

## **CIVIL UNIONS**

**By John M. Biesiada**  
**Senior Vice President**  
**Chief Underwriting Counsel**

The Illinois Religious Freedom Protection and Civil Union Act (750 ILCS 75/1 et seq., effective June 1, 2011) establishes the civil union in Illinois and provides that people who enter into a civil union have many of the protections and benefits provided by law to spouses. Civil unions may be entered into by same or opposite sex couples and the process is very similar to entering into and dissolving marriage.

The impact of the Act on real property law and title insurance is seen in three principal areas: homestead, death (heirship) and tenancy by the entirety. The Act provides that "a party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law." (750 ILCS 75/20).

As a result of the Act, we must consider whether an unmarried person may be a party to a civil union, because the civil union partner would have homestead rights. So, deeds, mortgages and other conveyancing documents from an unmarried person will also need to state whether the grantor is a party to a civil union. For example, where a deed may now state "Joe Brown, a bachelor", it will need to state "Joe Brown, a bachelor not party to a civil union". If the party is married, no mention of civil union is needed. If the party is in a civil union with a non-title holding person, the document should read "Joe Brown, party to a civil union with Jane Smith" and Jane will need to waive homestead.

The civil union partner of a decedent will have the same rights as a spouse. For probated estates, this will affect who is preferred as far as appointing the representative of an intestate estate. More importantly, the civil union partner will have the spouse's share of an intestate estate. Affidavits of heirship must state whether the decedent was a party to a civil union and whether the other party to the civil union survived the decedent. For example, if Joe Brown is a widower, there would need to be stated not only that he did not remarry, but also that he never entered into a civil union. If he did enter into a civil union, the partner would be an heir as if that partner were a spouse.

Greater Illinois Title has taken the position that parties to a civil union may hold title as tenants by the entirety, provided they and the property meet the other. Practitioners should be alert to create tenancies by the entirety for civil union partners where desirable.

Finally, it should be noted that the Act provides that marriages between persons of the same sex, civil unions or similar legal relationships (but not common law marriage) legally entered into in another jurisdiction shall be recognized in Illinois as civil unions.