



Same Sex Marriage in Pennsylvania: A Guide

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“We are a better people than what these laws represent, and it is time to discard them into the ash heap of history.”

With these words, on May 20, 2014, the Honorable John E. Jones, III, Federal District Court Judge for the Middle District of Pennsylvania, struck down Pennsylvania’s “marriage laws”, which defined marriage as “[a] civil contract by which one man and one woman take each other for husband and wife.” Same sex couples may now apply for marriage licenses, just like heterosexual couples. *The ramifications of this decision are many. All must be considered carefully.*

There are new legal rights. Same sex couples who marry and reside in Pennsylvania now have all of the rights and obligations of heterosexual married couples. They may file joint state, local, and federal tax returns. They may now designate one another the spousal beneficiary of life insurance policies and retirement plans such as pensions, IRAs, and 401(k) accounts. They may cover one another with health insurance and have full access to other employment benefits extended to the spouses of employees. They may hold real estate as joint tenants by the entirety (a special status afforded to married people in order to protect assets from the creditors of one spouse). Health care providers must accord to them the role of spouses/next of kin in making medical treatment and health care decisions. Same sex spouses are entitled to the same Social Security benefits as heterosexual couples. When same sex couples are planning for the transmission of their assets and liabilities at the end of life, they now have certain tax elections and rates that were historically reserved for heterosexual couples. Should a same sex spouse die without providing for the needs of his or her spouse in a will, Pennsylvania law will now provide the surviving spouse with a statutory spousal share of the assets of the deceased.

There are new legal obligations. Like heterosexual couples, when a same sex couple files joint tax returns, each becomes liable for the other’s tax liability, as well as his or her own. This situation is referred to as joint and several liability. If the marriage does not work out, the assets and liabilities of both spouses are now subject to inventory/accounting, valuation, and equitable (not necessarily equal) division under the divorce code, just like heterosexual couples. The spouse with the higher income may have to pay spousal support and alimony to the other spouse, usually by wage attachment. Same sex spouses in a long term

marriage may be required to share their pension benefits with their former spouses long after they retire, just like heterosexual couples who divorce.

What about children? If a same sex couple wishes to bring children into their marriage by way of adoption, the process will become much easier, with both parties adopting as married parents. If one party already has a child, his or her spouse may adopt that child as a step-parent, rather than having to qualify independently as a single, additional parent. While children will bring joy to these same sex couples, they also bring the same child support and custody obligations as for heterosexual parents. If things do not work out for the couple who has a child together, they will remain parents together for the rest of their lives.

Same sex couples who have resided with and been committed to one another for years are racing to the courthouse to apply for their marriage licenses. Like heterosexual couples, some of them may not be thinking about how the law will affect them once they marry. Marriage brings certain special rights and obligations, as described above, which couples (whether same sex or heterosexual) who have established their careers, philanthropic endeavors, and families may not intend or choose.

Are there any remaining legal risks? Same sex couples who decide to move from Pennsylvania to one of the 33 states that do not recognize their marriages will return to legal “limbo” – single for purposes of state law, while married under federal law. Although federal law now recognizes their legal status as a married couple, the new state to which they move may not do so. Unlike heterosexual couples, the same sex couple may file a joint federal tax return, but not be permitted to file a joint state and local tax return. Unlike heterosexual couples, the same sex couple will not be permitted to file for divorce or spousal support in the new state.

If you are thinking about getting married, consider consulting with an experienced family law attorney who can guide and advise you. A prenuptial agreement is usually the best way for all couples to clarify and contractually define a financial relationship upon marriage. Prenuptial agreements are recognized and enforced in Pennsylvania, as long as certain requirements with respect to financial disclosure are met. Prenuptial agreements keep smart people out of Court. Without one, same sex couples who marry, just like their heterosexual counterparts, may find that their carefully planned financial lives are upended by the divorce code and related support statutes.

About the Author: Ms. De Shong has counseled hundreds of men and women on all aspects of divorce, child custody, distribution of assets, support, and alimony, as well as property settlement agreements, prenuptial agreements, cohabitation and partnership agreements, family business agreements, protection from abuse matters, and more. If you would like further information concerning family law or if you have a family law matter that you would like to discuss with our lawyers, please email Ms. De Shong at adeshong@wispearl.com.

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