

# Same Sex Divorce

## Uncharted Territory in New Jersey

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The United States Supreme Court recently ruled The Defense of Marriage Act as unconstitutional. This opens the door for many more states to move forward with legislation recognizing same-sex marriages.

There are currently thirteen states that recognize same sex marriage and seven other states recognize other relationship laws i.e. domestic partnerships or civil unions. With the current ruling by the Supreme Court there will sure to be many more states moving forward with similar legislature. Currently New Jersey recognizes civil unions. However, politicians will be faced with bills enacting same sex marriage in New Jersey in upcoming elections.

Along with same-sex marriages, there will undoubtedly be same-sex divorces. New Jersey's family court is a court of equity. On February 17, 2007, the New Jersey Civil Union Act came into effect. Same sex couples that entered civil unions were to be provided the same rights enjoyed by married couples. However no case law exists on treating same-sex divorces. New Jersey Courts are forced to decide whether equitable distribution should reflect assets acquired prior to February 2007 or use the February 2007 date as the date of "marriage". Traditional marriages began on the date of ceremony through the date of complaint filed for divorce. The moneyed spouse in a same sex civil union could argue that only assets acquired past February 2007 should be considered for equitable distribution.

Unlike traditional marriages, when a couple files for divorce they must file in the state in which they currently reside. For example, if a same-sex couple marries in New York and

moves to Florida and wants to file for divorce they encounter a major road block. Florida does not currently recognize same-sex marriages. This prevents this same sex couple from divorcing in Florida. In addition, Federal income tax laws make same-sex divorces more costly. If a spouse is ordered to pay alimony to another spouse in a traditional marriage the alimony payments are tax deductible. In same-sex marriages payments to a spouse for alimony purposes do not qualify under current Internal Revenue Statues as alimony and therefor are non-deductible.

Marcum LLP has formed the LGBT & Non-Traditional Family Practice Group to navigate these uncharted waters dealing with these complex issues both on a Federal and State level. When consulting with same-sex couples seeking a divorce there are limited options to help remedy the situation. If the couple entered a written agreement defining assets that are premarital it provides the courts as basis for equitable distribution. Or if some form of estoppel or quantum meruit can be established it offers the court and the parties some structure when distributing assets and calculating support payments. These are among the myriad variables that couples can face when dissolving their legal union. How they are handled and with careful consideration of the changing law may make all the difference. It is our recommendation that parties consult with an expert in LGBT marital dissolution from day one. Divorce is never pleasant but the right team can limit the pain.

