



Gay Divorce A Higher Hurdle Than Marriage

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Courtesy of Lisa Lunt

As thousands of gay and lesbian couples are planning weddings in New York — and celebrating their hard-fought right to marry — others around the nation are fighting for the right to divorce.

Since most states, and the federal government, don't recognize gay marriages, many same-sex couples are left with no way to officially split.

For example, an out-of-state couple who goes to Massachusetts to marry, or a couple who lives in-state and then moves away, can't divorce in Massachusetts because they'd have to be a resident for at least a year. And if the couple's home state doesn't recognize gay marriage, they can't divorce there, either.

Nearly three years ago, Rhode Island resident Lisa Lunt split up with the woman she married in Massachusetts. She has been trapped ever since.

"It's strange. It puts me in emotional and legal limbo," Lunt says.

The consequences could be serious: If Lunt wants to marry again one day, would that be polygamy? And legally, her ex could claim half of her retirement. Lunt and her ex didn't share children or property — but many other same-sex couples say without access to a family court, it becomes almost impossible to divvy up joint assets and decide custody issues.

"Amy" married her partner in Connecticut and returned to her home state, where gay marriage is not legal, to start a family. But just months after their baby was born, Amy's wife wanted out, and no court would hear Amy's claim to the child who carries her last name.

“It puts me in emotional and legal limbo.

- Lisa Lunt

"It was heartbreaking — a lot of tears shed," she says.

Amy wants to remain anonymous because she is trying to get a judge to quietly grant her divorce under the radar. The court won't touch custody or property disputes, but she hopes a sympathetic judge might at least be willing to give his official stamp to an uncontested divorce, as long as it is all kept quiet.

"It's very much a gamble. I'm at the whim of a judge, but it is the best shot I have, and it would make such a difference to have that peace of mind," she says.

In the past, however, judges who are discovered to have gone out on a limb to grant gay divorces have been challenged — and their decisions usually overturned.

Attorney Elizabeth Schwartz specializes in same-sex divorces in Florida. She says it's unfair how same-sex couples are treated.

"[I] can't tell you how many can't even have a day in court. They just have to walk away," she says.

Even in states that do recognize gay marriage, gay divorce can still be a legal mess because gay marriages aren't recognized by the federal government — or the IRS.

For example, alimony payments are usually tax-free. But, Massachusetts attorney Joyce Kauffman says, the IRS has no guidelines on what to do if you are a gay divorcee.

"Many people are just keeping their fingers crossed, hoping they don't get audited," she says.

Another tricky issue in gay divorce is the length of a marriage. Courts divvy up property very differently when a couple has been together two years as opposed to 20. But if a couple has been together for a decade before gay marriage was legal, how many years should count? Some judges are now beginning to consider unmarried time

together, but Kauffman says that often gets ugly, when one ex inevitably tries to discount their early years together as "just friends."

For now, attorneys say, don't skip the prenuptial agreement.

There have been some efforts to enable gay divorce in states that bar gay marriage, but those have been fought by people who see it as a slippery slope.

That infuriates people like Lunt. It makes no sense, she says, for opponents of gay marriage to keep people like her from ending one.

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