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RECENT DEVELOPMENTS
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By Ron L. Meyers

SAME-SEX MARRIAGE COMES TO NEW YORK

It's the real thing this time.

But still not quite the whole thing.

- *The Marriage Equality Act was enacted in New York on June 24, 2011.*
- *The Act redefines marriage to include same-sex spouses for all purposes under state law.*
- *It will now be possible for same-sex couples to be married within the state of New York.*
- *But: marriage is a factor in over a thousand state laws – it is possible that the Act will require further interpretation to be fully effective, especially with tax laws.*
- *Other areas that remain unaffected by the Act are anything dealing with inter-state or federal matters, such as: Social Security, federal taxes, immigration, civil unions from other states.*
- *The Act is a historic step forward. But significant legal hazards remain for same-sex couples. Be sure to get really competent legal advice.*

If the three words you want to hear from your spouse are “I love you”, the six words you want to hear from your legislature are these: “Marriage is a fundamental human right”. This is the opening clause of the New York Marriage Equality Act that was passed by both houses of the legislature and signed by Governor Andrew Cuomo on June 24, 2011.

It heads the legislative-intent section of the law, which goes on to express the legislature’s purpose that “same-sex couples should have the same access as others to the protections, responsibilities, rights, obligations and benefits of civil marriage. Stable family relationships help build a stronger society. For the welfare of the community and in fairness to all New Yorkers, this act formally recognizes otherwise-valid marriages without regard to whether the parties are of the same or different sex.”

The declaration of legislative intent is a vital guide to judges and other officials in interpreting the law, which is helpful, since this law may require some interpretation. A study by the Empire Estate Pride Agenda and the LGBT Rights Committee of the New York City Bar Association in 2007 found that there are 1,324 laws relating to marriage in the state of New York. The Marriage Equality Act does not specifically address all of these laws; it makes a small number of sweeping statements, which may or may not succeed in updating all 1,324 laws.

The Act redefines marriage to include same-sex couples, so that same-sex marriages may now be performed within the state, not just recognized when performed in other states. It also states that this redefinition applies categorically to all state laws in which marriage is a factor. Implementation of this sweeping rule is aided by a further provision requiring that all laws relating to marriage be interpreted in gender-neutral terms, so that words like “husband” and “wife” in the existing laws don’t stand in the way of marriage equality. These provisions should result in automatic recognition of same-sex marriages for most purposes in New York.

But among the 1,324 laws relating to marriage, there will surely be some interpretive challenges ahead. Questions may arise, for example, in areas of the law where state and federal laws must be coordinated, such as employee benefits, Medicaid, and taxation.

One of the major problems with New York's limited recognition of same-sex marriages before the new law was with taxation. New York tax laws provide that the federal determination of marital status prevails over the state-level determination, and that a couple's state tax returns must be filed in the same manner (singly or jointly) as federal returns. The New York Department of Taxation has declared that full marriage equality will be implemented for state tax purposes. But we are awaiting further guidance on whether the Marriage Equality Act will be enough to supersede these tax laws, or whether it will require court decisions, further legislation, or just a revision of state tax forms.

The Act's intent seems to be resoundingly clear – it includes a statement that “the omission from this act of changes to other provisions of law shall not be construed as a legislative intent to preserve any legal distinction between same-sex couples and different-sex couples with respect to marriage”. That means that no one can argue that the legislature intended to leave the tax law, or any other discriminatory law, unchanged. But as with the tax law, it may take some time before the full reality of marriage equality trickles through the all the state's laws and bureaucracy.

Meanwhile, it's important to remember that the new law extends only to the borders of the state. The following concerns remain for same-sex couples, even if they are married:

- While New York now recognizes marriages, it still does not recognize civil unions. A civil union, from New Jersey or elsewhere, may just be the same thing by a different name, but words make all the difference in the law – different words create different status.
- Most other states do not recognize same-sex marriage – so remember that your legal status will be regarded differently when you travel, or if you move to a new state. Therefore, it's still important to establish clear legal documents such as a will, power of attorney and health care proxy, to ensure that you and your spouse can behave legally in the manner of spouses even in places where you are not recognized as spouses.
- The federal government still denies recognition to same-sex spouses. This affects many aspects of your life, from taxes to retirement accounts to health insurance to Social Security. Immigration is another major area of federal law that remains unaffected by the New York Marriage Equality Act. The Obama administration has given a number of signals that its policy is moving in the direction toward some degree of recognition, or at least clemency, in some of these areas. But it's more important than ever not to be over-confident on these matters and to obtain the most current and detailed legal advice.
- The Marriage Equality Act only protects you if you marry! Unmarried couples, whether same-sex or different-sex, have none of the benefits of marriage.

Let the wedding bells ring! But as always – let's be careful out there.

Ron L. Meyers is an attorney who helps his clients optimize their plans and assets to benefit the people they love. His attention to developments in the law, especially those affecting the LGBT community, helps his clients to achieve the best results, and the greatest confidence, in a fast-changing legal landscape. This article is presented for educational purposes only; it is not intended as, and should not be construed as, legal or tax advice.