

NAR Issue Summary

Fair Housing / Marriage Equality & Real Estate

NAR Committee:

Fair Housing Policy Committee

What is the fundamental issue?

Marriage can affect real estate in several ways including how property is titled, tax consequences related to real estate, and estates in the event of death or divorce. Many states allow same sex couples to marry and enjoy the property rights and tax benefits of marriage. The Federal Government has by executive order extended tax benefits to legally married same sex couples. Actions by the Courts have held that restrictions prohibiting same-sex couples from marrying are unconstitutional; however, the issue has not been decided by the Supreme Court. The US Supreme Court has agreed to review several lower court decisions and will likely decide whether states can prohibit same sex marriage.

There may be multiple private property rights issues related to marriage that impact same sex couples and possibly create a difference in treatment on the basis of sexual orientation. In Minnesota, an analysis of state laws benefiting married couples found well over 50 specific real estate related benefits for married couples.

I am a real estate professional. What does this mean for my business?

The rights associated with property ownership and marriage are not available in some states to same sex couples. Real estate professionals working with same sex couples in states not allowing or recognizing same sex marriage, even for those married in another state, will have to be familiar with those differences and be sure to advise same sex couple to seek counsel regarding titling, estate planning and taxes.

NAR Policy:

NAR supports equal housing opportunity on the basis of sexual orientation and gender identity.

Opposition Arguments:

Some might argue that marriage is not a real estate issue and therefore not an issue for NAR to consider. Others and the legislatures in several states have pushed measures allowing discrimination on the basis of sexual orientation if a business person has a religious belief that homosexuality is wrong.



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Legislative/Regulatory Status/Outlook

The NAR Diversity Committee identified several possible areas where real estate benefits are not available to same sex couples because they are not allowed to marry in their state. The Committee asked for the input of the Federal Financing and Housing Policy Committee, the Convention Financing and Policy Committee, the Federal Taxation Committee and the State and Local Issues Policy Committee. Research regarding state laws identified several issues impacting same sex couples not allowed to marry, including the application of transfer taxes when one member of a couple dies, the ability to title property, and protection from discrimination. The committees mentioned above, plus the Public Policy Coordinating Committee, have requested to be part of future discussions to address the development of NAR policy on the issue. Discussion will be postponed until after the US Supreme Court determines whether restrictions preventing same sex marriage are constitutional.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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