bank, savings and loan association, insurance company or other person whose business consists in whole or in part of making commercial real estate loans."

It is also unlawful for a creditor to discriminate against an applicant because of the applicant's sex or marital status with respect to any aspect of a credit transaction.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer that uses information from a consumer credit report may not use an insurance score that is calculated using the consumer's gender or marital status, among other traits, or that "would otherwise lead to unfair or invidious discrimination."

Section 598B.100 enacted 1975; § 686A.680 enacted 2003; § 207.310 amended 2011.

[Nev. Rev. Stat. §§ 207.310; 598B.100; 686A.680 \(2013\)](#)

Nevada, Property Titling

Domestic partners in Nevada generally have "the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law" as are granted to and imposed on spouses. Therefore, property may be titled to domestic partners in the same manner as a married couple. Every real property interest granted or devised to multiple persons, other than executors and trustees, is deemed to be a tenancy in common, unless expressly declared to be a joint tenancy. A tenancy in common may be created by a single conveyance from a husband and wife holding title as joint tenants to themselves, to themselves and others, or to one of them and others, provided the conveyance expressly declares that the grantees are tenants in common. Similarly, an estate as tenants in common may be created by conveyance:

- from husband and wife to themselves or to themselves and others; or
- from a sole owner to himself and others.

Joint tenancy in real property may be created by a transfer from a husband and wife when holding title as community property or otherwise to themselves, or to themselves and others, when expressly declared in the transfer to be a joint tenancy or when granted or devised to executors or

trustees as joint tenants.

With regards to community property rights and other rights and duties concerning property ownership, any reference to the date of a marriage is deemed to refer to the domestic partnership's registration date.

Section 111.060 amended 1929; § 111.065 amended 1965; § 111.063 enacted 1965; § 111.064 amended 1981; § 122A.200 enacted 2009.

[Nev. Rev. Stat. §§ 111.060, .063, .064, .065; 122A.200 \(2013\)](#)

Nevada, Real Estate Transfer Tax

Because domestic partners have "the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law" as are granted to and imposed on spouses, any transfer tax exemptions that apply to spouses should apply equally to domestic partners. Nevada imposes a transfer tax for each deed by which realty is transferred or conveyed to another person and to certain land installment contracts, provided that the property's consideration or value exceeds \$100. This tax does not apply to the following, among others:

- a transfer "recognizing the true status of ownership of the real property," including a transfer pursuant to a previously recorded land sale installment contract for which the transfer taxes have been paid;
- a transfer without consideration from one joint tenant or tenant in common to the remaining joint tenants or tenants in common;
- a transfer, assignment or other conveyance of real property if the property owner is related to the person to whom it is conveyed "within the first degree of lineal consanguinity or affinity";

- a transfer between former spouses pursuant to a divorce decree (note that domestic partners generally have the same rights, protections, and benefits as are granted to spouses);
- a transfer to effectuate a property settlement agreement or to comply with a divorce decree;
or
- certain conveyances by deed that become effective upon the grantor's death.

Section 122A.200 enacted 2009; §§ 375.020 and 375.090 amended 2011.

[Nev. Rev. Stat. §§ 122A.200; 375.020, .090 \(2013\)](#)

Nevada, Rights Upon Death

INHERITANCE

A surviving domestic partner after his or her partner's death has "the same rights, protections and benefits, and is subject to the same responsibilities, obligations and duties under law" as are granted to and imposed upon a widow or a widower. As used in Nevada's statutes regarding a deceased person's will and estate, the term "spouse" includes a domestic partner. Therefore, generally,

- if a decedent leaves a surviving spouse, all community property with right of survivorship vests in accordance with the right of survivorship, other community property vests as provided by Nev. Rev. Stat. § 123.250, and decedent's separate property is distributed pursuant to chapter 134;
- if a decedent dies intestate and has title to separate property that is not otherwise limited by contract, the estate is distributed, after payment of the decedent's debts, as set forth in chapter 134, which provides that if the decedent leaves no issue, parents, siblings, or grandchildren, all of the decedent's separate property goes to the surviving spouse; and

- although Nevada does not give a surviving spouse the right to elect against a will, the spouse is generally entitled to an undivided one-half interest in the decedent's community property.

OTHER RIGHTS

No specifically relevant provisions were located. Domestic partners generally have "the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law" as are granted to and imposed on spouses.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Sections 123.250, 134.010, and 134.050 amended 1999; § 134.030 amended 2003; § 122A.200 enacted 2009; § 155.095 enacted 2011.

[Nev. Rev. Stat. §§ 122A.200; 123.250; 134.010, .030, .050; 155.095 \(2013\)](#)

Nevada, Rights Upon Dissolution

Former domestic partners have "the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law" as are granted to and imposed on former spouses. Therefore, Nevada's laws regarding rights upon dissolution of a domestic partnership are the same as for married couples. However, if a couple in a domestic partnership moves to a state that does not recognize their relationship, the couple may not be eligible for a divorce. A Nevada divorce may not be possible because Nevada requires a party to reside in the state at least six weeks before bringing the action, and the couple's current state may not grant a divorce if it does not recognize domestic partnerships.

Generally, a domestic partner who wishes to terminate a registered domestic partnership must follow the dissolution procedures set forth in chapter 125. However, Nevada statutes also provide for a simplified termination proceeding for certain domestic partnerships. If a domestic partnership meets specified statutory criteria, the partners may terminate their partnership by filing a signed and notarized statement "declaring that both persons have chosen of their own free will to terminate the domestic partnership" and by paying the applicable filing fee. The specified statutory criteria generally require that:

- the domestic partnership must have been registered for no more than five years;
- there must be no minor children born or adopted before or during the domestic partnership and no female member of the domestic partnership may be known to be pregnant, or the parties must have executed a custody agreement that sets forth the amount and manner of the children's support;
- the parties must have executed agreements or waivers regarding property division, liability assumptions, and support; and
- the parties must have waived their rights to more comprehensive proceedings.

For the purposes of the state's laws governing domestic partners' community property, mutual responsibility for debts to third parties, and rights to seek financial support following a partnership's dissolution, any reference to the date of a marriage is deemed to refer to the domestic partnership's registration date.

Section 125.020 amended 1981; §§ 122A.200 and 122A.300 enacted 2009.

[Nev. Rev. Stat. §§ 122A.200, .300; 125.020 \(2013\)](#)

Nevada, Status of Same-Sex Marriage

Nevada does not recognize same-sex marriages. The state's constitution provides that "[o]nly a marriage between a male and female person shall be recognized and given effect." (This constitutional section will not be effective after November 21, 2016, if "the provisions of Senate Joint Resolution No. 13 (2013) are agreed to and passed by the 2015 Legislature and approved and ratified by the voters at the 2016 General Election.") Nevada's statutes also provide that a marriage must be between "a male and a female person."

However, the Nevada Domestic Partnership Act provides that two persons may register as a domestic partnership if they have a common residence, are at least 18 years of age, and are competent to consent to the relationship. In this context, "common residence" means a residence shared by both domestic partners on at least a part-time basis.

Generally, domestic partners have "the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law" as are granted to and imposed on spouses. To the extent that Nevada laws "adopt, refer to or rely upon provisions of federal law in a way that otherwise would cause domestic partners to be treated differently from spouses, domestic partners must be treated by Nevada law as if federal law recognized a domestic partnership in the same manner as Nevada law." A domestic partnership not marriage for purposes of Nevada Constitution, art. 1, § 21.

Nevada recognizes as a valid domestic partnership a legal union of two persons, "other than a marriage as recognized by the Nevada Constitution" that was validly formed in another jurisdiction and that is substantially equivalent to a domestic partnership. For a legal union formed in another jurisdiction to be recognized as a valid domestic partnership in Nevada, the parties must comply with Nev. Rev. Stat. § 122A.100(1)(b).

Section 122.020 amended 2009; §§ 122A.200, 122A.500, and 122A.510 enacted 2009; § 122A.100 amended 2010; constitutional section adopted 2002.

[Nev. Rev. Stat. §§ 122.020; 122A.100, .200, .500, .510 \(2013\); Nev. Const., art. 1 § 21](#)

Nevada, Tax Treatment

STATE INCOME TAX STATUS

Nevada residents are not subject to a state personal income tax.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. However, for Federal tax purposes, the term "marriage" does not include registered domestic partnerships.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

FAQ dated 2014; revenue ruling issued 2013.

[Nev. Dep't of Taxation, About Taxes and FAQs-General Questions and Answers About the Department: Income Tax in Nevada \(last visited July 28, 2014\); Rev. Rul. 2013-17](#)

New Hampshire

New Hampshire, Fair Housing Laws

PROTECTED CLASS

General Discrimination Laws (§ 354-A:1)

New Hampshire's "Law Against Discrimination" is "for the protection of the public welfare, health and peace of the people" of New Hampshire, and to fulfill the state constitution's provisions concerning civil rights. Discrimination against New Hampshire inhabitants because of sex, marital status, or familial status (among others) is a "matter of state concern."

Civil Rights Enforcement (§ 354-B:1)

Individuals have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and laws without being subject to actual or threatened physical force or violence or damage to or trespass on property, if the conduct is motivated by sexual orientation or gender, among others.

Ethics Code

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Civil Right (§ 354-A:8)

The opportunity to obtain housing without discrimination because of sex, marital status, familial status, or sexual orientation, among others, is a civil right.

Definitions (§ 354-A:2)

In this context, "sexual orientation" means "having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality."

Unlawful Discriminatory Housing Practices (§ 354-A:9, :10)

It is an unlawful discriminatory practice for a person who owns or has the right to rent or lease a dwelling or commercial structure, or who is in the business of selling or renting dwellings or commercial structures, to act as follows:

- to refuse to sell or rent after receiving a bona fide offer, to refuse to negotiate for the sale or rental of, or to otherwise make unavailable or deny, a dwelling or commercial structure because of a person's sex, marital status, familial status, or sexual orientation;
- to discriminate in a real estate transaction's terms, conditions, or "privilege of sale or rental" because of sex, marital status, familial status, or sexual orientation;

- to make, print, or publish a notice, statement, or advertisement, regarding the sale or rental of a dwelling or commercial structure that indicates any "preference, limitation, or discrimination" based on sex, marital status, familial status, or sexual orientation (or an intention to make such preference, limitation, or discrimination);
- to represent to an individual because of sex, marital status, familial status, or sexual orientation that a dwelling or commercial structure is not available for inspection, sale, or rental when it is available;
- for profit, to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of a particular sex, marital status, familial status, or sexual orientation;
- to evict a tenant solely because the person has acquired immune deficiency syndrome or is regarded as having the disease;
- for a person or other entity whose business includes engaging in residential real estate-related transactions to discriminate when making a transaction available, or in the transaction's terms or conditions, because of sex, familial status, marital status, or sexual orientation; or
- to deny a person access to, or membership or participation in, a multiple-listing service, a real estate brokers' organization, or another service, organization, or facility related to the residential real estate business, or to discriminate against that person in the terms or conditions of such access, membership, or participation, because of familial status, sex, marital status, or sexual orientation.

In this context, "business of selling or renting dwellings" means:

- participation as principal, during the preceding 12 months, in at least three transactions involving the sale or rental of a dwelling or commercial structure;

- participation, during the preceding 12 months, as an agent (other than in the sale of one's own residence) providing sales or rental facilities or services in at least two sale or rental transactions; or
- ownership of a dwelling to be occupied by at least three families.

A "residential real estate-related transaction" includes:

- making or purchasing loans secured by residential real estate or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; and
- selling, brokering, or appraising residential real property.

Interference, Coercion or Intimidation (§ 354-A:11)

It is an unlawful discriminatory act to coerce, intimidate, threaten or interfere with any person who is exercising or enjoying, who exercised or enjoyed, or who aided or encouraged another person to exercise or enjoy a protected right.

Exemptions (§ 354-A:13)

New Hampshire's provisions related to unlawful housing discrimination do not apply to the following:

- the sale or rental of a single-family dwelling its owner sells or rents, if the owner does not own more than one single-family house at any one time, and if the sale or rental is completed:

- without the use of a real estate licensee's facilities or services or the facilities or services of a person in the business of selling or renting dwellings; and
- without publishing, posting, or mailing an advertisement or notice that violates § 354-A:10 (III) above; or
- the rental of a housing accommodation in a building that contains housing accommodations for no more than three independent families, if the owner (or the owner's family members) reside in one of the units; or
- the rental of a room in a housing accommodation with no more than five rental rooms, if the owner or members of the owner's family reside in the housing accommodation.

Also, a religious organization, association, or society, or a related nonprofit institution or organization, may limit the sale, rental, or occupancy of dwellings it owns or operates for other than a commercial purpose to persons of the same religion, or give preference to persons of the same religion, unless membership in the religion is restricted by race, color, or national origin. A private club that is not open to the public and that incidentally provides lodging that it owns or operates for other than a commercial purpose, may limit the lodgings' rental or occupancy to its members or give its members preference.

Retaliation (§ 354-A:19)

It is an unlawful discriminatory practice for a person to "discharge, expel, or otherwise retaliate or discriminate" against a person who has:

- opposed the practices forbidden by New Hampshire's anti-discrimination laws; or
- filed a complaint, testified, or assisted in any proceeding under chapter 354-A.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Sections 354-A:9, 354-A:11, 354-A-13, and 354-A:19 enacted 1992; § 354-A:8 amended 1997; § 354-A:1 amended 1998; § 354-B:1 enacted 1999; §§ 354-A:2 and 354-A:10 amended 2006.

[N.H. Rev. Stat. §§ 354-A:1; :2; :8; :9; :10; :11; :13; :19; -B:1 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

New Hampshire, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is an unlawful discriminatory practice for a person or other entity whose business includes engaging in residential real estate-related transactions to discriminate in making available a transaction, or in the transaction's terms or conditions, because of sex, familial status, marital status, or sexual orientation.

A "residential real estate-related transaction" includes:

- making or purchasing loans secured by residential real estate or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; and
- selling, brokering, or appraising residential real property.

PROPERTY INSURANCE

Chapter 417-B applies to insurance policies that insure the loss of or damage to real property that is:

- used solely for residential purposes;
- owner-occupied; and
- consists of no more than four dwelling units.

An insurer may not cancel or refuse to write or renew a residential property insurance policy solely because of a person's "age, residence, race, color, creed, national origin, ancestry, marital status, or lawful occupation, including the military service."

The following, among others, are unfair methods of competition and unfair and deceptive acts and practices in the insurance business:

- "[m]aking or permitting any unfair distinction or discrimination" in any insurance contract; and
- refusing to insure risks "solely because of age (except in the case of life, accident or health insurance), place or area or residence, race, color, creed, national origin, ancestry, marital status, lawful occupation including the military service (except in the case of life, accident or health insurance)."

New Hampshire's statutory provisions regarding unfair insurance trade practices do not explicitly address sexual orientation.

Section 417-B:2 enacted 1971; § 354-A:9 enacted 1992; §§ 354-A:10 and 417-B:1 amended 2006; § 417:4 amended 2011.

[N.H. Rev. Stat. §§ 354-A:10; 417:4; 417-B:1, :2 \(2014\)](#)

New Hampshire, Property Titling

Because New Hampshire allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, a real estate conveyance or devise to multiple persons creates a tenancy in common, unless the document expressly provides that the estate is to be held as joint tenants or contains other words that clearly express an intent to create a joint tenancy.

Section amended 1959.

[N.H. Rev. Stat. § 477:18 \(2013\)](#)

New Hampshire, Real Estate Transfer Tax

Because New Hampshire allows same-sex marriage, the state's real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, although New Hampshire imposes a tax on the sale and transfer of real estate, the following deeds, among others, are exempt from the state's transfer tax:

- a deed or instrument that corrects a previous document;
- a transfer by devise, intestate succession, or the death of any cotenant of property held in joint tenancy; or
- a transfer between spouses pursuant to a divorce decree.

Section 78-B:1 amended 1999; § 78-B:2 amended 2007.

[N.H. Rev. Stat. §§ 78-B:1, :2 \(2013\)](#)

New Hampshire, Rights Upon Death

INHERITANCE

Because New Hampshire law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under New Hampshire's inheritance laws. Therefore, generally,

- a surviving spouse may waive his or her homestead right and the provisions in his or her spouse's will, and instead choose to claim an elective share equal to an amount, which varies according to the length of the couple's marriage, if the decedent leaves no children, parent, or other specified close relatives; and
- if the deceased spouse died without a will, the surviving spouse receives the entire estate if the decedent has no surviving issue or parents.

OTHER RIGHTS

Appointment as a Personal Representative

Because New Hampshire law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

Because New Hampshire law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located. Generally, the custody and control of a decedent's remains are determined first, by any person the decedent designated, and, if no person is designated, to the decedent's next-of-kin. The decedent's spouse has the top priority when determining "next-of-kin."

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax

purposes, including gift estate taxes. Because New Hampshire law permits same-sex marriages, a same-sex spouse is presumably also treated no differently than any other spouse under New Hampshire's state estate-tax laws. Therefore, generally, an estate tax is "imposed upon the transfer of the estate of every decedent leaving an estate which is subject to an estate tax under the provisions of the United States Internal Revenue Code" and who has property" in New Hampshire. New Hampshire's state estate tax is equal to the maximum federal estate tax credit allowable for state death taxes, and the tax is imposed "in every case in which the credit for state death taxes paid is available as a credit on the decedent's federal estate tax return."

Section 560:10 amended 1974; § 290:16 enacted 1996; § 87:1 amended 2002; § 561:1 amended 2003; § 290:17 amended 2012.

[N.H. Rev. Stat. §§ 87:1; 290:16, :17; 560:10; 561:1 \(2013\)](#)

New Hampshire, Rights Upon Dissolution

Because New Hampshire allows same-sex marriage, New Hampshire's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A New Hampshire divorce may not be possible because New Hampshire has a residency requirement before parties may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages. A New Hampshire court has jurisdiction to grant a divorce only if:

- both parties were domiciled in New Hampshire when the action was brought;
- the plaintiff was domiciled in New Hampshire, and the defendant was personally served with process within the state; or
- the plaintiff was domiciled in New Hampshire for "one year next preceding the time when the action was commenced."

Section 458:5 amended 2004.

[N.H. Gen. Laws § 458:5 \(2013\)](#)

New Hampshire, Status of Same-Sex Marriage

New Hampshire allows same-sex marriage. The stated purpose of its marriage statutes is to "affirm the right of 2 individuals desiring to marry and who otherwise meet the eligibility requirements of . . . chapter [457] to have their marriage solemnized in a religious or civil ceremony." Although a male must be at least 14 years of age and a female must be at least 13 years of age to be able to enter into a valid marriage between two persons of different genders, males and females must be at least 18 years of age to be able to enter into a valid marriage between persons of the same gender.

New Hampshire recognizes a marriage legally contracted outside New Hampshire that would not be prohibited under New Hampshire law as valid in New Hampshire for all purposes if the parties become permanent New Hampshire residents after their marriage. As of July 10, 2014, New Hampshire explicitly recognizes any marriage of a same-sex couple lawfully contracted outside New Hampshire.

All civil unions that were not merged into a marriage by January 1, 2011, were merged into a marriage by operation of law on January 1, 2011.

As of July 10, 2014, gender-specific terms related to marital or familial relationships, such as "spouse," "next of kin," "husband," or "wife," must be "construed to be gender-neutral for all purposes throughout New Hampshire law."

Sections 457:1, 457:4, and 457:46 amended 2010; §§ 21:3 and 457:3 amended 2014.

[N.H. Rev. Stat. §§ 21:3](#) (as amended by [2014 N.H. Laws ch. 160 \(S.B. 394\)](#)); [457:1](#), [:3](#) (as amended by [2014 N.H. Laws ch. 160 \(S.B. 394\)](#)), [:4](#), [:46 \(2013\)](#)

New Hampshire, Tax Treatment

STATE INCOME TAX STATUS

New Hampshire taxes only interest and dividends. No relevant provisions were located that apply only to same-sex couples. Generally, a married taxpayer may claim allowed exemptions for "both self and spouse, regardless of the ownership of the income from interest or dividends, provided that both husband and wife file a joint return."

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

New Hampshire permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. However, New Hampshire taxes only certain interest and dividend income.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Section 77:5-a enacted 1981; § 77:4 amended 2012; revenue ruling issued 2013.

[N.H. Rev. Stat. §§ 77:4, :5-a \(2013\)](#); [Rev. Rul. 2013-17](#)

New Jersey, Fair Housing Laws

PROTECTED CLASS

New Jersey's Law Against Discrimination prevents discrimination based on sex, gender identity or expression, affectional or sexual orientation, marital status, or familial status, among other traits. In this context, "affectional or sexual orientation" means "male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation."

The state's prohibition against discrimination based on marital status applies "in like manner" to civil unions.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Discrimination in Housing Transactions

New Jersey's Law Against Discrimination provides that it is unlawful discrimination for a person to act as follows:

- to refuse to sell, rent, lease, assign, or sublease, or otherwise deny real property because of a person's marital status, civil-union status, domestic-partnership status, sex, gender identity or expression, affectional or sexual orientation, or familial status;
- to discriminate because of a person's marital status, civil-union status, domestic-partnership status, sex, gender identity or expression, affectional or sexual orientation, or familial status in the terms, conditions, or privileges associated with a real property transaction or when furnishing related facilities or services; or
- to print, publish, issue, display, or mail a statement, advertisement, publication, or sign, or to use an application form for a real property transaction, that expresses a limitation, specification, or discrimination based on marital status, civil-union status, domestic-

partnership status, sex, gender identity or expression, affectional or sexual orientation, or familial status.

Real Estate Licensee

New Jersey's Law Against Discrimination provides that it is unlawful discrimination for a real estate licensee to act as follows:

- to refuse to sell, rent, assign, lease, or sublease real property because of a person's marital status, civil-union status, domestic-partnership status, familial status, sex, gender identity or expression, or affectional or sexual orientation;
- to represent that real property is not available when it is available because of a person's marital status, civil-union status, domestic-partnership status, familial status, sex, gender identity or expression, or affectional or sexual orientation;
- to discriminate against a person because of his or her marital status, civil-union status, domestic-partnership status, familial status, sex, gender identity or expression, or affectional or sexual orientation in the terms, conditions, or privileges of a real estate transaction; or
- to print, issue, display, or mail a statement, advertisement, publication, or sign, or to use an application form for a real property transaction that expresses a limitation, specification, or discrimination as to marital status, civil-union status, domestic-partnership status, familial status, sex, gender identity or expression, or affectional or sexual orientation.

It is also an unlawful discrimination for:

- a real estate licensee, for the purpose of inducing a real estate transaction for profit, to represent that a change has occurred or will occur in the area's composition with respect to marital status, civil-union status, domestic-partnership status, familial status, sex, gender identity or expression, or affectional or sexual orientation, among other traits, and that this change will result in undesirable consequences in the area; or

- a multiple listing service, real estate brokers' organization, or an organization related to the business of selling or renting dwellings to deny a person access to or membership or participation in such organization, or to discriminate in the terms or conditions of that access, membership, or participation, because of the person's marital status, civil-union status, domestic-partnership status, familial status, sex, gender identity or expression, or affectional or sexual orientation.

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity"; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

Public Housing

With regards to housing built or leased with public funds or assistance, New Jersey's Division on Civil Rights must enforce the state's laws against discrimination because of a person's marital status, affectional or sexual orientation, familial status, sex, or gender identity or expression.

Land Use Regulation

It is generally unlawful discrimination for a New Jersey municipality, county, or other local political subdivision to regulate land use or housing in a manner that discriminates because of marital status, familial status, sex, or gender identity or expression.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Sections 10:5-3, 10:5-9.1, and 10:5-12.5 amended 2006; § 10:5-5 amended 2009; § 10:5-12 amended 2014.

N.J. Stat. §§ 10:5-3, -5, -9.1, -12, -12.5 (2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

New Jersey, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is unlawful housing discrimination for a person, bank, mortgage company, insurance company, or other financial institution or lender making or purchasing a loan or extension of credit to act as follows:

- to discriminate because a person's marital status, civil-union status, domestic-partnership status, pregnancy, sex, gender identity or expression, affectional or sexual orientation, or familial status when "granting, withholding, extending, modifying, renewing, or purchasing, or in the fixing of the rates, terms, conditions or provisions" of a loan, extension of credit, or financial assistance or in related services; or
- to use an application form that expresses a limitation, specification, or discrimination as to marital status, civil-union status, domestic-partnership status, sex, gender identity or expression, affectional or sexual orientation, or familial status.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, the state's laws related to insurance benefits apply "in like manner" to civil union couples.

Section 10:5-12 amended 2013; § 37:1-32 enacted 2006.

N.J. Stat. §§ 10:5-12; 37:1-32 (2014)

New Jersey, Property Titling

Because New Jersey now allows same-sex marriage, a same-sex married couple should be able to title real property in the same manner as any other married couple. Also, the state's laws relating to title, including the eligibility to hold property as tenants by the entirety, apply "in like manner" to civil-union couples.

Generally, an estate is not a joint tenancy, unless the grant or devise expressly states that the parties intended to create a joint tenancy, not a tenancy in common. However, no instrument creating a property interest on the part of a husband and wife is construed to create a tenancy in common or a joint tenancy unless "it is expressed therein or manifestly appears from the tenor of the instrument that it was intended to create a tenancy in common or joint tenancy." A tenancy by entirety is created when:

- a husband and wife take title together under a written instrument designating both of their names as husband and wife;
- a husband and wife become the lessees of property under a written instrument containing an option to purchase and designating both of their names as husband and wife; or
- an owner spouse conveys or transfers a property interest to the non-owner spouse and the owner spouse jointly pursuant to a written instrument designating both of their names as husband and wife.

Section 46:3-17.2 and 46:3-17.3 enacted 1987; § 37:1-32 enacted 2006; history of § 46:3-17 unknown.

N.J. Stat. §§ 37:1-32; 46:3-17, -17.2, -17.3 (2014)

New Jersey, Real Estate Transfer Tax

Because New Jersey now allows same-sex marriage, the real estate transfer tax should apply to same-sex spouses in the same manner as any other married couple. The state's laws related to exemptions from the realty transfer tax based on marital status apply "in like manner" to civil unions.

New Jersey imposes a realty transfer fee, a supplemental fee, and an additional fee on certain transfers of residential real property over \$1 million. The fees imposed by chapter 46:15 do not apply to the following deeds, among others:

- to confirm or correct a previously recorded deed;
- on partition;
- between husband and wife or parent and child.

Sections 46:15-10 amended 1999; § 46:15-7.2 amended 2006; § 37:1-32 enacted 2006; § 46:15-7.1 amended 2007; § 46:15-7 amended 2008.

N.J. Stat. §§ 37:1-32; 46:15-7, -7.1, -7.2, -10 (2014)

New Jersey, Rights Upon Death

INHERITANCE

Because New Jersey law now permits same-sex marriages, a same-sex spouse should be treated no differently than any other spouse under New Jersey's inheritance laws. Therefore, generally,

- if a testator's surviving spouse married the testator after he or she executed a will, or if a testator's domestic partner formed their domestic partnership after the testator executed a will, the surviving spouse or domestic partner may receive, as an intestate share, at least the share of the estate the surviving spouse or domestic partner would have received if the testator had died intestate, generally unless the will reflects a different intention;
- if a decedent dies without a will and is not survived by a descendant or parent, the surviving spouse or domestic partner is entitled to the entire intestate; and

- if a married person or a person in a domestic partnership dies, his or her surviving spouse or domestic partner has a right to elect to take one-third of the augmented estate under certain limitations and conditions set forth by statute.

New Jersey's laws related to descent and distribution, intestate succession, survivorship, and probate law and procedure apply "in like manner" to civil unions.

OTHER RIGHTS

Appointment as a Personal Representative

Because New Jersey law now permits same-sex marriages, a same-sex spouse should be treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

If a decedent appointed a person in a will to control the funeral and disposition of the decedent's remains, that person will control the decedent's funeral and disposition. If the decedent did not leave a will appointing a person to control the funeral and disposition of the remains, the right to control the funeral and disposition generally goes first to the decedent's surviving spouse.

Anatomical Gifts

The following individuals, in the priority indicated, may make an anatomical gift of a decedent's body:

- first, the decedent's agent who could have made an anatomical gift immediately before the decedent's death pursuant to N.J. Stat. § 26:6-80;
- second, the decedent's spouse, civil-union partner, or domestic partner; and

- then, numerous other specified relatives and acquaintances.

New Jersey's laws related to the making of, revoking, and objecting to anatomical gifts apply "in like manner" to civil-union couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Sections 3B:5-3, 3B:5-15, and 3B:8-1 amended 2005; § 37:1-32 enacted 2006; § 26:6-85 enacted 2008; § 45:27-22 amended 2013; revenue ruling issued 2013.

N.J. Stat. §§ 3B:5-3, -15; 26:6-85; 37:1-32; 45:27-22 (2014); [Rev. Rul. 2013-17](#)

New Jersey, Rights Upon Dissolution

Because New Jersey now allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple should be the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A New Jersey divorce may not be possible because the state has a one-year residency requirement before parties may initiate a divorce for any cause other than adultery, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages.

New Jersey's dissolution laws explicitly apply to divorce of a marriage, dissolution of a civil union, and legal separation from a partner in a civil union. The dissolution of civil unions follows the same procedures and is subject to the same substantive rights and obligations as are involved in a marriage dissolution. Also, other domestic relations laws, including "annulment, premarital agreements, separation, divorce, child custody and support, property division and maintenance, and post-relationship spousal support" apply to civil unions.

Section 2A:34-10 amended 2006; § 37:1-31 enacted 2006.

N.J. Stat. §§ 2A:34-10; 37:1-31 (2014)

New Jersey, Status of Same-Sex Marriage

New Jersey permits same-sex marriage, civil unions, and, in some circumstances, domestic partnerships. However, although New Jersey's statutes reference same-sex marriages in other jurisdictions, they do not yet address same-sex marriage in the state.

On October 21, 2013, the New Jersey Supreme Court in [Garden State Equality v. Dow, 79 A.3d 1036 \(N.J. 2013\)](#), refused to stay a lower court decision holding that New Jersey must extend the right to a civil marriage to same-sex couples. The state appealed the lower court's denial of the state's request for a stay, and the higher court also denied the stay because the state did not show a "reasonable probability" that its appeal would succeed on its merits. The state took no further action, so the lower court's ruling stands, and same-sex marriages are now legal in New Jersey.

New Jersey also permits civil unions, which are defined as the "legally recognized union of two eligible individuals of the same sex." Parties in a civil union receive the same benefits and protections and are subject to the same responsibilities as spouses in a marriage. The terms "marriage," "husband," "wife," and "spouse," as used in New Jersey law, include a civil union. A civil union entered into in another jurisdiction is valid under New Jersey law if it is valid in the jurisdiction in which it was created. Civil union couples have all of the benefits, protections, and responsibilities under law as are granted to spouses in a marriage.

New Jersey has also permitted domestic partnerships, but, as of February 19, 2007, individuals may not register domestic partnerships, unless both parties are at least 62 years of age. This provision does not alter the rights and responsibilities of domestic partnerships existing before that date, except that eligible domestic partners must be given notice and opportunity to enter into a civil union. If a couple in an existing domestic partnership enters into a civil union, the domestic partnership is terminated. The obligations of domestic partners are limited to those established by law. A domestic partnership, civil union, or reciprocal beneficiary relationship entered into outside of New Jersey is valid in New Jersey if it is valid under the laws of the jurisdiction in which it was created.

Section 26:8A-6 enacted 2003; §§ 26:8A-4.1, 37:1-29, 37:1-31, 37:1-33, and 37:1-34 enacted 2006.

N.J. Stat. §§ 26:8A-4.1, -6; 37:1-29, -31, -33, -34 (2014)

[New Jersey, Tax Treatment](#)

STATE INCOME TAX STATUS

Same-Sex Marriages

Same-sex couples are now permitted in New Jersey, so individuals in a same-sex marriage should presumably have the same status options as individuals in any marriage. Although New Jersey's tax guidance does not mention New Jersey same-sex marriages, the guidance explicitly provides that the term "spouse" includes a spouse in a same-sex marriage in another jurisdiction.

Civil Unions

The laws related to state and local taxes "apply in like manner" to civil unions. Individuals that are married or in a civil union on the last day of the tax year may choose to file as a married or civil-union couple filing a joint return or a married or civil-union partner filing separate returns. The term "spouse" in New Jersey tax laws also refers to a partner in a civil union.

Domestic Partnerships

Individuals in a registered domestic partnership are not considered married and may not use the "joint" or "separate" filing statuses.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

New Jersey now permits same-sex marriage, so the relationship between federal and state tax laws should be the same for married same-sex couples as for other married couples. The state's tax guidance advises that a taxpayer should follow federal guidelines for determining his or her filing status and use the same filing status that he or she used on his or her federal return, unless the taxpayer is a partner in a civil union.

Deductions

New Jersey's laws related to state and local taxes, including tax deductions based on marital status, apply in like manner to civil union couples.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Section 37:1-32 enacted 2006; tax information updated 2014; revenue ruling issued 2013.

N.J. Stat. § 37:1-32 (2014); [N.J. Div. of Taxation, N. Income Tax - Filing Status \(Jan. 6, 2014\)](#); [Rev. Rul. 2013-17](#)

New Mexico

New Mexico, Fair Housing Laws

PROTECTED CLASS

New Mexico's Human Rights Act treats both sexual orientation and gender identity as protected classes. "Sexual orientation" means "heterosexuality, homosexuality or bisexuality, whether actual or perceived."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Provisions

It is an unlawful discriminatory practice for a person:

- to refuse to sell, rent, assign, lease, or sublease a housing accommodation or real property to a person or to refuse to negotiate for a person because of sex, sexual orientation, gender identity, or spousal affiliation;
- to discriminate in the terms, conditions, or privileges of a sale, rental, assignment, lease, or sublease of a housing accommodation or real property (or when providing related facilities or services) because of a person's sex, sexual orientation, gender identity, or spousal affiliation; or
- to print, circulate, display, or mail a statement, advertisement, publication, or sign, or use an application form for any housing accommodation or real property, that expresses a preference, limitation, or discrimination because of a person's sex, sexual orientation, gender identity, or spousal affiliation.

Housing Provision Exemptions

Nothing contained in New Mexico's Human Rights Act applies to a single-family dwelling that an owner sells, leases, subleases, or rents without making any notice, statement, or advertisement that indicates "any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation or gender identity," provided:

- that the seller does not own more than three single-family dwellings; and
- that if the seller does not currently live in the dwelling or if he or she was not the most recent occupant, this exemption applies to only one sale in 24 months.

The Act also generally does not bar a religious or denominational organization "from limiting admission to or giving preference to persons of the same religion or denomination" or to persons the organization believes will "promote the religious or denominational principles for which it is

established or maintained," unless membership is restricted because of race, color, national origin or ancestry. Also, the Act does not bar a religious organization from imposing discriminatory renting practices that are based upon sexual orientation or gender identity, except that the Act's provision related to sexual orientation and gender identity apply to:

- the organization's for-profit activities that are subject to § 511(a) of the Internal Revenue Code; or
- the organization's nonprofit activities that are subject to § 501(c)(3) of the Internal Revenue Code.

The Act also exempts rooms or units in dwellings with living quarters that are occupied by no more than four independent families, if the owner maintains and occupies one of the units as his or her residence.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Sections 28-1-7 and 28-1-9 amended 2004; § 28-1-2 amended 2007.

N.M. Stat. § 28-1-2, -7, -9 (2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

New Mexico, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is an unlawful discriminatory practice for a person to whom application is made for (a) financial assistance to acquire, construct, rehabilitate, repair, or maintain a housing accommodation or real property or (b) any type of consumer credit:

- to consider a person's sex, sexual orientation, gender identity, or spousal affiliation, among other traits, when granting, extending, modifying, or renewing financial assistance or when determining the credit's rates, terms, conditions, or provisions; or
- to use an application form or to make a record or inquiry in connection with a financial assistance application that expresses a limitation, specification, or discrimination as to a person's sex, sexual orientation, gender identity, or spousal affiliation, among others.

PROPERTY INSURANCE

No relevant provisions were located. An insurer that uses credit information to underwrite, rate, or renew personal insurance coverage may not use an insurance score that is calculated using the consumer's "income, gender, address, race, color, national origin, religion or marital status" as a factor. The statute does not address sexual orientation.

Section 28-1-7 amended 2004; § 59A-17A-4 enacted 2005.

N.M. Stat. §§ 28-1-7; 59A-17A-4 (2014)

New Mexico, Property Titling

Because New Mexico now allows same-sex marriage, property should be able to be titled to a same-sex married couple in the same manner as any other married couple. Generally, real estate

interests granted or bequeathed to two or more persons (other than executors or trustees) are held in common, unless the grant or bequest clearly expresses that it is "held by both parties." In a real estate conveyance, the designation of two or more grantees "as joint tenants" means that the conveyance is not as tenants in common.

Section 47-1-15 amended 1953; § 47-1-35 amended 1947.

N.M. Stat. §§ 47-1-15, -35 (2014)

New Mexico, Real Estate Transfer Tax

No relevant provisions were located.

New Mexico, Rights Upon Death

INHERITANCE

Because New Mexico law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under New Mexico's inheritance laws. Therefore, generally,

- if a decedent dies without a will, the surviving spouse receives the entire intestate estate of separate property if there is no surviving issue, and one-half of the community property "as to which the decedent could have exercised the power of testamentary disposition"; and
- if a deceased spouse's will does not provide for the surviving spouse, the surviving spouse may receive his or her intestate share unless the omission was intentional.

OTHER RIGHTS

Because New Mexico law permits same-sex marriages, a same-sex spouse should be treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Section 45-2-102 enacted 1975; § 45-2-301 amended 1995; revenue ruling issued 2013.

N.M. Stat. §§ 45-2-102, -301 (2014); [Rev. Rul. 2013-17](#)

New Mexico, Rights Upon Dissolution

Because New Mexico now allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple should be the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A New Mexico divorce may not be possible because the state has a six-month residency requirement before a party may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages.

Section 40-4-5 amended 1977.

N.M. Stat. § 40-4-5 (2014)

New Mexico, Status of Same-Sex Marriage

N.M. Stat. § 40-1-1 provides that "marriage is contemplated by the law as a civil contract, for which the consent of the contracting parties, capable in law of contracting, is essential," but § 40-1-18 clearly refers to a marriage as being a union between a husband and a wife. However, New Mexico allows same-sex marriage after a recent state supreme court decision. On December 19, 2013, the court in [Griego v. Oliver, 316 P.3d 865 \(N.M. 2013\)](#), held that the state's marriage laws must apply to same-sex couples and that the state must issue marriage licenses to couples without respect to their gender. The court also held that "all rights, protections, and responsibilities that result from the marital relationship shall apply equally to both same-gender and opposite-gender married couples."

New Mexico's Attorney General has opined that a "same-sex marriage that is valid under the laws of the country or state where it was consummated would likewise be found valid in New Mexico."

Section 40-1-1 amended 1953; § 40-1-18 amended 1961; attorney general opinion issued 2011.

N.M. Stat. §§ 40-1-1, -18 (2014); [2014 N.M. Op. Att'y Gen. 11-01 \(2011\)](#)

New Mexico, Tax Treatment

STATE INCOME TAX STATUS

The state has not issued guidance regarding a same-sex couple's filing status. However, since New Mexico now allows same-sex marriage after a recent state supreme court decision, taxpayers in a same-sex marriage will presumably be treated the same as taxpayers in any other marriage.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

The state has not issued any guidance regarding the relationship between federal and state taxes for same-sex couples.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Revenue ruling issued 2013.

New York

New York, Fair Housing Laws

PROTECTED CLASS

No person may be subjected to discrimination because of his or her sex, marital status, or sexual orientation, among others. The ownership, use, and occupancy of housing accommodations and commercial space without discrimination because of sexual orientation, sex, or marital status is a civil right.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors

HOUSING DISCRIMINATION

Public-Assisted Housing (§ 296(2-a))

It is an unlawful discriminatory practice for the person who owns or has the right to own, possess, rent, or lease, publicly-assisted housing accommodations:

- to refuse to sell, rent, lease, or otherwise deny or withhold publicly-assisted housing accommodations because of a person's sexual orientation, sex, marital status, or familial status;
- to represent that a publicly-assisted housing accommodation or land is not available when it is available;
- to discriminate against a person because of his or her sexual orientation, sex, marital status, or familial status, in the terms, conditions, or privileges of a publicly-assisted housing accommodation or related facilities or services;

- to make an inquiry or record concerning the sexual orientation, sex, marital status, or familial status of a person seeking to rent or lease a publicly-assisted housing accommodation; or
- to print or circulate a statement or advertisement, to use an application form, or to make a record or inquiry in connection with the prospective purchase, rental, or lease of a publicly-assisted housing accommodation that expresses a limitation, specification, or discrimination as to sexual orientation, sex, marital status, or familial status (or an intent to make such limitation, specification or discrimination).

Representations (§ 296(3-b))

It is an unlawful discriminatory practice for a real estate licensee or another person or entity, for the purpose of inducing a real estate transaction that may benefit the person or its stockholders or members financially, to represent that:

- a change has occurred or will or may occur in the area's composition regarding property owners' or occupants' sexual orientation, sex, marital status, or familial status; and
- this change will or may result in undesirable consequences.

Housing Accommodations (§ 296(5)(a))

It is an unlawful discriminatory practice for an owner, lessee, or other person with the right to sell, rent, or lease a housing accommodation:

- to refuse to sell, rent, lease, or otherwise withhold housing accommodations because of sexual orientation, sex, marital status, or familial status;

- to represent that a housing accommodation or land is not available when it is available;
- to discriminate against a person because of his or her sexual orientation, sex, marital status, or familial status, in the terms, conditions, or privileges of housing accommodations or in related facilities or services; or
- to print or circulate a statement or advertisement, to use an application form, or to make a record or inquiry in connection with the prospective purchase, rental, or lease of a housing accommodation that expresses a limitation, specification, or discrimination as to sexual orientation, sex, marital status, or familial status (or an intent to make such limitation, specification, or discrimination).

These provisions do not apply to:

- the rental of a housing accommodation in a building that contains dwellings for no more than two independent families, if the owner resides in one of the housing accommodations;
- the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex; or
- the rental of a room in a housing accommodation, if the rental is by the accommodation's occupant or owner and if the owner resides in the housing accommodation.

Commercial Space (§ 296(5)(b))

It is an unlawful discriminatory practice for an owner, lessee, or other person with the right to sell, rent, or lease land or commercial space:

- to refuse to sell, rent, lease, or otherwise to withhold land or commercial space because of sexual orientation, sex, marital status, or familial status;

- to discriminate against a person because of his or her sexual orientation, sex, marital status, or familial status, in the terms, conditions, or privileges of land or commercial space, or in related facilities or services; or
- to print or circulate a statement or advertisement, to use an application form, or to make a record or inquiry in connection with the prospective purchase, rental, or lease of land or commercial space that expresses a limitation, specification, or discrimination as to sexual orientation, sex, marital status, or familial status (or an intent to make such limitation, specification, or discrimination).

Real Estate Licensees (§ 296(5)(c))

It is an unlawful discriminatory practice for a real estate licensee:

- to refuse to sell, rent, or lease a housing accommodation, land, or commercial space, or to refuse to negotiate for the same, because of a person's sexual orientation, sex, marital status, or familial status;
- to represent that a housing accommodation, land, or commercial space is not available when it is available;
- to deny or withhold a housing accommodation, land, or commercial space because of a person's sexual orientation, sex, marital status, or familial status; or
- to print or circulate a statement or advertisement, to use an application form, or to make a record or inquiry that expresses a limitation, specification, or discrimination as to sexual orientation, sex, marital status, or familial status (or an intent to make such limitation, specification, or discrimination).

Coercion (§ 296(6))

It is an unlawful discriminatory practice for a person "to aid, abet, incite, compel or coerce" another to do any of the forbidden acts described above.

Retaliation (§ 296(7))

It is an unlawful discriminatory practice for a person to retaliate or discriminate against a person because he or she has:

- opposed a forbidden practice described above; or
- filed a complaint, or testified or assisted in any proceeding under article 15.

Religious Exemption (§ 296(11))

A religious institution or organization, or an organization operated for charitable or educational purposes that is operated, supervised, or controlled by a religious organization, may limit the sale or rental of housing accommodations in order to promote its religious principles.

Definitions (§ 292(27))

In this context, "sexual orientation" means "heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived."

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section § 40-c amended 2002; §§ 296 and 291 amended 2010; § 292 amended 2012.

[N.Y. Civ. Rights Law § 40-c; Exec. Law §§ 291, 292, 296 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

New York, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is an unlawful discriminatory practice for a creditor:

- in the case of credit applications to purchase, acquire, construct, rehabilitate, repair, or maintain a housing accommodation, land, or commercial space, to discriminate against an applicant because of the applicant's, or the applicant's owner's, director's, officer's, or employee's, sexual orientation, sex, marital status, or familial status when "granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of" credit;
- to discriminate "in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit," on the basis of sexual orientation, sex, marital status, or familial status;

- to use an application form or make a record or inquiry that expresses a limitation, specification, or discrimination as to sexual orientation, sex, marital status, or familial status;
- to refuse to consider sources of an applicant's income or to discount an applicant's income because of his or her sexual orientation, sex, marital status, or familial status; or
- to discriminate against a married person because he or she does not use his or her spouse's surname.

It is also discriminatory if, because of an applicant's sexual orientation, sex, marital status, or familial status,

- an applicant or class of applicants is denied credit, but other applicants of similar overall credit-worthiness are granted credit; or
- special requirements or conditions are imposed on an applicant or class of applicants so that similar requirements or conditions are not imposed on other applicants with similar overall credit-worthiness.

PROPERTY INSURANCE

No relevant provisions specifically addressing sexual orientation were located. An individual or entity may not refuse to issue, cancel, or renew an insurance policy because of the applicant's or policyholder's sex or marital status.

Section 2607 enacted 1984; § 296-a amended 2012.

[N.Y. Exec. Law § 296-a; Ins. Law § 2607 \(2014\)](#)

New York, Property Titling

Because New York allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, generally, a property disposition to multiple persons creates a tenancy in common, unless expressly stated to be a joint tenancy. However, a real property disposition to a husband and wife creates a tenancy by the entirety, unless expressly stated to be a joint tenancy or tenancy in common. Also, a property disposition to two or more persons as executors, trustees, or guardians creates a joint tenancy, and property passing in intestacy to multiple persons creates a tenancy in common.

Section 6-2.2 amended 1995.

[N.Y. Est. Powers & Trusts Law § 6-2.2 \(2014\)](#)

New York, Real Estate Transfer Tax

Because New York allows same-sex marriage, the state's real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, New York generally imposes a state realty transfer tax pursuant to § 1402 on each real property conveyance, provided the consideration exceeds \$500. In addition to the tax imposed by § 1402, New York imposes an additional tax on each conveyance of residential real property with a consideration of \$1 million or more.

The following, among others, are exempt from the state's real estate transfer tax:

- conveyances that, without additional consideration, "confirm, correct, modify or supplement a prior conveyance";
- conveyances "without consideration and otherwise than in connection with a sale," including a conveyance conveying realty as a bona fide gift; and
- deeds of partition.

Section 1402-a enacted 1989; § 1405 amended 1989; § 1402 amended 2011.

[N.Y. Tax Law §§ 1402, 1402-a, 1405 \(2014\)](#)

New York, Rights Upon Death

INHERITANCE

Because New York law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under New York's inheritance laws. Therefore, generally,

- if a decedent is survived by a spouse and no issue, all property of a decedent that was not disposed of by will, after deducting certain expenses and debts, goes to the spouse; and
- a surviving spouse may choose to take an elective share in the estate.

OTHER RIGHTS

Appointment as a Personal Representative

Because New York law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

The following persons in descending priority have the right to control the disposition of a decedent's remains:

- the person designated in a written instrument by the decedent;
- the decedent's surviving spouse;
- the decedent's surviving domestic partner; and
- numerous other specified relatives and acquaintances.

An employer who extends to its employees funeral or bereavement leave for the death of the employee's spouse may not deny the same leave to an employee for the death of the employee's same-sex committed partner. In this context, "same-sex committed partners" are those "who are financially and emotionally interdependent in a manner commonly presumed of spouses."

ESTATE OR INHERITANCE TAXES

A same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because New York law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under New York's state estate-tax laws.

The estates of same-sex spouses who died before July 24, 2011, may (but are not required to) amend any previously filed estate tax return if the statute of limitations period is open. For New York state estate tax purposes, estates of same-sex spouses may claim the same deductions and elections allowed for estates of different-sex spouses, including the marital deduction.

Sections 4-1.1 and 1421 amended 1992; § 79-n enacted 2010; § 4201 amended 2012; both memoranda issued 2013.

[N.Y. Civ. Rights Law § 79-n](#); [Est. Powers & Trusts Law § 4-1.1](#); [Pub. Health Law § 4201](#); [Surr. Ct. Proc. Act § 1421 \(2014\)](#); [N.Y. State Dep't of Taxation and Finance, Taxpayer Guidance Division, Technical Memorandum TSB-M-13\(5\)I, \(10\)M, Information for Same-Sex Married Couples \(Sept. 13, 2013\)](#); [N.Y. State Dep't of Taxation and Finance, Taxpayer Guidance Division, Technical Memorandum TSB-M-13\(9\)M, New York Estate Tax Information for Estates of Individuals Married to Same-Sex Spouses \(July 18, 2013\)](#)

New York, Rights Upon Dissolution

Because New York allows same-sex marriage, New York's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A New York divorce may not be possible because New York has a residency requirement before parties may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages. New York requires the following residency status for parties to be able to bring an annulment, divorce, or separation action:

- the parties were married in New York and either party is and has been a New York resident for one year before the action is started;

- the parties have resided in New York as husband and wife and either party is and has been a New York resident for one year before the action is started;
- the cause occurred in New York and either party has been a New York resident for at least one year before the action is started;
- the cause occurred in New York and both parties are New York residents at the time the action is started; or
- either party has been a New York resident for at least two years immediately before the action is started.

Section 230 amended 1967.

[N.Y. Dom. Law § 230 \(2014\)](#)

New York, Status of Same-Sex Marriage

Effective July 24, 2011, New York allows same-sex marriage. The legislative intent behind the state's "Marriage Equality Act" is that same-sex couples "should have the same access as others to the protections, responsibilities, rights, obligations, and benefits of civil marriage." Therefore, the legislature intended that marriages of same-sex and different-sex couples should be "treated equally in all respects under the law."

An otherwise valid marriage is valid whether the parties are of the same sex or different sexes. A "government treatment or legal status, effect, right, benefit, privilege, protection or responsibility" relating to marriage does not differ based on the parties to the marriage being or having been the same or a different sex. When implementing spouses' rights and responsibilities under the law, all gender-specific language or terms must be construed in a gender-neutral manner.

Section 10-a amended 2011.

[N.Y. Dom. Rel. Law § 10-a \(2014\)](#); *see also* Laws 2011, ch 95, § 2 (legislative intent)

New York, Tax Treatment

STATE INCOME TAX STATUS

New York gives equal treatment to individuals legally married to different-sex spouses and same-sex spouses since the enactment of the Marriage Equality Act. Based federal case law and an IRS ruling, this equal treatment also applies to the state's personal income tax for earlier periods.

The following rules apply to the state's income tax for same-sex couples who are in a legally recognized marriage:

- for tax years before 2011, individuals who were legally married to a same-sex spouse may (but are not required to) file an amended New York State return to use a married filing status for any tax year for which the statute of limitations for filing an amended return is open (generally, the later of three years from the date the return was filed or two years from the date the tax was paid);
- for tax years 2011 and 2012, same-sex married couples must file their New York State income tax returns using a married filing status, even if they used a single or head of household filing status on their federal income tax returns; and
- for tax years 2013 and after, same-sex married couples must use the general married filing status rules.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

New York permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple

calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by New York's statutes, and then applies the state's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. New York tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

No specifically relevant provisions were located. New York tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. New York tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. New York tax laws apply to same-sex spouses in the same manner as any other married couple.

Section 601 amended 2013; memorandum issued 2013; revenue ruling issued 2013.

[N.Y. Tax Law § 601 \(2014\)](#); [N.Y. State Dep't of Taxation and Finance, Taxpayer Guidance Division, Technical Memorandum TSB-M-13\(5\)I, \(10\)M, Information for Same-Sex Married Couples \(Sept. 13, 2013\)](#); [Rev. Rul. 2013-17](#)

North Carolina

North Carolina, Fair Housing Laws

PROTECTED CLASS

North Carolina's laws do not identify sexual orientation or gender identity as a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

North Carolina's laws addressing unlawful discriminatory housing practices prohibit discrimination based on sex or familial status, among other traits, but they do not protect against discrimination based on sexual orientation or marital status

Similarly, it is an unlawful discriminatory housing practice for a person or other entity whose business includes engaging in residential real estate related transactions to discriminate because of a person's sex or familial status. It is also an unlawful discriminatory housing practice:

- for a person to induce another to enter into a real estate transaction by representing that a change has occurred or may occur in the area's composition with respect to the owners' or occupants' sex or familial status; or
- to deny a person access to or membership or participation in a real estate brokers' organization, multiple listing service, or other service or facility related to the business of engaging in real estate transactions because of sex or familial status.

Sexual orientation is not addressed in any of these contexts.

Fair housing ordinances in certain municipalities

A municipality may adopt ordinances prohibiting discrimination "on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions," but nothing prohibits discrimination based on sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 160A-499.2 enacted 2007; § 41A-4 amended 2009; ethics code issued 2014.

[N.C. Gen. Stat. §§ 41A-4; 160A-499.2 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

North Carolina, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. North Carolina law provides that a licensee under the North Carolina Consumer Finance Act may not refuse to extend credit or discriminate in credit's terms or conditions because of the applicant's sex or marital status, but sexual orientation is not addressed.

Also, it is an unlawful discriminatory housing practice for a person or entity whose business includes engaging in residential real estate related transactions to discriminate because of a person's sex or familial status, but discrimination based on sexual orientation is not prohibited. In this context, "residential real estate related transaction" includes making or purchasing of loans or providing financial assistance that is:

- to be used to purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real estate.

PROPERTY INSURANCE

No relevant provisions were located.

Section 41A-4 amended 2009; § 53-180 amended 2013.

[N.C. Gen. Stat. §§ 41A-4; 53-180 \(2013\)](#)

North Carolina, Property Titling

No provisions were located that address the titling of a same-sex couple's property. North Carolina does not recognize same-sex relationships in any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples. Generally, a real property conveyance by a husband or a wife to such husband and wife vests title in the couple as tenants by the entirety unless a contrary intention is expressed.

Section 39-13.3 amended 1977.

[N.C. Gen. Stat. § 39-13.3 \(2013\)](#)

North Carolina, Real Estate Transfer Tax

North Carolina levies a state excise tax on any instrument by which a person conveys a real property interest. No exceptions relating to transfers between spouses were located. However, the transfer tax does not apply to any of the following transfers of a real property interest, among others:

- by operation of law;
- by the provisions of a will;
- by intestacy;

- by gift; and
- if no consideration is due or paid by the transferee to the transferor.

Section 105-228.29 amended 1999; § 105-228.30 amended 2013.

[N.C. Gen. Stat. §§ 105-228.29, .30 \(2013\)](#)

North Carolina, Rights Upon Death

INHERITANCE

Because North Carolina law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because North Carolina does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant state-law provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

North Carolina, Rights Upon Dissolution

Because North Carolina does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

North Carolina, Status of Same-Sex Marriage

North Carolina does not recognize same-sex marriages. The state's constitution provides that "[m]arriage between one man and one woman is the only domestic legal union" that is valid or recognized in North Carolina. The state's statutes also provide that a valid and sufficient marriage is created by the consent of a male and a female who may lawfully marry. Marriages between individuals of the same gender are not valid in North Carolina.

No provisions in North Carolina's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Although case law is outside the scope of this survey, it is important to note that in *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va. 2014), a the U.S. District Court for the Eastern District of Virginia ruled that Virginia's laws banning same-sex marriage were unconstitutional. The court stayed its ruling pending the decision's appeal. The Fourth Circuit Court of Appeals recently upheld the lower court's ruling in *Bostic v. Schaefer*, No. 14-1167 (4th Cir. July 28, 2014). Because North Carolina is part of the Fourth Circuit, the state's constitutional amendment defining marriage as between one man and one woman is also likely to be ruled unconstitutional unless the Supreme Court overturns the Circuit Court's decision.

Section 51-1.2 enacted 1995; § 51-1 amended 2012; constitutional section adopted 2011.

[N.C. Gen. Stat. §§ 51-1, -1.2 \(2013\)](#); [N.C. Const. art. 14, § 6](#)

North Carolina, Tax Treatment

STATE INCOME TAX STATUS

Individuals in a same-sex marriage must each file their North Carolina individual income tax returns on Form D-400 using the filing status of single or, if qualified, head of household or qualifying widow or widower.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals

who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Each individual in a same-sex marriage must file a separate North Carolina income tax return on Form D-400 using the filing status of single or, if qualified, head of household or qualifying widow or widower. If a same-sex couple files a federal income tax return as "married filing jointly" or "married filing separately," each spouse must complete a separate pro forma federal return using the filing status of single or, if qualified, head of household or qualifying widow or widower in order to determine his or her North Carolina adjusted gross income, deductions, and tax credits. The taxpayers must each attach a copy of the pro forma federal return to his or her North Carolina return.

If the taxpayer files electronically, he or she must select the "State only" return for North Carolina. The taxpayer must transmit the pro forma federal return with the state return.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Directive issued 2013; revenue ruling issued 2013.

[N.C. Dep't of Rev., Directive PD-13-1 \(Oct. 18, 2013\); Rev. Rul. 2013-17](#)

North Dakota

North Dakota, Fair Housing Laws

PROTECTED CLASS

North Dakota's laws prohibit discrimination in housing because of sex or marital status, but they do not address sexual orientation or gender identity.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Laws

North Dakota's laws regarding housing discrimination, blockbusting, residential real estate-related transactions, and broker services all prohibit discrimination based on sex, marital status, or familial status, but they do not protect against discrimination based on sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 14-02.4-01 amended 1993; §§ 14-02.5-02, 14-02.5-05, 14-02.5-07, and 14-02.5-08 amended 2001.

[N.D. Cent. Code, §§ 14-02.4-01; 14-02.5-02, -05, -07, -08 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

North Dakota, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. North Dakota's residential real estate-related transaction laws, which apply to making or purchasing loans or providing other financial assistance, prohibit discrimination based on sex, familial status, or marital status, but they do not address discrimination based on sexual orientation.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, with regard to personal insurance, an insurer that uses credit information to underwrite or rate risks may not use an insurance score that is calculated using gender or marital status. The state's personal-insurance statutes do not address sexual orientation. Similarly, an insurer may not decline or terminate property and casualty policies because of the applicant's or the insured's sex or marital status. Again, the statutes do not mention sexual orientation.

Sections 14-02.5-07 and 26.1-39-17 amended 2001; § 26.1-25.1-03 enacted 2003.

[N.D. Cent. Code §§ 14-02.5-07; 26.1-25.1-03; -39-17 \(2013\)](#)

North Dakota, Property Titling

No provisions were located that address the titling of a same-sex couple's property.

North Dakota, Real Estate Transfer Tax

No applicable provisions were located. North Dakota has passed a concurrent resolution to submit to the electorate at North Dakota's 2014 general election a new section to the Constitution of North Dakota providing that neither the state nor any county, township, city, or other political subdivision may impose "any mortgage taxes or any sales or transfer taxes on the mortgage or transfer of real property."

Resolution passed 2013.

[H.C.R. 3006, 63rd Leg., Reg. Sess. \(N.D. 2013\)](#)

North Dakota, Rights Upon Death

INHERITANCE

Because North Dakota does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because North Dakota does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant state law provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

North Dakota, Rights Upon Dissolution

Because North Dakota does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

North Dakota, Status of Same-Sex Marriage

North Dakota does not recognize same-sex marriages. The state's constitution provides that "[m]arriage consists only of the legal union between a man and a woman." No other domestic union is recognized as a marriage or given "the same or substantially equivalent legal effect."

Pursuant to North Dakota's statutes, marriage is a "personal relation arising out of a civil contract between one man and one woman to which the consent of the parties is essential." The term "spouse" refers only to "a person of the opposite sex who is a husband or a wife."

A same-sex marriage that is recognized by another state is not valid in North Dakota.

Sections 14-03-01 and 14-03-08 amended 1997; constitutional section amended 2004.

[N.D. Cent. Code 14-03-01, -08 \(2013\); N.D. Const. art. XI, § 28](#)

North Dakota, Tax Treatment

STATE INCOME TAX STATUS

Individuals in a same-sex marriage recognized by another state must each file a separate North Dakota income tax return using the filing status of single or, if qualified, head of household.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

If individuals in a same-sex marriage recognized by another state file a federal income tax return using the married filing jointly filing status, they must complete North Dakota's Schedule ND-1S to determine each individual's share of the adjusted gross income and taxable income reported on

their joint federal return. Each individual must then use his or her separate share of these amounts to complete his or her separate North Dakota return.

Deductions

If a same-sex couple itemized deductions on their joint federal return, the taxpayers must allocate the deduction so that the amounts equal the amount that "would have been allowed to the taxpayer had the taxpayer filed a federal return as a single person." As an alternative, the taxpayer may allocate the joint deductions using a ratio equal to the taxpayer's separate federal adjusted gross income divided by the joint federal adjusted gross income.

If a couple claimed the standard deduction on a joint federal return, each taxpayer's share generally equals one-half of the basic standard deduction.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Schedule issued 2013; revenue ruling issued 2013.

[N.D. Office of State Tax Comm'r, North Dakota Schedule ND-1S, Instructions \(2013\); Rev. Rul. 2013-17](#)

Ohio

Ohio, Fair Housing Laws

PROTECTED CLASS

No provisions were located indicating that sexual orientation is a protected right in Ohio.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Ohio's fair housing laws prohibit discrimination in housing accommodations because of sex or familial status, but they do not address sexual orientation or marital status.

The state's criminal code similarly provides that it is unlawful for a person to interfere with another's fair housing rights because of the other person's sex or familial status, among other traits. However, that statute also does not address discrimination based on sexual orientation or marital status.

Real Estate Licensees

A real estate broker's office must prominently display a statement that it is illegal for the licensee to discriminate because of a person's sex or familial status, among other traits, but sexual orientation is not mentioned. The licensee's agency agreement must contain a similar provision.

Blockbusting is illegal.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;

- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 2927.03 amended 2008; §§ 4735.16 and 4735.55 amended 2011; § 4112.02 amended 2013.

[Ohio Rev. Code §§ 2927.03; 4112.02; 4735.16, .55 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Ohio, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Ohio's fair housing laws regarding financing housing accommodations prohibit discrimination based on sex or familial status when extending credit or receiving a loan application, but they do not protect against discrimination based on sexual orientation or marital status. Similarly, it is an unlawful discriminatory practice for a creditor to discriminate against any applicant for credit based on sex or marital status, among other traits, but not including sexual orientation.

PROPERTY INSURANCE

No specifically relevant provisions were located. Ohio's civil rights laws regarding housing accommodations prohibit discrimination based on sex or familial status when extending homeowners' insurance, but they do not protect against discrimination based on sexual orientation or marital status. Similarly, although Ohio's insurance laws provide that it is an unfair and deceptive act in the insurance business to refuse to issue, to cancel, or to decline to renew a policy because of the applicant's or insured's sex or marital status, they do not address sexual orientation. Also, an agent may not discriminate when charging a fee because of an individual's sex or marital status, but sexual orientation is again not addressed. However, an insurance agent generally may not "unfairly discriminate between persons of essentially the same class and of essentially the same hazard."

Sections 3905.55 and 4112.021 amended 2008; § 3901.21 amended 2012; § 4112.02 amended 2013.

[Ohio Rev. Stat. §§ 3901.21; 3905.55; 4112.02, .021 \(2013\)](#)

Ohio, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Ohio does not recognize same-sex relationships in any form, so any title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples. Generally, except as otherwise provided by statute, a real property interest conveyed or devised to multiple persons is held as tenants in common and the joint interest created is a tenancy in common.

Section 5302.19 enacted 1985.

[Ohio Rev. Stat. § 5302.19 \(2013\)](#)

Ohio, Real Estate Transfer Tax

Ohio imposes a transfer tax on deeds conveying real property, unless an exception applies. Because Ohio does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses apply. However, the following exceptions may be relevant:

- to confirm or correct a previously recorded deed;
- to evidence a gift between parent and child;
- pursuant to a court order, to the extent that the transfer is not the result of a sale;
- among the heirs at law or devisees of a common decedent, if no monetary consideration is paid; or

- to the beneficiaries of a trust, provided the fee was paid on the transfer from the trust grantor to the trustee or the transfer was made pursuant to trust provisions that became irrevocable upon the grantor's death.

Section 322.02 amended 2011; § 319.54 amended 2014.

[Ohio Rev. Code §§ 319.54](#) (effective until Sept. 4, 2014), [.54](#) (effective as of Sept. 4, 2014); [322.02 \(2014\)](#)

Ohio, Rights Upon Death

INHERITANCE

Because Ohio law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Ohio does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant state-law provisions were located.

Ruling issued 2013.

[Rev. Rul. 2013-17](#)

Ohio, Rights Upon Dissolution

Because Ohio does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Ohio, Status of Same-Sex Marriage

Ohio does not recognize same-sex marriages. Ohio's constitution provides that "[o]nly a union between one man and one woman may be a marriage valid in or recognized by" the state. Ohio also may not "create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage."

The state's statutes also provide that a marriage may "only be entered into by one man and one woman," elaborating as follows:

(C)(1) Any marriage between persons of the same sex is against the strong public policy of this state. Any marriage between persons of the same sex shall have no legal force or effect in this state and, if attempted to be entered into in this state, is void ab initio and shall not be recognized by this state.

(2) Any marriage entered into by persons of the same sex in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state.

(3) The recognition or extension by the state of the specific statutory benefits of a legal marriage to nonmarital relationships between persons of the same sex or different sexes is against the strong public policy of this state. Any public act, record, or judicial proceeding of this state . . . that extends the specific statutory benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes is void ab initio.

Any "public act, record, or judicial proceeding" of any other jurisdiction that extends the specific benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes has no legal force or effect in Ohio.

Although case law is outside the scope of this survey, it is important to note that in *Henry v. Himes*, No. 1:14-cv-129, 2014 U.S. Dist. LEXIS 52600 (S.D. Ohio Apr. 16, 2014), the United States District Court for the Southern District of Ohio, Western Division, stayed a previous order that the state must recognize out-of-state same-sex marriages, pending action by a higher court. The original order recognizing the plaintiffs' out-of-state marriages applies to the named plaintiffs in the case.

Section 3101.01 amended 2004; constitutional section adopted 2004.

[Ohio Rev. Stat. § 3101.01 \(2013\); Ohio Constitution, Article XV § 11](#)

Ohio, Tax Treatment

STATE INCOME TAX STATUS

Individuals who have entered into same-sex marriages in another jurisdiction must use the filing status of "single" or, if qualified, "head of household" when filing their state income tax returns.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Each individual who entered into a same-sex marriage in another jurisdiction must file his or her Ohio return according to the following guidelines:

- file a separate Ohio income tax return using Form IT 1040, checking the box indicating that Schedule IT S will be filed;
- use the filing status of "single" or, if qualified, "head of household"; and
- complete *Ohio Schedule IT S, Federal AGI to be Reported by Same-Gender Taxpayers Filing a Joint Federal Return*, which is a supplement to Form IT 1040, on which the couple allocates the federal adjusted gross income reported on their joint federal income tax return to each individual to arrive at the amounts each individual must use as his or her federal adjusted gross income for Ohio tax purposes.

Taxpayers may not file these returns using Form IT 1040EZ or TeleFile.

Although the IRS Revenue Ruling permits same-gender couples to file amended federal returns to change their filing status to "married filing jointly" or "married filing separately," a same-sex couple may not file a corresponding Ohio amended return to change their filing status for prior years.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusions

No specifically relevant provisions were located.

Withholding

Certain employer-provided benefits are excluded from an employee's gross income for federal income tax purposes. However, many of these exclusions are permitted only when the benefits are provided to the employee and the employee's "federal tax dependents," which include the employee's spouse. If an employer provides benefits to an individual that is not an employee's federal tax dependent, the employer must include the benefit's value in the employee's gross income.

However, because Ohio does not recognize marriage between persons of the same gender, an Ohio employer of a same-sex spouse must determine withholding taxes "based on the taxable gross earnings amount of each employee as if it was calculated in a manner that does not recognize same-gendered marriages." Therefore, an employer must treat benefits provided to a same-gender spouse of an employee as imputed income when calculating the employee's Ohio income tax withholding.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Releases dated 2013; revenue ruling issued 2013.

[Ohio Dep't of Taxation, Tax Information Release IT 2013-01 \(Dec. 19, 2013\)](#); [Ohio Dep't of Taxation, Employer Withholding Information Release EW 2013-01 \(Nov. 14, 2013\)](#); [Rev. Rul. 2013-17](#)

Oklahoma

Oklahoma, Fair Housing Laws

PROTECTED CLASS

Oklahoma law does not address discrimination based on gender identity or sexual orientation.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Oklahoma's laws regarding unlawful discriminatory housing practices prohibit discrimination based on gender or familial status, but not sexual orientation or marital status, in the following contexts, among others:

- refusing to sell, rent, or negotiate for the sale or rental of housing;
- denying a person access to or membership in a multiple-listing service or other real estate brokers' organization or service;
- knowingly inducing a person to transfer real property, or discouraging a person from purchasing real property, by representing the existing or potential proximity of real property owned, used, or occupied by persons of any particular "race, color, religion, gender, national origin, age, familial status or disability";

- representing that the existing or potential proximity of protected groups may result in lower property values, a change in the area's character, an increase in criminal behavior, or a decline in the quality of schools serving the area; or
- discriminating when selling, brokering, or appraising residential real property by a person whose business includes engaging in residential real estate related transactions.

Oklahoma's laws also explicitly state that no other categories or classes of persons are protected by sections 1451 through 1453 of title 25. Furthermore, the statutory provisions described above protect against discrimination based on disability, but the relevant definitions clarify that "[f]or purposes of Sections 1451 through 1453 of . . . title 25, 'an individual with a disability' or 'disability' does not apply to an individual because of sexual orientation or the sexual preference of the individual or because that individual is a transvestite."

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located. Oklahoma's laws regarding unlawful discriminatory housing practices prohibit a person from including in a transfer, sale, rental, or lease of housing a restrictive covenant that discriminates because of "race, color, religion, gender, national origin, age, familial

status, or disability," but it does not prohibit discrimination based on sexual orientation or marital status.

Sections 1451 and 1452 amended 2013; ethics code issued 2014.

[Okla. Stat. tit. 25, §§ 1451, 1452 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Oklahoma, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Oklahoma's unlawful financing laws prohibit discrimination based on sex or marital status when extending credit or receiving a loan application, but they do not protect against discrimination based on sexual orientation.

Similarly, it is an unlawful discriminatory practice to discriminate against a person obtaining or using financial assistance to acquire, construct, rehabilitate, repair, or maintain housing because of gender or familial status. Also, a person whose business includes engaging in residential real estate related transactions may not discriminate because of an individual's gender or familial status. In this context, "residential real estate related transaction" includes making or purchasing loans or providing other financial assistance. Discrimination based on sexual orientation is not protected in either provisions.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not use an insurance score that is calculated using a consumer's gender or marital status, but sexual orientation is not addressed.

Section 953 amended 2010; § 1452 amended 2013.

[Okla. Stat. tit. 25, § 1452; tit. 36, § 953 \(2013\)](#)

Oklahoma, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Oklahoma does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples. Generally, Oklahoma

law appears to presume the creation of a tenancy in common; a joint interest is created "when expressly declared in the instrument, will or transfer to be a joint tenancy." Only a husband and wife may create a tenancy by entirety.

Section enacted 1945.

[Okla. Stat. tit. 60, § 74 \(2013\)](#)

Oklahoma, Real Estate Transfer Tax

Oklahoma imposes a transfer tax on each deed, instrument, or writing by which any realty is conveyed to or vested in the purchaser, provided the consideration or value (excluding any liens or encumbrances) exceeds \$100, unless an exception applies. Because Oklahoma does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses are relevant. However, the following exceptions, among others, may apply:

- a deed that, without additional consideration, confirms, corrects, modifies, or supplements a previously recorded deed;
- a deed between a parent and child, or certain other related persons, without consideration; or
- certain partition deeds.

Section 3201 amended 1991; § 3202 amended 2001.

[Okla. Stat. Ann. tit. 68, § 3201, 3202 \(2013\)](#)

Oklahoma, Rights Upon Death

INHERITANCE

Because Oklahoma law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Oklahoma does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Oklahoma, Rights Upon Dissolution

Because Oklahoma does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Oklahoma, Status of Same-Sex Marriage

Oklahoma does not recognize same-sex marriages. The state's constitution provides that marriage consists "only of the union of one man and one woman." No "legal incidents" of marriage are conferred upon unmarried couples. Oklahoma does not recognize a marriage of persons of the same gender performed in another state.

Oklahoma statutes also permit a qualified unmarried person to marry only a person of the opposite sex. A same-sex marriage performed in another state is not valid and binding Michigan.

Although case law is outside the scope of this survey, it is important to note that in *Bishop v. U.S. ex rel. Holder*, 962 F. Supp. 2d 1252 (N.D. Okla. 2014), the United States District Court for the Northern District of Oklahoma ruled that Oklahoma's constitutional and statutory bans on same-sex marriage are unconstitutional. The Tenth Circuit Court of Appeals recently affirmed that holding in *Bishop v. Smith*, Nos. 14-5003 & 14-5006, 2014 U.S. App. LEXIS 13733 (10th Cir. July 18, 2014). The court stayed its ruling pending action by the Supreme Court.

Section 3.1 enacted 1996; § 3 amended 2004; constitutional section adopted 2004.

[Okla. Stat. tit. 43, § 3, 3.1 \(2013\)](#); [Okla. Const. art. 2, § 35](#)

Oklahoma, Tax Treatment

STATE INCOME TAX STATUS

A same-sex couple may not file a joint state income tax return in Oklahoma.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Each individual in a same-sex marriage that files a federal tax return using a "married" federal filing status must file an Oklahoma return as single or head of household, if applicable. Each taxpayer must provide the same federal income tax information on his or her Oklahoma state returns that he or she would have provided before the IRS issued Ruling 2013-17. Therefore, in order to calculate Oklahoma income tax liability, each taxpayer must recompute his or her federal income tax liability as single or head of household. If the instructions for the taxpayer's Oklahoma income tax return require a copy of the federal return, the taxpayer must provide a copy of the single federal return the taxpayer would have filed before IRS Ruling 2013-17.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Tax notice issued 2013; revenue ruling issued 2013.

[Okla. Tax Comm'n, Notice: Oklahoma Income Tax Filing Status For Same Sex Couples \(Sept. 27, 2013\); Rev. Rul. 2013-17](#)

Oregon

Oregon, Fair Housing Laws

PROTECTED CLASS

The opportunity to obtain housing without unlawful discrimination because of sex, sexual orientation, or marital status is a civil right. Therefore, sexual orientation is a protected class. "Sexual orientation" is defined as "an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth."

Pursuant to the National Association of REALTORS's ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Unlawful Discrimination in Real Property Transactions (§ 659A.421)

A person may not, because of another's sex, sexual orientation, marital status, or familial status, among other traits, act as follows:

- refuse to sell, lease, or rent real property to a purchaser;
- expel a purchaser from real property;

- discriminate against a purchaser in the price, terms, conditions, or privileges related to a real estate transaction or when furnishing connected facilities or services;
- attempt to discourage the sale, rental, or lease of real property to a purchaser;
- publish, circulate, issue, or display a communication, notice, advertisement, or sign related to a real estate transaction that indicates any "preference, limitation, specification or unlawful discrimination" based on sex, sexual orientation, marital status, or familial status, among others;
- induce or incite another person to commit an act or engage in a practice that violates the protected rights listed above;
- coerce, intimidate, threaten, or interfere with a person exercising or enjoying their protected rights;
- deny access to, or membership or participation in, a multiple listing service or a real estate brokers' organization or other service;
- represent to a person that a dwelling is not available when it is available; or
- otherwise "make unavailable or deny a dwelling to a person."

A person whose business includes engaging in "residential real estate related transactions" may not discriminate because of a person's sex, sexual orientation, marital status, or familial status, among other traits.

A person may not, for profit, induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a "particular race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income."

The provisions that prohibit actions based upon sex, sexual orientation, or familial status generally do not apply to renting space within a single-family residence if:

- the owner maintains and occupies the residence as his or her primary residence; and
- all occupants share some common space.

Facially Neutral Housing Policies (§ 659A.425)

A person may be found to have violated § 659A.421 (involving the renting or leasing of residential real property) if:

- the person applies a facially neutral housing policy to a member of a protected class in a real property transaction involving a residential tenancy; and
- applying the policy "adversely impacts members of the protected class to a greater extent than the policy impacts persons generally."

In this context, a "facially neutral housing policy" means "a guideline, practice, rule or screening or admission criterion, regarding a real property transaction, that applies equally to all persons."

Community Action Agency Network (§ 458.505)

A community action agency must "provide assurances" that no person may, on the grounds of sex or sexual orientation, be excluded from participating in, be denied benefits of, or be subjected to discrimination under any program or activity funded by a community action program.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity"; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

A person conveying fee title to real property may not include in a conveyance instrument a provision that restricts the property's use by any person because of his or her sex or sexual orientation. Any provision that violates this restriction is void and unenforceable.

Sections 174.100 and 659A.006 amended 2007; § 659A.425 enacted 2008; §§ 93.270 and 458.505 amended 2009; § 659A.421 amended 2013; ethics code issued 2014.

[Or. Rev. Stat. §§ 93.270; 174.100; 458.505; 659A.006, .421, .425 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

[Oregon, Financing and Insurance Access](#)

MORTGAGE AND HOME EQUITY FINANCING

A person whose business includes engaging in "residential real estate related transactions" may not discriminate because of sex, sexual orientation, marital status, or familial status, among other factors. In this context, a "residential real estate related transaction" includes making or purchasing loans or providing other financial assistance that is:

- used to purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real estate.

PROPERTY INSURANCE

No relevant provisions were located.

Section 659A.421 amended 2013.

[Or. Rev. Stat. § 659A.421 \(2013\)](#)

[Oregon, Property Titling](#)

Because Oregon now allows same-sex marriage, a same-sex married couple should be able to title property in the same manner as any other married couple. Therefore, a conveyance or devise of real property (or a real property interest) made to two or more persons:

- creates a tenancy in common, unless the conveyance or devise "clearly and expressly declares that the grantees or devisees take the real property with right of survivorship";
- creates a tenancy by the entirety if the conveyance or devise is to a husband and wife (unless the document clearly declares otherwise); and
- creates a joint tenancy if the conveyance or devise is to a trustee or personal representative. (In this context, joint tenancy in real property is abolished and using the words "joint

tenants" without any other indication of an intent to create a right of survivorship creates a tenancy in common.)

Since the rights granted to registered domestic partners by Oregon law are generally the same as those granted to married couples, it appears that registered domestic partners may also own property as tenants by the entirety.

Section 93.180 amended 2007.

[Or. Rev. Stat. § 93.180 \(2013\)](#)

Oregon, Real Estate Transfer Tax

No relevant provisions were located. Generally, no Oregon city, county, district or other political subdivision may impose a tax or fee on the transfer of a fee estate in real property "or measured by the consideration paid or received upon transfer of a fee estate in real property."

Section 306.815 amended 2013.

[Or. Rev. Stat. § 306.815 \(2013\)](#)

Oregon, Rights Upon Death

INHERITANCE

No specifically applicable provisions were located. Oregon law now permits same-sex marriages, so a same-sex spouse should be treated no differently than any other spouse under Oregon's inheritance laws. Therefore, generally,

- if the decedent leaves a surviving spouse and no issue, the surviving spouse inherits all of the decedent's net intestate estate; and
- if a deceased spouse had a will, his or her surviving spouse may elect to take a specified amount based on the length of the marriage (ranging from five to 33 percent of the augmented estate) instead of the amount provided under the will.

Nothing indicates that domestic partners should be treated any differently than married couples in this context.

OTHER RIGHTS

Appointment as a Personal Representative

No specifically applicable provisions were located. Because Oregon law now permits same-sex marriages, a same-sex spouse should be treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

No specifically applicable provisions were located. Because Oregon law now permits same-sex marriages, a same-sex spouse should be treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex married couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No specifically applicable state-law provisions were located. Because Oregon law permits same-sex marriages, a same-sex spouse should be treated no differently than any other spouse under Oregon's estate transfer-tax laws.

Oregon's income-tax laws apply to surviving domestic partners "as if federal income tax law recognized a domestic partnership in the same manner as Oregon law."

Section 112.035 enacted 1969; §§ 114.600 and 114.605 enacted 2009; revenue ruling issued 2013.

[Or. Rev. Stat. §§ 112.035; 114.600, 605; 314.023 \(2013\); Rev. Rul. 2013-17](#)

Oregon, Rights Upon Dissolution

Oregon now allows same-sex marriage, so the state's laws regarding rights upon dissolution of a married same-sex couple should be the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. An Oregon divorce may not be possible because Oregon has residency requirements, and the couple's current state may not grant a divorce if it does not recognize same-

sex marriages. Oregon's residency requirements are as follows if one of the grounds for the divorce is as set forth in §§ 106.020 or 107.015:

- if the marriage was solemnized in Oregon, either party must be a resident of the state at the time the suit is brought; and
- if the marriage was not solemnized in Oregon, at least one party must be a resident of the state at least six months before the suit is brought.

Each partner who signed a Declaration of Domestic Partnership consents to the jurisdiction of Oregon's circuit courts for the purpose of an action for dissolution or annulment of the domestic partnership, for a legal separation, or for "any other proceeding related to the partners' rights and obligations, even if one or both partners cease to reside in, or to maintain a domicile in, this state." Therefore, the state's residency requirements that apply to divorce do not apply to the dissolution of a domestic partnership. (The Oregon legislature has not met since Oregon's same-sex marriage ban was found to be unconstitutional, so the application of the state's laws regarding residency requirements for dissolution of a same-sex marriage are not clear.) If both parties no longer reside in Oregon, either party may file a petition for the domestic partnership's dissolution in the county in which either petitioner or the respondent last resided. Registered domestic partnerships have all the rights and responsibilities of marriage under Oregon law, so, other than the residency requirements, Oregon's laws regarding rights and responsibilities upon divorce apply equally to domestic partnerships.

Section 107.075 amended 1973; § 106.340 enacted 2007; § 106.325 amended 2009.

[Or. Rev. Stat. §§ 106.325; 107.075 \(2013\)](#)

[Oregon, Status of Same-Sex Marriage](#)

Oregon permits same-sex marriages. On May 19, 2014, the United States District Court for the District of Oregon in *Geiger v. Kitzhaber*, 2014 U.S. Dist. LEXIS 68171 (D. Or. May 19, 2014), found the state's constitutional provision that prohibits same-sex marriage to be unconstitutional. No documents were located indicating that the decision has been stayed or appealed. The Oregon legislature has not met since the court declared Oregon's same-sex marriage ban to be unconstitutional, so the application to same-sex marriages of the some of the state's laws, such as the residency requirements for dissolution, is not clear.

Oregon's Family Fairness Act also permits same-sex partners to be registered domestic partners. Domestic partners have many of the same rights and responsibilities as married spouses under state law, including:

- any "privilege, immunity, right or benefit" granted by law to an individual because he or she is or was married; and
- any responsibility imposed by law on an individual because he or she is or was married.

Sections 106.305 and 106.340 enacted 2007; constitutional section adopted 2004 and held unconstitutional 2014.

[Or. Rev. Stat. §§ 106.305, .325 \(2013\)](#); [Or. Const. art. XV, § 5a](#) (held unconstitutional)

Oregon, Tax Treatment

STATE INCOME TAX STATUS

The Oregon Department of Revenue recognizes same-sex couples legally married in Oregon and other jurisdictions as married for Oregon tax purposes, including filing status.

An Oregon registered domestic partner not legally married in a jurisdiction that recognizes same-sex marriages is generally required to use the "registered domestic partners filing jointly" or the "registered domestic partners filing separately" filing status. A registered domestic partner receives the same tax treatment under Oregon law that is available to married individuals. Registered domestic partners may not file using the single filing status on their Oregon returns.

Couples that have entered into a registered domestic partnership, civil union, or similar formal relationship and also are legally married under the laws of Oregon or another state, federal jurisdiction, or foreign country are considered married for Oregon tax purposes. Individuals that are registered domestic partners in Oregon and were legally married in a state that recognizes same-sex marriages should file as married individuals and generally must use the same filing status on their Oregon return that they use on their federal return.

Individuals who were legally married in a state that recognizes same-sex marriages in a prior year, may amend their Oregon returns for all years that they were married, provided the limitations period for filing a refund claim is open (generally, the later of three years from the date the return was filed or two years from the date the tax was paid).

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Oregon now permits same-sex marriages, so the relationship between federal and state tax laws are the same for married same-sex couples as for other married couples. Spouses in a same-sex marriage generally must use the same filing status for their Oregon and federal returns unless one spouse has a different residency status than the other. When spouses have a different full-year resident, part-year resident, or nonresident status, they must file married filing separately if that's the status they used on their federal returns. If spouses have a different residency status and they filed a joint federal return, they generally may either:

- determine their Oregon taxable income separately and file "married filing separately"; or
- choose to file an Oregon return as "married filing jointly."

Oregon's income tax laws apply to partners in a domestic partnership "as if federal income tax law recognized a domestic partnership in the same manner as Oregon law." The federal government does not recognize domestic partners as married individuals for federal tax purposes, but Oregon does. Because of the differences in filing status between a domestic partner's federal return and his or her Oregon return, a domestic partner must complete two federal tax returns: one to be submitted to the IRS using a single or head-of-household filing status and one completed as if the domestic partners are "married filing jointly" or "married filing separately." The couple must complete the information from this mock return to complete their Oregon income tax return. The

mock return must be included with the couple's Oregon tax return. If domestic partners file separately, each must submit a mock federal "married filing separately" return.

Deductions

The Oregon Department of Revenue recognizes same-sex couples legally married in Oregon and other jurisdictions as married for Oregon tax purposes, including taking the standard deduction.

Home Sale Exclusion

The Oregon Department of Revenue recognizes same-sex couples legally married in Oregon and other jurisdictions as married for Oregon tax purposes, including exclusions. The limits for the amount of gain that can be excluded from gross income upon a principle residence's sale or exchange varies depending on filing status.

Withholding

No specifically relevant provisions were located. Oregon's tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Oregon's tax laws apply to same-sex spouses in the same manner as any other married couple.

Section 314.023 enacted 2007; state tax information sheets dated 2014; revenue ruling issued 2013.

[Or. Rev. Stat. § 314.023 \(2013\)](#); [Or. Dep't of Rev.: *Personal Income Tax, Oregon Tax Information for Same-Sex Married Couples, Updated to reflect court ruling declaring Oregon's same-sex marriage ban unconstitutional* \(2014\)](#); [Or. Dep't of Rev.: *Personal Income Tax, Registered Domestic Partners in Oregon* \(2014\)](#); [Rev. Rul. 2013-17](#)

Pennsylvania

Pennsylvania, Fair Housing Laws

PROTECTED CLASS

The Pennsylvania Human Relations Act prohibits discrimination in housing accommodations and commercial property because of sex or familial status, but it does not address sexual orientation. Accordingly, the civil right to freedom from discrimination in housing accommodations and commercial property does not apply to discrimination based on sexual orientation.

Although case law is outside the scope of this survey, it is important to note that in [*Whitewood v. Wolf*, No. 1:13-cv-1861, 2014 U.S. Dist. LEXIS 68771 \(M.D. Pa. May 20, 2014\)](#), the United States District Court for the Middle District of Pennsylvania found that for purposes of analyzing equal protection, gay and lesbian individuals compose a "quasi-suspect class" that is subject to heightened scrutiny.

Pursuant to the National Association of REALTORS's ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

The Pennsylvania Human Relations Act provides that it is an unlawful discriminatory practice for a person to sell, lease, finance, or otherwise to deny or withhold a housing accommodation or commercial property because of a person's familial status or sex, but the act does not protect against discrimination based on sexual orientation.

Similarly, it is an unlawful discriminatory practice for a person to engage in blockbusting activities based on familial status or sex, but, again, the relevant statute does not address sexual orientation.

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity"; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Sections 952, 953, and 955.3 amended 1991; § 1680.402a amended 1992; § 955 amended 1997.

[35 Pa. Stat. § 1680.402a](#); [43 Pa. Stat. §§ 952, 953, 955, 955.3 \(West 2014\)](#); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Pennsylvania, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. The Pennsylvania Human Relations Act provides that it is an unlawful discriminatory practice for a person to refuse to finance any housing accommodation or commercial property, or to discriminate in financing terms, because of a person's familial status or sex, among other traits, but the act does not protect against discrimination based on sexual orientation. Similarly, Pennsylvania's housing finance agency must require that occupancy of all housing financed by the agency be open to all persons regardless of gender or familial status, but the relevant statute does not address sexual orientation.

PROPERTY INSURANCE

No relevant provisions were located. However, it is an unfair or deceptive act or practice for an insurer to unfairly discriminate by making or permitting any "unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy, fees or rates charged for any policy or contract of insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever." Also, an insurer may not make or permit unfair discrimination with regard to underwriting standards and practices or eligibility requirements because of a person's sex or familial status. Discrimination based on sexual orientation is not protected.

Section 1680.402b amended 1992; § 955 amended 1997; § 1171.5 amended 2006.

[35 Pa. Stat. § 1680.402b](#); [40 Pa. Stat. § 1171.5](#); [43 Pa. Stat. § 955 \(West 2014\)](#)

Pennsylvania, Property Titling

Because Pennsylvania now allows same-sex marriage, property should be titled to a same-sex married couple in the same manner as any other married couple. Generally, all property acquired by either party during a marriage is presumed to be marital property, regardless of whether title is held individually or in joint tenancy, tenancy in common, or tenancy by the entirety.

Section 3501 amended 2004.

[23 Pa. Cons. Stat. § 3501 \(West 2014\)](#)

Pennsylvania, Real Estate Transfer Tax

Because Pennsylvania now allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, although the register of deeds collects a transfer tax when any deed is offered for recordation, the following deeds, among numerous others, are exempt from the transfer tax:

- a transfer for nominal consideration that corrects or confirms a previously recorded transfer, but does not extend or limit the existing legal title or interest;
- a transfer between husband and wife;
- a transfer between persons who were husband and wife, but have since been divorced, provided the couple acquired the property before the final divorce decree; or
- a transfer between parent and child (or the child's spouse), a stepparent and a stepchild (or the stepchild's spouse), siblings, or a grandparent and grandchild, except that if the grantee subsequently transfers within one year, the transfer is subject to tax as if the grantor were making the transfer.

Sections 8102-C and 8102-C.3 amended 2013.

[72 Pa. Stat. §§ 8102-C, -C.3 \(West 2014\)](#)

Pennsylvania, Rights Upon Death

INHERITANCE

Because Pennsylvania now permits same-sex marriages, a same-sex spouse should be treated no differently than any other spouse under Pennsylvania's inheritance laws. Therefore, generally,

- if a decedent dies without a will, his or her surviving spouse's intestate share equals the entire estate if the decedent died with no surviving issue or parent; and
- a surviving spouse has the right to an elective share equal to one-third of the probate estate.

OTHER RIGHTS

Appointment as a Personal Representative

Because Pennsylvania now permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located. However, generally, letters of administration are granted first to those entitled to their residuary estate under the will, and then, before numerous others, to the surviving spouse.

Funeral Arrangements

Because Pennsylvania now permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Pennsylvania law permits same-sex marriages, a same-sex spouse should also be treated no differently than any other spouse under the Commonwealth's inheritance-tax laws.

Section 2102 amended 2003; § 2203 amended 2004; § 3155 amended 2006; revenue ruling issued 2013.

Pennsylvania, Rights Upon Dissolution

Because Pennsylvania now allows same-sex marriage, the Commonwealth's laws regarding rights upon dissolution of a married same-sex couple should be the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A Pennsylvania divorce may not be possible because the Commonwealth has a six-month residency requirement before parties may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages.

Section 3104 enacted 1990.

[23 Pa. Cons. Stat. § 3104 \(2014\)](#)

Pennsylvania, Status of Same-Sex Marriage

Pennsylvania permits same-sex marriage.

Although case law is outside the scope of this survey, it is important to note that in [Whitewood v. Wolf, No. 1:13-cv-1861, 2014 U.S. Dist. LEXIS 68771 \(M.D. Pa. May 20, 2014\)](#), the United States District Court for the Middle District of Pennsylvania found that defining marriage as between one man and one woman and not recognizing same-sex marriages validly performed in other jurisdictions violated the federal Due Process Clause. Therefore, 23 Pa. Cons. Stat. §§ 1102 and 1704 are unconstitutional. The court did not stay the ruling, and the Commonwealth did not appeal within its 30-day appeal window. Therefore, same-sex marriages are now legal in Pennsylvania.

23 Pa. Cons. Stat. §§ 1102 and 1704 held unconstitutional 2014.

[23 Pa. Cons. Stat. §§ 1102, 1704 \(West 2014\)](#)

Pennsylvania, Tax Treatment

STATE INCOME TAX STATUS

No formal guidance for same-sex couples was located. Because Pennsylvania's same-sex marriage ban was recently ruled unconstitutional and the decision was not appealed, same-sex couples will most likely be able to file using a "married" status.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Because Pennsylvania now permits same-sex marriage, the relationship between federal and state tax laws should be the same for married same-sex couples as for other married couples. No tax guidance was located.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Puerto Rico

Puerto Rico, Fair Housing Laws

PROTECTED CLASS

No laws were located providing that sexual orientation is a protected class in Puerto Rico. In 2013, if Senate Bill 238 had passed as introduced, it would have broadly banned discrimination based on sexual orientation and gender identity. As the bill passed into law, it protects against sexual discrimination only in the employment context.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

No provisions were located that prohibit discrimination in housing based on sexual orientation.

Real Estate Licensees

Puerto Rico's laws provide that a real estate licensee may not discriminate against "any of the parties to a real estate transaction because of race, religion, sex, physical or mental disability, family status or national origin," but sexual orientation is not addressed.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;

- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 3054 amended 2006.

P.R. Laws tit. 20, § 3054 (LexisNexis 2014); [2013 P.R. Laws ch. 22 \(S.B. 238\)](#) (in Spanish); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Puerto Rico, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located.

Note that although Puerto Rico laws do not protect against discrimination based on sexual orientation, they do provide that no person may discriminate against a person, or establish different conditions in the terms or conditions of a transaction to acquire or finance property, merely because the person has been diagnosed as HIV-positive or is suffering from Acquired Immunodeficiency Syndrome.

PROPERTY INSURANCE

No relevant provisions were located.

Section 521c enacted 1995.

P.R. Laws tit. 1, § 521c (LexisNexis 2014)

Puerto Rico, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Puerto Rico does not recognize same-sex relationships of any form, so any title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Puerto Rico, Real Estate Transfer Tax

Puerto Rico imposes a "presentation fee" that must be paid for the "recording, notation, cancelling, release, with respect to each property right." No relevant exceptions were located.

Section amended 2004.

P.R. Laws tit. 30, § 1767a (LexisNexis 2014)

Puerto Rico, Rights Upon Death

INHERITANCE

Because Puerto Rico does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Puerto Rico does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant territory laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Puerto Rico, Rights Upon Dissolution

Because Puerto Rico does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's marriage-dissolution laws to same-sex couples.

Puerto Rico, Status of Same-Sex Marriage

Puerto Rico does not recognize same-sex marriages. Marriage is "a civil institution, originating in a civil contract whereby a man and a woman mutually agree to become husband and wife." A marriage between persons of the same sex or transsexuals entered into in other jurisdictions is not valid or recognized in Puerto Rico.

No provisions in Puerto Rico's statutes or regulations indicate that the territory recognizes civil unions or domestic partnerships.

Section 221 amended 1999.

P.R. Laws tit. 31, § 221 (LexisNexis 2014)

Puerto Rico, Tax Treatment

STATE INCOME TAX STATUS

No guidance was located regarding the filing status for same-sex couples.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Rhode Island

Rhode Island, Fair Housing Laws

PROTECTED CLASS

Rhode Island law expressly declares that it is the state's policy to assure to all individuals, regardless of sex, sexual orientation, gender identity or expression, marital status, or familial status, an "equal opportunity to live in decent, safe, sanitary, and healthful accommodations anywhere within the state in order that the peace, health, safety, and general welfare of all the inhabitants of the state may be protected and insured." An individual's right to equal housing opportunities regardless of sex, sexual orientation, gender identity or expression, marital status, or familial status is a civil right.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate on the basis of a person's sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Definition

In this context, "sexual orientation" means "having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality."

Unlawful Housing Practices (§ 34-37-4(a))

An owner may not:

- make an inquiry concerning the sex, sexual orientation, gender identity or expression, marital status, or familial status of a prospective purchaser, occupant, or tenant of their housing accommodation;
- refuse to sell, rent, lease, or otherwise withhold a housing accommodation because of the sex, sexual orientation, gender identity or expression, marital status, or familial status of the individual or of any person with whom the individual is associated;
- issue an advertisement relating to a housing accommodation's sale, rental, or lease that indicates a preference, limitation, specification, or discrimination based on sex, sexual orientation, gender identity or expression, marital status, or familial status; or
- discriminate because of an individual's sex, sexual orientation, gender identity or expression, marital status, or familial status in the terms, conditions, or privileges of the sale, rental, or lease of a housing accommodation, or in the furnishing of connected facilities or services.

The above provisions do not prohibit an owner, lessee, sublessee, or assignee from advertising or selecting a person of the same or opposite gender to rent, lease, or share the housing unit that the owner, lessee, sublessee, or assignee will also occupy.

Coercion, Obstruction, and Attempted Acts (§ 34-37-4(m))

A person may not:

- "aid, abet, incite, compel, or coerce" an unlawful housing practice;
- obstruct or prevent a person from complying with the anti-discrimination provisions described above; or
- attempt to commit an unlawful housing practice.

Exemptions (§ 34-37-4.2, .4, .5)

Nothing in chapter 34-37 prohibits:

- a religious organization, or a nonprofit institution or organization operated or controlled by a religious organization, from:
 - limiting to persons of the same religion the sale, rental, or occupancy of a dwelling it owns or operates for other than commercial purposes; or
 - giving preference to persons of the same religion, unless membership in the religion is restricted because of sex, sexual orientation, or gender identity or expression;
- a private club that incidentally provides lodgings that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodgings to its members or from giving its members preference; or

- a housing accommodation's owner from refusing to rent to a person based on that individual's sexual orientation, gender identity, or gender expression, if the housing accommodation is three units or less and one unit is occupied by the owner.

Discrimination in Brokerage Services (§ 34-37-5.2)

It is unlawful:

- to deny a person access to or membership or participation in a real estate listing service, brokers' organization, or other service, organization, or facility related to the business of selling, leasing, or renting a housing accommodation; or
- to discriminate against a person in the terms or conditions of that access, membership, or participation, because of the person's sex, sexual orientation, gender identity or expression, marital status, or familial status.

Fostering Segregated Housing (§ 34-37-5.3)

It is an unlawful discriminatory housing practice to induce, for profit, a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of any marital status, sex, sexual orientation, gender identity or expression, or familial status.

Discrimination in Residential Real Estate-Related Transactions (§ 34-37-5.4)

It is unlawful for a person or entity whose business includes residential real estate-related transactions to discriminate in making available a transaction, or in the transaction's terms and conditions, because of a person's marital status, sex, sexual orientation, gender identity or expression, or familial status.

In this context, "residential real estate related transaction" means:

- the making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or that is secured by residential real estate; or
- the "selling, brokering, or appraising of residential real property."

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 34-37-4.4 enacted 1995; §§ 34-37-4.2, 34-37-4.5, 34-37-5.2, 34-37-5.3, and 34-37-5.4 amended 2001; §§ 34-37-2 and 34-37-4 amended 2002; §§ 34-37-1 and 34-37-3 amended 2012.

[R.I. Gen. Laws §§ 34-37-1, -2, -3, -4, -4.2, -4.4, -4.5, -5.2, -5.3, -5.4 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Rhode Island, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

A person to whom application is made for a loan or other financial assistance to acquire, construct, rehabilitate, repair, or maintain a housing accommodation may not:

- make an inquiry concerning the applicant's sex, sexual orientation, gender identity or expression, marital status, or familial status; or
- discriminate in the terms, conditions, or privileges related to obtaining or using any financial assistance because of the applicant's sex, sexual orientation, gender identity or expression, marital status, or familial status.

No owner, person to whom an application is made for a housing loan described above, financial organization, or any other credit-granting commercial institution may discriminate against an individual because he or she has opposed a forbidden practice.

No financial organization or other credit-granting commercial institution may discriminate when granting or extending a loan or credit, or when granting the privilege or capacity to obtain a loan or credit, on the basis of the applicant's sex, marital status, familial status, sexual orientation, or gender identity or expression. (The provision related to the form of loan and credit is not limited to those related to housing accommodations.)

It is unlawful for a person or entity whose business includes residential real estate related transactions to discriminate when making a transaction available, or in the transaction's terms and conditions, because of marital status, sex, sexual orientation, gender identity or expression, or familial status.

In this context, "residential real estate related transaction" means any of the following:

- the making or purchasing of loans or providing other financial assistance that is for purchasing, constructing, improving, repairing, or maintaining a dwelling or that is secured by residential real estate; or
- the "selling, brokering, or appraising of residential real property."

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, it is unfair competition and an unfair and deceptive act or practice in the insurance business to refuse to insure, to refuse to continue to insure, or to limit the coverage amount available to an individual because of his or her sex or marital status.

Sections 34-37-4.3 and 34-37-5.4 amended 2001; § 34-37-4 amended 2002; § 27-29-4 amended 2004.

[R.I. Gen. Laws §§ 27-29-4; 34-37-4, -4.3, -5.4 \(2014\)](#)

Rhode Island, Property Titling

Because Rhode Island allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. All gifts, conveyances, and devises of real estate to multiple persons, whether they are husband and wife or otherwise, are deemed to create a tenancy in common, unless:

- the conveyance or devise declares that the tenancy is to be joint or that the conveyance is to those persons and their survivors;
- the conveyance is to the parties as trustees or executors; or
- the "intention manifestly appears" that the persons take as joint tenants, not as tenants in common.

Section 34-3-1 amended 1956.

[R.I. Gen. Laws § 34-3-1 \(2013\)](#)

Rhode Island, Real Estate Transfer Tax

Because Rhode Island allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Rhode Island levies a state realty transfer tax on each deed, instrument, or writing by which a realty is transferred or conveyed, if the consideration exceeds \$100, unless an exception applies. Although a few exemptions are provided by statute, none are related to transfers between spouses or other couples.

Section 44-25-1 amended 2004; § 44-25-2 amended 2012.

[R.I. Gen. Laws §§ 44-25-1\(a\), -2 \(2014\)](#)

Rhode Island, Rights Upon Death

INHERITANCE

Because Rhode Island law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Rhode Island's inheritance laws. Therefore, generally,

- if a spouse without issue dies with no will, the decedent's real estate passes to the surviving spouse for his or her natural life;
- if a decedent has no living issue, the probate court must set off to the surviving spouse that portion of the decedent's real estate that is not required for the payment of his or her debts, "as may be suitable for her or his situation and support and in accordance with the circumstances of the estate"; and
- a surviving spouse may waive the decedent's devise and bequest and instead claim a life estate in the decedent's real estate.

OTHER RIGHTS

Appointment as a Personal Representative

Because Rhode Island law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

If there is no funeral services contract indicating the deceased person's preferences regarding the decedent's funeral or the final disposition of his or her remains, then the funeral establishment must follow the directions of the deceased person's survivors in the following priority:

- first, any designated agent;
- second, the deceased's surviving spouse or domestic partner; and
- then, numerous other specified relatives or acquaintances.

Disposition of Deceased Bodies

The state medical examiners' office must, after any postmortem examination or autopsy, promptly release the deceased's body to his or her relatives, representatives, or domestic partners. In this context, "domestic partner" is defined as a person who, before the decedent's death, was in "an exclusive, intimate and committed relationship with the decedent" and who certifies by affidavit that their relationship met specified qualifications.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including estate taxes. Because Rhode Island law permits same-sex marriages, a same-

sex spouse is also treated no differently than any other spouse under Rhode Island's state estate-tax laws. The tax is generally imposed on the transfer of a decedent's net estate as a tax upon the right to transfer.

A same-sex married couple is treated for Rhode Island estate tax purposes the same as an opposite-sex married couple. Therefore, a Rhode Island marital deduction is allowed for property passing from a decedent to his or her surviving spouse, regardless of gender.

Also, same-sex spouses may include in the decedent's gross estate one-half the value of certain joint property interests, as do opposite-sex couples. These rules apply to couples "joined in a same-sex marriage in Rhode Island, or in a same-sex marriage or other such union in another jurisdiction."

Section 33-1-5 amended 1956; § 33-10-4 amended 1980; § 33-25-4 amended 1992; §§ 5-33.2-24, and 23-4-10 amended 2009; § 44-22-1.1 amended 2014.

[R.I. Gen. Laws §§ 5-33.2-24; 23-4-10; 33-1-5, -10-4, -25-4; 44-22-1.1 \(2014\)](#) (as amended by [2014 R.I. Pub. Laws ch. 145, art. 12](#)); [R.I. Dep't of Rev., Div. of Taxation, Same-Sex Marriage and Taxes: Frequently Asked Questions \(FAQs\) \(September 6, 2013\)](#)

Rhode Island, Rights Upon Dissolution

Because Rhode Island allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, if a married same-sex couple moves to a state that does not recognize same-sex marriages, the couple may not be eligible for a divorce. A Rhode Island divorce may not be possible because Rhode Island generally has a one-year residency requirement before parties may initiate a divorce, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages.

Section 15-5-12 amended 2004.

[R.I. Gen. Laws § 15-5-12 \(2014\)](#)

Rhode Island, Status of Same-Sex Marriage

As of August 1, 2013, Rhode Island allows same-sex marriage. A person who otherwise meets the state's eligibility requirements "may marry any other eligible person regardless of gender."

Rhode Island has also permitted civil unions. The parties to a civil union may apply for and be issued a marriage license and have their marriage solemnized. After the parties solemnize their marriage, the couple's civil union is merged into the marriage by operation of law as of the marriage certificate's recording date. The couple may also apply to have their civil union legally designated and recorded as a marriage, without any additional marriage licensing fees or solemnization, as long as the parties' civil union was not previously dissolved or annulled.

Sections 15-1-1 and 15-3.1-12 amended 2013.

[R.I. Gen. Laws §§ 15-1-1, -3.1-12 \(2014\)](#)

Rhode Island, Tax Treatment

STATE INCOME TAX STATUS

Same-sex couples married in Rhode Island on or after August 1, 2013, are recognized as married couples for Rhode Island income tax purposes. A same-sex couple married under Rhode Island's laws must file their Rhode Island personal income tax return using a "married" filing status. Effective for tax years 2013 and later, same-sex couples married in a state other than Rhode Island, but living in Rhode Island, must file their Rhode Island resident returns as a married couple.

Couples in a civil union may not file their Rhode Island personal income tax return using a "married" filing status. However, if the couple chooses to convert their civil union into a recognized marriage, they must then file their returns as a married couple.

If same-sex spouses are allowed under federal law to amend their federal income tax returns to claim a married filing status, they may also amend their Rhode Island income tax return to claim a married filing status. If the spouses file amended federal returns to change their filing status for one or more prior years, they must also file an amended state return to change their filing status for those years.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex

marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Rhode Island permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by Rhode Island's statutes, and then applies the state's income tax rates and income brackets.

Deductions

No specifically relevant provisions were located. Rhode Island tax laws apply to same-sex spouses in the same manner as any other married couple.

Home Sale Exclusion

Rhode Island tax laws apply to same-sex spouses in the same manner as any other married couple. Therefore, if a same-sex couple sells their principal residence at a profit, the couple may be able to exclude from income, for Rhode Island tax purposes, up to \$500,000 in gain from the sale of a principal residence, provided the federal law's exclusion requirements are met.

Withholding

No specifically relevant provisions were located. Rhode Island tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Memorandum and FAQ issued 2013; revenue ruling issued 2013.

[R.I. Dep't of Rev., *Division of Taxation Issues Tax Guidance Involving Same-Sex Marriage Law* \(Sept. 6, 2013\); R.I. Dep't of Rev., Div. of Taxation, *Same-Sex Marriage and Taxes: Frequently Asked Questions \(FAQs\)* \(Sept. 6, 2013\); *Rev. Rul. 2013-17*](#)

South Carolina

South Carolina, Fair Housing Laws

PROTECTED CLASS

No provisions were located providing that sexual orientation is a protected civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

South Carolina's fair housing laws prohibit discrimination in relation to the sale or rental of property based on sex or familial status, but they do not protect against discrimination based on sexual orientation or marital status.

Discrimination related to membership or participation in a multiple listing service, a real estate brokers' organization, or any related service, organization, or facility is unlawful if it is based on sex or familial status, among other things. Similarly, it is unlawful for a person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person because of his or her sex or familial status. Discrimination based on sexual orientation is not addressed in either context.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 31-21-40, 31-21-50, and 31-21-60 enacted 1989.

[S.C. Code §§ 31-21-40, -50, -60 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

South Carolina, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. It is unlawful for a person or entity whose business includes engaging in residential real estate-related transactions to discriminate against a person because of sex or familial status, but the statute does not protect against discrimination based on sexual orientation. In this context, "residential real estate-related transaction" includes making or purchasing loans or providing other financial assistance that is:

- to be used purchase, construct, improve, repair, or maintain a dwelling; or
- secured by residential real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not refuse to issue or

renew a policy because of a person's sex or marital status, but the law does not protect against discrimination based on sexual orientation.

Section 31-21-60 enacted 1989; §§ 38-75-1210 and 38-75-1220 enacted 2004.

[S.C. Code §§ 31-21-60; 38-75-1210, -1220 \(2013\)](#)

South Carolina, Property Titling

No provisions were located that address the titling of a same-sex couple's property. South Carolina does not recognize same-sex relationships in any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, South Carolina law appears to presume that a deed creates a tenancy in common unless otherwise explicitly provided. A real estate deed that contains the grantees' names followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" conclusively creates a joint tenancy with rights of survivorship.

Section 27-7-40 amended 2002.

[S.C. Code § 27-7-40 \(2013\)](#)

South Carolina, Real Estate Transfer Tax

South Carolina imposes a recording fee for the privilege of recording a deed that transfers realty to another person. Because South Carolina does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly refer to spouses apply. However, the following exceptions may be relevant:

- transferring realty in which no gain or loss is recognized pursuant to § 1041 of the Internal Revenue Code;
- transferring realty in order to partition it, provided no consideration is paid other than the realty;

- constituting a corrective or a quitclaim deed used to confirm title already vested in the grantee, provided no consideration is paid;
- assigning, transferring, or releasing real property to a decedent's estate's distributee as evidence of the distributee's title to the property; and
- transferring real property from a trust to a trust distributee upon the settlor's death, provided a distribution deed would be the appropriate instrument to transfer the subject property if the property were part of the decedent's probate estate.

Section 12-24-10 amended 2008; § 12-24-40 amended 2014.

[S.C. Code §§ 12-24-10, -40 \(2013\)](#) (as amended by [2014 S.C. Acts ch. 259](#))

South Carolina, Rights Upon Death

INHERITANCE

Because South Carolina law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because South Carolina does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

South Carolina, Rights Upon Dissolution

Because South Carolina does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

South Carolina, Status of Same-Sex Marriage

South Carolina does not recognize same-sex marriages. The state's constitution provides that a "marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized." Neither South Carolina nor its political subdivisions may "create a legal status, right, or claim respecting any other domestic union, however denominated." Also, South Carolina also does not recognize a legal status, right, or claim created by another jurisdiction regarding any other domestic union.

South Carolina's statutes also provide that a marriage between persons of the same sex is void and against South Carolina's public policy. They also explicitly state that no man may marry another man and that no woman may marry another woman.

Although case law is outside the scope of this survey, it is important to note that South Carolina is subject to the precedent set when the Fourth Circuit Court of Appeals recently upheld a lower court's ruling that Virginia's ban of same-sex marriage was unconstitutional. See *Bostic v. Schaefer*, No. 14-1167 (4th Cir. July 28, 2014).

Section 20-1-10 amended 1996; § 20-1-15 enacted 1996; constitutional section adopted 2007.

[S.C. Code Ann. §§ 20-1-10, -15 \(2013\); S.C. Const. Ann. Art. XVII, §15](#)

South Carolina, Tax Treatment

STATE INCOME TAX STATUS

Same-sex couples that are considered married for federal income tax purposes must use a filing status of single or, if qualified, head of household for South Carolina income tax purposes.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Despite federal rulings to the contrary, South Carolina's Department of Revenue interprets the terms "husband" and "wife" as gender specific and "spouse" as referring to a person of the opposite sex for South Carolina income tax purposes. Therefore, South Carolina's tax code requires the same filing status for South Carolina and federal income tax purposes only for married couples of the opposite sex. Same-sex couples that file as married for federal income tax purposes must file their South Carolina returns separately.

In order to prepare Form SC 1040, individual taxpayers that filed a joint federal return must first prepare a pro forma federal income tax return using a filing status of single or head of household. The return, which must be attached to each individual SC1040 return, provides a starting point for calculating each individual's South Carolina taxable income using a filing status of single or, if qualified, head of household.

Taxpayers may file their returns electronically or by paper. If filing electronically, the taxpayer must select the South Carolina "state only" return and attach his or her pro forma federal return as a PDF. If an individual is filing by paper, he or she must write "pro forma" at the top of the federal return and attach it to his or her SC1040.

A same-sex couple may not file amended South Carolina returns to revise their filing status to a joint status for previous years.

Deductions

If a same-sex couple itemizes deductions or uses the standard deduction on their joint federal return, each individual may elect to itemize or use the standard deduction on their South Carolina return, regardless of the method they used on their joint or married filing separately federal return.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

State revenue ruling and FAQs issued 2014; revenue ruling issued 2013.

[S.C. Dep't of Revenue, Revenue Ruling No. 14-1 \(Feb. 3, 2014\)](#); [S.C. Dep't of Revenue, Same-Sex Marriage Filing FAQs for Income Tax \(Feb. 24, 2014\)](#); [Rev. Rul. 2013-17](#)

South Dakota

South Dakota, Fair Housing Laws

PROTECTED CLASS

No provisions were located that designate sexual orientation as a protected civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

South Dakota's Fair Housing Law prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 20-13-20 amended 1991.

[S.D. Codified Laws § 20-13-20 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

South Dakota, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not discriminate against an insured or a prospective insured on the basis of his or her sex or marital status, but nothing protects against discrimination based on sexual orientation.

Section 58-33-13.1 enacted 1979.

[S.D. Codified Stat. § 58-33-13.1 \(2013\)](#)

South Dakota, Property Titling

No provisions were located that address the titling of a same-sex couple's property. South Dakota does not recognize same-sex relationships in any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, an interest "created in favor of several persons in their own right is an interest in common," unless:

- the parties acquired it in partnership or for partnership purposes; or
- it was declared on creation to be a joint interest.

Section 43-2-17 amended 1939.

[S.D. Codified Laws § 43-2-17 \(2013\)](#)

South Dakota, Real Estate Transfer Tax

South Dakota imposes a transfer tax on the value of the real property transferred, unless an exception applies. Because South Dakota does not recognize same-sex marriage or other same-sex relationships in any form, no real estate transfer tax exemptions that explicitly apply to spouses apply. However, the following exceptions may be relevant, among others:

- deeds that confirm or correct a previously recorded deed;
- transfers between parent and child, with only nominal consideration;
- deeds on partition;
- deeds pursuant to a distribution decree in a decedent's estate;

- transfers of a gift without consideration; or
- deeds for which no consideration was given.

Section 43-4-21 enacted 1968; § 43-4-22 amended 1994.

[S.D. Codified Laws §§ 43-4-21, -22 \(2013\)](#)

South Dakota, Rights Upon Death

INHERITANCE

Because South Dakota law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because South Dakota does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

South Dakota, Rights Upon Dissolution

Because South Dakota does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

South Dakota, Status of Same-Sex Marriage

South Dakota does not recognize same-sex marriages. The state's constitution provides that "[o]nly marriage between a man and a woman shall be valid or recognized in South Dakota." Also, uniting two or more persons in a "civil union, domestic partnership, or other quasi-marital relationship" is not valid or recognized in South Dakota.

South Dakota's statutes define a marriage as a "personal relation, between a man and a woman."

A marriage contracted between two persons of the same gender outside of South Dakota is not valid in South Dakota.

Section 25-1-1 amended 1996; § 25-1-38 amended 2000.

[S.D. Codified Laws §§ 25-1-1, -38 \(2013\)](#)

South Dakota, Tax Treatment

STATE INCOME TAX STATUS

South Dakota residents are not subject to a state personal income tax.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

I.R.S. document dated 2013; revenue ruling issued 2013.

I.R.S., *States Without a State Income Tax* (Apr. 11, 2013); [Rev. Rul. 2013-17](#)

Tennessee

Tennessee, Fair Housing Laws

PROTECTED CLASS

Tennessee's human rights provisions prohibit discrimination in housing because of sex, but sexual orientation is not a protected class.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Tennessee's fair housing laws generally prohibit discrimination against any person because of sex or familial status with regards to real property or housing accommodations, but they do not address sexual orientation. The same restrictions apply:

- to denying a person access to, or membership or participation in, a multiple-listing service or another real estate brokers' organization or service; and
- in the state's statutes that prohibit blockbusting.

Similarly, it is an unlawful practice for a person or entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex or familial status, among others. Again, the relevant statutes do not address sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 4-21-101 amended 1988; §§ 4-21-601, 4-21-603, and 4-21-606 amended 2008.

Tenn. Code Ann. §§ 4-21-101, -601, -603, -606 (LexisNexis 2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Tennessee, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Tennessee law does not address discrimination based on sexual orientation, but it is unlawful for a person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex or familial status. In this context, "residential real estate-related transaction" includes making or purchasing loans or providing financial assistance:

- to be used to purchase, construct, improve, repair, or maintain a dwelling; or
- that are secured by residential real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located.

Generally, it is a discriminatory practice for a person in the business of insuring against hazards to discriminate when issuing a contract of insurance against hazards to a housing accommodation or real property because of the "race, color, creed, religion, sex or national origin of the person owning, or residing in or near the housing accommodations or real property." Discrimination based on sexual orientation is not addressed.

It is an unfair trade practice in the insurance business to refuse to insure, to continue to insure, or to limit the coverage amount available because of an individual's sex or marital status. Also, an insurer may not use an insurance score that is calculated using a consumer's gender or marital status, among other factors. Again, nothing protects against discrimination based on sexual orientation.

Section 56-5-402 enacted 2004; §§ 4-21-601 and 4-21-606 amended 2008; § 56-8-104 amended 2012.

Tenn. Code Ann. §§ 4-21-601, -606; 56-5-402; 56-8-104 (LexisNexis 2014)

Tennessee, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Tennessee does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" (such as an estate by entirety, which is created by conveyance to a spouse) are not available to same-sex couples.

Section 66-1-109 amended 1950; § 66-1-110 enacted 1955.

Tenn. Code Ann. §§ 66-1-109, -110 (LexisNexis 2014)

Tennessee, Real Estate Transfer Tax

Tennessee imposes a transfer tax on the greater of the consideration amount or the property's value, unless an exception applies. Because Tennessee does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses are relevant. However, the following exceptions, among others, may apply:

- "of division in kind of realty formerly held by tenants in common"; or
- executed to implement a testamentary devise.

Section amended 2013.

Tenn. Code Ann. § 67-4-409 (LexisNexis 2014)

Tennessee, Rights Upon Death

INHERITANCE

Because Tennessee law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Tennessee does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, because Tennessee law does not recognize same-sex marriage or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance taxes in any special manner to same-sex couples.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Tennessee, Rights Upon Dissolution

Because Tennessee does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Tennessee, Status of Same-Sex Marriage

Tennessee does not recognize same-sex marriages. The state's constitution provides that the "historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman shall be the only legally recognized marital contract" in the state. Any policy, law, or judicial interpretation otherwise defining marriage is contrary to Tennessee's public policy, void, and unenforceable. A same-sex marriage entered into in another state is also void and unenforceable in Tennessee.

Tennessee's statutes similarly provide that the only marriages recognized in Tennessee are between one man and one woman.

No provisions in Tennessee's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Although case law is outside the scope of this survey, it is important to note that in [Tanco v. Haslam, No. 3:13-CV-01159, 2014 U.S. Dist. LEXIS 33463 \(M.D. Tenn. Mar. 14, 2014\)](#), the United States District Court for the Middle District of Tennessee granted three same-sex couples who had been legally married in other states a preliminary injunction against the enforcement of Tennessee's laws providing that their marriages were void in Tennessee. The Sixth Circuit in [Tanco v. Haslam, No. 14-5297 \(29-1\) \(6th Cir. Apr. 25, 2014\)](#) (order granting stay), stayed the district court's ruling and agreed to expedite the decision's appeal.

Section 36-3-113 enacted 1996.

Tenn. Code Ann. § 36-3-113 (LexisNexis 2014)

Tennessee, Tax Treatment

STATE INCOME TAX STATUS

Tennessee's state income tax applies only to interest and dividends and is not calculated using amounts from the taxpayer's federal tax return. The state has not issued formal guidance regarding same-sex couples, even though the dividend and interests amounts that determine whether a person must file a state tax return depend on whether the taxpayer is single or married. (A taxpayer must file if his or her dividend and/or interest income exceeds \$1250, or \$2500 if married filing jointly.) Because the state does not recognize same-sex marriages, it is likely that taxpayers in a same-sex marriage should file separate returns.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Section 67-2-102 amended 1985; state guidance issued 2013; revenue ruling issued 2013.

Tenn. Code Ann. § 67-2-102 (LexisNexis 2014); [Tenn. Dep't of Rev., *Guidance for Tennessee's Individual Income Tax Return \(July 23, 2013\)*](#); [Rev. Rul. 2013-17](#)

Texas

Texas, Fair Housing Laws

PROTECTED CLASS

No provisions were located providing that the opportunity to obtain housing accommodations without discrimination because of sexual orientation or gender identity is a civil right.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

The Texas Fair Housing Act prohibits discrimination in the following contexts based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status:

- the sale or rental of a dwelling;
- publications regarding the sale or rental of a dwelling;
- the availability of a dwelling for inspection when it is available;
- a licensee's access to a multiple-listing service or other brokerage services; or
- the effects of entry into a neighborhood of persons in a protected group.

Also, a person whose business includes engaging in "residential real estate related transactions" may not discriminate against another in a transaction because of "race, color, religion, sex, disability, familial status, or national origin," but, again, the provision does not address sexual orientation.

The Texas Fair Housing Act also generally protects against discrimination based on disability, but the relevant definitions explicitly clarify that a "disability" does not "apply to an individual because of an individual's sexual orientation or because that individual is a transvestite."

The real estate commission may suspend or revoke a licensee, while acting as a broker or salesperson, discriminates against an owner, potential buyer, landlord, or potential tenant "on the basis of race, color, religion, sex, disability, familial status, national origin, or ancestry." No laws address discrimination based on sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 301.021, 301.022, 301.023, 301.024, 301.026, and 301.027 enacted 1993; § 301.003 amended 2003; § 1101.652 amended 2009.

[Tex. Occ. Code § 1101.652; Prop. Code §§ 301.003, .021, .022, .023, .024, .026, .027 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Texas, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Texas's unlawful financing laws prohibit discrimination based on sex or marital status, but they do not protect against discrimination based on sexual orientation.

Similarly, a residential mortgage loan company may be subject to disciplinary action if the commissioner determines that the company discriminated against a prospective borrower on the basis of sex or familial status, among other factors, but sexual orientation is not addressed.

A person whose business includes engaging in "residential real estate related transactions" may not discriminate against another because of their "race, color, religion, sex, disability, familial status, or national origin." In this context, a "residential real estate related transaction" includes making or purchasing loans or providing other financial assistance to purchase, construct, improve, repair, or

maintain a dwelling or to secure residential real estate. The Texas Fair Housing Act explicitly provides that the term "disability" in this context does not "apply to an individual because of an individual's sexual orientation or because that individual is a transvestite."

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not unfairly discriminate against an individual because of his or her marital status, but Texas laws do not protect persons from insurance discrimination based on their sexual orientation, gender identity, or gender expression.

Section 301.026 enacted 1993; § 341.401 enacted 1997; § 544.002 enacted 2003; § 156.303 amended 2013.

[Tex. Fin. Code §§ 156.303, 341.401](#); [Ins. Code § 544.002](#); [Prop. Code § 301.026 \(2013\)](#)

Texas, Property Titling

No provisions were located that address the titling of a same-sex couple's property.

Texas, Real Estate Transfer Tax

No relevant provisions were located.

Texas, Rights Upon Death

INHERITANCE

Because Texas law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

Neither the state nor its agencies or political subdivisions may give effect to a "right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union" in Texas or in any other jurisdiction.

OTHER RIGHTS

Because Texas does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Section 6.204 enacted 2003; revenue ruling issued 2013.

[Tex. Fam. Code § 6.204 \(2013\); Rev. Rul. 2013-17](#)

Texas, Rights Upon Dissolution

Because Texas does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples. Texas's statutes regarding marital property rights and liabilities explicitly provide that the term "spouse" means "a husband, who is a man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse."

Also, neither Texas nor its agencies or political subdivisions may give effect to a "right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union" in Texas or in any other jurisdiction.

Section 6.204 enacted 2003; § 3.401 amended 2009.

[Tex. Fam. Code §§ 3.401; 6.204 \(2013\)](#)

Texas, Status of Same-Sex Marriage

Texas does not recognize same-sex marriages. The state's constitution provides that marriage in Texas "shall consist only of the union of one man and one woman," and that neither the state nor its political subdivisions may "create or recognize any legal status identical or similar to marriage."

Texas's statutes similarly provide that a marriage license may not be issued to marry persons of the same sex. Both a marriage between persons of the same sex and a civil union are contrary to Texas public policy and void.

Texas and its agencies or political subdivisions may not give effect to a "right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union."

Although case law is outside the scope of this survey, it is important to note that in *De Leon v. Perry*, 975 F. Supp. 2d 632 (W. D. Tex. 2014), the United States District Court for the Western District of Texas issued a preliminary injunction based on its finding that the state's constitutional and statutory provisions that fail to recognize a same-sex marriage from another jurisdiction are unconstitutional. The court stayed its own order, pending the decision's appeal to the Fifth Circuit Court of Appeals.

Section 2.001 enacted 1997; § 6.204 enacted 2003; constitutional section adopted 2005.

[Tex. Fam. Code §§ 2.001, 6.204 \(2013\)](#); [Tex. Const. Art. I, § 32](#)

Texas, Tax Treatment

STATE INCOME TAX STATUS

Texas residents are not subject to a state personal income tax. See [Susan Combs, Texas Comptroller of Public Accounts, *Windows on State Government, Overview of Texas Taxes* \(last visited Aug. 1, 2014\)](#) (listing all Texas state taxes).

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Utah

Utah, Fair Housing Laws

PROTECTED CLASS

No provisions were located that classify sexual orientation as a protected class.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Utah's Fair Housing Act prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

Similarly, although it is a discriminatory housing practice for any person whose business includes engaging in residential real estate-related transactions to discriminate because of sex or familial status, discrimination based on sexual orientation is not prohibited. The same is true for denying a person access to or participation in a multiple-listing service or other real estate brokers' organizations.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located. Utah law provides that an unenforceable covenant, which is defined as a restriction based on "race, gender, national origin, marital status, or a similar classification determined to be unenforceable under state or federal law," is void.

Section 57-21-6 amended 1993; § 57-3-107 amended 1999; § 57-21-5 amended 2011.

[Utah Code §§ 57-3-107; -21-5, -6 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Utah, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Utah's laws pertaining to discriminatory housing practices regarding residential real estate-related transactions prohibit discrimination based on sex or familial status, but they do not protect against discrimination based on sexual orientation. "Residential real estate-related transactions" include making or purchasing loans or providing other financial assistance that is to be used to purchase, construct, improve, repair, or maintain a dwelling or that is secured by residential real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located.

Section 57-21-6 amended 1993.

[Utah Code § 57-21-6 \(2014\)](#)

Utah, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Utah does not recognize same-sex relationships in any form, so presumptions in title relationships that require a couple to be "husband and wife" do not apply to same-sex couples.

Generally, a real estate ownership interest granted to multiple persons who are designated as husband and wife is presumed to be a joint tenancy, unless "severed, converted, or expressly declared in the grant to be otherwise." A real estate ownership interest that does not qualify for this joint tenancy presumption is presumed to be a tenancy in common unless the grant expressly declares otherwise.

Section 57-1-5 amended 2011.

[Utah Code § 57-1-5 \(2014\)](#)

Utah, Real Estate Transfer Tax

No applicable provisions were located.

Utah, Rights Upon Death

INHERITANCE

Because Utah law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Utah does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Utah, Rights Upon Dissolution

Because Utah does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Utah, Status of Same-Sex Marriage

Utah does not recognize same-sex marriages. The state's constitution provides that marriage consists "only of the legal union between a man and a woman." No other domestic status or union is valid or recognized or may be given "the same or substantially equivalent legal effect as a marriage."

Utah's statutes also provide that marriages between persons of the same sex are prohibited and void. A marriage solemnized in another jurisdiction is not valid in Utah if it is between persons of

the same sex. It is Utah's policy to recognize as marriage only the legal union of a man and a woman, and the state will not "recognize, enforce, or give legal effect to any law creating any legal status, rights, benefits, or duties that are substantially equivalent to those provided under Utah law to a man and a woman because they are married."

Furthermore, neither a municipality nor a county may by ordinance give legal status or effect to a domestic partnership, civil union, or domestic cohabitation relationship other than a marriage.

Although case law is outside the scope of this survey, it is important to note that in [Kitchen v. Herbert, 961 F. Supp. 2d 1181 \(D. Utah 2013\)](#), *aff'd*, No. 13-4178 (10th Cir. Jun. 25, 2014); *stay granted*, 134 S. Ct. 893 (2014), the United States District Court for the District of Utah enjoined the state from enforcing its statutory and constitutional provisions that ban same-sex marriage. The Tenth Circuit Court of Appeals affirmed the decision, but the Supreme Court stayed the lower court's ruling "pending the final disposition of the appeal."

Section 30-1-4 amended 1996; § 30-1-2 amended 1999; § 30-1-4.1 enacted 2004; §§ 10-8-1.5 and 17-50-325 enacted 2008; constitutional section adopted 2004.

[Utah Code §§ 10-8-1.5; 17-50-325; 30-1-2, -4, -4.1 \(2014\); Utah Const. art. I, § 29](#)

Utah, Tax Treatment

STATE INCOME TAX STATUS

Same-sex couples who file a joint federal income tax return may also file a joint 2013 Utah Individual Income Tax, as provided for husband and wife in Utah Code § 59-10-503. The Utah Tax Commission limited this determination to the 2013 tax year, and the commission has not yet issued any guidance for subsequent years.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for

federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

The relationship between federal and state tax laws is in flux in Utah, as the state's same-sex marriage litigation proceeds through the courts. The Utah Tax Commission issued a notice on January 16, 2014, which provided that same-sex couples who are eligible to file a joint federal income tax return and who elect to file jointly, may also file a joint 2013 Utah Individual Income Tax return. The commission elaborated as follows:

Filing information for future years will be provided as court rulings and other information become available. If any taxpayers are required to file amended 2013 tax returns based on future court rulings, they will not be subject to penalties for any tax deficiencies resulting solely from following this guidance.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Section 59-10-503 amended 2010; tax notice and filing information issued 2014; revenue ruling issued 2013.

[Utah Code § 59-10-503 \(2014\)](#); [Utah Tax Comm'n, Tax Notice \(Jan. 15, 2014\)](#); [Utah Tax Comm'n, Filing Status \(Jan. 16, 2014\)](#); [Rev. Rul. 2013-17](#)

Vermont

Vermont, Fair Housing Laws

PROTECTED CLASS

Vermont's laws regarding unfair housing practices prohibit discrimination based on sex, sexual orientation, gender identity, and marital status, among other factors.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among others.

HOUSING DISCRIMINATION

Unfair Housing Practices

It is unlawful:

- to refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise to deny a dwelling or other real estate to a person because of the person's sex, sexual orientation, gender identity, or marital status;
- to discriminate against or harass a person in the terms, conditions, or privileges of the sale or rental of a dwelling or other real estate (or when providing connected services or facilities), because of a person's sex, sexual orientation, gender identity, or marital status;
- to make, print, or publish a notice, statement, or advertisement, regarding the sale or rental of a dwelling or other real estate that indicates a preference, limitation, or discrimination based on a person's sex, sexual orientation, gender identity, or marital status;
- to represent to a person, because of his or her sex, sexual orientation, gender identity, or marital status, that a dwelling or other real estate is not available when it is available;
- to engage in blockbusting practices, for profit, that may include inducing a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of persons of a particular sex, sexual orientation, gender identity, or marital status;
- to deny a person access to or membership or participation in a multiple listing service, real estate brokers' organization, or other organization or facility related to the business of selling or renting dwellings, because of a person's sex, sexual orientation, gender identity, or marital status;

- to discriminate against a person in the terms or conditions of access to or membership or participation in those real estate services, organizations, or facilities, because of a person's sex, sexual orientation, gender identity, or marital status; or
- to discriminate in land-use decisions or in housing permits because of a person's sex, sexual orientation, gender identity, or marital status.

Rental Housing Exemptions

The provisions described above, as related to a dwelling's rental, do not apply to the following, among others:

- if, under applicable occupancy laws and ordinances, the dwelling is not adequate to house all persons who intend to live there;
- if the dwelling unit is in a building with no more than three units and the owner or a member of the owner's immediate family resides in one of the units; or
- to a religious organization, association, or society, or a nonprofit organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, that limits the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose, to persons of the same religion (or gives preference to those persons), unless membership in the religion is "restricted on the basis of race, color, or national origin."

Definition

As used in Vermont's statutes, "sexual orientation" means "female or male homosexuality, heterosexuality, or bisexuality."

Mobile Home Lot Leases

A mobile home lot lease must contain a notice that the park's owner may not discriminate because of sex, sexual orientation, gender identity, or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No specifically relevant provisions were located.

Section 143 enacted 1991; § 6236 amended 2007; § 4504 amended 2013; § 4503 amended 2014.

[Vt. Stat. tit. 1, § 143; tit. 9, §§ 4503](#) (as amended by [2104 Vt. Acts. ch. 96](#)), [4504](#); [tit. 10, § 6236 \(2013\)](#); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Vermont, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is unlawful to discriminate because of a person's sex, sexual orientation, gender identity, or marital status:

- when making or purchasing loans or providing other financial assistance for real-estate-related transactions; or
- when selling, brokering, or appraising residential real property.

Also, a financial institution may not discriminate against an applicant for credit services on the basis of an applicant's sex, marital status, sexual orientation, or gender identity.

A person may not discriminate against a lessee or prospective lessee who has entered into an agricultural finance lease because of the lessee's sex, sexual orientation, gender identity, or marital status.

PROPERTY INSURANCE

Generally, insurance rates may not be excessive, inadequate, or unfairly discriminatory. "Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses."

The following are deemed to be unfair methods of competition or unfair or deceptive acts or practices in the insurance business:

- making an unfair discrimination between insureds of the same class and equal risk in insurance rates, dividends, benefits, or other terms and conditions of an insurance contract;

- making or permitting unfair discrimination because of an applicant's or an insured's sex, sexual orientation, gender identity, or marital status, regarding underwriting standards and practices, eligibility requirements, or rates;
- inquiring or investigating an applicant's, insured's, or beneficiary's sexual orientation, or gender identity in an insurance application or in an investigation connected to an insurance application;
- using "information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation or gender identity";
- using "sexual orientation, gender identity, or beneficiary designation in the underwriting process" or when determining insurability;
- making adverse underwriting decisions because medical records or an insurance support organization's report reveals that an applicant or insured has demonstrated AIDS-related concerns;
- making adverse underwriting decisions on the basis of the existence of nonspecific blood-code information; and
- making or permitting unfair discrimination between married couples and parties to a civil union, with regard to offering insurance benefits to a couple, a spouse, a party to a civil union, or their family.

Section 4685 enacted 1983; § 4724 amended 2008; §§ 2388, 4503, and 10403 amended 2014.

[Vt. Stat. tit. 8, §§ 4685, 4724, 10403](#) (as amended by [2104 Vt. Acts. ch. 96](#)); [tit. 9, §§ 2388](#) (as amended by [2104 Vt. Acts. ch. 96](#)), [4503](#) (as amended by [2104 Vt. Acts. ch. 96](#))

Vermont, Property Titling

Because Vermont allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, a land conveyance to multiple persons is deemed to create a tenancy in common, unless the document expressly provides otherwise. However, this provision does not apply to:

- devises or conveyances made in trust;
- devises or conveyances made to a husband and wife; or
- a conveyance in which it "manifestly appears" from the instrument's "tenor" that the parties intended to create a joint tenancy.

A spouse or civil union partner may convey his or her homestead interest to the other spouse or civil union partner before the homestead right vests, divesting the grantor of any homestead interest in the property. A conveyance of homestead property between spouses or civil union partners includes a conveyance of any homestead interest.

Section 2 amended 2003; § 141 amended 2007.

[Vt. Stat. tit. 27, §§ 2, 141 \(2013\)](#)

Vermont, Real Estate Transfer Tax

Because Vermont allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, the register of deeds collects the tax when any deed is recorded, unless an exception applies. The following transfers, among others, are exempt from the transfer tax:

- to confirm or correct a previously recorded transfer;
- between two spouses, parent and child, or grandparent and grandchild, without consideration, or in trust or by court decree (to the extent of the benefit to the donor or one these related persons), or from a trust conveying or releasing the property from the trust as between such persons and without consideration;
- under certain court judgments disposing of real estate of the parties to a civil marriage; and

- by partition among co-owners of joint tenancies, tenancies in common, or tenancies by the entirety.

Sections 9602 and 9603 amended 2011; regulatory section adopted 1979.

[Vt. Stat. tit. 32, §§ 9602, 9603 \(2013\); 10-060-025 Vt. Code R. § 1.9603 \(2010\)](#)

Vermont, Rights Upon Death

INHERITANCE

Because Vermont law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse under Vermont's inheritance laws. Therefore, generally,

- if a deceased spouse died without a will, the decedent's surviving spouse receives the entire intestate estate if the decedent has no surviving descendant or if all of the decedent's surviving descendants are also descendants of the surviving spouse; and
- a surviving spouse may waive the provisions of the decedent's will and elect to take one-half of the balance of the estate, after claims and expenses are paid.

OTHER RIGHTS

Appointment as a Personal Representative

Because Vermont law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

Because Vermont law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

If the decedent left no written directive, the following, in the priority indicated, have the right to determine the disposition of the decedent's remains, including the "location, manner, and conditions of disposition and arrangements for funeral goods and services":

- first, an individual appointed by an advance directive;
- second, the decedent's surviving spouse, civil union partner, or reciprocal beneficiary; and
- then, numerous other specified relatives or acquaintances.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Vermont permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under Vermont's state estate-tax laws. According to Vermont's Department of Taxes, Vermont's estate tax is tied to the federal estate tax, and a surviving spouse of a same-sex marriage who did not receive a marital benefit at the federal level in an estate in which Vermont state tax was paid may be entitled to a refund.

However, federal estate and gift tax law does not recognize a civil union in the same manner as Vermont law. Estates of parties to a civil union are subject to tax based on their actual federal estate tax liability and the actual federal credit for state death taxes. Starting with the estates of decedents who died on or after January 1, 2005, Vermont's laws regarding estate and gift taxes (chapter 190 of title 32) apply to parties to a civil union as if federal estate tax law recognized a civil union in the same manner as Vermont law.

Section 7401 amended 2001; §§ 311 and 319 amended 2009; § 5227 amended 2013; tax guidelines issued 2013.

[Vt. Stat. tit. 14, §§ 311, 319; tit. 18, § 5227; tit. 32 § 7401 \(2013\); Vt. Dept. of Taxes, *Shumlin Confirms New Vermont Estate Tax Guidelines for Same-Sex Marriages* \(July 25, 2013\)](#)

[Vermont, Rights Upon Dissolution](#)

Because Vermont allows same-sex marriage, the state's laws regarding rights upon dissolution of a married same-sex couple are generally the same as for other married couples. However, although Vermont generally has a six-month residency requirement before parties may initiate a divorce (and a one-year residency requirement before the final hearing), the state provides an exception when neither party's state of legal residence recognizes the couple's Vermont marriage for purposes of divorce, provided other conditions are met. Nevertheless, if either party wishes to litigate an issue related to the divorce before a Vermont court, one of the parties must meet the state's residency requirement.

The dissolution of civil unions follows the same procedures and is subject to the same substantive rights and obligations as are involved in the dissolution of civil marriages, including residency requirements. Therefore, parties who are not Vermont residents may file a complaint to dissolve a Vermont civil union if neither party's state of legal residence recognizes the couple's Vermont civil union for purposes of dissolution, provided other conditions are met.

The parties must file a stipulation that resolves all issues in the dissolution action. If a party wishes to litigate an issue related to the dissolution before a Vermont court, one of the parties must meet the state's residency requirements.

Generally, parties to a certified civil union who wish to dissolve their civil union after legally marrying one another "are not subject to the same substantive rights and obligations that are involved in the dissolution of civil marriage." Parties to a civil union who are legally wed to one another may dissolve their civil union by filing a petition for uncontested dissolution, and the court may immediately grant the petition without requiring a hearing.

Sections 1206 and 592 amended 2011.

[Vt. Stat. tit. 15, §§ 592, 1206 \(2013\)](#)

Vermont, Status of Same-Sex Marriage

As of September 1, 2009, Vermont allows same-sex marriage. The state has also permitted civil unions and reciprocal beneficiaries.

Vermont defines "marriage" as "the legally recognized union of two people." When used in Vermont's statutes, "marriage" means a civil marriage. Terms relating to a marital or familial relationship are construed consistent with these definitions "for all purposes throughout the law."

Parties to a Vermont civil union may elect to dissolve their civil union upon marrying one another, but are not required to do so to form a civil marriage. Civil unions do not automatically convert into civil marriages. Parties to a civil union have all the same benefits, protections, and responsibilities under law, as are granted to spouses in a civil marriage. Therefore, a party to a civil union is included in terms such as "spouse," "family," "dependent," "next of kin," and other terms that denote a spousal relationship, as the terms are used in Vermont law. Also, Vermont's laws of domestic relations, including annulment, divorce, probate, descent, distribution, property division, and prohibitions against discrimination based upon marital status, apply to parties to a civil union.

Chapter 25 of title 15, which permitted reciprocal beneficiaries, was repealed effective May 28, 2014.

Sections 8 and 1204 amended 2009; § 5131 amended 2011; § 1301 repealed 2014.

[Vt. Stat. tit. 15, §§ 8, 1204, 1301](#) (as repealed by [2014 Vt. Acts & Resolves ch. 164](#)); [tit. 18, § 5131 \(2013\)](#)

Vermont, Tax Treatment

STATE INCOME TAX STATUS

Same-sex couples are treated the same as other married couples under Vermont law. Therefore, they must file their Vermont personal income tax returns using the married status categories that are available to all couples.

Vermont applies its personal income tax laws to parties to a civil union or civil marriage "as if federal income tax law recognized a civil union and civil marriage in the same manner as Vermont law." Civil union couples must file their Vermont income tax return as either Civil Union Filing Jointly or Civil Union Filing Separately. A couple using a civil union status, must complete a separate federal income tax return as if "married filing jointly" or "married filing separately," using the exemptions, deductions, and credits available for the married filing status. This return should be marked, "Recomputed for VT Purposes" and the parties should use the recomputed information whenever federal information is requested on the Vermont return.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Vermont permits same-sex marriage, so the relationship between federal and state tax laws is the same for married same-sex couples as for other married couples. Therefore, a same-sex couple calculating its income for state-tax purposes starts with its federal adjusted gross income, adjusts it as required by Vermont's statutes, and then applies the state's income tax rates and income brackets. As described above, a couple in a civil union must prepare a federal return that is "Recomputed for VT Purposes" and use the recomputed information whenever federal information is requested on their Vermont returns.

Deductions

No specifically relevant provisions were located. Vermont tax laws apply to same-sex spouses in the same manner as any other married couple. When a couple in a civil union prepares a recomputed "married filing separately" federal tax return for Vermont tax purposes, the recomputed return must reasonably allocate exemptions and deductions.

Home Sale Exclusion

No specifically relevant provisions were located. Vermont tax laws apply to same-sex spouses in the same manner as any other married couple.

Withholding

No specifically relevant provisions were located. Vermont tax laws apply to same-sex spouses in the same manner as any other married couple.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Vermont tax laws apply to same-sex spouses in the same manner as any other married couple.

Sections 5812 and 5823 amended 2013; § 5822 amended 2014; history of civil-union tax guidelines unknown; bulletin issued 2010; revenue ruling issued 2013.

[Vt. Stat. tit. 32, §§ 5812, 5822](#) (as amended by [2104 Vt. Acts. ch. 96](#)), [5823 \(2013\)](#); [Vt. Dep't of Taxes, Technical Bulletin, TB-55: Exceptions to Requirement that Vermont Filing Status Must Mirror Federal Filing Status; Procedures for Allocation of Exemptions and Deductions for Recomputed Federal Income Tax Returns \(Oct. 7, 2010\)](#) (note that bulletin was issued before the federal government recognized same-sex marriages); [\(Vt. Dep't of Taxes, Individual Income: Civil Unions \(last visited July 15, 2014\)](#); [Rev. Rul. 2013-17](#)

Virgin Islands

Virgin Islands, Fair Housing Laws

PROTECTED CLASS

No provisions were located providing that sexual orientation is a protected class in the Virgin Islands. Although it is "the public policy of the United States Virgin Islands that all natural persons within its jurisdiction shall be entitled to . . . equal privileges in the purchase, lease, or rental of real estate, . . . subject only to conditions or limitations imposed by law and applicable in like manner to all persons," this declaration is in the context of prohibiting discrimination "based upon race, creed, color, or national origin."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Virgin Islands' laws regarding unlawful discriminatory practices prohibit discrimination based on sex, but they do not protect against discrimination based on sexual orientation or marital status.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Section 1 amended 1961; § 64 amended 2011.

V.I. Code tit. 10, §§ 1, 64 (LexisNexis 2014); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Virgin Islands, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. It is an unlawful discriminatory practice for a person or lending institution to discriminate because of an applicant's "race, creed, age, color, national origin, marital status, sex and/or political affiliation" when evaluating an application for financial assistance to purchase, acquire, construct, rehabilitate, repair, or maintain a housing accommodation, land, or commercial space. No provisions were located that prohibit discrimination based on sexual orientation.

PROPERTY INSURANCE

No relevant provisions were located.

Section 64 amended 2011.

V.I. Code tit. 10, 64 (LexisNexis 2014)

Virgin Islands, Property Titling

No provisions were located that address the titling of a same-sex couple's property. The Virgin Islands does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

Generally, a conveyance or devise of property made to multiple persons, other than to executors and trustees, creates a tenancy in common, unless the conveyance or devise expressly provides that the grantees or devisees take as joint tenants. However, a conveyance or devise of real property to a husband and wife creates an estate by the entirety, unless otherwise provided. No provisions applies this assumption to same-sex spouses.

Section 7 enacted 1921.

V.I. Code tit. 28, § 7 (LexisNexis 2014)

Virgin Islands, Real Estate Transfer Tax

The Virgin Islands imposes a stamp tax on the transfer of title to real property by a conveyance instrument, unless an exception applies. Because the Virgin Islands does not recognize same-sex marriage or other same-sex relationships in any form, none of the real estate transfer tax exemptions that explicitly apply to spouses are likely to apply. However, the following transfers are exempt:

- a transfer solely to provide or release security;
- an instrument that confirms or corrects a previously recorded deed;
- a deed involving the partition of real property; or

- a deed between "parents and children, step-parents and step-children, legal guardians and wards, brothers and sisters, grandparents and grandchildren, great grandparents and great grandchildren, uncles and nieces and nephews, aunts and nieces and nephews, and between cousins up to and including the second degree."

Statute 121 amended 2003; § 128 amended 2013.

V.I. Code tit. 33, §§ 121, 128 (LexisNexis 2014) (as amended by 2013 V.I. Acts ch. 7532)

Virgin Islands, Rights Upon Death

INHERITANCE

Because Virgin Islands' law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Virgin Islands' law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant provisions were located in the territory's laws.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Virgin Islands, Rights Upon Dissolution

Because Virgin Islands' law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the territory's marriage-dissolution laws to same-sex couples.

Virgin Islands, Status of Same-Sex Marriage

The Virgin Islands' laws do not recognize same-sex marriages. Marriage is "a civil contract which may be entered into between a male and a female in accordance with law."

No provisions were located that explicitly provide that the territory recognizes civil unions or domestic partnerships.

Statutory history unknown.

V.I. Code tit. 16, § 31 (LexisNexis 2014)

Virgin Islands, Tax Treatment

STATE INCOME TAX STATUS

No guidance was located regarding the filing status for same-sex couples.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

The Internal Revenue Service has also issued a tax guide for employers in the Virgin Islands, which also provides that for federal tax purposes, individuals of the same sex are considered married if they were lawfully married in a state or foreign country whose laws authorize same-sex marriages, even if the state or foreign country in which they now live does not recognize same-sex marriage.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Guide and revenue ruling issued 2013.

[Rev. Rul. 2013-17; Dep't of the Treasury, IRS Publication 80, Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands \(Dec. 17, 2013\)](#)

Virginia

Virginia, Fair Housing Laws

PROTECTED CLASS

The Virginia Human Rights Act provides that it is the Commonwealth's policy to protect all individuals from unlawful discrimination based on their sex or marital status, among other traits, in real estate transactions. The Act does not address sexual orientation.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

Virginia's Fair Housing Law prohibits discrimination with respect to residential housing based on sex or familial status, among other factors, but it does not protect against discrimination based on sexual orientation or marital status.

Similarly, the law provides that it is unlawful discrimination to deny a person membership or participation in a multiple listing service or other real estate brokers' organization because of the person's sex or familial status. It is also unlawful for a person or entity whose business includes engaging in residential real estate-related transactions to discriminate because of another's "race, color, religion, national origin, sex, elderliness, familial status, or handicap." Sexual orientation is not addressed in either contexts.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located. It is an unlawful discriminatory practice to include in any housing transfer, sale, rental, or lease a restrictive covenant that discriminates because of sex or familial status. Similarly, a restrictive covenant that purports to restrict a property's occupancy or ownership on the basis of sex or familial status is void and contrary to Virginia's public policy. Neither provision addresses sexual orientation.

Sections 36-96.1 and 36-96.4 amended 1991; § 36-96.3 amended 1996; § 2.2-3900 amended 2001; § 36-96.1:1 amended 2003; § 36-96.6 amended 2012.

[Va. Code §§ 2.2-3900; 36-96.1, .1:1, .3, .4, .6 \(2013\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Virginia, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. Virginia's unlawful financing laws prohibit discrimination based on sex or marital status, but they do not protect against discrimination based on sexual orientation. Also, it is unlawful for a person or entity, including a lending institution, whose business includes residential real estate-related transactions to discriminate because of sex or familial status, but not sexual orientation. In this context, the term "residential real estate-related transaction" includes making or purchasing loans or providing other financial assistance that is to be used to purchase, construct, improve, repair, or maintain a dwelling or that is secured by residential real estate.

PROPERTY INSURANCE

No relevant provisions were located. Generally, an insurer may not refuse to renew a fire insurance policy to insure an owner-occupied dwelling solely because of the insured's sex or marital status. Similarly, an insurer may not refuse to issue a fire insurance policy solely because a person's sex or marital status. Also, an insurer may not use a person's gender or marital status to determine an insurance credit score for underwriting, tier placement, or rating purposes for a policy insuring an owner-occupied dwelling. None of the statutes addressing insurance discrimination related to property insurance prohibit discrimination based on sexual orientation.

Section 38.2-2115 enacted 1986; § 36-96.4 amended 1991; § 38.2-2126 enacted 2003; § 6.2-501 amended 2010; § 38.2-2114 amended 2013.

[Va. Code §§ 6.2-501; 36-96.4; 38.2-2114, -2115, -2126 \(2013\)](#)

Virginia, Property Titling

No provisions were located that address the titling of a same-sex couple's property. Virginia does not recognize same-sex relationships of any form, so title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples. Generally, a person may own real property as joint tenants with or without a right of survivorship. Only a husband and wife may own property as tenants by the entireties.

Section 55-20.1 amended 2001; § 55-20.2 amended 2006.

[Va. Code §§ 55-20.1, .2 \(2013\)](#)

Virginia, Real Estate Transfer Tax

Virginia levies a state recordation tax on every deed admitted to record, unless the deed is exempt. Because Virginia does not recognize same-sex marriage or other same-sex relationships in any form, no real estate transfer tax exemptions that explicitly apply to spouses apply to same-sex couples. However, the following exceptions may be relevant:

- a confirmation;
- a correction; or
- a notice of assignment of a note secured by a deed of trust or mortgage.

Section 58.1-801 amended 2004; § 58.1-810 amended 1984.

[Va. Code §§ 58.1-801, -810 \(2013\)](#)

Virginia, Rights Upon Death

INHERITANCE

Because Virginia law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Virginia does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. However, no relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Virginia, Rights Upon Dissolution

Because Virginia does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

Virginia, Status of Same-Sex Marriage

Virginia does not recognize same-sex marriages. Its constitution provides that "[o]nly a union between one man and one woman may be a marriage." Neither Virginia nor its political subdivisions may create or recognize:

- "a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage"; or
- another "union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage."

Virginia's statutes also provide that a marriage between persons of the same sex is prohibited. A same-sex marriage entered into in another jurisdiction is "in all respects" void in Virginia, and any contractual rights created by the marriage are unenforceable.

Virginia law also prohibits a same-sex civil union, partnership contract, or other arrangement "purporting to bestow the privileges or obligations of marriage." A civil union, partnership contract, or other arrangement entered into by persons of the same sex in another jurisdiction is void in Virginia, and any contractual rights created by the arrangement are unenforceable.

Although case law is outside the scope of this survey, it is important to note that in *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va. 2014), the U.S. District Court for the Eastern District of Virginia ruled that the state's laws banning same-sex marriage were unconstitutional. The court stayed its ruling pending the decision's appeal. The Fourth Circuit Court of Appeals recently upheld the lower court's ruling. *Bostic v. Schaefer*, No. 14-1167 (4th Cir. July 28, 2014). It is not known whether the state will appeal that decision.

Section 20-45.2 amended 1997; § 20-45.3 enacted 2004; constitutional section ratified 2006.

[Va. Code §§ 20-45.2, -45.3 \(2013\)](#); [Va. Const. art. I, § 15-A](#)

Virginia, Tax Treatment

STATE INCOME TAX STATUS

Same-sex couples who file federal income tax returns jointly, or as married taxpayers filing separately, must file their Virginia income tax returns as single individuals.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Same-sex couples that are legally married in other states are considered unmarried for Virginia income tax purposes and must file their Virginia income tax returns as single taxpayers. Because an individual's Virginia taxable income begins with his or her federal adjusted gross income, individuals in a same-sex marriage must create pro forma federal returns using a filing status of either "single" or "head of household." Each individual must then use his or her recalculated federal adjusted gross income and other information from the pro forma federal return when filing his or her single Virginia income tax return.

Same-sex married couples may not file original or amended returns using a married filing status for Virginia tax purposes for any taxable year.

Deductions

Above-the-line, standard, and itemized deductions are all impacted when same-sex married couples who file federal income tax returns jointly, or as married taxpayers filing separately, file their Virginia income tax returns as single individuals. For example, using a different filing status on the Virginia state tax return may impact a taxpayer's ability to claim the above-the-line deductions for Virginia income tax purposes that are available only if the individual is related to the taxpayer, his or her spouse, or his or her dependents. The above-the-line deductions most likely to be affected by a taxpayer's changed status are deductions for health savings accounts, self-employed health insurance, individual retirement accounts, interest on educational loans, and tuition and fees.

Also, a taxpayer may not deduct from his or her income for state-tax purposes alimony and separate maintenance payments made pursuant to a valid divorce decree or separation agreement. Individuals making alimony or separate maintenance payments must include the amounts as income on their pro forma federal returns.

A taxpayer who does not itemize deductions for federal tax purposes may claim a standard deduction when computing his or her Virginia taxable income. Each partner in a same-sex marriage that does not itemize deductions on their joint federal return must claim the standard deduction for single taxpayers on his or her individual Virginia return.

Same-sex married couples who itemize deductions on their joint federal returns must recalculate their itemized deductions as single taxpayers on their pro forma federal returns. Each taxpayer must use his or her recalculated itemized deductions from his or her pro forma federal return to determine the amount of Virginia itemized deductions. A taxpayer who itemizes deductions on his or her federal return may not claim a standard deduction on his or her pro forma federal return or Virginia state income tax return.

Same-sex couples:

- may not allocate itemized deductions between each partner in proportion to his or her income; and

- must separately account for their expenses. Only the individual who can account for a particular expense may claim the related deduction on his or her pro forma federal return.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

Same-sex married couples who are required to file their Virginia income tax returns as single individuals must claim the proper amount of withholding allowances on Form VA-4, the Personal Exemption Worksheet. As an example, Virginia's tax bulletin explains that if a same-sex married couple has one dependent child, each partner would generally claim personal allowances for himself, his spouse, and his dependent child on federal Form W-4. However, when completing Form VA-4, neither partner may claim an exemption for a spouse, and only one partner, but not both, may claim an exemption for the child.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located.

Tax bulletin issued 2013; revenue ruling issued 2013.

[Va. Dep't of Taxation, Tax Bulletin 13-13 \(Nov. 8, 2013\); Rev. Rul. 2013-17](#)

Washington

Washington, Fair Housing Laws

PROTECTED CLASS

Washington's legislature has found that discriminatory practices against its inhabitants because of sex, marital status, and sexual orientation, among other traits, threatens its inhabitants' rights and proper privileges and menaces the "institutions and foundation of a free democratic state." Washington's laws against discrimination must be construed liberally to accomplish those purposes.

The right to be free from discrimination because of sex or sexual orientation is a civil right. This right includes, among others:

- the right to engage in a real estate, credit, and insurance transaction without discrimination; and

- the right to "engage in commerce free from any discriminatory boycotts or blacklists."

In this context, "sexual orientation" means "heterosexuality, homosexuality, bisexuality, and gender expression or identity."

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Unfair Practices Related to Real Estate Transactions, Facilities, or Services

It is an unfair practice for a person to act as follows because of another person's sex, marital status, or sexual orientation:

- to refuse to engage in a real estate transaction;
- to discriminate in the terms, conditions, or privileges of a real estate transaction or when furnishing related facilities or services;
- to refuse to receive or transmit a bona fide offer to engage in a real estate transaction;
- to refuse to negotiate a real estate transaction;
- to represent that real property is not available for inspection, sale, rental, or lease when it is available;
- to fail to bring a property listing to a person's attention;

- to refuse to permit a person to inspect real property;
- to discriminate in the sale or rental, to make unavailable, or to deny a dwelling to a person residing in or intending to reside in a dwelling after it is sold, rented, or made available (or to a person associated with that individual);
- to make, print, circulate, post, or mail a document that indicates an intent to make a limitation, specification, or discrimination;
- to use an application form for a real estate transaction that indicates an intent to make a limitation, specification, or discrimination;
- to make a record or inquiry in connection with a prospective real estate transaction that indicates an intent to make a limitation, specification, or discrimination;
- to "offer, solicit, accept, use, or retain" a real property listing, "with the understanding that a person may be discriminated against" in the transaction, or in facilities or services furnished in connection with the transaction;
- to expel a person from occupying real property;
- to discriminate in the course of negotiating, executing, or financing a real estate transaction, or in negotiating or executing a related item or service; or
- to attempt to do any of the unfair practices listed above.

The provisions described above do not apply to real estate transactions that involve sharing a dwelling unit, renting, or subleasing a dwelling unit, when the dwelling is occupied by its owner or sublessor.

Entry of Certain Persons into Neighborhood

It is an unfair practice for a person, for profit, to induce another to sell or rent real property by representations regarding the entry into the neighborhood of persons of a particular sex or sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

A provision in a written instrument related to real property that "purports to forbid or restrict" the property's "conveyance, encumbrance, occupancy, or lease" to persons of a specified sex or sexual orientation is void. A condition, restriction, or prohibition that limits a property's use or occupancy because of a person's sex or sexual orientation is also void.

It is an unfair practice:

- to insert a void provision in a written instrument related to real property; or
- "to honor or attempt to honor such a provision in the chain of title."

Sections 49.60.010, 49.60.020, 49.60.222, 49.60.223, and 49.60.224 amended 2007; §§ 49.60.030 and 49.60.040 amended 2009.

[Wash. Rev. Code §§ 49.60.010, .020, .030, .040, .222, .223, .224 \(2014\); Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Washington, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

Unfair Practices Related to Real Estate Transactions

It is an unfair practice for a person to discriminate in the course of negotiating, executing, or financing a real estate transaction because of another person's sex, marital status, or sexual orientation.

Unfair Practices by Financial Institutions

It is an unfair practice to use a person's sex, marital status, or sexual orientation to determine an applicant's creditworthiness in a credit transaction.

Unfair Practices Regarding Credit Transactions

It is an unfair practice for a person to act as follows in connection with a credit transaction because of another person's sex, marital status, or sexual orientation:

- to deny credit;

- to increase the charges, fees, or collateral required to secure any credit extended;
- to restrict the amount or use of extended credit;
- to impose different terms or conditions with respect to extended credit or a related item or service; or
- to attempt to do any unfair practice listed above.

PROPERTY INSURANCE

Unfair Discrimination

A person or entity engaged in the insurance business in Washington may not refuse to issue an insurance contract or cancel or decline to renew an insurance contract because of the insured's or prospective insured's sex, marital status, or sexual orientation. Benefits payable and any coverage term, rate, condition, or type may not be "restricted, modified, excluded, increased, or reduced" because of a person's sex, marital status, or sexual orientation. However, this provision does not prohibit "fair discrimination based on the basis of" sex or marital status "when bona fide statistical differences in risk or exposure have been substantiated."

Unfair Practices

It is generally an unfair practice for a person, in connection with an insurance transaction, to cancel or refuse to issue or renew an insurance agreement to a person because of his or her sex, marital status, or sexual orientation.

Sections 48.30.300 and 49.60.178 amended 2006; §§ 49.60.175, 49.60.176, and 49.60.222 amended 2007.

[Wash. Rev. Stat. §§ 48.30.300; 49.60.175, .176, .178, .222 \(2014\)](#)

Washington, Property Titling

Because Washington allows same-sex marriage, property may be titled to a same-sex married couple in the same manner as any other married couple. Therefore, an interest created in favor of multiple persons is an interest in common, unless it is:

- acquired in partnership or for partnership purposes;
- declared to be a joint tenancy; or
- acquired by executors or trustees.

Interests in common held by both spouses or, effective June 12, 2008, by both domestic partners, whether or not with others, are presumed to be community property. Joint tenancy interests held in the names of both spouses or both domestic partners, whether or not with others, are also presumed to be community property. The interest passes to the surviving spouse or domestic partner, as provided for property held in joint tenancy, but in all other respects is treated as community property.

Either or both persons in a marriage or a state registered domestic partnership may sever a joint tenancy. When a joint tenancy is severed, the property or its proceeds are presumed to be community property, whether it is held in either or both spouses' or domestic partners' names.

A spouse or domestic partner may directly give, grant, sell, or convey to his or her spouse or domestic partner his or her community right, title, interest, or estate in their community real property. A deed from one spouse or domestic partner to the other divests the real estate from claims or demands as community property and vests the property in the grantee as separate property.

Sections 26.16.050, 64.28.020, and 64.28.040 amended 2008.

[Wash. Rev. Code §§ 26.16.050; 64.28.020, .040 \(2014\)](#)

Washington, Real Estate Transfer Tax

Because Washington allows same-sex marriage, the real estate transfer tax applies to same-sex spouses in the same manner as any other married couple. Therefore, Washington imposes an excise tax on the sale of real property. The term "sale" does not include the following transactions, among others, so that the transfer tax does not apply:

- a gift;
- a devise;
- an inheritance;
- a transfer by transfer on death deed, to the extent that it satisfies a contractual obligation the decedent owed to the property's recipient;
- a partition by tenants in common by agreement or as the result of a court decree;
- an assignment from one spouse or one domestic partner to the other according to a decree of marriage or domestic partnership dissolution or a property settlement agreement; or
- an assignment or other transfer of a vendor's interest in a sale contract.

Section 82.45.060 amended 2013; § 82.45.010 amended 2014.

[Wash. Rev. Code §§ 82.45.010, .060 \(2014\)](#)

Washington, Rights Upon Death

INHERITANCE

Because Washington law permits same-sex marriages, a same-sex spouse is treated no differently

than any other spouse under Washington's inheritance laws. Therefore, generally,

- if a decedent's will fails to name or provide for the decedent's surviving spouse or domestic partner and the decedent married or entered into the domestic partnership after the will was executed, the omitted spouse or domestic partner must receive a portion of the decedent's estate generally equal to the amount he or she would have received if the decedent had died without a will, unless it appears from the will or other clear and convincing evidence that the omission was intentional; and
- if a decedent dies without a will, the decedent's surviving spouse or state registered domestic partner receives all of the net separate estate if the decedent has no surviving issue, parent, or issue of his or her parent.

Washington is a community property state, so one-half of the community property and quasi-community property automatically goes to the surviving spouse or domestic partner. Therefore, Washington has no state law giving a surviving spouse or domestic partner the right to elect against the will.

"Community property" is defined as "[p]roperty not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage or after registration of a state registered domestic partnership by either domestic partner or either husband or wife or both." Although either spouse or domestic partner may manage and control community property alone, neither person may devise or bequeath by will more than one-half of the community property.

OTHER RIGHTS

Appointment as a Personal Representative

Because Washington law permits same-sex marriages, a same-sex spouse is treated no differently than any other spouse, and no provisions specifically relevant to same-sex marriages were located.

Funeral Arrangements

If the decedent has not prearranged for a funeral or if the cost of the decedent's wishes exceeds a reasonable amount, the right to control the decedent's remains is in following individuals, in the order indicated:

- first, the person designated by the decedent on the decedent's Department of Defense emergency data record, if the decedent died while in military;
- second, the decedent's designated agent;
- third, the decedent's surviving spouse or state registered domestic partner;
- then, other specified relatives or persons.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. Because Washington law permits same-sex marriages, a same-sex spouse is also treated no differently than any other spouse under Washington's state estate-tax laws, including the right to estate tax spousal benefits. A state registered domestic partner is deemed to be a surviving spouse, who is entitled to a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner.

Sections 11.12.095 and 26.16.030 amended 2008; § 11.04.015 amended 2010; § 68.50.160 amended 2012; § 83.100.047 amended 2013.

[Wash. Rev. Code §§ 11.04.015; 26.16.030; 68.50.160; 83.100.047 \(2014\); Wash. Dep't of Rev., *Excise Tax Advisory ETA 3179.2013: Washington State Estate Tax Treatment of Same-Sex Spouses* \(Aug. 15, 2013\)](#)

Washington, Rights Upon Dissolution

Because Washington allows same-sex marriage, Washington's laws regarding rights upon dissolution of a married same-sex couple are the same as for other married couples. However, a Washington divorce may not be possible because Washington has a residency requirement, and the couple's current state may not grant a divorce if it does not recognize same-sex marriages. Washington permits a dissolution petition to a party who:

- is a Washington resident;
- is a member of the armed forces stationed in Washington; or
- is married to or in a domestic partnership with a Washington resident or a member of the armed forces stationed in Washington.

In a dissolution proceeding for either a marriage or domestic partnership, the court, without regard to misconduct, disposes of the parties' community and separate property and liabilities, as appears "just and equitable," after considering all relevant factors. The court may also grant a maintenance order for either spouse or domestic partner, in an amount and for the time period the court deems just after considering all relevant factors.

If a marriage or registered domestic partnership is dissolved, invalidated, or terminated, a provision made before that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset to the decedent's former spouse or domestic partner is revoked. If, after making a will, the testator's marriage or domestic partnership is dissolved, invalidated, or terminated, all provisions in the will in favor of the testator's former spouse or domestic partner are revoked, unless the will expressly provides otherwise.

Sections 11.12.051, 26.09.030, 26.09.080, and 26.09.090 amended 2008; § 11.07.010 amended 2014.

[Wash. Rev. Code §§ 11.07.010; 11.12.051; 26.09.030, .080, .090 \(2014\)](#)

Washington, Status of Same-Sex Marriage

As of December 6, 2012, Washington allows same-sex marriage. The state has also allowed domestic partnerships.

Partners in a domestic partnership may apply and receive a marriage license and have their marriage solemnized, as long as the parties are otherwise eligible to marry and are the same as the parties to the state registered domestic partnership.

A domestic partnership is dissolved by operation of law when the same parties marry each other. A same-sex registered domestic partnership in which neither party is 62 years of age or older and that

the parties have not dissolved or converted into a marriage by June 30, 2014, is automatically merged into a marriage as of June 30, 2014. If proceedings for dissolution, annulment, or legal separation of a registered domestic partnership is pending as of June 30, 2014, that domestic partnership is not automatically merged into a marriage.

Washington's legislature has found that the "public has an interest in providing a legal framework for . . . mutually supportive relationships, whether the partners are of the same or different sexes, and irrespective of their sexual orientation." The legislature has also found that although partners who are at least 62 years of age are entitled to marry under the state's marriage statutes, some social security and pension laws make it impractical for them to marry. Therefore, couples may continue to enter into state registered domestic partnerships if one of the partners is at least 62 years of age.

State registered domestic partners are treated the same as married spouses under Washington state law for all purposes. Any "privilege, immunity, right, benefit, or responsibility granted or imposed" by law is granted equally to an individual who is or was in a state registered domestic partnership. Furthermore, the provisions of chapter 521 must be "liberally construed to achieve equal treatment, to the extent not in conflict with federal law, of state registered domestic partners and married spouses."

A legal union, other than a marriage, of two persons that was validly formed in another jurisdiction and that is "substantially equivalent" to a Washington domestic partnership is recognized as a valid domestic partnership in Washington.

Gender specific terms such as "husband" and "wife" must be construed to be gender neutral and applicable to spouses of the same sex when used in the context of a spouse's rights and responsibilities under Washington law. Also, terms such as "spouse," "marriage," "husband," and "wife" must be interpreted as applying equally to registered domestic partnerships or individuals in state registered domestic partnerships, as well as to marital relationships and married persons. Furthermore, for the purposes of chapter 26.21A, any "privilege, immunity, right, benefit, or responsibility granted or imposed" by the uniform interstate family support act, to or on an individual "because the individual is or was married is granted or imposed on equivalent terms, substantive and procedural, to or on an individual who is or was in a domestic partnership."

Section 26.18.240 enacted 2008; § 26.60.015 enacted 2009; § 26.60.010 amended 2010; §§ 1.12.080, 26.04.010, 26.60.030, and 26.60.090 amended 2012; § 26.60.100 enacted 2012.

[Wash. Rev. Code §§ 1.12.080; 26.04.010; 26.18.240; 26.60.010, .015, .030, .090, .100 \(2014\)](#)

Washington, Tax Treatment

STATE INCOME TAX STATUS

Washington residents are not subject to a state personal income tax.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Washington residents are not subject to a state personal income tax.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No specifically relevant provisions were located. Washington tax laws apply to same-sex spouses in the same manner as any other married couple.

Federal revenue ruling issued 2013; history of state tax information page unknown.

[Wash. Dep't of Revenue, *Income Tax* \(last visited July 17, 2014\); Rev. Rul. 2013-17](#)

West Virginia

West Virginia, Fair Housing Laws

PROTECTED CLASS

West Virginia's laws provide that equal opportunity in housing accommodations or real property is a human right or civil right without regard to "race, religion, color, national origin, ancestry, sex, blindness, disability or familial status," but nothing prohibits discrimination based on sexual orientation. Accordingly, the definition of "discriminate" or "discrimination" does not include actions based on sexual orientation.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

West Virginia's Fair Housing Act prohibits discrimination based on sex or familial status, but it does not protect against discrimination based on sexual orientation or marital status.

Also, it is unlawful for a person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of a person's sex or familial status, among other traits. Similarly, it is unlawful to deny a person access to or membership or participation in a multiple listing service or other real estate broker's organization because of a person's sex or familial status. However, neither law addresses sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located. The county clerk must post in a prominent place a disclaimer that "certain covenants or restrictions that are based on race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin" are invalid, unenforceable, and void. However, nothing prohibits deed restrictions or covenants that are based on sexual orientation.

Sections 5-11-2 and 5-11-3 amended 1998; § 36-4-18 enacted 2006; §§ 5-11A-5, 5-11A-6, and 5-11A-7 amended 2014.

[W. Va. Code §§ 5-11-2, -3; 5-11A-5, -6, -7](#) (as all three are amended by [2014 W. Va. Acts ch. 87 \(H.B. 2387\)](#)); [36-4-18 \(2014\)](#); [Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

West Virginia, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located. It is unlawful for a person or entity whose business includes residential real estate-related transactions to discriminate because of a person's sex or familial status, among other things, but the relevant law does not address sexual orientation. The term "residential real estate-related transaction" includes making or purchasing loans or providing other

financial assistance that is to be used to purchase, construct, improve, repair, or maintain a dwelling or that is secured by residential real estate.

PROPERTY INSURANCE

No specifically relevant provisions were located. Generally, an insurer may not refuse to issue or renew or terminate a property insurance policy because of a person's sex or marital status, among other reasons, but the relevant statutes do not address sexual orientation.

Section 33-17A-6 amended 2000; § 33-17A-4a enacted 2005; § 5-11A-6 amended 2014.

[W. Va. Code §§ 5-11A-6](#) (as amended by [2014 W. Va. Acts ch. 87 \(H.B. 2387\)](#)); [33-17A-4a](#), [-6 \(2014\)](#)

West Virginia, Property Titling

No provisions were located that address the titling of a same-sex couple's property. West Virginia does not recognize same-sex relationships in any form, so any title relationships that require a couple to be "husband and wife" or "spouses" are not available to same-sex couples.

West Virginia, Real Estate Transfer Tax

West Virginia imposes a state excise tax on the privilege of transferring a real estate title, unless an exception applies. Because West Virginia does not recognize same-sex marriage or other same-sex relationships in any form, none of the exemptions that explicitly refer to spouses are likely to apply. However, the following exceptions may be relevant:

- partition deeds;
- transfers between parent and child or the child's spouse, without consideration;
- transfers between grandparent and grandchild or the grandchild's spouse, without consideration; or
- quitclaim or corrective deeds without consideration.

Statutory section 11-22-1 amended 1999; § 11-22-2 amended 2007.

[W. Va. Code §§ 11-22-1, -2 \(2014\)](#)

West Virginia, Rights Upon Death

INHERITANCE

Because West Virginia law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because West Virginia does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state law provisions were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

West Virginia, Rights Upon Dissolution

Because West Virginia does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples.

West Virginia, Status of Same-Sex Marriage

West Virginia does not recognize same-sex marriages. The state's statutes provide that a "public act, record or judicial proceeding of any other state, territory, possession or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of the

other state, territory, possession, or tribe, or a right or claim arising from such relationship, shall not be given effect" in West Virginia.

Although case law is outside the scope of this survey, it is important to note that West Virginia is subject to the precedent set when the Fourth Circuit Court of Appeals recently upheld a lower court's ruling that Virginia's ban of same-sex marriage was unconstitutional. *See Bostic v. Schaefer*, No. 14-1167 (4th Cir. July 28, 2014).

Section 48-2-603 enacted 2001.

[W. Va. Code § 48-2-603 \(2014\)](#)

West Virginia, Tax Treatment

STATE INCOME TAX STATUS

Each individual in a same-sex marriage must file a West Virginia State return (IT-140) using a "single" filing status.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Each taxpayer in a same-sex marriage must complete a pro forma federal single return and use that information for his or her state return. If the couple files a joint federal but separate state returns, each spouse must compute his or her West Virginia adjusted gross income as if he or she had determined his or her federal adjusted gross income on separately filed federal returns.

Deductions

No specifically relevant provisions were located.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Tax instructions issued 2014; revenue ruling issued 2013.

[W. Va. State Tax Dep't, *Personal Income Tax Forms & Instructions* \(Jan. 2, 2014\); Rev. Rul. 2013-17](#)

Wisconsin

Wisconsin, Fair Housing Laws

PROTECTED CLASS

Sexual orientation is generally a protected class in Wisconsin.

Pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Laws (§ 106.50)

Wisconsin's Open Housing Law prohibits discrimination based on sex, sexual orientation, marital status, or family status, among other factors. The term "discriminate" specifically includes treating a person unequally because of sex, sexual orientation, marital status, or family status. In this context, "sexual orientation" means "having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference."

It is unlawful for a person to discriminate as follows based on sexual orientation:

- refusing to sell, rent, finance, or contract to construct housing;
- refusing to negotiate, discuss terms, or permit inspections for housing;
- requiring different or more stringent terms for the sale, lease, financing, or rental of housing;
- advertising in a manner that "indicates discrimination by a preference or limitation";
- refusing to renew a lease;
- evicting a tenant from rental housing;
- harassing a tenant;
- when providing privileges, services, or facilities connected to housing;
- falsely representing that housing is not available;
- denying access to, or membership in, a multiple listing service or other real estate service;
- "coercing, intimidating, threatening or interfering" with a person exercising or enjoying protected rights; or
- otherwise making unavailable or denying housing.

No person may induce or attempt to induce a person to sell or rent housing by representing that the entry into the neighborhood of a person of a protected class may adversely affect the neighborhood.

Housing Authorities (§ 66.1201)

Wisconsin's Housing Authorities Law provides that a person entitled to a right, benefit, facility, or privilege under Wis. Stat. §§ 66.1201—1211 may not be discriminated against because of sex or sexual orientation.

Housing Authorities for Elderly Persons (§ 66.1213)

Wisconsin's Housing Authority for Elderly Persons Law provides that a person otherwise entitled to a right, benefit, facility, or privilege under the law may not be discriminated against because of sex or sexual orientation.

Urban Redevelopment (§ 66.1301)

Wisconsin's Urban Redevelopment Law provides that a person entitled to a right, benefit, facility, or privilege under Wis. Stat. §§ 66.1301—1329 may not be discriminated against because of sex or sexual orientation.

Blighted Area Law (§ 66.1331)

Wisconsin's Blighted Area Law provides that a person otherwise entitled to a right, benefit, facility, or privilege under the law may not be discriminated against because of sex or sexual orientation.

Blight Elimination and Slum Clearance (§ 66.1333)

Wisconsin's Blight Elimination and Slum Clearance Act provides that a person entitled to a right, benefit, facility, or privilege under the act may not be discriminated against because of sex or sexual orientation.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Sections 66.1201, 66.1213, 66.1301, 66.1331, and 111.32 amended 2009; §§ 66.1333 and 106.50 amended 2011.

[Wis. Stat. §§ 66.1201, .1213, .1301, .1331, .1333; 106.50; 111.32 \(2014\); Nat'l Assoc. of REALTORS® Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Wisconsin, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

It is unlawful for a person to discriminate based on sexual orientation, among other traits, by:

- refusing to finance housing;
- requiring different or more stringent prices, terms, or conditions when financing housing;
- refusing to finance an unimproved residential lot; or
- for a person whose business includes residential real estate-related transactions, making or purchasing loans or providing other financial assistance to purchase, construct, improve, repair, or maintain housing; making or purchasing loans; or providing other financial assistance secured by residential real estate.

A mortgage banker, mortgage loan originator, or mortgage broker may not treat a person unequally because of his or her sex, sexual orientation, or marital status.

No financial organization or other credit-granting commercial institution may discriminate when granting or extending a loan or credit on the basis of the applicant's sex or marital status, among other traits, but sexual orientation is not addressed in that context.

PROPERTY INSURANCE

It is unlawful for a person in the business of insuring against hazards to discriminate based on sexual orientation by "refusing to enter into, or by exacting different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling."

Section 138.20 amended 1987; § 106.50 amended 2011; § 224.77 amended 2014.

[Wis. Stat. §§ 106.50; 138.20; 224.77 \(2014\)](#)

Wisconsin, Property Titling

No provisions were located that address the titling of a married same-sex couple's property. However, Wisconsin's statutes regarding title documents do recognize domestic partnerships.

Generally, multiple persons named as owners in a title document, as transferees in a transfer instrument, or as buyers in a bill of sale are tenants in common. Each tenant in common has an undivided interest in the entire property for the tenancy's duration without a survivorship rights. If persons named as owners in the document are described as domestic partners, or if they are in fact domestic partners, they are joint tenants, unless the document expresses the intent to create a tenancy in common.

Section 700.18 enacted 1991; § 700.17 amended 1999; § 700.19 amended 2009.

[Wis. Stat. §§ 700.17, .18, .19, .20 \(2014\)](#)

Wisconsin, Real Estate Transfer Tax

Wisconsin imposes a real estate transfer fee on every conveyance not otherwise exempted or excluded. Wisconsin's exemption that applies to spouses also applies to domestic partners. The following other exceptions may also be relevant:

- deeds executed for nominal, inadequate, or no consideration to confirm, correct, or reform a previously recorded conveyance;
- deeds on partition; or
- deeds between "parent and child, stepparent and stepchild, parent and son-in-law or parent and daughter-in-law for nominal or no consideration."

Section 77.22 amended 2011; § 77.25 amended 2013.

[Wis. Stat. §§ 77.22, .25 \(2014\)](#)

Wisconsin, Rights Upon Death

INHERITANCE

Registered domestic partners are given some of the spousal benefits related to inheritance. Therefore, generally, all of a decedent's net estate that is not disposed of by will passes to the deceased's domestic partner if the decedent has no surviving issue or if the surviving issue are all issue of the decedent's surviving domestic partner. If the intestate estate includes an interest in a home, the decedent's entire interest in the home is assigned to the surviving domestic partner if:

- the surviving domestic partner petitions the court; and
- a governing instrument does not provide a specific transfer of the decedent's interest to someone other than the surviving domestic partner.

If a testator recorded a domestic partnership with his or her surviving domestic partner after the testator executed his or her will, the domestic partner is entitled to a share of the probate estate equal to "the value of the share that the . . . surviving domestic partner would have received had the testator died with an intestate estate equal to the value of the testator's net estate," reduced by specified amounts

Wisconsin's statutes also provide for special allowances for the support of the deceased's domestic partner and the support and education of their minor children.

OTHER RIGHTS

Because Wisconsin does not recognize same-sex marriages, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex married couples. However, some statutes that provide rights upon death apply to domestic partners. For example, a domestic partner may make an anatomical gift of his or her partner who is near death or has died.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Sections 852.01, 852.09, 853.12, 861.21, and 861.35 amended 2009; § 157.06 amended 2011; revenue ruling issued 2013.

[Wis. Stat. §§ 157.06; 852.01, .09; 853.12; 861.21, .35 \(2014\); Rev. Rul. 2013-17](#)

Wisconsin, Rights Upon Dissolution

Because Wisconsin does not recognize same-sex marriages, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex married couples. However, the state's statutes do address the termination of a domestic partnership. A domestic partner may terminate his or her domestic partnership by filing a completed notice of termination and paying the required fee. Other requirements apply if the notice is signed by only one of the domestic partners or if a domestic partner who is seeking to terminate the domestic partnership is unable to find the other domestic partner after making reasonable efforts.

No provisions were located that address the partners' rights upon the partnership's termination.

Section 770.12 enacted 2009.

[Wis. Stat. § 770.12 \(2014\)](#)

Wisconsin, Status of Same-Sex Marriage

Wisconsin does not recognize same-sex marriages. Wisconsin's constitution provides that "[o]nly a marriage between one man and one woman shall be valid or recognized as a marriage" in the state. Although the state's constitution also provides that a "legal status identical or substantially similar to that of marriage for unmarried individuals" is not valid, Wisconsin statutes recognize domestic partnerships that grant some rights that are traditionally incidental only to a marriage.

If a person who resides in Wisconsin and enter into a same-sex marriage in another jurisdiction, that marriage is void for all purposes in Wisconsin.

Although case law is outside the scope of this survey, it is important to note that in *Wolf v. Walker*, 986 F. Supp. 2d 982 (W.D. Wis. June 6, 2014), the United States District Court for the Western District of Wisconsin ruled that Wisconsin's constitutional and statutory prohibition on same-sex marriage is unconstitutional. The ruling has been stayed, pending action by Seventh Circuit Court of Appeals. *Wolf v. Walker*, No. 14-cv-64-bbc (W.D. Wis. Jun. 13, 2014) (order granting stay).

Section 765.04 amended 1979; § 770.05 enacted 2009; constitutional amendment adopted 2006.

[Wis. Stat. §§ 765.001, 765.04; 770.05 \(2014\); Wis. Const. art. XIII, § 13](#)

Wisconsin, Tax Treatment

STATE INCOME TAX STATUS

Individuals who entered into a same-sex marriage in another state may not file a Wisconsin income tax return using the tax status of "married filing jointly" or "married filing separately."

Each individual in a same-sex couple must file their Wisconsin income tax return separately using the filing status of single or, if qualified, head of household.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

Because Wisconsin does not recognize same-sex marriages, individuals who entered into a same-sex marriage in another state may not file a Wisconsin income tax return using a tax status of married filing jointly or married filing separately. Each individual in a same-sex marriage who is considered married for federal tax purposes must:

- file a Wisconsin income tax return on Form 1 (or Form 1NPR, if a nonresident or part-year resident);
- file his or her Wisconsin income tax return separately using the filing status of single or, if qualified, head of household; and

- complete a Wisconsin form Schedule S in order to determine the amount of income reported on the federal return that is allocated to each individual and the federal adjusted gross income to be used for Wisconsin tax purposes. (Wisconsin marital property law does not apply to the allocation).

For tax year 2012 and late returns from prior years filed on or after September 16, 2013, the individual returns must be filed on paper. A complete copy of the federal return and Schedule S must be attached to the state return.

This guidance applies to:

- 2012 returns filed on or after September 16, 2013;
- late returns from earlier years filed on or after September 16, 2013; and
- returns filed for tax years 2013 and later.

Although couples in a same-sex marriage may file amended returns for federal tax purposes to change their filing status to a married status, they may not file amended state returns to change their Wisconsin filing status.

Deductions

Certain federal deductions are not available for same-sex spouses in Wisconsin. For example:

- contributions to health savings accounts are not deductible for Wisconsin tax purposes if the account provides benefits to a same-sex spouse that is not a dependent; and
- each of the spouses in a same-sex marriage who filed a joint federal return must file their Wisconsin return subject to their own individual IRA limitation of the lesser of \$5,500 or the amount of annual compensation.

Home Sale Exclusion

No specifically relevant provisions were located.

Withholding

No specifically relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Tax Guidance, Common Questions, and Schedule S issued 2013; revenue ruling issued 2013.

[Wis. Dep't of Revenue, Tax Guidance for Individuals in a Same-Sex Marriage \(Sept. 6, 2013\)](#); [Wis. Dep't of Revenue, Same-Sex Couples Common Questions \(Nov. 1, 2013\)](#); [Wis. Dep't of Revenue, Schedule S, Allocation of Income to be Reported by Same-Sex Couples Filing a Joint Federal Return \(2013\)](#); [Rev. Rul. 2013-17](#)

Wyoming

Wyoming, Fair Housing Laws

PROTECTED CLASS

No provisions were located that provide that sexual orientation is a protected class.

However, pursuant to the National Association of REALTORS' ethics code, REALTORS, in their real estate employment practices, may not discriminate against a person on the basis of sex, familial status, sexual orientation, or gender identity, among other factors.

HOUSING DISCRIMINATION

Fair Housing Law

No relevant provisions were located.

Ethics Code

The National Association of REALTORS' ethics code provides that REALTORS may not:

- "deny equal professional services" to any person because of sex, familial status, sexual orientation, or gender identity;
- print, display, or circulate a statement or advertisement related to selling or renting a property that "indicates any preference, limitations or discrimination" based on sex, familial status, sexual orientation, or gender identity; or
- be parties to a plan or agreement to discriminate on the basis of sex, familial status, sexual orientation, or gender identity.

RESTRICTIVE CLAUSES

No relevant provisions were located.

Ethics code issued 2014.

[Nat'l Assoc. of REALTORS®, Code of Ethics and Standards of Practice of the National Association of REALTORS®, art. 10 \(Jan. 1, 2014\)](#)

Wyoming, Financing and Insurance Access

MORTGAGE AND HOME EQUITY FINANCING

No relevant provisions were located.

PROPERTY INSURANCE

No relevant provisions were located.

Wyoming, Property Titling

No provisions were located that address the titling of a same-sex couple's property.

Section 34-1-140 amended 1969.

See [Wyo. Stat. § 34-1-140 \(2014\)](#) (generally addressing creation of joint tenancy or tenancy by the entirety)

Wyoming, Real Estate Transfer Tax

No applicable provisions were located.

Wyoming, Rights Upon Death

INHERITANCE

Because Wyoming law does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's inheritance laws to same-sex couples.

OTHER RIGHTS

Because Wyoming does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's provisions related to other rights upon death to same-sex couples.

ESTATE OR INHERITANCE TAXES

For federal tax purposes, a same-sex couple is treated as a married couple for all federal tax purposes, including gift and estate taxes. No relevant state laws were located.

Revenue ruling issued 2013.

[Rev. Rul. 2013-17](#)

Wyoming, Rights Upon Dissolution

Because Wyoming does not recognize same-sex marriages or any other form of same-sex relationships, no statutes or regulations were located that apply the state's marriage-dissolution laws to same-sex couples. However, although case law is beyond the scope of this survey, the annotations to Wyo. Stat. Ann. § 20-1-111 note that in *Christiansen v. Christiansen*, 253 P.3d 153 (Wyo. 2011), the court found that the district court had subject-matter jurisdiction over a divorce

involving a same-sex couple legally married in Canada and that recognizing the marriage for that limited purpose was not inconsistent with the state's statutory definition of marriage.

Wyoming, Status of Same-Sex Marriage

Wyoming does not recognize same-sex marriages. The state's statutes provide that marriage is "a civil contract between a male and a female person to which the consent of the parties capable of contracting is essential." However, the statutes also provide that "all marriage contracts which are valid by the laws of the country in which contracted are valid" in Wyoming, and they do not specifically exempt same-sex marriages, so it is unclear whether the state recognizes same-sex marriages that were entered into in another jurisdiction. (Although case law is beyond the scope of this survey, the annotations to Wyo. Stat. Ann. § 20-1-111 note that a Wyoming district court had subject-matter jurisdiction over the divorce of a same-sex couple legally married in Canada, and that recognizing the marriage for that limited purpose was not inconsistent with Wyo. Stat. Ann. § 20-1-101. See *Christiansen v. Christiansen*, 253 P.3d 153 (Wyo. 2011).)

No provisions in Wyoming's statutes or regulations indicate that the state recognizes civil unions or domestic partnerships.

Also, it is important to note that Wyoming is subject to the precedent set by the Tenth Circuit Court of Appeals in *Kitchen v. Herbert*, 961 F. Supp. 2d 1181 (D. Utah 2013), *aff'd*, No. 13-4178 (10th Cir. June 25, 2014), *stay granted*, 134 S. Ct. 893 (2014), which is a federal case challenging Utah's constitutional ban on marriage for same-sex couples. The court's decision is stayed pending action by the Supreme Court.

Section 20-1-101 and 20-1-111 amended 1957.

[Wyo. Stat. §§ 20-1-101, -111 \(2014\)](#)

Wyoming, Tax Treatment

STATE INCOME TAX STATUS

Wyoming residents are not subject to a state personal income tax.

FEDERAL INCOME TAX CONFORMITY

Federal Filing Status

The Treasury Department and the Internal Revenue Service have ruled that same-sex couples that are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This ruling applies if the couple lives in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. (For Federal tax purposes, the term "marriage" does not include registered domestic partnerships or civil unions.) Individuals who were in a same-sex marriage may, but are not required to, file amended returns as married for federal tax purposes for prior tax years still open under the applicable statute of limitations.

Relationship between federal and state taxes

No relevant provisions were located.

Deductions

No relevant provisions were located.

Home Sale Exclusion

No relevant provisions were located.

Withholding

No relevant provisions were located.

GIFT TAX IMPLICATIONS

No relevant provisions were located.

Revenue information history unknown; revenue ruling issued 2013.

[Wyo. Dep't of Rev., Department Key Reports \(last visited Aug. 6, 2014\); Rev. Rul. 2013-17](#)