

LGBT SideBar

A Newsletter From

VISHNICK MCGOVERN MILIZIO LLP

Specifically for the Lesbian-Gay-Bisexual-Transgender

(LGBT) Community

Equality... What A Feeling!

*By Joseph G. Milizio, Esq., Managing Partner and
John Nicodemo, Legal Intern at VMM*

THERE ARE MOMENTS we remember all our lives. Certain events become emblazoned in our memories so that we recall exactly where we were and what we were doing when they occurred. June 24, 2011 represented such an “event” for gay and lesbian New Yorkers. On that historic date, the New York State Senate affirmatively voted to legalize same-sex marriage and allowed gays and lesbians throughout our great state to become eligible to engage in one of this nation’s most fundamental rights. New York now joins five states and the District of Columbia to become the largest state to legalize same-sex marriage.

The victory in Albany over equal rights resonated throughout the State. Never before has a legislative vote had so much positive impact on the spirit of the LGBT community. The jubilation that erupted following the late night announcement that the Marriage Equality Act had been approved served to erase any doubts regarding the effect that meaningful legislation has over the citizens of a State. Frayed nerves and cautious optimism, although reasonable and justified, proved unnecessary as the events of June 24 unfolded. No longer will gays and lesbians be relegated to second-class status in New York. Equality has quite a nice ring to it.

So here we are, equals under the law. Well, in New York at least. With legal marriage come myriad benefits and responsibilities that were inapplicable to members of the LGBT community—until now. Although no one doubts the overwhelmingly upbeat effect on the collective psyche of the LGBT community simply arising from the feeling of “being equal,” it would be remiss of the legal community to neglect to educate the community about the legal ramifications of marriage.

Moreover, since there is a dichotomy between federal and New York laws, it is imperative that all members of the community understand the distinctions. Legal marriage in New York entitles spouses to rights regarding estate and inheritance matters, property ownership, state tax benefits, and state pension benefits. Additionally, responsibilities such as the legal duty to support a spouse

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Equality... What A Feeling!

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immediately engage. These rights and responsibilities, although new to the LGBT community, have always been enjoyed by heterosexual couples.

The Good News (in some not-so-good times)

Many of the rights and responsibilities of legal marriage for purposes of realizing the benefits often become applicable in unfortunate times. For instance, upon the death of one of the spouses, automatic inheritance rights attach. Issues regarding the duty to support a spouse seem to arise upon the dissolution of the marriage. Health insurance, although achieving solid peace of mind for an insured, remains in the background until health concerns arise. Survivor benefits pertaining to pensions, like estate issues, logically only arise upon death. However, these “benefits” of marriage which, in many ways, provide for people in the event of unfortunate occurrences, were once privileges enjoyed only by heterosexual married individuals.

Inheritance Rights

In New York, a legal spouse cannot be disinherited. New York law provides that a legal surviving spouse, upon the death of the other spouse, may elect to share in a decedent’s estate whether or not the surviving spouse has been provided for in a will. A surviving spouse cannot be disinherited unless there is an existing prenuptial or ante-nuptial agreement.

Property Ownership

Up until the enactment of Marriage Equality this past summer, same-sex couples wishing to purchase real property as joint owners were limited in both the types of co-ownerships they could assume and the legal protections that accompany those types of ownership. Unmarried individuals could own real property together only as tenants in common or joint tenants. The third type of co-ownership recognized in New York, known as a tenancy by the entirety, is available only to married individuals, and carries significant advantages.

A tenancy by the entirety is not subject to probate and passes directly to the spouse upon the other spouse’s death. One spouse cannot engage in any legal dealings regarding this type of co-ownership without the consent of the other. Furthermore, debtors cannot touch or seize a tenancy by the entirety for the purposes of settling one co-owner’s debt.

There may be many same-sex couples, now legally married, that have previously formed joint tenancies and wish to change the form of ownership into a tenancy by the entirety. The good news is that the possibility exists, but tax and other consequences must be examined. Consult the attorneys at Vishnick McGovern Milizio to assess the situation and the process to accomplish this, as well as other issues that may arise with property ownership under legal marriage.

Health Insurance—taking the Good News with the (Potentially) Bad

Essentially, employers, whether public or private, that provide health insurance coverage for spouses must extend those benefits to validly married same-sex spouses. Of course, this benefit of marriage goes a long way in curbing health expenses because of the reduced costs of additional coverage on employee health plans as opposed to the cost of separate individual plans.

However, not all employers may be required to extend health insurance benefits to same-sex spouses of employees, regardless of state mandates. Those employers that provide self-insured plans which are subsidized by the employers’ assets and not through insurance companies rely on the Employee Retirement Income Security Act (ERISA), a federal law. Because DOMA, (discussed herein) federally defines marriage as a union between opposite-sex individuals, these employers are not required to extend health insurance benefits to same-sex spouses. However, they are not precluded by federal law from extending the benefit, and may choose to do so.

Additionally, because of DOMA, same-sex legally married individuals, regardless of whether their spouses are covered under their health plans, are still unfairly subject to federal income taxes based on the value of their spouses’ benefits, unless they can be claimed as dependents. New York, however, does not impose this tax liability on health benefits to same-sex spouses since the enactment of the Marriage Equality Act. Employers and employees should consider the need to prepare withholding documents.

The Duty to Support During (and After) the Marriage

Legal marriage in New York attaches both financial and moral obligations on both spouses. A spouse may be legally obligated, if financially and physically able, to



support his or her spouse. Under the Necessaries Doctrine, the courts have held that, although the spouse who has incurred a debt for necessary goods or medical treatment is primarily liable for that debt, the non-debtor spouse, provided that he or she is able to do so, may nonetheless be responsible if the debt is marital.

In both separation and divorce, the greater-monied spouse generally has the obligation of providing the lesser-monied spouse with maintenance which reflects the lesser-monied spouse's pre-separation standard of living. In determining the amount of maintenance, courts take into account other factors such as the level of education of the lesser-monied spouse, ability of the lesser-monied spouse to enter the workforce, longevity of the marriage, ages of any children, and any other factor that contributes to the ability of the lesser-monied spouse to "get on his or her feet."

Spousal Privilege against Testifying—What Happens in NY, Stays (Only) in NY

One of the "benefits" of legal marriage in the State of New York is that confidential communication made between spouses is considered privileged communication. Therefore, one spouse may not be compelled to testify against the other at trial. This rationale behind the privilege is that, if one spouse were not protected from testifying against another, it would undermine the trust and harmony that should exist freely in a marriage. The State wishes to foster a harmonious family relationship.

However, this privilege does not extend to the federal courts, regardless of whether the federal court sits in New York. Because of DOMA, the federal government lacks recognition of valid same-sex marriages. The interesting query arises in federal cases where State law applies. The possibilities for paradoxical challenges that may arise are overwhelming. Stay tuned.

Workers Compensation Death Benefits

Although not necessarily the kind of topic that would be characterized as "good news," New York's Workers' Compensation Laws provide that employers pay compensation for injury or death of an employee resulting while in the course of employment. Recovery from a spouse's employer upon the death of the other spouse results in another "benefit" of valid marriage in New York State.

But What About DOMA?

The Defense of Marriage Act (DOMA), a federal law, does not recognize marriage between individuals of the same sex. Moreover, DOMA allows the states to disregard the validity of such marriages that were entered

into in other states and countries. The effect of DOMA is that no federal laws apply to married same-sex individuals that otherwise apply to married opposite-sex individuals. This creates many issues for gay and lesbian people. Moreover, it obligates same-sex married individuals who marry to take extra measures for income tax, estate tax, and overall family planning perspectives to comply with the effects of federal and state law and the interaction (or lack thereof) between them. **M**

For more information about how the NY Marriage Equality Act may affect you, please contact Joseph G. Milizio, Esq. at 516-437-4385 or via email at Jmilizio@ymmlegal.com

A Season of Seminars!

Vishnick McGovern Milizio LLP hosted two informative and interactive seminars for same-sex couples and LGBT individuals, and one seminar for planning professionals. These sessions explained how legalized same-sex marriage in NY affects life and estate planning; marital rights and obligations; tax implications; and which rights are still denied to married same-sex couples under the federal Defense of Marriage Act (DOMA).

Joseph G. Milizio spoke before the Suffolk County Bar Association in September and the Queens County Women's Bar Association in November on the legal aspects of same sex marriage. Mr. Milizio also presented this topic to the Nassau/Suffolk Chapter - National Conference of CPA Practitioners at its 2011 Long Island Tax Professionals Symposium in November.

On Thursday, November 3, attorney, constitutional scholar, and affiliate of Vishnick McGovern Milizio Peter Carrozzo appeared on a panel at Touro Law Center in Central Islip, discussing the constitutional implications of the Defense of Marriage Act (DOMA).

If you or your group are interested in arranging a speaking engagement, please contact Saskia Thomson at sthomson@ymmlegal.com or by phone at 516-437-4385, ext 127.

Don't Ask Don't Tell: No Longer Enforceable

By John Nicodemo

SEPTEMBER 20, 2011—a date that represents an event in the lives of the many service members in the United States armed forces. On September 20, 2011, the United States Military officially ended its decade-and-a-half discriminatory policy known as Don't Ask, Don't Tell (DADT). On July 21, 2011, President Obama, Secretary of Defense Leon Panetta, and Joint Chiefs Chairman McMullen signed a document effectively ending the policy once and for all.

Can we then assume that the end of DADT means that the more than 13,000 gay men and women discharged for simply being gay can seek immediate re-enlistment? Although the knee-jerk, logical and civilian-minded response may be a swift “yes,” the reality is not as simple. According to a September 5 *New York Times* article, those service members honorably discharged under DADT (a now—invalidated policy), in order to return to the service, must seek re-enlistment and “be evaluated according to the same criteria and requirements applicable to all others seeking re-entry into the military.” (See James Dao, *Discharged for Being Gay, Veterans Seek to Re-enlist*, *NEW YORK TIMES*, (Sept. 4, 2011)).

In other words, these people will need to pass rigorous tests and other criteria, regardless of present age, to re-

enlist. Furthermore, there is no guarantee that these veterans will regain their former rankings, lagging far behind their contemporaries. Many believe that the military should adopt a policy by which former service members discharged under the discriminatory policy regain their former statuses.

However dim and patently unfair the scenario seems for these men and women discharged under such a disgraceful policy, there is one lesson to be learned from the story. Many of the men and women that fell victim to DADT not only lived in painful silence because of the policy but also, once “outed,” lived with the public humiliation that accompanies a discharge. Many of them spent great expanses of their lives building military careers, only to have the military discard them for no other reason than their being gay. Regardless of the pain, regardless of the feeling of abandonment, regardless of the barriers and obstacles of re-enlistment mentioned prior, many of these honorable Americans, now that DADT has ended, wish to return to serving their country. **M**



legal
Brief

Dissolving a Civil Union in a New York Court: A Landmark Ruling

Before this past summer, although New York had not performed legal unions between same-sex couples, other states, including Vermont, did. New York State currently recognizes and validates same-sex civil unions entered into in other states. However, the issue regarding whether New York courts would dissolve out-of-state civil unions remained relatively untouched—until now.

On July 21, 2011, an upstate appeals court, in the case of *Dickerson v. Thompson*, held that New York courts have the authority to dissolve a civil union entered into in the State of Vermont. The *Dickerson* case involved a petition for dissolution of a civil union entered into in Vermont in 2003. Both parties to the civil union were New York residents. The problem arose when, after the relationship irreparably deteriorated, one of the parties sought to dissolve the union in a New York court. The court dismissed the complaint, claiming that New York lacked authority to dissolve such unions. Essentially, the court told the parties that only Vermont had the authority to do so. Since Vermont law requires residency status to dissolve a civil union, the parties would need to relocate to Vermont and establish residency for one year to have the union dissolved.

The appeals court disagreed, and issued a directive for the judge, in the interest of fairness and justice, to find a way to achieve an equitable result for the parties. Judge Vincent J. Reilly, however, declined to declare the union dissolved because the New York Legislature had not expressly enacted a law to grant such authority to the courts. Again, the appeals court disagreed, stating that, without dissolution, *Dickerson* would be prevented from progressing with her life and putting the past behind her. Dissolution of civil unions, the court added, should receive the same treatment under New York law as marriages.

news & Events

VMM's documentary on DOMA screened at the NY International Film Festival!

We are proud to announce that *Left Out In America: Legislating Love, Life and LGBT* – our short film about how the Defense of Marriage Act discriminates against the LGBT community – was accepted to and screened at the New York International Film Festival on November 22, 2011.



Opening Night of the NY International Film Festival.
From Left to Right: Joseph G. Milizio, Esq., Producer;
Saskia Monteiro Thomson, Producer; Eun Chong (EJ)
Thorsen, Esq., Producer; and Joseph Trotti, Esq.,
Executive Producer and Director.



In the Community

Vishnick McGovern Milizio LLP was a proud sponsor of the Long Island Gay and Lesbian Film Festival in November... VMM also showed its support for the Long Island Gay Men's Chorus Winter Concert... the firm will also be sponsoring the 2012 Outlook Awards in January 2012... Follow us on Twitter (LGBT VMMLegal) or on our LGBT website (www.LGBT-VMMLegal.com) for updates!

In the News

Joseph G. Milizio, Esq. was quoted in *Long Island Business News* in its July 1-7, 2011 issue and its September 16-22, 2011 issue. He spoke on the topic of the legal aspects of Same-Sex Marriage in New York. Mr. Milizio also published an article on this topic in *Outlook Magazine*. To request copies, please contact Saskia Thomson at sthomson@vmmlegal.com or at 516.437.4385, ext 127.

Online Updates

Check out www.LGBT-VMMLegal.com, Vishnick McGovern Milizio's website for LGBT legal issues and news. We've recently added an LGBT Blog that addresses legal issues of particular interest to the LGBT community, You can also track important updates, event information and seminars by following us on Twitter: [LGBTVMMLEGAL](https://twitter.com/LGBTVMMLEGAL)

Caring and Aging With Pride

By John Nicodemo


IN MARCH OF 2011, the National Institutes of Health and the National Institute on Aging released preliminary findings of Caring and Aging with Pride, a national project, the first of its kind, reflecting the specific needs of LGBT elders.¹ The report titled “The Health Report—Resilience and Disparities among Lesbian, Gay, Bisexual and Transgender Older Adults: Preliminary Report,” serves to specifically target the population of LGBT elders to better accommodate that population.²



The preliminary results of the study reveal important issues that highlight health and wellness needs of the older LGBT community. The following reveals several of the study’s significant results³:

- Nearly one-half of the survey respondents reported having a disability; almost one-third reported having depressions; nearly one-fourth reported anxiety.
- More than two thirds have experienced verbal insults and 40% physical violence.
- 15% fear receiving health services outside the LGBT community.
- Two-thirds reported the need for senior housing, social events and transportation to meet their needs as they age.
- Transgender older adults reported the following: 22% needed a doctor’s care but could not afford to see one, 40% of transgender older adults fear receiving health services outside the community.

The preliminary findings also reveal the importance of community for older LGBT citizens.⁴

- 88% of respondents feel “good” about belonging to their communities.
- Three-quarters report that they have social support when needed, contributing to the wellness factors of the elderly LGBT community.
- Over one-third of the respondents provide necessary care giving to either a spouse or a friend, bolstering this population’s penchant for community.
- More than three-quarters report their general health as “good.”
- Almost all of the respondents engage in some type of physical activity, ranging from moderate exercise to vigorous physical activity such as running or aerobics. 

(Endnotes)

1 The full report will be released in fall 2011 at the Gerontological Society of America conference in Boston, MA. <http://www.grayprideparade.com/2011/06/06/preliminary-findings-of-new-lgbt-aging-study/>.

2 Id.

3 24% of the participants ranged in age from 50-59; 41%, 60-69; 25% 70-79; and 10% 80 and older. Western, eastern, and central regions of the United States are represented by 46%, 40%, and 16% of the survey, respectively. See Id.

4 Id.

5 See <http://www.aging.ny.gov/Index.cfm> (New York State currently ranks third in the nation in its population of adults aged 60 and over).



Find out the latest news at:

www.LGBT-VMMLEGAL.com

Vishnick McGovern Milizio LLP attorneys advocate for and strongly believe in the rights of gay, lesbian, bisexual and transgender individuals. The LGBT community has the same concerns and the same needs as the larger community. Unfortunately, society does not automatically grant the same legal rights, or offer the same legal benefits to the LGBT community. However, with proper planning, many of those rights and benefits can be fulfilled. Whether counseling individuals, families, or businesses, we understand the issues and are well versed in strategies that protect our clients and satisfy their wishes.

We offer a number of services that uniquely address the issues that matter most to the LGBT community.

The content of this newsletter is for informational purposes only. Please contact us if you would like legal counsel.



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