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The newest civil rights attorneys

Local lawyers called on to counsel, represent same-sex married couples

By KRISTEN D'ANDREA

New York now recognizes same-sex marriages, but once all the rice has been thrown, the last photo taken and the cake cut, newlyweds are waking up to realize the rights they're entitled to aren't nearly as cut and dried as those for heterosexual couples.

And it's not a minor issue, if you look at the numbers: More than 3,000 same-sex couples (representing 6.4 percent of all marriages) have tied the knot in New York state during the past 12 months, not counting New York City, according to the state Department of Health.

New York is among six states sanctioning same-sex marriages, in addition to the District of Columbia. And, although the laws have not yet taken effect, legislation passed

in Washington and Maryland in February 2012 will allow same-sex marriages, as well.

Still, the majority of states have adopted prohibitions of same-sex marriages, similar to the federal Defense of Marriage Act, which defines the word "marriage" as a legal union between one man and one woman.

According to Jordan Trager, attorney at Wiseliman, Harounian & Associates in Great Neck, one harsh downside of same-sex marriage for states acknowledging it are spouses are not entitled to any federal benefits or rights, such as Social Security survivorship, disability or veteran's benefits. Similarly, same-sex spouses are not able to pass property between each other free of estate and gift taxes.

Entering into a same-sex marriage in New York entitles spouses to rights traditionally granted to married couples concerning property ownership, state tax benefits, state pension benefits and all other benefits provided under state law, said EJ Thorsen, an attorney with Vishnick McGovern Milizio in Lake Success, with "state" being the operative word.

"Married same-sex couples continue to be

NEW YORK IS AMONG SIX STATES SANCTIONING SAME-SEX MARRIAGES, IN ADDITION TO THE DISTRICT OF COLUMBIA

denied numerous rights because DOMA provides not only that the federal government will not recognize same-sex marriage, but that individual states are not required to recognize same-sex marriages that were validly entered into in a state that permits them," Thorsen said.

In fact, Thorsen added, married same-sex couples must file three separate tax returns — each spouse needs to file an individual federal tax return with the IRS; the couple must create a "mock" joint federal return combining their income, deductions and credits; then, the couple must use the mock return as a basis to prepare their joint state

tax return.

Trager and his colleague, attorney Lauren Chartan, periodically invite same-sex couples to their offices for educational seminars that are usually standing-room-only, explaining and counseling on relevant changes that have taken effect since the passage of the marriage equality law, Chartan said. Topics covered include employment benefits, health-related issues and wills.

"We go over how to deal with issues associated with the limitations under the federal law and how to navigate the rights you do have under the state law," she said.

For instance, picture this: A newlywed couple visits another state, which does not sanction same-sex unions, for a hiking trip. During the vacation, one of the spouses is injured and taken to a hospital. The other spouse is not considered a family member or next of kin and has no decision-making power. If, however, that same couple had traveled with their health care proxies, the state should have honored it and given full faith and credit, Chartan said.

See CIVIL RIGHTS, 39A

Civil rights: Be educated on state laws

From 31A

"This is a civil rights issue," Chartan said, noting the importance of people educating themselves. "You don't want to be in a foreign land — and by foreign land I mean in our own country — and not be able to exercise your rights."

The same holds true when children are involved in a same-sex union. Nonbiological parents should legally adopt their spouse's children, Trager said. Chartan agreed, recommending same-sex couples travel with all their documents, including adoption papers, if they want to be acknowledged as a legal parent in the event of an emergency.

Traveling interstate raises other issues for same-sex married couples, as well. Couples who have moved to a state that does not recognize marriage equality will be in legal limbo if they attempt to get a divorce in that state, Trager said.

"The court will not grant a divorce because under DOMA they're not required to recognize a marriage from another state," he said.

Even in states recognizing same-sex marriage, Thorsen advises couples to be aware of their individual requirements, such as six-month or one-year residency requirements,

that must be satisfied to obtain a divorce.

Other concerns Trager has addressed involve clients who previously established legal domestic partnerships prior to the passage of the marriage equality law. Some same-sex couples question whether getting married will convey any additional rights not already granted through their domestic partnerships. Others have concerns about dissolving a domestic partnership with a former partner before getting married, Trager added.

It recently took a New York court nearly a year to grant a judgment of dissolution

for one of Chartan's clients, who was seeking to dissolve a civil union she'd entered into in Vermont years ago before she could marry her current partner in New York this summer.

Still in its infancy, marriage equality is an ever-evolving area of the law and society.

"The increased acceptance of nontraditional couples and families are being reflected in these changes in the law," Thorsen said. "However, the battle is not nearly won for the LGBT community until all states fully recognize same-sex marriage and DOMA is overturned."



LAUREN CHARTAN: Same-sex couples should travel with all their documents.

Immigrants

From 33A

For instance, in some Suffolk towns there's been a tendency to set bail for minor traffic infractions for someone who's suspected of being undocumented, said David Mejias, president of the Long Island Hispanic Bar Association and a partner at the Glen Cove-based law firm Mejias Migrim & Alvarado.

Once bail is set, the individual can be run through the system to see if he's undocumented, and if he is, he could face deportation, said Mejias, who noted that part of the mission of the Hispanic Bar is calling attention to the unfair treatment of any Latino, documented or undocumented.

On-the-job dangers

One concern is undocumented workers are exploited on the job, Mejias said.

"In industries like construction, they can suffer traumatic injuries and have no worker's compensation or other insurance to protect them," he said. "Plus, they often get less than minimum wage and no overtime pay. Labor laws are not followed when it comes to undocumented workers."

In representing immigrants from nations with temporary protected status, such as Haiti, West Babylon attorney Larry J. McCord finds his clients are often hit with extra fees from the government.

"Often, when they apply for a work authorization card, they don't receive it, and then they have to request it and pay for it again," he said. "The extra fees are onerous for many immigrants."



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