

# LEGALIZATION OF SAME SEX MARRIAGES

By K. Dean Kantaras and Jennifer H. Cavill

UNTIL JUNE, 2015, SAME SEX marriages were legal in some states, but not all. Additionally, not every state would recognize a same sex marriage that was lawfully entered into in another jurisdiction. Florida is one of them. In fact, the Florida Constitution, Article I, Section 27 states: "Marriage defined.—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." Furthermore, §741.212, Florida Statutes holds, in part, "(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state." Consequently, until recently, Florida did not recognize same sex marriages, even if they were entered into in a jurisdiction in which same sex marriages are legal, and Florida would not permit any issuance of marriage licenses to same sex couples.

However, in 2014, the case of Brenner v. Scott, 999 F. Supp. 2d 1278, 1293 (N.D. Fla. 2014) held that Article I, Section 27 of the Florida Constitution and §741.212, Florida Statutes were unconstitutional and, therefore, that the ban on same sex marriages was unconstitutional. The case then went on appeal and was placed on hold, pending action by the United States Supreme Court.

On June 26, 2015, the United States Supreme Court rendered its opinion in Obergefell v. Hodges, 135 S. Ct. 2584 (2015) where it ultimately ruled that all states must license a marriage of the same sex so long as the marriage is lawfully entered



K. Dean Kantaras, Esq.

into. In its ruling, the Supreme Court held that "[t]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them." The Supreme Court also ruled that "there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character." As such, Article I, Section 27 of the Florida Constitution and §741.212, Florida Statutes are unconstitutional under Obergefell v. Hodges, 135 S. Ct. 2584 (2015).

Not only does Florida now recognize same sex marriages, but same-sex couples may seek a dissolution of marriage in Florida. In Brandon-Thomas v. Brandon-Thomas, 163 So. 3d 644, 647 (Fla. 2nd DCA

2015), the 2nd DCA held that a same sex partner failed to establish a legitimate government interest that would be served by precluding the court from exercising jurisdiction over the dissolution of same sex marriages. K. Dean Kantaras, P.A. handles all aspects of same sex marriage family law cases. For more information on rights and responsibilities involved with same sex marriages, including, but not limited to, antenuptial or postnuptial agreements, timesharing issues, child support, equitable distribution and/or dissolution of marriage, contact K. Dean Kantaras, P.A. at 727-781-0000.




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*EDITOR'S NOTE: K. Dean Kantaras has been licensed to practice law in Florida for over eighteen years. Mr. Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar, a distinction held by less than one percent of all attorneys licensed to practice in Florida. He is "A" rated by Martindale-Hubbell, the highest possible rating. He is a member of the Supreme Court of the United States, the United States Court of Appeals for the 11th Circuit and Middle District, The Florida Bar, and the Clearwater Bar Association. His offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000 and 1930 East Bay Drive, Largo, 33771, (727) 544-0000. www.Kantaraslaw.com. Jennifer Cavill, Esq. is an Associate Attorney at the firm. She is a member of the Florida Bar, the United States District Court-Middle District of Florida, Clearwater Bar and St. Petersburg Bar Associations and Canakaris Inn of Court.*