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The evolving same-sex marriage landscape

With 37 jurisdictions now recognizing same-sex marriage, it's a historic time period for the LGBT community as marriage equality nationwide continues to improve.

In the aftermath of the U.S. Supreme Court's 2013 Defense of Marriage Act ruling, though, states and courts are striving to catch up to new waves of laws. And the varying marriage statutes can create significant marriage, divorce and estate planning challenges.

Consequently, couples must be mindful of the implications that can result for both same-sex couples and their loved ones. Below is a state-by-state chart highlighting those that recognize same-sex marriage, the avenue by which marriage equality occurred, when the laws became effective and the process to obtain a divorce in those states.

Illinois, for example, introduced same-sex marriage legislation in 2013 with the new law effective on June 1, 2014. While no residency requirement exists for couples to marry, couples seeking a divorce must be Illinois residents for at least 90 days before filing. It is important to note, however, that Illinois is one of the few states that do not allow a marriage by a non-resident if that marriage would be void in the non-resident's state.

As a result, same-sex couples looking to wed in Illinois, but who are residents of a state not recognizing the marriage, would be prevented from marrying. Because of similar provisions in other states limiting marriage equality, couples need to be aware of the significant hurdles they might face when deciding to reside or divorce in a state that does not grant such marriages.

Married couples who move to a non-recognizing state may face

THE BUZZ



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problems and uncertainties regarding their legal rights and protections in the event of a divorce. Not all states will grant a divorce to same-sex couples, and this creates serious complications for couples who wish to end their marriages but are not able to pick up and move to a state that would grant the divorce.

Some states, though, such as Hawaii and Vermont, will grant a divorce to non-residents who married in their state but who reside in a jurisdiction where they are unable to pursue a divorce because their marriage is not recognized.

Estate planning implications

Despite the disparities in state laws, a valid will and trust can serve to alleviate uncertainty and secure final wishes associated with disability and post-death planning. For same-sex couples living in states that do not recognize their marriages, an estate plan can allow partners to inherit from one another.

Likewise, having powers of attorney in place for health care and

property gives partners the ability to make medical decisions for one another. Normally, the default person to make end-of-life decisions is the next of kin, so having these documents in place is particularly important if an individual's family has conflicting or opposing views.

Powers of attorney are also critically important for transgender individuals in order for them to make sure that their gender identities are respected should they become incapacitated or incapable of making health or financial decisions.

As the law continues to evolve across the country, it is also important to consider the ramifications of inheriting from loved ones who live in states that do not recognize same-sex marriages.

Consider the situation where mom and dad reside in a state that does not recognize same-sex marriage. Often, when assets are left in trust, a beneficiary is given a limited power of appointment to designate the balance of the trust to an heir at law.

The definition of an heir may or may not include a same-sex partner depending on the governing state. However, with knowledge of this nuance, provisions can be carved out to make certain all beneficiaries (and their spouses) are treated equally.

Being proactive

As the laws continue to evolve, it is critical for those in same-sex marriages — and their family members — to be proactive in their planning to ensure their wishes are properly documented. And, same-sex couples should contemplate the financial implications associated with marriage and potential divorce and discuss whether a premarital agreement is appropriate.

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In states with same-sex marriage, requirements for divorce vary

State	Effective	How Enacted	Divorce for Non-Residents
Alabama	2/9/2015	Court decision	When the defendant is a non-resident, the other party to the marriage must have been a bona fide resident for six months. Ala.Code 1975 § 30-2-5
Alaska	10/12/2014	Court decision	Filing spouse must be a resident. AS § 25.24.090
Arizona	10/17/2014	Court decision	90-day residency requirement. A.R.S. § 25-312
California	6/28/2013	Court decision	Divorce for persons of the same gender may be entered if the marriage was entered in California and neither party resides in a jurisdiction that will dissolve marriage. West's Ann.Cal.Fam.Code § 2320
Colorado	10/7/2014	Court decision	90 days before the start of the proceeding. C.R.S.A. § 14-10-106
Connecticut	11/12/2008	Court decision	12-month residency requirement. C.G.S.A. § 46b-44
Delaware	7/1/2013	State legislature	Jurisdiction over all proceedings for divorce and annulment of same-gender marriages that occurred in Delaware, regardless of the domicile or residency of the parties, if the jurisdiction of domicile or residency of the parties does not permit such a proceeding. 13 Del.C. § 1504
District of Columbia	3/3/2010	District council	Persons of the same gender can divorce if the marriage was performed in the District of Columbia and neither party resides in a jurisdiction that will maintain a cause of action. DC ST § 16-902
Florida	1/6/2015	Court decision	Six-month residency requirement. West's F.S.A. § 61.021
Hawaii	12/2/2013	State legislature	Action may be commenced where neither party to the marriage meets the domicile or physical presence requirements at the time the action is commenced, if the marriage occurred in Hawaii and neither party is able to pursue an action where they are domiciled because both parties are domiciled in a jurisdiction not recognizing the marriage. HRS § 580-1
Idaho	10/15/2014	Court decision	Six-week residency requirement. I.C. § 32-701
Illinois	6/1/2014	State legislature	90-day residency requirement. 750 ILCS 5/401 (Illinois does not allow marriages by a non-resident if marriage would be void in non-resident's state.)
Indiana	10/6/2014	Court decision	Six-month residency requirement. IC 31-15-2-6
Iowa	4/24/2009	Court decision	One-year residency requirement. I.C.A. § 598.5
Kansas	11/12/2014	Court decision	60-day residency requirement. K.S.A. 23-2703 (Kansas marriage licenses not available in all counties and fails to recognize marriages from other jurisdictions.)
Maine	12/29/2012	Popular vote	Six-month residency requirement. 19-A M.R.S.A. § 901
Maryland	1/1/2013	Popular vote	One-year residency requirement. MD Code, Family Law, § 7-101
Massachusetts	5/17/2004	Court decision	One-year residency requirement. M.G.L.A. 208 § 5
Minnesota	8/1/2013	State legislature	If neither party to the civil marriage is a resident of this state at the commencement of the proceeding, a court has jurisdiction over the dissolution if the civil marriage was performed in Minnesota and neither party to the civil marriage resides in a jurisdiction that will maintain an action because of the sex or sexual orientation of the spouses. M.S.A. § 518.07
Montana	11/19/2014	Court decision	90-day residency requirement. MCA 40-4-104
Nevada	10/7/2014	Court decision	Six-week residency requirement. N.R.S. 125.020
New Hampshire	1/1/2010	State legislature	One-year residency requirement. N.H. Rev. Stat. § 458:5
New Jersey	10/21/2013	Court decision	One-year residency requirement. N.J.S.A. 2A:34-10
New Mexico	12/19/2013	Court decision	Six-month residency requirement. N. M. S. A. 1978, § 40-4-5
New York	7/21/2011	State legislature	One-year residency requirement. McKinney's DRL § 230
North Carolina	10/10/2014	Court decision	Six-month residency requirement. N.C.G.S.A. § 50-6
Oklahoma	10/6/2014	Court decision	Six-month residency requirement. 43 Okl.St. Ann. § 102
Oregon	5/19/2014	Court decision	Six-month residency requirement. O.R.S. § 107.075
Pennsylvania	5/20/2014	Court decision	Six-month residency requirement. 23 Pa.C.S.A. § 3104
Rhode Island	8/1/2013	State legislature	One-year residency requirement. Gen.Laws 1956, § 15-5-12
South Carolina	11/20/2014	Court decision	One year before filing if one party is not a resident and 3 months if both are residents of the state. Code 1976 § 20-3-30
Utah	10/6/2014	Court decision	Three-month residency requirement. U.C.A. 1953 § 30-3-1
Vermont	9/1/2009	State legislature	Divorce may be filed for non-residents if all of the following criteria are met: (1) marriage established in Vermont; (2) neither party's state of residence recognizes the Vermont marriage for divorce; (3) no minor children born or adopted during the marriage; (4) parties file a stipulation with the complaint that resolves all issues in the divorce action. 15 V.S.A. § 592
Virginia	10/6/2014	Court decision	Six-month residency requirement. VA Code Ann. § 20-97
Washington	12/9/2012	Popular vote	Must be a resident of Washington. West's RCWA 26.09.030
West Virginia	11/7/2014	Court decision	One year before filing but the residency requirement is waived if parties were married in the state. W. Va. Code, § 48-5-105
Wisconsin	10/6/2014	Court decision	Six-month residency requirement. W.S.A. 767.301
Wyoming	10/17/2014	Court decision	60-day residency requirement. W.S.1977 § 20-2-107