



The Gay Divorce Trap: When Same-Sex Marriage Goes Wrong

Splitting up is hard. If you're gay, it can be a nightmare. Lizzie Crocker on how a tangle of contradictory laws has left some couples stuck with each other long after they've said 'I don't.'

by [Lizzie Crocker \(/contributors/lizzie-crocker.html\)](/contributors/lizzie-crocker.html) | September 30, 2013 5:45 AM EDT

Cristin Vincent's relationship was two years old when she flew with her partner from Port St. Lucie, Florida, to Massachusetts to be legally sanctified as a gay couple. They arrived in Boston on Christmas Eve in a blizzard, but chaos transformed into euphoria when, on December 30, 2010, a judge declared them wife and wife.



Peter Dazeley/Getty

“It was wonderfully surreal,” she says, her voice trembling with emotion. “We didn’t think that would ever happen.”

She didn’t think they would ever split up, either.

Few couples say “I do” with the assumption that they’ll at some point break that vow. In recent years, marriage-equality advocates have channeled their energy into momentous victories on the state and federal level—Minnesota became the 13th state to legalize gay marriage in May, just before the Supreme Court’s reversal of the Defense of Marriage—but the issue of gay divorce is an often overlooked aspect of the fight for marriage equality.

It seems obvious that anyone who has the right to marry should also have the right to divorce. And yet that right doesn’t always extend to same-sex couples, exposing a fundamentally flawed legal regime that could take years to catch up with heterosexual marriage. “Divorce is by no means romantic, but it is still one of the most profoundly important incidents as a right of civil marriage,” says Allen Drexel, a divorce lawyer specializing in family law.

When compared with the voluminous public debate on the legal intricacies of gay marriage, there has been a relative lack of discussion surrounding gay divorce. Because same-sex marriage is adjudicated differently by different states, countless complications arise in how each approach issues of inheritance, pensions, and divorce.

It wasn’t something Cristin Vincent had considered.

After their nuptials, Vincent and her wife returned to Florida, where they currently live. Before her same-sex marriage, Vincent was involved in an opposite-sex marriage that ended in divorce. She and her wife would also separate, and Vincent soon reconciled with her ex-husband. But legally terminating her second marriage wasn’t an easy option. “She and I know we cannot get divorced here, and it’s kind of causing a headache for everyone in the situation,” she says, noting the irony that the state of Florida doesn’t recognize their marriage, and yet federal law requires them to claim each other on their taxes.

Vincent hadn’t realized that the right to marry didn’t necessarily allow for the right to divorce. “My wife and I are so happy for other gay couples that are married—it’s about equality for them. But not for us because we’re on the other side. Now we have to claim each other and it’s just a yucky feeling.”

Vincent, who just had her third child with her ex-husband (she vacillates between referring to him as her “ex-husband” and “husband”), wants to remarry. But, according to Florida law, that would qualify as bigamy. “My wife and I still feel like it’s kind of morally wrong that we are married and engaged in other relationships,” she says. “I can’t 100 percent invest in my current relationship and neither can she.”

Vincent and her wife are examples of how same-sex couples can end up “wedlocked,” says Elizabeth Schwartz, a Florida lawyer specializing in gay and lesbian issues. “It’s really an uphill battle in terms of education.” Vincent would never have guessed, for example, that if she were on her deathbed, her estranged wife would legally have the right to decide whether or not to pull the plug. “That would never happen because we trust each other. But what if we didn’t?”

“My wife and I made a decision to get married, but we should be able to also make the decision to get divorced.”

Many gay couples who live in Florida want to get married in Massachusetts or New York, says Schwartz, but don't realize that one of them will have to move back to that state (otherwise known as "long arm" jurisdiction) for six months to a year if they want to divorce. "It makes me cringe when I see gay folks running north to get married impetuously when they don't know what they're getting into legally," she says. "After so many years of pent-up demand, I understand the impulse. And I think we have the right to be as impulsive as straight folks, but I was hoping we could be a bit smarter about it."

Andrea, an acupuncturist who lives in Massachusetts, would never say marrying her partner of more than seven years was an impetuous decision. But when gay marriage was legalized in Massachusetts, such a historically significant moment drew her toward a premature decision. Everyone from their parents to their children—twin boys—wanted them to tie the knot. Andrea remembers driving with one of her sons in the car when same-sex marriage was legalized in Massachusetts. She remembers hearing the excitement in his voice. "He chirped up from the back seat and asked, 'So a girl can marry a girl now?' We all got caught up in the hoopla of it." They wed on May 17, 2004, in a small ceremony in their backyard.

Two years later, they filed for divorce.

Andrea was lucky on two fronts: she could dissolve her marriage when the relationship unraveled, and there was no bitter custody battle because they had their kids together ("I carried them and she adopted them—both of our names are on their birth certificates.") But for other gay couples who divorce, the issue of parental rights can be catastrophic: it's another area where federal and state law clash.

When a heterosexual couple divorces, a judge determines custody rights—both visitation and child support—based on a child's best interest. But that issue is complicated for gay couples who raised children together if only one is an adoptive parent. New York, for example, doesn't recognize "de facto" parents—those who, according to the American Law Institute, "share (at least) equally in primary childcare responsibilities while residing with a child for reasons other than money."

As a result, a biological or adoptive parent can "literally slam the door on the other parent—and vice versa; the other parent can walk away—and then the judge won't even look at visitation rights or child support," says Karen Moulding, co-author of *Sexual Orientation & The Law*, an annually updated legal treatise on LGBT and alternative family issues. "Now we have this situation where same-sex couples can get divorced, but some states including New York don't necessarily enforce parental rights and responsibilities."

Four years after her first divorce, Andrea remarried. "It seemed like it would work that time and it didn't," she tells me. The relatively clean settlement process didn't leaven the heartache (it wasn't her idea to end the relationship). "I don't really count [that marriage]," she told me. "And I will never get married again."

Gay or straight, breakups can be ugly. Andrea's two divorces weren't especially dramatic, but the more gay couples like her break their vows, the harder it is for them to resist seeking retribution in court. In this sense, gay people are quickly catching up with heterosexuals. "We're going to take advantage of a legal system that serves us," says Schwartz. "It's human nature."

As is customary in heterosexual marriage, gay couples are increasingly signing prenuptial agreements. "Even since the *Windsor* decision [the Supreme Court decision that invalidated a key portion of the Defense of Marriage Act], we've seen the number of prenuptial agreements rise significantly," says Allen Drexel. But the *Windsor* decision has complicated matters on that front, too. Moulding is currently helping a divorcing couple work through the conditions of a prenup they wrote before DOMA was reversed.

"At the time, we wrote the agreement assuming that alimony would not be taxed to the recipient; that the

federal government wouldn't automatically assume you're going to inherit from each other's estates; that there wouldn't necessarily be spousal support," she says. "We jumped through hoops and had to be very creative to come up with such an agreement, which has pretty much been thrown out the window. Everything we tried to avoid is kind of irrelevant."

Emanuelle, a therapist in Los Angeles, was in a domestic partnership with a woman for six months. While thankful that she now enjoys the legal right to marry, she's also relieved that her relationship dissolved before those rights were codified into law. "It wasn't legal for me to get married at the time but I'm really grateful that I didn't because it costs a lot of money, and it also costs a lot of money to get divorced."

Along with this list of legal adversities, another thing that makes divorce especially difficult for gay people is that it reinforces conservative views about their inability to maintain monogamous relationships. "I think a lot of gay and lesbian couples do try and model a perfected form of marriage as the first couples to create tradition anew," says Drexel. Some couples who have been early to marry and early to divorce may "internalize an unwarranted sense of guilt or shame."

Cristin Vincent merely wants what straight people take for granted. "My wife and I made a decision to get married, but we should be able to also make the decision to get divorced." The legal morass of gay divorce has strained their relationship, creating a pervasive feeling of desperation. "At one point she called me up and begged me to move to Massachusetts, just for a year, now that I'm not working."

Situations like Vincent's, says Schwartz, offend human dignity and ensure that until gay couples are afforded full legal equality, they'll remain second-class citizens. "Justice Kennedy used the word dignity repeatedly when authoring the *Windsor* decision, and I feel like divorce is part and parcel of the dignity that needs to be afforded to our relationships—the dignity to not only get into one but to get out of one."

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