

Same-sex couples planning marriage still face legal challenges

Written by

[Rebecca Baker](#)

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WHITE PLAINS — With hundreds of gay couples in [New York](#) looking to get married on — and after — Sunday, legal experts say such couples will face new complications on top of the old challenges in their quest to be legally recognized as spouses.

From prenuptial agreements to end-of-life care, gay couples now have to make legal decisions they never had to make before.

But they still will face problems when it's time to file tax forms, choose health-care plans and claim pension benefits.

All of these issues, new and old, should not get lost in the excitement over getting married, the lawyers say,

"It's not an excuse to lower your guard," said Bernard A. Krooks, a partner at Littman and Krooks in White Plains. "Gay or lesbian couples have to take caution and make sure to cross all the t's and dot all the i's."

Lisa Padilla, a Tarrytown attorney who was a panelist at a legal clinic on same-sex marriages held Wednesday night at the LOFT in White Plains, said couples need to prepare for marriage by discussing financial planning, children and other long-term decisions.

"It's a life event that's happening," she said. "Accountants are going to be busy, that's for sure."

While getting married protects couples in numerous ways, including inheriting property when one spouse dies, the protections stop at the state border.

Gay spouses who move to a state that doesn't recognize same-sex marriage could find themselves facing the same legal problems they did before they were married. And if a state doesn't recognize same-sex marriages, it can't grant gay couples a divorce.

"We don't know how it's going to play out when you get divorced," Krooks said. "I

think there are a lot more complications now. You have to think through things more."

A key problem facing gay spouses in New York and other states, Krooks said, is the Defense of Marriage Act. DOMA, as it is known, bars the federal government from recognizing same-sex marriages that are legal in certain states.

This means gay spouses cannot file a joint income-tax return or collect Social Security survivor benefits or each other's pensions.

Padilla said same-sex spouses could file their taxes separately as a married couple, but Krooks said checking the "married, filing separately" box might actually cost couples more money.

"That's the worst filing bracket because you reach a higher marginal income-tax rate," he said. "You may be able to do it, but I'm not sure they'd want to."

When it comes to health insurance, some companies in New York — including IBM — are requiring same-sex couples to marry if they want to keep their domestic-partner benefits.

But gay spouses who share a policy must still pay federal taxes on the partner's benefits, even though the state taxes will be waived.

"Until DOMA is repealed, this is not going to go away," Krooks said. "It's still hanging over this whole issue."

Until that day, gay couples and those who support them should celebrate the progress that has been made and keep fighting for full recognition, Krooks said.

"Should we be excited and euphoric? Of course. But there's still a lot of work that needs to be done," he said.

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