

Ten Years After Same-Sex Marriage in Minnesota:

What Has Changed for Queer Families?

Mary Pat Byrn
marypat@vbilaw.com

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A Few Caveats:

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Overview of Implications of Same-Sex Marriage

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Overview of Implications of Same-Sex Marriage

Marriage Binary Trap

Ten Years After Same-Sex Marriage in Minnesota:

What Has Changed for Queer Families?

- I.
 - Estate Planning
 - Probate
- II.
 - Known Sperm Donor Agreements
 - Adoption
- III.
 - Dissolution
 - Custody
 - Ante-, Post-, and Co-habitation Agreements
- IV.
 - Name and Gender Marker Changes...and Marriage Licenses

ESTATE PLANNING

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- If married person wants to direct the bulk of their assets to someone other than their spouse, may need to have spouse sign consent to estate plan
 - Consent can prevent spouse from exercising statutory right to “Elective Share” of deceased spouse’s estate

PROBATE

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 - Surviving spouse can claim percentage of deceased spouse's estate based on length of marriage
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- Spouse dies without Will (Intestate)
 - Statutes give spouse priority as Personal Representative
 - Statutes prioritize spouse for distribution of assets

ESTATE PLANNING AND PROBATE

- Marriage creates significant presumptions for spouse
- Unmarried person can protect interests if they execute an estate plan

KNOWN SPERM DONOR AGREEMENTS

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Married

- Gender neutral reading of marriage and a parentage statutes (517.201)
- Gender neutral reading of “Insemination Statute” (257.56)?
 - Insemination by Doctor
 - No case law on gender neutral application of statute

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- Known Sperm Donor Agreement

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<ul style="list-style-type: none">➤ <u>Known Sperm Donor Agreement</u><ul style="list-style-type: none">➤ No specific statute regarding such agreements➤ May be unenforceable as a contract, but still show intent➤ Best way to ensure that all parties are clear on process, promises, and intended application of parentage statutes	

2ND-PARENT AND CO-PARENT ADOPTIONS

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Unmarried – Anonymous Donor

- Statutory right for “birth mother”
- No statutory rights for partner!
- Inchoate rights of sperm donor (“biological parent”)
- *2nd-Parent Adoption*

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2ND-PARENT AND CO-PARENT ADOPTIONS

Married – Anonymous Donor

- Statutory right for “birth mother”
- Spouse is parent in Minnesota through gender neutral reading of marital presumption statute (257.55)
 - Both names on Birth Certificate
 - *In the Matter of E.D.M v. S.J.M*, No. A2—0422, Minn. App. (2020).

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DISSOLUTION AND SEPARATION AGREEMENTS

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- Never married
- “Always” Married
- Co-mingled finances and/or made promises to each other over time, and then got married
- Never married, but made “marriage like” promises to one another?????

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- For unmarried same-sex couples, “non-bio” parent may now face more scrutiny for not having “married” or “adopted”
 - That is, a court may consider the fact that they not married *against* the “non-bio” parent.
 - *In the Custody of N.S.V. et al, A18-0990, Minn. App. (2019)*

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- For unmarried same-sex couples, “non-bio” parent may now face more scrutiny for not having “married” or “adopted”
- May raise new opportunities, or obstacles, for other queer families (trans, polyamorous)
 - Greater acceptance?
 - More deference to legislature?
 - Expressio unius est exclusio alterius – The expression of one thing implies the exclusion of others

ANTE-, POST-, AND CO-HABITATION AGREEMENTS

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- Non-marrying same-sex couples need to clarify the legal consequences of their relationship to ensure that the marriage and dissolution statutory scheme is not inferred “against” them
- There are legal tools for queer families to use to protect their interests, but they need to employ them
 - Empowerment v. Resentment

NAME AND GENDER MARKER CHANGES...AND
MARRIAGE LICENSES

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- Person marries
- Subsequently changes name
- Person is able to change name on birth certificate, driver's license, passport . . .
- Minnesota does not allow person to change name on Marriage Certificate

NAME AND GENDER MARKER CHANGES...AND MARRIAGE LICENSES

- Minnesota does not allow person to change name on Marriage Certificate
 - Executive Remedy?
 - Minnesota Department of Health
 - Administrative Law Judge
 - Judicial Remedy?
 - District Court
 - Legislative Remedy?

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