



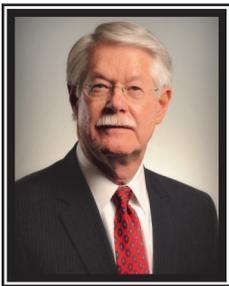
**IN THIS ISSUE:**

- ▶ SAME-SEX MARRIAGE: NOW LEGAL IN ALL FIFTY STATES  
By: PETER B. SCOTT, ESQ. ....1-2
- ▶ CP2 WELCOMES TWO NEW ATTORNEYS .....2
- ▶ SURVEYS: WHERE DOES YOUR PROPERTY END?  
By: EDWIN S. CHAPIN, ESQ. ....3
- ▶ CP2 WELCOMES NEW ATTORNEYS & STAFF.....4

# Between *The* Lines



COAN, PAYTON & PAYNE, LLC IS AN INTEGRATED TEAM OF HIGHLY-TRUSTED PROFESSIONALS ORGANIZED TO PROVIDE WORLD-CLASS LEGAL SERVICES. TOGETHER WITH OUR CLIENTS, WE CREATE AND IMPLEMENT ROCK SOLID® STRATEGIES FOR SUCCESS.



By: Peter B. Scott, Esq.  
[pscott@cp2law.com](mailto:pscott@cp2law.com)

## SAME-SEX MARRIAGE: NOW LEGAL IN ALL FIFTY STATES

On June 26, 2015, the US Supreme Court issued its opinion in *Obergefell v. Hodges*, the name assigned to a series of consolidated cases on same-sex marriage rights. The Court ruled 5-4 in favor of the petitioners, ruling same-sex married couples are entitled to equal protection under the laws and that their marriages must be recognized nationwide.

### Case background

Jim Obergefell & his longtime partner, John Arthur, sought to enter into a legal marriage. Both residents of Ohio, Mr. Arthur was terminally ill with ALS and they wanted to solemnize their relationship before his death. They chartered a plane to Maryland, where same-sex marriage is legal and were married on the tarmac at a Baltimore airport. They then returned to Ohio as a married couple.

Soon after, Mr. Arthur died. The State of Ohio issued a death certificate that did not identify Obergefell as a surviving spouse. Mr. Obergefell sued the state (naming Hodges, the director of the Ohio Department of Health) to have himself named as Mr. Arthur’s surviving spouse, arguing that Ohio’s state constitutional ban on same-sex marriage – including *nonrecognition of marriages solemnized in other states* – violates the equal protection clause of the 5<sup>th</sup> and 14<sup>th</sup> Amendments. Obergefell’s case was consolidated with a series of other related same-sex marriage cases to resolve two specific issues under the 14th Amendment.

### Issues resolved by *Obergefell* Opinion

1. The 14th Amendment requires states to issue marriage licenses to individuals of the same gender.
2. The 14th Amendment requires states to formally recognize same-sex marriages of that state’s residents, when those residents entered into a same-sex marriage in another state where the marriage was legally valid.

### The law in Colorado

The *Obergefell* decision will have no impact on same-sex couples in Colorado. On October 6, 2014, the U.S. Supreme Court decided to let the appellate court decisions stand, permitting same-sex marriage, in seven appeals from five states. Two of those states were Utah and Oklahoma, states that are in the 10<sup>th</sup> Circuit Court of Appeals. Decisions of the 10<sup>th</sup> Circuit Court of Appeals determine the applicable law for all six states in the 10<sup>th</sup> Circuit, Oklahoma, Kansas, New Mexico, Colorado, Wyoming and Utah.

As a consequence of that decision, Colorado Attorney General John Stuthers issued a statement that the Colorado County Clerks were legally required to issue marriage licenses to same-sex couples who request them. The *Obergefell* decision has now extended the right of same-sex couples to marry to all 50 states.

### Impact of *Obergefell* for same-sex married couples

State laws banning same-sex marriage are effectively invalidated. Same-sex spouses will now enjoy all state tax benefits and other spousal benefits that other couples enjoy. Some of these occur independent of proactive planning:

- Adoption or child custody proceedings, even in states that previously did not recognize two persons of the same gender as a child’s parents (at issue in some of the cases that were consolidated with *Obergefell*);
- Divorce proceedings, if necessary, now that states must recognize the validity of the marriage wherever solemnized;
- Spousal priority in matters concerning an incapacitated spouse’s care, or recognition in the event guardianship or conservatorship proceedings are necessary;
- Spousal survivorship rights under state pension or other retirement benefits, even in states that previously did not recognize same-sex marriage;

- Spousal inheritance through *intestacy* (when a spouse dies without a valid will or trust);
- Spousal *identity or priority* in the event will or trust proceedings are contested after death;
- The ability to file taxes jointly as a married couple;
- Spousal privilege in criminal proceedings where a spouse is a defendant;
- Any other spousal contract right where the contract is construed under the laws of a state that did not recognize the marriage.

### Proactive planning still advised

Just because all states must now recognize marriage between same-sex couples doesn't mean couples should not take control of their will and trust planning, and clearly set forth their wishes in enforceable legal documents. All the good reasons to plan apply just as much to same-sex married couples as to opposite-sex married couples:

- Proactively expressing their wishes concerning their medical care during periods of incapacity (through durable powers of attorney and living trust provisions);
- Structuring the distribution of their property – ideally in protective trusts – for the benefit of their surviving spouse and children after death;
- Providing mechanisms that allow flexibility in administering those trusts to account for changes in the law, or changes in beneficiary circumstances after death (through carefully-tailored choice of law, decanting, or trust protector provisions);
- Providing clarity and discretion to a trustee to make



**Congratulations to founding member, Michael C. Payne, Esq., on being elected to the Colorado Bar Association's Real Estate Law Section Council.**

[Michael C. Payne, Esq.](#)  
[mpayne@cp2law.com](mailto:mpayne@cp2law.com)

strategic tax decisions through trust administration after death (through various accounting, tax and investment provisions);

- Providing for family members other than a spouse or child through their estate plans;
- Making gifts to religious or other charitable organizations through their estates;
- Allowing orderly operation and transition of businesses or professional practices through incapacity or death.

Obergefell likely represents the last word on same-sex marriage, elevating these relationships to equal stature with other marriages. While same-sex married couples are now entitled to equal protection under the laws of every state, the efficacy of those laws in ensuring dignity in disability and death, and orderly and structured distribution of property after death is very limited for all couples. Families should always take control of their planning and leave as little to state law interpretation as possible. That is best done through careful planning with experienced professionals who can intelligently guide the family through the process.

## CP2 WELCOMES TWO NEW ATTORNEYS TO THE TEAM



**JOHN W. MADDEN, III, ESQ.**

Mr. Madden has significant experience with complex real estate litigation which will be his primary focus at the firm. Mr. Madden will be working out of the firm's Denver office.

[John W. Madden, III, Esq.](#)  
[jmadden@cp2law.com](mailto:jmadden@cp2law.com)

Mr. Madden was an Assistant U.S. Attorney for the District of Colorado serving in the major trials section, trying over 35 cases. He was awarded a Special Commendation for Outstanding Service. Thereafter, he became a named partner in the Denver law firm of Brownstein Hyatt Farber & Madden for 18 years. He also served as Regional Director for the Federal Trade Commission's Denver Office and received the Agency's Distinguished Service Award. He is also a Fellow of the American Bar Association.



**CURTIS SEARS, ESQ.**

Mr. Sears has significant experience with complex commercial real estate, development and construction related matters which will be his primary focus at the firm.

[Curtis Sears, Esq.](#)  
[csears@cp2law.com](mailto:csears@cp2law.com)

Mr. Sears has practiced law in Colorado and Texas in both small and large firms. He is not just an accomplished attorney, Mr. Sears has been actively involved in real estate development, construction and brokerage throughout his career. He was the Director of a commercial bank and has taught real estate courses at the College of Business at Colorado State University. Mr. Sears currently teaches real estate courses at the Leeds School of Business at the University of Colorado Boulder.

**CP2 congratulates Edwin “Ned” Chapin, Esq., on being elected to the Greeley Rotary Club Board and for being selected to be a Senior Counselor at the Rotary Youth Leadership Awards Camp.**

**Mr. Chapin was also recently appointed Vice President of the AIMS Community College Foundation Board of Directors!**



[Edwin Chapin, Esq.  
echapin@cp2law.com](mailto:echapin@cp2law.com)

## **SURVEYS: WHERE DOES YOUR PROPERTY END?**

Do you know where your property ends and your neighbor’s begins? It seems like a simple question with a simple answer, but if you have it wrong the outcomes can be costly.

Consider that a court in northern Minnesota ruled that a man was not entitled to any award for damages after his neighbor sawed his garage in half and removed most of the structure because the half that was removed was actually on the neighbor’s land, see this [June 3, 2015, article](#) from the Duluth News Tribune.

In another situation, I had a client who owned three adjoining commercial lots. He built a three-story motel on the middle lot, operated it for a while and then sold it. Later it was discovered that two feet of the portico of the motel encroached onto the northern lot. My client was left holding the bag. The client, who still owned the southern lot but sold the northern lot, had to provide the motel owner with additional paved parking on the southern lot and pay to remodel part of the motel to add an entrance on the other side of the building.

Similarly, I spoke with a property owner who had bought a home adjacent to land owned by a local electric utility. He had replaced the fence around his property following along a prior fence, only to discover a large portion of the fence and fully landscaped yard was owned by the utility. It had been this way for many years. The only solution was to move the fence back to the actual property line and abandon much of what he thought was his yard.

A proper survey could have helped avoid these situations. In Colorado, there are generally four types of surveys, with each building upon the information provided by the former.

The first type is known as the improvement location certificate. It is not a true survey, but merely a certification that the improvements on the subject parcel of land are contained within its boundaries. It also certifies whether any adjoining improvements encroach onto the subject parcel. It’s generally used for residential transactions, since it is inexpensive and provides assurance that improvements are located within boundaries and of little use in other situations.

The second type is the land survey plat. This survey must contain a scale drawing of the land parcel, its boundaries and all recorded and apparent rights-of-way as well as easements. It does not, however, show any

improvements to the parcel. Its most useful application is in transactions involving vacant lands.

The third type is known as the improvement survey plat. This survey must show all information of a land survey plat, plus the location of all visible and underground utilities, the location of all improvements, any structures, fences, or hedges within five feet of the boundary and any encroachments from adjoining properties. This survey can be useful for all manner of transactions or disputes.

The last type of survey is the ALTA/ASCM land title survey. The standards for this type of survey are set by the American Land Title Association (ALTA) and the American Congress on Surveying and Mapping (ASCM). This is the most comprehensive, and most expensive, of all surveys. In addition to the information provided by the improvement survey plat, the ALTA/ASCM land title survey can show such features as parking, road striping, landscaping, topography, flood zone classification, exterior dimensions of buildings, current zoning classification and platted setback or building restriction lines from recorded subdivision plats. This survey can be used to determine if there are any potential deviations from subdivision plats or potential violations of current land-use regulations. It is generally only used in commercial transactions where this amount of information will be important to a buyer or lender.

This leaves the question of which survey you need for your particular transaction. The answer, of course, is that it depends on the property. Often times the type of survey will be guided by the type of real estate owned or being acquired. An ALTA/ASCM land title survey for a 10,000 acre ranch, for instance would likely not be required (you would not want to pay for it either). The type of survey may be determined by the lender. But whatever you do, consult with your real estate professional when considering a survey and put serious consideration to this choice. A few hundred or few thousand dollars now may save much more later.



[R. Clay Bartlett, Esq.  
cbartlett@cp2law.com](mailto:cbartlett@cp2law.com)

**Congratulations to  
R. Clay Bartlett, Esq.,  
for graduating from  
the sixth Leadership  
Northern Colorado  
class of 2015.**

## CP2 WELCOMES NEW ATTORNEYS & STAFF TO THE TEAM



### ROBERT J. HERRERA, ESQ.

Former Managing Partner of Black Suit Law and Business Law Professor, Robert J. Herrera, Esq., joined the firm.

[Robert J. Herrera, Esq.  
rherrera@cp2law.com](mailto:rherrera@cp2law.com)

Mr. Herrera's law practice focuses on all areas of complex civil litigation in Federal District Court for the District of Colorado which includes ERISA, Fair Labor Standards Act and violation of federal employment law. Mr. Herrera's state court practice focuses on business litigation, breach of contract, breach of warranty, wrongful termination, real estate, property disputes and homeowner association matters. Mr. Herrera works out of the firm's Greeley office.

### JAMIE BAKER ROSKIE, ESQ.

Former Managing Attorney of the University of Georgia Land Use Clinic, Jamie Baker Roskie, Esq., joined the firm.



[Jamie Baker Roskie, Esq.  
jroskie@cp2law.com](mailto:jroskie@cp2law.com)

Ms. Baker Roskie's law practice focuses on all areas of real estate, land use development planning, zoning, local government, environmental law and conservation issues. She has comprehensive experience in representing local governments, conservation and community organizations, as well as state and local agencies in land use matters. She lived in Fort Collins as a child and is excited to return home and pursue her career. She works out of the firm's Fort Collins office.



### PAUL T. MARICLE, ESQ.

Recently appointed Honorary Consul for Germany in Colorado, Paul T. Maricle, Esq., joined the firm.

[Paul T. Maricle, Esq.  
pmaricle@cp2law.com](mailto:pmaricle@cp2law.com)

As Honorary Consul, he is responsible for encouraging networking between the state of Colorado and Germany, facilitating business opportunities and cultural exchange. Mr. Maricle's law practice focuses on the areas of business and corporate law, international business and commercial transactions. He has extensive experience with stock and asset purchase agreements, distribution agreements, licensing agreements, employment agreements, corporate governance, export regulation, commercial arbitration, mergers & acquisitions and bankruptcy-related issues. Mr. Maricle represents a number of German, Swiss, and Austrian clients and is fluent in German. Mr. Maricle works out of the firm's Denver office.

### BECKY PONTIUS-SCHULTE

Mrs. Pontius-Schulte is legal assistant to German Honorary Consul, Paul T. Maricle and works out of the firm's Denver office.



[Becky Pontius-Schulte  
rpontius@cp2law.com](mailto:rpontius@cp2law.com)

Her fluency in both German and English enables her to routinely assist US and German citizens in consular issues related to Germany. Along with her consular work, she is also responsible for administrative duties in the firm's Denver office.

## Contact CP2

*Our offices are conveniently located throughout Colorado, giving you easy access to our trusted team of legal professionals.*

[www.cp2law.com](http://www.cp2law.com)

**Denver**  
999 18th Street,  
South Tower / Suite S1500  
Denver, CO 80202  
(303) 861-8888

**Fort Collins**  
103 W. Mountain Ave.,  
Suite 200  
Fort Collins, CO 80524  
(970) 225-6700

**Greeley**  
5586 W. 19th St.,  
Suite 2000  
Greeley, CO 80634  
(970) 339-3500

### Attorneys

K. Michelle AmRhein	Paul T. Maricle
R. Clay Bartlett	Jacob W. Paul
Edwin S. Chapin	Michael C. Payne
G. Brent Coan	Brett Payton
Kay L. Collins	Jamie Baker Roskie
William F. Garcia	Peter B. Scott
Robert J. Herrera	Curtis Sears
Daniel W. Jones	Steve Suneson
John W. Madden, III	Walter A. Winslow

### Practice Areas

- [Agricultural Law](#)
- [Intellectual Property](#)
- [Aviation Law](#)
- [International Transactions](#)
- [Banking Law](#)
- [Natural Resources](#)
- [Business Law](#)
- [Oil and Gas Law](#)
- [Business Succession](#)
- [Probate Litigation](#)
- [Commercial Litigation](#)
- [Real Estate Law](#)
- [Creditors' Rights](#)
- [Tax Law](#)
- [Employment Law](#)
- [Wealth Preservation](#)
- [Estate Planning](#)