

REAL ESTATE

Gay marriage and real estate: What changed because of the Supreme Court's ruling?

By [Janna Herron](#) • Bankrate.com



The decision by the U.S. Supreme Court to legalize gay marriage has sweeping effects on laws across the country, including those related to real estate ownership. Married same-sex couples now have more options available to them when they buy and own a home.

The high court ruled in *Obergefell v. Hodges* that same-sex couples in the U.S. have a right to marry, no matter where they live, striking down gay marriage bans that still existed in a handful of states.

Here's how it affects property ownership.

What gay couples used to face

In many states where gay marriage was not recognized, married same-sex couples had a choice of two types of ownership:

- Joint rights of tenancy with survivorship.
- Tenancy in common.

Joint rights of tenancy with survivorship ensures that when one co-owner passes, the survivor owns all the property, no matter what the underlying relationship, says Mike Gelfand, senior partner at Gelfand & Arpe, PA in West Palm Beach, Florida.

In tenancy in common arrangements, each individual owns an undivided 50% of the property, and when one person dies, her stake in the property goes to her heirs, not the other owner. "We see this many times in second marriages," Gelfand says.

Now, tenancy by the entirety

Now, after the Supreme Court ruling, married same-sex couples have a choice to hold a property as tenancy by the entirety, which was available only to married couples.

Tenancy by the entirety provides greater protection against creditors, among other important ownership benefits, says Elizabeth Schwartz, an attorney with Elizabeth F. Schwartz, PA in Miami Beach.

"When marriage equality passed in Florida back in January, the requests to retitle properties started flowing in," she says. "I'm glad legally married same-sex couples can avail themselves of this advantageous form of ownership."

How capital gains are affected

For same-sex couples who can now get married in a state that didn't allow those unions before the Supreme Court decision, they get another real estate perk after they say "I do" in their home state. When they sell their primary residence, they can enjoy double the capital gains exemption that an individual does.

For example, an individual pays a tax on every dollar of profit over \$250,000. But married couples pay taxes on every dollar over \$500,000. Since 2013, the IRS has recognized legal same-sex marriages for tax purposes. Now, those unions exist in every state.

How VA loans are affected

Before the Obergefell ruling, the Department of Veterans Affairs, or VA, which guarantees mortgages for eligible service members, veterans and Defense Department employees, tried to treat all married couples equally, but a federal law still on the books required the VA to defer to state laws.

That meant a married gay couple didn't receive equal treatment if they applied for a VA loan in a state that did not recognize their marriage. So, a couple who legally married in California might not have received the full benefit of a VA mortgage in Texas, where same-sex marriages were not recognized.

Similarly, the law didn't allow the VA to recognize marriages of same-sex couples who were living in a non-equality state, but visited another jurisdiction, say Washington, D.C., and got married there.

Take-their-word-for-it policy

To get around it, the VA adopted a policy of taking the couples' word for it that they were legally married, so they could apply for a home loan.

Now, the VA no longer has to jump through those rhetorical hoops to give same-sex married couples the same benefits that heterosexual married couples already receive.

"It will basically allow the VA to recognize all marriages of our military and veterans," says Chris Rowzee, director of family readiness for the American Military Partner Association.

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