

Navigating LGBTQ+ Divorce: Unique Legal Considerations

June 21, 2024

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With the 2015 decision in *Obergefell v. Hodges*, same-sex marriage has been recognized nationwide for nearly ten years. But what about same-sex couples who partnered through civil unions or other means 10, 20, or even 30 years prior to *Obergefell*? This is an important consideration when navigating LGBTQ+ divorce. Some couples married “on paper” for only nine years may be entitled to benefits from the relationship spanning beyond those years.

In some jurisdictions, an argument can be made to divide what would otherwise be considered non-marital property in favor of the non-owning spouse if they were a contributor to the asset prior to marriage. For example, say a same-sex couple had been living together since 1995 and promptly got married in the District of Columbia once same-sex marriage was legalized in 2010. From 1995 until 2010, the house they lived in was the separate property of one spouse, but for 15 years, the other spouse put his own money into renovations, decorated, furnished, and helped make the house into a home. In this scenario, it would be equitable for the court to treat the house as a marital asset, given the circumstances of the parties’ relationship and the contributions made by the non-owner spouse. In other words, it would be unfair to erase 15 years of dedication to a home and family solely because the couple was not legally allowed to marry until 2010.

When divorcing as a same-sex couple, it is important to have an attorney who recognizes the unique issues LGBTQ+ couples face in the legal realm. Though we are making great strides for our community, the laws protecting us are still behind. Having an experienced LGBTQ attorney to identify and address these unique concerns is paramount to achieving a fair and equitable outcome.