

New York Passes the Marriage Equality Act, Allowing Same-Sex Couples to Marry

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Governor Cuomo signed into law the Marriage Equality Act on June 24, 2011. The Act will become effective on July 24, 2011. The Marriage Equality Act permits all couples to enter into marriage in New York State, thereby removing current barriers to same sex marriage.

The Marriage Equality Act removes these barriers by amending New York's Domestic Relations Law to state: (i) A marriage that is otherwise valid will be valid regardless of whether the parties are of the same or opposite sex; (ii) No government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage shall differ based on the parties being the same sex or opposite sex; (iii) All relevant gender-specific language referenced by New York law will be construed in a gender neutral manner; and (iv) No application for a marriage license will be denied on the ground that the parties are of the same or opposite sex.

Now that New York is the sixth and largest state to legalize gay marriage, same sex couples who marry here will gain a variety of financial benefits and legal rights. Like any other married couple: (i) they will be able to file their state income tax returns jointly; (ii) they will be first in line to inherit their spouses' assets, even in the absence of a will; and (iii) they will be entitled to obtain health insurance under a spouse's plan without owing state income taxes on the value of the benefits provided. However, since the federal **Defense of Marriage Act (DOMA)** – which defines marriage as between a man and a woman – is still being enforced, same sex couples in New York still need to file separate federal income tax returns, and they are not eligible for Social Security spousal or survivor benefits.

As to parentage, when a married lesbian gives birth to a child in New York, the spouse who did not give birth, but who is recognized as a parent, will be automatically put on the child's birth certificate. For two married men who are using a surrogate to carry their child, only the biological father can be automatically listed on the birth certificate. Based on current New York State law, the surrogate must first relinquish her rights to the child, at which point the nonbiological father can adopt the child. For all same sex couples, adoption is the best way to secure the child's legal relationship to both parents, and to protect a parent's rights to custody/parental access in the event of a domestic dispute.

The Marriage Equality Act also affords same sex couples the right to divorce. Since same sex marriages are now legally equivalent to heterosexual unions, same sex couples' right to divorce will be rooted in New York's Domestic Relations Law. Same sex couples will have all the same rights and protections as to custody, support, and equitable distribution of the marital assets.

Steven J. Eisman, a senior partner and co-director of the [Matrimonial Law](#) department at the New York-based full service law firm of [Abrams Fensterman](#) states, "Same sex couples who are contemplating marriage, separation or divorce, should consult an experienced attorney who can address their particular circumstances, needs, and goals such as the protection of separate assets through a well drafted prenuptial agreement, and the resolution of domestic disputes and custody issues for biological and nonbiological parents." Samuel J. Ferrara, a partner and Steve's co-director of the Matrimonial Law Department, agrees and suggests that "Education is the most important resource available, whether for same sex couples or heterosexual couples. Same sex couples should afford themselves this opportunity-they are finally entitled to be treated equally in this area of the law."

Abrams Fensterman provides comprehensive legal services in all aspects of family law. Our experienced attorneys represent a variety of clients in a range of matrimonial and family law issues, including negotiating and preparing pre-nuptial agreements, postnuptial agreements and marital separation agreements, and in counseling clients through all phases of the divorce and separation process, including custody/parental access disputes and support/property distribution issues.

For more information on the Marriage Equality Act, and other divorce and matrimonial related issues, please contact our matrimonial and family law department in our Lake Success office at (516) 328-2300, or your attorney contact at our firm.