Family Law for Our ‘Families’

By Lynn Yeldell in collaboration with Family Law Attorneys Becky Beaver, Jim Arth & Karen Langsley

Covering family law in this publication may seem like an oxymoron as there are very few states that offer or recognize same-sex marriage and Texas is not among them. Family law, however, is very relevant in our community, particularly now and particularly in Texas. The following cases covered under the Texas Family Code are considered family law cases:

> The definition of marriage and the determination of an established marriage
> Pre-marital and post-marital agreements for the purpose of establishing property
> Custody, possession, support, name change, adoption, termination of parental rights
> and every other situation related to the laws governing children

As we discussed in our previous coverage of estate planning, we know that one of two outcomes is certain in any relationship: you will break-up or die. This may be a harsh reality to some, but a very important one to be proactively planning for. During a recent conversation with Becky Beaver, a prominent local attorney specializing in complex property and complex custody cases, we discussed potential litigation issues for same-sex couples and the real estate they might share.

Beaver recommends having co-tenancy or joint tenancy agreements drafted that will clearly govern how and when a buyout of your partner’s share of the real estate will happen and what events will trigger the buyout. We have all heard the nightmare stories where a relationship has ended yet one partner refuses to leave. Under Texas law, one co-tenant cannot evict another co-tenant; therefore you will be forced to file a lawsuit for partition of the property. This process can be expensive, emotional, exposed to the public and time consuming and best avoided with some advanced planning.

Family Law Attorney Jim Arth echoes Beaver’s urging for documenting your intentions with your partner and for your family clearly and at the beginning when times are good and heads are clear. “Because there are not laws that give legal protection to gay and lesbian relationships, it is important we protect ourselves with written agreements,” states Arth who specializes in property and child custody cases.

The Legalities of Parenting

Because unrelated parties have purchased real estate together for years, the laws are pretty well established for property. Parenting, it turns out, is a completely different story. Co-parenting agreements are often used to clearly document how a couple plans to raise their children and how they wish to establish each other’s rights in various scenarios. These documents are powerful in their intent but are not legally binding as the courts retain the right to determine what is in the child’s best interest. Co-parenting documents are simply evidence of what the couple intended.

As we saw a few issues ago, the processes couples go through to have children vary widely. Some have children from a previous marriage while others weigh the options to adopt or have a partner/surrogate carry. Whatever the path, it is personal, but sadly the laws are not. Currently, there is no prohibition in Texas against same-sex couples adopting a child. In fact, since the mid-90’s, family law attorney Suzanne Bryant has helped up to 50 same-sex couples each year from all over Texas with their adoption issues. According to Bryant, such adoptions not only protect the family, but there is also a federal tax credit that will usually cover the adoption expenses. Bryant is so passionate about helping same-sex couples adopt that she often adjusts her fee if the federal credit does not cover the expenses so that cost is not the main consideration a same-sex couple has to deal with when weighing adoption.

State-by-State

As the former chair of the LGBT section of the State Bar of Texas, Karen Langsley helps us explore the ramifications when same-sex marriage meets parenting and adoption and the laws are fluid. Langsley explores the scenario of a family of same-sex parents and their children move from a state where they can marry to a state where they cannot, like Texas. For example, when legally married same-sex couples in Iowa have a baby, that child is the legal child of both parents.
But what happens when that couple moves to Texas? Because same-sex marriage is not recognized in Texas and the parent-child relationship flows from the fact that the parents were married when the child was born, the parent-child relationship between the non-biological parent and the child could potentially be called into question. How do we get around this in other states? The Full Faith and Credit Clause of the United States Constitution requires that every state treat a valid court order from another state as valid. Period. So the safest thing to do, even though the child is the legal child of the non-bio parent, is to do an adoption by the non-bio parent. This means that people are actually adopting their own children in order to have a court order that will be recognized if they move.

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Although the pace is incredibly slow, there are some signs of progress being made. Now, more than ever, it’s important that all of us attempt to be part of the solution. It is frustrating to have to take additional steps not necessary for “traditional” families, but it is only through this participation that we can show a demand and need for a solution.

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