

MARRIAGE MINEFIELDS


LAVENDER LAW 2018 NYC
THURSDAY, AUGUST 9, 2018
CONCURRENT SESSION E

HOW WE GOT HERE

- In 2015, *Obergefell v. Hodges* (14-556) made marriage equality the law of the land
- Prior to that, LGBTQ couples had a patchwork of rights that varied from jurisdiction to jurisdiction
- Pent up demand led some to leap before looking.

THE BENEFITS OF MARRIAGE

THERE ARE AROUND 1500 BENEFITS THAT ACCRUE TO MARRIED COUPLES, INCLUDING:

- **Standing to sue for wrongful death, etc.;**
 - **Sponsor a fiancé or spouse for immigration;**
 - **Collect social security benefits;**
 - **Qualify for family medical leave;**
 - **Own property as tenants by the entirety;**
 - **Benefit from the parental presumption**
 - **Minimize or eliminate tax burdens that accrue to couples whose relationships aren't recognized by the law**
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- **Second/step parent adoption is important for clients with kids**
- **Presumptive v. conclusive evidence of parentage**
- **Portability concerns**
- **ETHICS concerns:**
 - **Don't empower bio parent to exclude non-bio;**
 - **No secrets between parties**

MARRIAGE EQUALITY \neq PARENTAL RIGHTS

OTHER ISSUES TO CONSIDER


- **Prenuptial Agreements**
 - Date of marriage v. total length of relationship
 - Long term v. short term marriage and its consequences in your state
- **Necessity of advanced directives, etc. in the face of emboldened bigots**
- **Reports of domestic violence may increase as people feel safer being “out”**
- **Surrogacy - parentage judgment/affirmation of parental status**
- **DIVORCE!!!**
 - Date of marriage and of separation - Retroactivity cuts both ways
 - “holding out” de facto marriage
- **Name changes/gender marker changes**
 - Having proof that spouse is aware spouse is trans
 - Judicial education in your communities **please!**

PLEASE BE SURE YOU:

- **Use their preferred gender pronoun**
- **Learn proper terminology**
- **Change your forms**
- **Have resources available (therapists, CPAs, financial advisors)**
- **Don't assume they're married or want to be**

TO MARRY, OR NOT TO MARRY?

Possible reasons not to marry:

- **Obligations upon death or divorce**
 - **Potential tax consequences**
 - **Spousal support**
 - **Income-dependent aid**
 - **Don't believe in the institution**
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