

Pitfalls of Divorce in Play for Same-Sex Couples

Roberta G. Stanley, Daily Business Review

March 20, 2015



After decades of fighting for the right to enter into the state of matrimony, the lesbian, gay, bisexual and transgender community is celebrating the extraordinary success of finally attaining marriage equality for same-sex couples in the state of Florida.

This development brings equality to couples in all respects, meaning that divorce laws and procedures are now universal regardless of who weds whom.

Therefore, same-sex couples need to understand the potential pitfalls of marriages that end in divorce so both parties are able to protect their rights and property.

While this is a general outline of marital rights, the law has numerous exceptions, so the consultation of a matrimonial lawyer is essential for understanding the impact of marriage on a couple.

Marital Property

Upon marriage, the law states that all assets and liabilities acquired or incurred during the marriage become marital property, regardless of how they are titled. In the event of a divorce, each spouse is presumptively entitled to one-half of all marital assets and liabilities. Furthermore, all income earned by either party during the marriage and any assets acquired with earnings are considered marital property. What does this mean? Cars, houses, furniture, companies, stocks, bonds or anything else obtained while married is subject to being equally owned, even if the asset is solely titled in the name of only one spouse. If one person is a spender, this also means all liabilities or debts incurred during the marriage become the joint obligation of both spouses. The phrase "what's mine is yours" couldn't be more true than in this context.

Nonmarital Property

Property owned prior to the marriage, which is kept in one party's individual name during the marriage, or property which is inherited by or gifted to one of the parties during the marriage, can remain that individual's nonmarital property and therefore would not be subject to division. Nonmarital property must be maintained in individual names and never titled in joint names.

Commingling Of Assets

What if the spouses keep their pre-marital financial accounts in individual names during the marriage? Does it remain separate property? It depends. Because income earned during the marriage is marital, often marital and nonmarital property are inadvertently commingled. If one spouse deposits earnings, bonuses or other distributions into one of his or her nonmarital accounts, the entire account can be transformed into a marital asset. Over time, the funds become so commingled that there is no way to determine which dollar was earned before or after the marriage began. For instance, one spouse had a

nonmarital savings account with \$25,000 and continues to deposit earnings into the account after tying the knot. Five years later, there is \$50,000 in the account. If the couple decides to divorce, what happens to the money? The entire \$50,000 could be deemed marital property and divided in a divorce proceeding. Commingling can occur in all financial accounts regardless of the title or name on the account.

Property Appreciation

If any marital efforts or money are spent on improving nonmarital property during the marriage, which results in an appreciation of that particular asset, the appreciation becomes marital property. For example, one spouse owns a residence where the couple will live together once they are married. If either party uses marital money or effort to improve the home while married, then the increase in value of the residence can be deemed a marital asset. In the same respect, if one spouse is an active stock trader and the earnings of a nonmarital brokerage account substantially increase, then that increase can also be considered a marital asset. Business owners are similarly affected by this standard. If a spouse owns a business, or part of one, before getting married and she continues to work with that business throughout the marriage, the appreciation in value of the business as a result of the marital effort will be subject to division in the event of a divorce.

Alimony

What if one spouse quits working to care for a family and maintain a home? The law now provides for various types of alimony based on years of marriage. The amount depends on the needs of the nonworking spouse after the divorce. Although the alimony statute is under legislative review, the working spouse could still be ordered to pay support to the nonworking spouse after a divorce.

Optional Agreements

Despite the potential pitfalls of divorce, marriage undoubtedly has many benefits. To ensure that both parties understand the financial changes that occur as a result of marriage, it is wise for couples to meet with a matrimonial lawyer to understand all legal aspects of marriage and to avoid financial repercussions that were never intended or considered at the inception of the marriage.

If the parties want to change the statutory impact of marriage, they can enter into a prenuptial agreement or postnuptial agreement and specify exactly how they will handle finances and support in the event of a divorce.

These considerations aside, congratulations to the LGBT community on this major achievement!

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