

Family Law & Same-sex or Gay Marriage

by Carlos M. Lastra, Esq.

BRP | FAMILY LAW

BRODSKY
RENEHAN
PEARLSTEIN
LASTRA
BOUQUET

16061 Comprint Circle
Gaithersburg, MD
20877-1321

301.869.1700
info@brpfamilylaw.com

www.brpfamilylaw.com

“It is probably inevitable that there will be a national consensus on gay marriage,” Vice President, Joe Biden, told *Meet the Press*.

Same-sex Marriage Around The World

In 2001, the Netherlands became the first country to permit same-sex marriage, followed by Belgium (2003), Spain (2005), Canada (2005), South Africa (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010) and Argentina (2010), who all grant and mutually accept marital unions between homosexual partners. In short, about Two Hundred Million people, or Four-Percent of the planet’s population, live in nations that recognize legal unions between gay and lesbian partners.

Legal recognition of same-sex marriage varies in the United States. This often seeds confusion, especially as it relates to domestic partnership rights. Maryland is not an exception to this confusion. In Maryland, the legal recognition of same-sex marriage is in flux.

Gay Marriage in Maryland

Iowa, Massachusetts, New Hampshire, Vermont, and the District of Columbia are the only states to recognize same-sex unions. Rhode Island, New York and New Jersey do not allow same-sex marriages, but do acknowledge same-sex marriages performed in other jurisdictions. Maryland also fits into this category.

In 2010, Maryland’s Attorney General issued an opinion concluding that Maryland law may and should recognize same-sex marriages performed in other jurisdictions. However, this opinion does not carry the weight of law. In Maryland, only court rulings and legislative enactments can legalize marriage for same-sex couples.

Currently, a law as passed by the Maryland House of Delegates almost 40 years ago states “only a marriage between a man and a woman is valid in this state.” However, recent legislative action in Maryland seeks to change this law. A bill in front of the Maryland General Assembly would redefine marriage from “between a man and woman” to “between two individuals.”

The legislative proposal in Maryland comes at a time when opinion is swinging in favor of gay marriage. A 2010 Washington Post poll found that fifty-five percent of registered voters in Maryland support a law allowing same-sex marriage, compared to forty-four percent in 2007. Therefore,

in just three years a clear majority of registered voters would support the passage of a law permitting lesbian, gay, bisexual, transgender (LGBT) couples to marry.

Gay Marriage: Rights, Domestic Partnerships, & Family Law

So, what can homosexual life partners do if they wish to ensure themselves of all the rights and protections the law affords married heterosexual couples? The complete answer will very much depend on the jurisdiction where the same-sex life partners reside. The first part of that answer will lie in whether or not a domestic partnership is recognized by the local or state government where the parties reside; or by the employer of either of the life partners. The federal government still does not recognize domestic partnership and thus, unlike heterosexual couples, same-sex LGBT couples are not afforded the 1,138 separate rights conveyed to married couples by the federal government. In fact, the federal Defense of Marriage Act significantly complicates the situation for same-sex spouses raising serious tax consequences as just one example. Same-sex life partners will have to rely on recognition by their local municipalities and governments or turn to private legal contracts and agreements, such as domestic partnership agreements, child custody agreements, powers of attorney, healthcare directives, etc., which should be completed under the advice of counsel.

Matters in Maryland are in stark contrast to the District where same-sex unions are recognized. Maryland afforded just eleven protections for domestic partners, such as funeral arrangements, additions and removals to residential deeds without tax penalty, and hospital visitation. The General Assembly did not, however, establish a registry for domestic partnerships which further complicates the legal aspects of gay marriage in Maryland.

Maryland Domestic Partnership Agreements & Legal Remedies

Gay marriage is too new to have reliable divorce rates. However, there is no reason to think that it will differ from the forty to fifty percent

national divorce rate experienced by heterosexual couples. This raises an interesting quandary for same-sex couples. What sort of legal structure should be established to help navigate the complex maze of issues that accompany a breakup? Heterosexual couples have the benefit of access to family court and the well established precedents and legal rulings. In states that do not recognize same-sex unions, this guidance may not be available to same-sex couples. Whether in a locale that recognizes gay marriage or not, several legal steps should be considered:

(1) *Proof of Partnership*- since the Maryland General Assembly has not yet established a registry for domestic partnerships, couples may be faced with having to prove that their domestic partnership exists. This means same-sex couples may have to prove the partnership through sworn affidavit and at least two sets of documents enumerated in the Maryland statute, such as a joint checking account, mortgage statement, or joint insurance coverage, in addition to others. This has been the law in Maryland since July 1, 2008.

(2) *Domestic Partnership Agreements*- which may provide for the division of assets and liabilities, as well as define the rights of each partner in the event of a separation and/or termination of the relationship. This is especially important in states like Maryland where same-sex divorce will not have the benefit of family law precedent.

(3) *Child Custody Agreements*- to define both legal, physical and visitation/access to minor children of the same-sex relationship, as well as powers of attorney, healthcare directives, and other documents that assist in times of emergencies where crucial decisions regarding the health of a same-sex partner needs to be made rapidly. These documents should be tailored for each couple under the advice of counsel.

Making Sense of Gay Marriage, Divorce, & Family Law in Maryland

Unfortunately, there is no easy answer when it comes to same-sex marriage and family law in Maryland. Unlike heterosexual marriage, there is no legal precedent or case work upon which to rely. The issue is made even more complex by federal obstacles such as the Defense of Marriage Act. This means that same-sex partners wishing to establish a civil union or marriage must act in their own interest and take the necessary protective legal actions. Divorce is emotional, difficult, and life changing. Clear legal guidelines established from the beginning will greatly benefit both partners and any children or other family members involved.

About The Author

Carlos M. Lastra is a highly effective trial lawyer whose experience has earned him such recognitions as being named a top "Divorce Attorney" in Washingtonian magazine and in Marquis' Who's Who in American Law. Mr. Lastra joined Brodsky, Renehan, Pearlstein, Lastra, & Bouquet in 2000 and was named a Partner in 2007.



Mr. Lastra is licensed to practice law in Maryland, Florida and the District of Columbia. Mr. Lastra has served as Co-Chair of the Family Law Section for the Montgomery County Bar Association, a Barrister in the Montgomery Inn of Court, and is a member of the Maryland Hispanic Bar Association and the Hispanic Bar Association for the District of Columbia. In addition to his legal expertise, he is fluent in Spanish. Raised in Miami, Florida, he received his Bachelor of Arts from the University of Miami in 1989; and in 1992, he earned his Doctor of Jurisprudence from the University of Miami School of Law.

About Brodsky Renehan Pearlstein Lastra & Bouquet, Chartered

Celebrating 60 years in business, Brodsky Renehan Pearlstein Lastra & Bouquet, Chartered is recognized as one of Greater Washington's leading divorce and family law practices. The MD family law firm provides creative and aggressive counsel to clients in the areas of divorce law, child support, custody issues, alimony, property division, high asset cases, domestic violence, pre-nuptial agreements, and e-discovery. For additional information on the firm visit <http://www.divorce-md.com> or call 301.869.1700.