

The Legal Befuddlement of Legal Same Sex Unions

Only in the states of Iowa, Massachusetts, Connecticut, New Hampshire (effective January 1st, 2010), Maine, Vermont (effective September 1, 2009) and California (between June 17, 2008 and November 4, 2008) can same sex couples legally get married. The U.S. Constitutional protections under the Full Faith and Credit Clause provides little solace in the remaining states, unless the marriage has somehow been declared or ordered in an actual judgment of a court with Jurisdiction in the marrying state. The idea that each state will honor and enforce each other state's judgments does not generally extend to policies contra to the policies of the other state. Although the question is not finally settled by the United States Supreme Court to a certainty, full faith and credit will not generally require a state to recognize or enforce a policy forbidden in the resident state. This places same sex married couples from states in which same sex marriages are valid in a befuddling and precarious situation should they migrate to a different state for employment, family, or other personal reasons.

Some states such as New York, New Jersey, California, Nevada, Oregon and Washington state have recognized legal domestic partnership or domestic civil unions. Texas is not such a state so obtaining a divorce, separation or division of assets in a same sex relationship (whether originally legally married or not) in the state of Texas requires manipulation and application of Texas partnership and property codes, probate considerations along with various other contractual considerations.

Texas family law considerations for same sex couples in adoption situations becomes even more complicated requiring careful compliance with Texas state law and the adoption process to avoid donor issues, limitations, judicial estoppel and case law precedent in Texas which does not recognize or enforce same sex couple marriages.

If a co-parent adoption is properly followed, it is possible in Texas to have two moms or two dads which will be recognized under the Texas Family Code. In such cases a suit affecting the parent child relationship (SAPCR Action) is the appropriate remedy for recognition of and consideration of the minor children of the same sex union by adoption. Child support, health care insurance, visitation, possession and access rights of the parties, transportation costs, and injunctions that preserve the status quo and peace of all parties concerned are all subject to proper litigation and judgment under the Texas Family Code.

Regrettably, under the current Texas law, same sex unions or marriages validly performed and recognized in a state authorizing and providing jurisdiction for such legal relationships will not help the parties in the state of Texas, where it often counts most: health insurance, social security, disability insurance, child support, alimony, etc. The current state of law in Texas further ignores the underlying policy recognized in all states to always consider the best interest of the children. Regardless of policy considerations and decisions with regard to same sex unions, children are never at fault and making their children illegal citizens or citizens unworthy of protection cannot be in their best interest under any interpretation of state policy. Absent legal hoop jumping and manipulation, they are practically children without legal rights in the state of Texas.