

# ROYAL ABSTRACT

C O R P O F N E W J E R S E Y

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TO: Royal Abstract clients

FROM: David R. Gelbert, Esq.

RE: Civil Union Law

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As many of you are aware, Governor Corzine has just signed Assembly Bill A3787 (the "Act"), the so-called "Civil Union Law"; its provisions are effective as of February 19, 2007.

The Act establishes the right of same sex couples to enter into civil unions with the "same benefits and protections" and "subject to the same responsibilities as spouses in a marriage". This is accomplished by amending current relevant law to add civil union couples to laws concerning property ownership, inheritance and domestic relations. This will impact a wide variety of laws in this State, and the purpose of this memo is to make you aware of issues which apply to title and real estate practice.

The new law authorizes the establishment of civil unions between persons of the same sex. The persons entering the civil union are referred to as the "civil union couple", and each is referred to as "a partner in a civil union". In order for the civil union to be valid, the couple must apply for a license and have the union solemnized in either a civil or religious ceremony.

One of the most important points in the Act to the real estate industry is the ability of civil union couples to own property as tenants by the entireties. In order to vest title in a civil union couple as tenants by the entireties, the deed into them should read:

X and Y, a civil union couple  
Or  
X and Y, partners in a civil union

These designations provide sufficient identification of the parties and the relationship. However, if the grantee reads only "X and Y", and the parties can provide proof that they were a civil union couple at the time of acquisition of the property, the presumption is that they hold as tenants by the entireties. If the parties acquired the real property prior to entering into a civil union, they must execute a new deed into themselves as a civil union couple to create a tenancy by the entireties.

Affidavits of Title will have to be revised to include a place for parties to indicate that they are a civil union couple. Until such time as the legal forms companies and your software companies

update forms, add the following language to the "Exceptions and Additions" section of the Affidavit:

X and Y are a civil union couple, said civil union having been solemnized on \_\_\_\_\_.

If one or both of the parties has changed their name, their prior name(s) must also be disclosed in the affidavit of title:

The prior name of X was \_\_\_\_\_.

Civil union partners enjoy the right of joint possession in the principal civil union residence under N.J.S.A. 3B:28-3. Those joint possession rights also enjoy priority over certain mortgage liens in accordance with 3B:28-3.1. The title insurance industry will therefore underwrite those rights the same way we underwrite marital rights of joint possession.

A civil union may be terminated by a divorce proceeding or the partners may obtain a legal separation. Where we find title vested in a civil union couple who are now divorced, we will require all of the usual proofs required in a divorce, including copies of decrees and property settlement agreements when necessary.

Civil union couples also have the ability to enter into Pre-Civil Union Agreements which are treated from an underwriting standpoint the same as Pre-Marital Agreements.

Decedent's Estates is another area with a significant change. Partners in a civil union are Class A beneficiaries for purposes of New Jersey Inheritance Taxes. Accordingly, they are not subject to the tax and a Waiver is not necessary. New Jersey Estate taxes and Federal Estate taxes may be due, depending upon the size of the estate. Additionally, the surviving partner in a civil union will have the same inheritance rights as a spouse, whether the decedent died testate or intestate.

Provided the civil union in question was created legally under the laws of the foreign state, an out of state civil union will be recognized as legal in New Jersey. As of this writing the only other states with same sex civil union laws are Connecticut and Vermont. Presently, Massachusetts is the only state to allow same sex marriage.

The Act also makes some changes to the Domestic Partnership statute enacted in 2004. As of the effective date of the Act, no more Domestic Partnerships will be registered, except to couples consisting of a man and a woman both over the age of 62. Existing Domestic Partnerships will continue, but if the parties to an existing Domestic Partnership enter into a civil union, the Domestic Partnership automatically terminates.

An exhaustive review of this legislation is beyond the scope of this release; however it highlights the affected topics which are relevant to title practitioners. A full copy of A3787 can be obtained from the New Jersey legislative website [www.njleg.state.nj.us](http://www.njleg.state.nj.us).