

SAME-SEX MARRIAGE IN FLORIDA: PART I

Marital and Family Law Section

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general legal and economic sense. In the second part of this article, we will explore some of the changes that would necessarily follow the legalization of same-sex marriage.

Perhaps the first benefits that come to mind for financial-minded practitioners are those related to taxes. Aside from the obvious



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fact that a married couple's tax bracket changes because they can file jointly, a heterosexual married couple with a child is entitled to claim an earned income credit pursuant to 26 U.S.C. §32, establish a head of household pursuant to 26 U.S.C. §2, thereby increasing the couple's standard

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The state of Florida does not recognize same-sex marriage.¹ However, with the recent changes in New York's state laws on same-sex marriage, it is possible that Florida could follow suit. Thus, it is worth considering what this change might mean to the family law community. This article is a two-part discussion. In this first part, we will discuss some aspects of what it means to be married in a

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deduction, and claim a child tax credit pursuant to 26 U.S.C. §32.² Further, a married couple can transfer property from one spouse to the other without any tax consequence, including after one of the parties has passed away, pursuant to 26 U.S.C. §1041 and 26 U.S.C. §2056.

Perhaps most importantly, being married creates a world of rights in the estate and family law domains. Under Florida law, if one spouse dies intestate, the surviving spouse receives the deceased spouse's entire estate if there are no children.³ Often overlooked and perhaps taken for granted by most married couples is the fact that a married couple in Florida has the rights outlined in Chapter 61 of the Florida Statutes. This means that spouses without taking any action other than getting married, have a statutory claim to all property acquired during the marriage, including arguably increases in value of non-marital property, and to support for themselves and their

children. Further, only a spouse, former spouse or child can go after creditor-exempt qualified retirement assets by obtaining a Qualified Domestic Relations Order, which are often extremely valuable.⁴

Private companies also incentivize their employees and customers with benefits for spouses and married couples. Employers that provide health, dental, vision, life, and/or car insurance, often give this benefit to the employee's spouse at a reduced premium relative to policies for individuals. Further, employers can provide health insurance to an employee's spouse without any negative tax consequences to any party.⁵

The list goes on, and for lack of space, we have barely scratched the surface. All too often, family law attorneys lose sight of the many benefits that inure to married couples solely by virtue of the fact that they are married, without more. Same-sex couples locked out of marriage are not only locked out of the social institution, but also a world of legal and economic benefits and safeguards.

¹ Even prior to the enactment of the laws presently in effect, Florida had placed a statutory ban on same-sex marriage.

² These tax laws are not applied in the same manner to same-sex married couples, who are provided with far less of a tax advantage for non-biological and adopted children. Further, because of the Defense of Marriage Act, same-sex married couples are not considered married pursuant to most federal laws.

³ See Fla. Stat. § 732.102 (2010).

⁴ See ERISA § 206 (2010).

⁵ Employer-provided health benefits provided to a same-sex partner or spouse are taxable as income to the employee.



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