

ZAVOS JUNCKER ■ LAW GROUP, PLLC

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Welcome to our Firm's fourth E-newsletter! What a year it's been!

So much has happened since our last E-Newsletter. Maryland passed marriage equality, and is one of the first states where marriage equality won a popular vote. Couples are now able to marry IN Maryland. Our firm also won a great victory in Port v. Cowan at the Maryland Court of Appeals, Maryland's highest court, in May of 2012. Port required that Maryland recognize marriages between same-sex couples that were entered into validly in another jurisdiction.

Our Firm also assisted with the passage of a new divorce law in D.C. which allows same-sex couples who married in D.C. but cannot divorce in their home state to access D.C. courts to obtain a divorce. We also proposed to the City Council amendments to the D.C. Parentage Act to allow D.C. courts to issue a Judgment of Parentage, and jurisdiction for an adoption on the basis of the birth of a child in the District.

See more on these and other developments below.

DISTRICT OF COLUMBIA

Marriage

Marriage equality in D.C. is safe, as the Supreme Court refused to hear a case that might have overturned it. The D.C. Court of Appeals also found that an initiative on marriage equality would impermissibly allow discrimination against gay men and lesbians in the District.

Divorce

In March 2012 the D.C. City Council unanimously approved the [Civil Marriage Dissolution Equality Amendment Act of 2011](#), D.C. Code § 16-902 (2012). Our Firm proposed this law to the City Council and helped write it. Under preexisting law, to be divorced in D.C., one member of the couple must have been a resident of D.C. for at least 6 months, and the couple must be separated for at least six months if the divorce is mutual and voluntary, or at least one year if it is not. Now, if the couple was married in D.C. and is unable to divorce where either member of the couple currently lives, they can return to D.C. courts to obtain a divorce. We recommend that if possible, couples negotiate a comprehensive agreement so the divorce can proceed as uncontested. Thanks to the National Center for Lesbian Rights for its invaluable assistance with the drafting of this statute and Council Member Phil Mendelson who proposed it.

Parentage

Although D.C. passed the Parentage Act in 2009, (see our previous newsletters), the Superior Court of the District of Columbia would not issue a Judgment of Parentage pursuant to the new law. To remedy this problem we proposed amendments to the Parentage Act to the City Council that would not only allow a D.C. court to issue a Judgment of Parentage, but would also give that court jurisdiction for an adoption based solely on the child's birth in D.C. Those amendments should become law on March 22, 2013. Accordingly, we will be able to file these second-parent adoptions in D.C. on that date!

The amendments, if passed, will be very important for couples in nearby states where second-parent adoptions are not yet available (i.e. Virginia and North Carolina). But, the birth of the child MUST take place in D.C. Unfortunately, the Parentage Act and its new amendments do not apply to male same-sex couples because surrogacy is currently illegal in the District of Columbia.

MARRIAGE - What are its legal implications???

Now that Maryland and D.C. have marriage equality many same-sex couples are getting married. It's important to know what marriage means from a legal perspective. To see what rights and responsibilities come with marriage in Maryland [click here](#). To see what this means on the federal level [click here](#). The most important thing to know for couples who get married is that marriage is not only an emotional and loving institution, it is also a legal contract. When couples are married, they become a marital unit. Any income coming into the marital unit during their marriage belongs presumptively equally to both of them. Should this couple be divorced, each has a right to one half of the marital assets. Marital assets do not include gifts or inheritance to one person that are not made joint but do include retirement, real property, accounts, etc. Michele will be giving a seminar on the rights and responsibilities of marriage. If you would like to attend such a seminar, please email her.

For those same-sex parents who have children who were not born in D.C. and cannot obtain a second-parent adoption where they live, please contact Michele Zavos, mzavos@zavosjunckerlawgroup.com, as there may be other options to create a legal relationship between the current nonlegal parent and the child.

MARYLAND

Marriage

Marriage equality came to Maryland in January as Question 6 won a majority vote on November 6th. You can read more about it [here](#). Marriages began in Maryland starting January 1, 2013. Read [here](#) how to be married in Maryland.

The holding in our Firm's case, Port v. Cowan (read it [here](#)), required that Maryland recognize marriages between same-sex couples that were entered into validly in another jurisdiction. So, if a couple was validly married in D.C., the couple's marriage must be recognized in Maryland as a valid marriage. And, of course, with marriage equality, there is no question about that.

In more good news, CareFirst BlueCross BlueShield has changed its 'Eligibility of Spouse Amendment.' Effective November 1, 2012, a spouse is eligible if the spouse "legally married...the Subscriber under the laws of the state or jurisdiction in which the marriage was performed."

[A binding arbitration decision involving two Baltimore County police officers](#), who had been denied benefits coverage for their same-sex spouses, held that denying spousal benefits to these married police officers was discriminatory and contrary to the County's agreement to give benefits to spouses legally recognized under Maryland law. The decision to grant the two couples spousal benefits came as a result of grievances filed by Lambda Legal and the county police union on behalf of the two officers, before marriage equality came to Maryland.

We are still fighting some battles for marriage equality in Maryland on behalf of our clients, particularly with the Maryland Comptroller's Office, which is currently taking the position that it imports the federal definition of marriage to compute income tax and Maryland estate tax. The Comptroller does find that LGBT married couples meet the exemption from inheritance tax since inheritance tax is solely a creature of Maryland law. However, the Comptroller is now saying that he may revise his position or issue a regulation clarifying that Maryland will recognize marriage equality in these circumstances.

For an overview of marriage issues in Maryland issued by the Office of the Attorney General in Maryland, [click here](#).

Fairness For All Marylanders Act of 2013

Recently, Senators Madaleno and Raskin introduced the *Fairness for All Marylanders Act of 2013*. Twenty-one of their colleagues signed as co-sponsors to this bill that stands for the idea that every single person in Maryland deserves an equal opportunity to make a life for themselves free from discrimination. Currently in Maryland, transgender people are not included in state laws that prohibit discrimination, and as a result can be denied housing or jobs based on their gender identity and/or expression.

Parentage

Lambda Legal helped establish that a Maryland birth certificate will name two married moms as parents, without the necessity of a court order. However, we strongly recommend that same-sex couples obtain a second-parent adoption, as birth certificates DO NOT conclusively establish legal parentage. Unfortunately, this policy does not currently extend to a gay male couple, but the passage of marriage equality may change that. Stay tuned.

VIRGINIA

Adoption

See the "Parentage" section under District of Columbia for new developments on second-parent adoptions for Virginia residents!

A new adoption law approved in Virginia permits discrimination by private agencies - even those accepting federal funding - to turn away prospective parents based on perceived and/or actual sexual orientation or religious and moral beliefs. The General Assembly passed the addition of what is known as a "conscience clause" to Virginia law that allows state-funded, faith-based agencies to choose which parents are suitable for adoption based on the agencies' beliefs, and to deny placements based solely on the sexual orientation of the couple. North Dakota is the only other state with such a law. Read more about the story [here](#).

Revised VA DMV Gender Change Policy

New Virginia DMV regulations make a gender change on drivers' licenses easier for people seeking correct gender identification. Now, updating a driver's license only requires a statement by a treating health care professional that the applicant is a patient of the provider and that the applicant's gender identity is either female or male and "can reasonably be expected to continue as such for the foreseeable future." The revised form for a Gender Change Request can be found [here](#).

OTHER STATES

Marriage

Same-sex couples may marry in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York, D.C., and now by popular vote in Washington state, Maryland, and Maine. We anticipate that Illinois and Rhode Island may soon also pass marriage equality. Stay tuned!

Birth Certificates for children of same-sex couples

An Iowa District Court ordered the state to issue a birth certificate for a child of a same-sex married couple listing both spouses as parents.

FEDERAL

Adoption Tax Credit

The federal adoption tax credit has been made permanent. It provides a \$12,750 tax credit for an adoption, with additional credits for special needs adoptions, subject to the financial eligibility of the adoptive parents. Currently, second-parent adoptions are eligible for the credit, BUT, if DOMA is overturned and the same-sex couple parents are married, the credit may no longer be available, depending on how DOMA is invalidated. It's complicated! Another "stay tuned".

Obama's support for same-sex marriage

In May 2012, President Obama announced his support of marriage equality, expressing that he believes marriage equality strengthens families. The President also made LGBT civil rights a highlight of his inauguration speech, the first time a President of the U.S. has mentioned LGBT equality in an inaugural address.

Bankruptcy

Same-sex married couples may now be able to file jointly for bankruptcy. On June 13, 2011, a California bankruptcy court found that Section Three of the Defense of Marriage Act was unconstitutional as it applied to married same-sex debtors filing jointly for bankruptcy. The bankruptcy case signified a new policy in which the Department of Justice informed bankruptcy courts that it would no longer seek dismissal of bankruptcy petitions filed jointly by same-sex debtors who are validly married under state law.

Defense of Marriage Act (DOMA)

The Supreme Court will hear two cases involving marriage equality on March 26th and 27th of this year. The first, Hollingsworth v. Perry, is the Proposition 8 case out of California. Here, the Supreme Court could decide not to hear this case at all, or find that same-sex couples have a constitutional right to be married, or anything in between. Most legal observers think that the Court will issue a very narrow ruling in Hollingsworth, one that will not have a national impact.

The second, Windsor v. United States, comes out of New York. There, Edie Windsor, was with her spouse, Thea Spyer, for over 40 years. They were married in Canada in 2007. Thea died and Edie owed the federal government \$363,000 in estate tax because her marriage to Thea was not recognized. If it were recognized, she would have been able to claim the unlimited marital estate tax exemption and her estate tax bill would have been 0.

Eight federal courts have invalidated various parts of DOMA. DOMA defines marriage as the legal union of one man and one woman for federal purposes. Section 3 of DOMA provides that federal benefits accrue only to opposite sex married couples regardless of state law. This section of DOMA is at issue in the Windsor case. There is great speculation that the Supreme Court will strike down Section 3 of DOMA, and that the federal government will then recognize marriages between same-sex couples, for FEDERAL purposes, such as social security benefits, estate tax exemption, filing joint income taxes, division of retirement assets, etc. To see the full list of the 1100 rights and responsibilities of marriage on the federal level, [click here](#). Decisions on Hollingsworth and Windsor are expected by the end of the Supreme Court's term on June 30, 2013.

Immigration

Since President Obama announced in February 2011 that he considers DOMA to be unconstitutional and would no longer defend it in court, immigration courts, an arm of the Justice Department, have put deportation orders of same-sex spouses on hold in a handful of cases. The Justice Department said it would be reviewing 300,000 pending deportation cases in light of the President's announcement.

Most recently, the Department of Homeland Security has stated that foreigners who are same-sex partners of American citizens can be included under the President's policy of suspending deportations of some immigrants who pose no security risk. In a letter to several key Democratic lawmakers, Homeland Security Secretary Janet Napolitano said she was clarifying guidelines for enforcement officers to specify immigration-policy language, particularly the meaning of "family relationships" to extend to gay partners.

Healthcare

On September 7, 2011, the Department of Health and Human Services announced new guidelines to support enforcement of the regulations promulgated in 2010 protecting the visitation rights of LGBT individuals. The guidelines also support enforcement of the right of patients to designate the person of their choice, including a same-sex partner, to make medical decisions on their behalf should they become incapacitated.

HHS (Health & Human Services) affirms Trans protections in health reform

The Obama administration has interpreted existing non-discrimination law, including Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 to mean that the sex-discrimination protections under the Affordable Care Act apply to transgender people, and in

some cases, individuals who are lesbian, gay and bisexual.

Military

On September 20, 2011, the repeal of the federal law that mandated the eighteen-year-old "don't ask, don't tell" policy went into effect, ending the military's longstanding ban on openly gay and lesbian troops. Five weeks after the repeal, Service Members Legal Defense Network sued on behalf of several service members and veterans and their spouses in federal district court challenging DOMA and seeking spousal benefits for gay and lesbian troops who are legally married under state law. The military continues to deny married same-sex couples the same benefits as given to opposite-sex married couples.

Federal benefits for same-sex couples

(Clarification from last issue)

In June 2010, President Obama ordered government agencies to extend additional benefits to same-sex partners of federal employees including child-care services and subsidies; more flexibility to use family leave to attend to the needs of domestic partners and their children; relocation benefits; giving domestic partners the same status as "family members" when federal appointments are made; and access to credit union and other memberships when those are provided to federal workers. As with Obama's memo from the previous year, this one covers only benefits that can be extended under existing law, without legislative action. Legislative action would be required for a full range of health care and other benefits.

Taxes

[Here](#), [here](#), and [here](#) are some articles about taxes that may be helpful to same-sex couples with their tax planning. We make no representations about the accuracy of these articles. Please consult your accountant or attorney for tax-related questions or concerns.

Our Staff and Firm Updates

Our Staff

Michele is a partner and founder of the Firm. She works primarily in the areas of adoption, assisted reproductive technology, estate planning, family mediation, collaborative law, and probate. Her practice is particularly focused on developing legal protections for families, including families headed by same-sex couples. She has 30 years of legal experience and has been a pioneer in the development of legal protections for LGBT families. Michele is an elected Fellow of both the American Academy of Adoption Attorneys and the American Academy of Assisted Reproductive Attorneys. She is a member of the National Center for Lesbian Rights National Family Law Advisory Council and the Board of Rainbow Families D.C. She has been given many awards for her service to the LGBT community. She graduated from the Catholic University of America (Columbus School of Law) in 1979. Michele is licensed to practice law in D.C. and Maryland and has been named a Best Lawyer in 2012 and 2013.

Eva is a partner with the Firm, and heads the Firm's family law litigation practice. She has over 13 years of experience litigating divorce, custody, and dissolution issues. She was named a Virginia Rising Star by Super Lawyers. Eva graduated cum laude from George Mason University School of Law in 1999. She has served on the Board of Directors of the National Gay and Lesbian Lawyers Association and as an affiliate member to the Young Lawyers Division of the ABA. She

is also a member of the National Center for Lesbian Rights National Family Law Advisory Council. Eva is licensed to practice law in Virginia, Maryland, and D.C.

Jill Seiferth is an associate with the Firm, helping clients with adoptions, estate planning, probate administration, and litigation. She graduated from American University's Washington College of Law in 2010. During law school Jill worked as a student attorney in the Domestic Violence Clinic where she assisted survivors in obtaining civil protection orders. Jill was also a student federal prosecutor at the United States Attorney's Office where she represented the government in prosecuting crimes of domestic violence in the child sex offense unit. She speaks Spanish and is licensed to practice law in Virginia, Maryland, and D.C.

Emily Neuhausen is an attorney working with the Firm, assisting clients with adoptions, assisted reproductive technology, estate planning, and probate. She graduated from American University's Washington College of Law in 2012. During law school Emily worked as a student attorney in the Women and the Law Clinic where she gained experience in estate planning and immigration law. She was also a member of the Moot Court Honor Society and finished among the top-16 teams at the Domenick L. Gabrielli National Family Law Moot Court Competition at Albany Law School. She is licensed to practice law in Maryland.

Lisa Szustak is the Firm's litigation paralegal. She came to the Firm from Condo, Kelly & Byrnes, P.C. She previously worked as a paralegal at Montana Legal Services Association, Legal Assistance of Western New York, and was an advocate for victims of domestic violence at the Women's Resource Center.

Timothy Compton is a paralegal with the Firm. He works with adoptions, estate planning, and probate. He came to the Firm from Capsalis, Bruce & Caulkins, PLLC. He also previously worked for Spriggs & Hollingsworth, LLC.

Kate Ference is the Firm's office manager. She received her B.A. from the University of Virginia in May 2010, where she double-majored in Sociology and Studies of Women & Gender.

Kelli Meredith is the Firm's receptionist. She is a graduate of Trinity University with B.A. in psychology. She has 14 years of experience in the legal profession. and was previously employed with O'Malley, Miles, Nylen & Gilmore, P.A. in Beltsville, Maryland.

Katie Caffey is the Firm's law assistant. She received her B.A. in 2012 from St. Mary's College of Maryland, where she double-majored in Art History and Economics.

Firm Updates

Michele and Eva were panelists for the LGBT legal conference held at the William & Mary law school in October 2012. Michele spoke on the "Foster Care, Adoption, and the Virginia Conscience Clause" and "Children and Parenting" panels. Eva presented on the "Transgender Paperwork Issues" and "Dissolving Relationships" panels. The conference was endorsed by the Virginia State Bar Diversity Conference.

Michele was honored by the D.C. Center for the LGBT Community at its Fall Reception on October 12, 2012 for her work serving the LGBT community in the Washington metropolitan area. She was a guest on The Kojo Nnamdi Show to talk about "Same Sex Marriage, Domestic Partnerships And Family Law" including the different rights in Maryland, Virginia, and D.C. related to marriage, divorce, adoption, inheritance, and other legal matters. [Listen to the show!](#)

Michele spoke before the Anne Arundel Bar Association on Maryland's parental rights created by the Civil Protection Marriage Act and civil unions and domestic partnerships in other states. She also spoke at the Maryland State Bar Association's 13th Solo and Small Firm Conference on legal issues faced by unmarried and same-sex couples, and to Maryland's 5th Circuit judges on parentage and marriage equality issues. To listen to Michele discuss LGBT family law [click here](#).

Eva was elected Secretary of the Diversity Conference with the Virginia State Bar.

IF YOU WOULD LIKE ONE OF OUR ATTORNEYS TO TALK TO YOUR GROUP, PLEASE CONTACT US.

Interested in learning more about the legal services offered by the ZAVOS JUNCKER LAW GROUP, PLLC? Please visit us on the web at www.zavosjunckerlawgroup.com.

QUICK TIP

Take some time for a review of your personal affairs. Be sure you have a Will, up-to-date beneficiary designations, and other personal planning documents, particularly if you have recently been married or brought children into your family.

Please stop by and visit us!

To schedule an appointment with our office for litigation, [click here](#). To schedule an appointment for adoptions, estate planning, or probate, [click here](#).

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