

The high cost of same-sex divorce

By Blake Ellis @blakeellis3 May 13, 2013: 6:01 AM ET



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When a same-sex marriage fails, it's often complicated and costly to get a divorce.

NEW YORK (CNNMoney)

While same-sex couples across the country fight for the right to marry, others are fighting for the right to divorce.

A patchwork of state marriage laws and the federal [Defense of Marriage Act](#) has made the process of unraveling a relationship extremely difficult -- and expensive.

A same-sex couple who marries in one state and later relocates to a state that doesn't recognize the marriage, for example, may be unable to get a traditional divorce. Often, they either have to move to the state where they married to establish residency or dissolve the marriage outside of the court system. Some states call this a dissolution of marriage instead of a divorce.

In most cases, this means filing a civil lawsuit -- or multiple lawsuits. With no threat of a trial or a judge to make a ruling, couples often get stuck in negotiations and the lawyer fees can really pile up, said Kevin Maillard, a law professor at Syracuse University specializing in nontraditional families.

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And because this is still a niche area of practice, the lawyers aren't cheap.

"While we celebrate the growing acceptance of gay marriage, there is a tendency to avoid the issue that gay divorce goes along with it," said Jim Duke, founder of the Guide for Gay Men and a life coach who helps men with issues like divorce. "The current legal structure leaves massive holes that straight couples do not face."

Duke entered a domestic partnership in California in 2001, but eight years later he and his partner divorced. He ended up paying \$12,000 in legal fees for a simple 50-50 split of property and assets.

Christina Fuentes and her partner decided not to dissolve their civil union after realizing it was going to cost at least \$6,000 -- even though the only property they would need to divide was their furniture. Instead, they waited two years, until Fuentes got a full-time job, to start the separation process.

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"The lawyer fees were [high], because this is a new type of law and basically lawyers have to figure out how to charge and how to negotiate with the other side," she said.

For an out-of-court settlement in states where same-sex marriage isn't recognized, a same-sex divorce typically costs around \$20,000, versus \$10,000 for an opposite-sex couple, said Randall Kessler, a partner at Kessler & Solomiany Family Law Attorneys in Atlanta.

And the costs go up exponentially when children are involved. Even though a divorce typically can't be brought to court in states that don't recognize same-sex marriage, custody issues can -- resulting in court fees on top of the lawyer fees the couple is already paying to resolve property issues outside of court.

Same-sex couples who negotiate property division on their own but bring the custody issue to court are usually looking at \$40,000, compared to \$20,000 for opposite-sex couples, Kessler said. And a long, drawn-out court battle over custody could lead costs to jump to \$100,000 or more for a same-sex couple, twice what it costs for an opposite-sex couple.

Many same-sex couples face extra custody costs even in states where same-sex marriage is recognized.

Andrea Friedman, an associate at Sari M. Friedman in New York, is representing a client who is battling for custody of her child. But since the client isn't the biological mother -- her wife carried the child -- her legal standing to argue for custody is in question, and an appeal has been filed against her.

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"An appeal can be very costly, so on top of the cost to get divorce, the fight over custody adds more legal work on top of it and can really complicate things," said Friedman.

Other attorneys say same-sex divorces cost the same amount as opposite-sex divorces in states where same-sex marriage is recognized -- and are sometimes even cheaper because the marriages are usually very short given how recently the laws have taken effect.

No matter what state they're in, same-sex partners can still be subject to a federal gift tax when they transfer property or assets worth more than \$14,000 to one another in a divorce. Opposite-sex married couples don't have to pay this tax when dividing assets.

Another growing trend that makes divorce even more complicated for same-sex couples: some like to get married in multiple states in order to secure rights in as many places as possible -- making it unclear how many divorces are needed and potentially causing costs to skyrocket, said Carolyn Satenberg, a New York divorce attorney.

"Everything will be murky until case law develops, and the murkier it is, the longer it's going to take to hash out -- and the more hours it takes, the more expensive it is," said Satenberg. ■

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