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# Same-sex couples in financial limbo until Supreme Court rules

Anna Robaton, special to CNBC.com  
Monday, 11 May 2015 | 9:00 AM ET



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Next month, the U.S. Supreme Court is expected to hand down rulings on several cases that could result in what supporters of same-sex marriage call "a 50-state solution." But until same-sex marriage is legal throughout the country, gay and lesbian couples who have already tied the knot will continue to face a raft of challenges as a result of the uneven legal landscape.



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Same-sex marriage is now legal in 37 states and Washington, D.C. That’s the good news for supporters of marriage equality. The bad news is that the status quo has given rise to a number of dilemmas for married gay and lesbian couples when it comes to taxes, retirement and estate planning, divorce and other matters.

"You can be married in one jurisdiction and assume that you and your partner have certain rights, such as the right to inherit assets from one another or to make medical decisions for your partner if that person can’t act for themselves," said Elizabeth Schwartz, a Miami-based lawyer and advocate for the lesbian, gay, bisexual and transgender (LGBT) community.

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"Then, you go to another jurisdiction and find that you are legal strangers to one another because your marriage isn’t recognized there," added Schwartz.

## Heading off muddy legal issues

by Taboola

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The fact that same-sex marriage is legal in some places and not others makes it especially important for married gay and lesbian people to have certain legal documents in place, including a will and an advanced directive, Schwartz explained.

One type of advanced directive is a durable power of attorney for health care, which permits you to name someone to make health-care decisions for you if you can't act for yourself.

When it comes to taxes, married gay and lesbian couples often have to jump through extra hoops.

Due to the 2013 Supreme Court ruling that struck down part of the Defense of Marriage Act, same-sex couples who are legally married are now treated as married for federal tax purposes, even if they happen to live in a state that doesn't recognize their union. At the federal level, they can file tax returns as a married couple and get the same exemptions as heterosexual married couples when it comes to estate and gift taxes.

At the state level, things can get more complicated. According to LGBT legal advocacy organization Lambda Legal, gay and lesbian people who are married in a state that recognizes same-sex marriage but now live in a state that does not are likely to have to file their state tax returns as "single." They may also have to pay state income taxes on spousal medical benefits offered through an employer.

"Taxes are one of the biggest areas of confusion" for married same-sex couples, said Steve Branton, a certified financial planner and senior planner at Mosaic Financial Partners.

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In Michigan, more than 300 gay and lesbian couples got married during a brief period in 2014 when same-sex marriage was legal in that state. Now, many of those couples are perplexed as to how to handle their 2014 state tax returns, said Branton, adding that it behooves some couples to file a six-month extension because the Supreme Court may resolve the issue of marriage equality on a national level in June.

Most federal agencies adhere to the "place-of-celebration rule," meaning that they recognize same-sex marriages performed in states that sanction gay marriage no matter where a couple currently lives. But the Social Security Administration has followed the state-of-residence rule, although it is reportedly reviewing its policy on this issue.

### Same-sex marriage argued

Wednesday, 29 April 2015 | 11:01 EDT | 02:19

The Supreme Court heard arguments over the constitutionality of same-sex marriage and the ruling could have implications for businesses both small and large.

In the past, married same-sex couples living in states that don't sanction their union have been denied certain Social Security benefits, including retirement benefits based on a spouse's work record and "surviving spouse" benefits. President Barack Obama has called for the Social Security Act to be amended to address this issue.

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"Social Security benefits are different [for married same-sex couples], depending on where you live," Branton said. So the "workaround" for couples planning to move to a non-recognition state "is to apply for benefits before you move," he added.

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The Social Security dilemma has made retirement planning difficult for many same-sex couples, said Cathy Pareto, a CFP and president of Cathy Pareto & Associates. Pareto was a plaintiff in Pareto v. Ruvin, one of several lawsuits that successfully challenged Florida’s ban on same-sex marriage. Elizabeth Schwartz represented plaintiffs in the case.

Same-sex marriage has been legal in Florida since January, which, among other things, means that married gay and lesbian residents can now qualify for certain benefits that had been off-limits. For instance, same-sex spouses of state employees participating in the Florida Retirement System can now be designated as beneficiaries under the pension plan.

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"I've seen some horrible situations where people have had to move back with their divorcing spouse to the state where they got married and establish residency in order to get a divorce."

-Steve Branton, senior planner at Mosaic Financial Partners

"It is complicated to do a financial plan when one of the pillars of your retirement is a state pension" but you aren’t allowed to name your spouse as a beneficiary, said Pareto, recalling one Florida couple that faced this dilemma before same-sex marriage became legal in Florida. The couple had gotten married in Canada.

Ironically, the freedom to divorce is a big issue for same-sex couples. Some states recognize gay marriage but have residency requirements when it comes to dissolving marriages. As a result, some couples end up in a condition that lawyer Schwartz calls "wedlock," unable to divorce because of where they live.

To avoid this unpleasant possibility, some couples tie the knot in states that don’t have residency requirements for divorce, which include Hawaii, California, the District of Columbia, Delaware and Vermont.

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"I've seen some horrible situations where people have had to move back with their divorcing spouse to the state where they got married and establish residency in order to get a divorce," said Branton at Mosaic Financial Partners.

Married same-sex couples living in states that don’t recognize their

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unions may also have a more difficult time when it comes to using the courts to ensure that assets are split equitably in a divorce, said Jonathan Robertson, a CFP and advisor with Abacus Planning Group.

"If a traditional family wants to dissolve a relationship, they go to court and the legal process helps to ensure that both parties are protected and that one spouse is not impoverished," Robertson said. "If you are in a relationship that is not recognized by the state, you may have a more difficult time splitting assets."

—By Anna Robaton, special to CNBC.com

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James · 20 days ago

How can you legally allow same sex marriage without also allowing polygamy, polyandry, and group marriages (i.e. 5 men 8 women, etc.) of any size? After all, is it not discrimination if you do not allow them to be legalized? After all it is their sexual preference and lifestyle to be with multiple partners. If same sex marriage is enforced by the supreme court then you must also allow these marriages for the same reasons, in which case the term "Marriage" then loses ALL MEANING. Why does no one consider these realities?

^ | v · Reply · Share

The\_Random\_Sample → James · 19 days ago

It is an entirely separate issue. If advocates of polygamy want

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to go into federal court and argue that bans on polygamy are unconstitutional, they are free to do so. They can argue that there is no rational basis for banning it, and the states can argue that there is such a basis (or more than one). However, the following is NOT a valid legal argument: "Well, gay marriage, so anything goes, right?"

^ | v · Reply · Share ›



**daniwitz13** · 21 days ago

I'm betting that 99% of our Nation, "thinks" that Same Sex Marriages, are only for Homosexuals. Read the stories, read the comments, read the Court cases, they all indicate that it only involves Homosexuals. Courts, Judges, Legislators and the General Public, all assume that Same Sex, means Homosexual in nature. 99% must be blindsided by it, because, it should be called, Same Gender Marriage. ANY two Genders, can get Married, for hundreds of different reasons, besides Homosexuality. As an example: If a Male person loves Cats, and is Oriented to cats, he could Marry another Person that loves cats too. He does NOT have to love, live or have sex, with the Person he Marries, just the same affinity to cats. They can now receive ALL the Rights and Benefits of the Married, till the day they die or divorce. Have the

see more

^ | v · Reply · Share ›



**Bill Shaper** → daniwitz13 · 20 days ago

What you are arguing has nothing to do with same-sex marriage. Opposite-sex couples who don't love each other can get married now. States don't make applicants pass a "love" test before granting marriage licences. That doesn't change by ending discrimination against same-sex couples.

We both know you don't really to care about couples getting married for reasons other than love. This is just another excuse for your bigotry and a failed one at that.

^ | v · Reply · Share ›



**Silver** · 21 days ago

Supreme Court is not going to touch this. They will kick it back to the states. If you think 9 people are going to redefine marriage you are crazy.

^ | v · Reply · Share ›



**daniwitz13** · 21 days ago

It is Unconstitutional for any State, under the 14th Amendment, to make a Law for the general public, an entity comprised of only one Gender, to the exclusion of the other lone Gender. This Law of Same Gender Marriages, are Unconstitutional in any State, even in Massachusetts. The 14th Amendment commands and demands that all States make Laws equally to both Genders. To make a State Law or only one Gender only, is Unconstitutional. All such Marriages are invalid, illegal and Unconstitutional. They cannot be recognized, similar to any State Law that allowed for slavery. It would be null and void.

It would be Unconstitutional for any State to make a Law to form an entity for everyone, but design it only for

see more

^ | v · Reply · Share ›



**The\_Random\_Sample** → daniwitz13 · 21 days ago


Actually, laws that say that only a woman can marry a man,

and that only a man can marry a woman, are sexually discriminatory. Only by taking gender out of the requirements for marriage do we make the law truly non-discriminatory.

Your argument would make sense if we had a law that said the only people who can get married are men (to other men), or the only people who can get married are women (to other women). Saying that any gender can marry any gender makes the law truly non-discriminatory.


BTW, why is it bad to let two "unknowns" enter into a same-sex marriage, but not bad to let two "unknowns" enter into an opposite-sex marriage?

^ | v • Reply • Share ›

**Silver** ➔ [The\\_Random\\_Sample](#) • 21 days ago


Marriage is between a man a woman, period. Same sex couples will get some common law something in a few years.

^ | v • Reply • Share ›

**The\_Random\_Sample** ➔ [Silver](#) • 21 days ago


Yeah, denial ain't just a river in Egypt. It is really very funny to watch adults delude themselves like this.

^ | v • Reply • Share ›

**Tim** ➔ [daniwitz13](#) • 21 days ago


What????

^ | v • Reply • Share ›

**robert88324** • 22 days ago

Same sex marriage is an issue that states alone can decide. I believe the Supreme Court will reach this same conclusion.

^ | v • Reply • Share ›

**Silver** ➔ [robert88324](#) • 21 days ago


That is true that marriage is between the states but most will kick the bans back in and some will call it Common Law Partnership.

^ | v • Reply • Share ›

**The\_Random\_Sample** ➔ [robert88324](#) • 21 days ago


Do you also believe in fairies (pun intended)?

^ | v • Reply • Share ›

**Tim** ➔ [robert88324](#) • 21 days ago


Think you're going to be proven wrong. Think title IV and 14th amendment are going to be the factors that make same-sex marriage the law of the land.

1 ^ | v • Reply • Share ›

**PIDEPIPER** • 22 days ago


Currently, the divorce rate for same-sex marriage is lower than the divorce rate for opposite-sex marriage. Ban opposite sex marriage.

1 ^ | v • Reply • Share ›

**Silver** ➔ [PIDEPIPER](#) • 21 days ago


The abuse rate among lesbians is sky high. The hit each other and the CDC says it needs to be addressed. The abuse rate for gay men is high also but not as bad as lesbians.

^ | v • Reply • Share ›

**PIDEPIPER** ➔ [Silver](#) • 20 days ago

And of course the rate of opposite sex abuse is VERY low.....Not!

^ | v • Reply • Share ›

**Daveyjones** • 22 days ago

I believe the Supreme Court will decide that gay marriage is an issue that states should decide for themselves.

^ | v • Reply • Share ›



**Silver** → Daveyjones · 21 days ago

I do also...they will not touch it. They are not crazy

^ | v · Reply · Share ›



**The\_Random\_Sample** → Daveyjones · 21 days ago

Yeah, and you believe in fairies.

^ | v · Reply · Share ›



**MarketMaker** · 22 days ago

What about other groups like Polygamy and Bigamy why not just include them all then?

1 ^ | v · Reply · Share ›



**Silver** → MarketMaker · 21 days ago

They piggyback off the gays and if they show up jut outlaw them all.

^ | v · Reply · Share ›



**breezescreamer** → MarketMaker · 22 days ago

Because they have nothing to do with one another? Hey, polygamists are typically heterosexual.. If you want to head off polygamy, then ban heterosexual marriage.

1 ^ | v · Reply · Share ›



**Munch Hausen** → breezescreamer · 22 days ago

Who says he wants to ban it? Perhaps, like me, he just wants equal treatment for his perversions.

Any two or or more adult, consenting beings should have the same rights as any other. Isn't that the idea here?

^ | v · Reply · Share ›



**The\_Random\_Sample** → Munch Hausen · 21 days ago

No, it is an entirely separate issue. If advocates of polygamy want to go into federal court and argue that bans on polygamy are unconstitutional, they are free to do so. They can argue that there is no rational basis for banning it, and the states can argue that there is such a basis (or more than one). However, the following is NOT a valid legal argument: "Well, gay marriage, so anything goes, right?"

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**Tim** → Munch Hausen · 21 days ago

You people are just stupid. Polygamy is illegal for all. It isn't a right given to a select few. Guess you don't understand what the 14th amendment means.

1 ^ | v · Reply · Share ›



**Silver** → Tim · 21 days ago

They will start the same arguments the gays do

^ | v · Reply · Share ›



**Tim** → Silver · 21 days ago

Please elucidate what those "same arguments" are and how having multiple spouses is the same thing.

^ | v · Reply · Share ›



**Sam** · 22 days ago

If same sex couples were smart, they would simply form an LLC. This way, they could thumb their noses at any marriage laws or lack thereof and instead, operate their marriage as a business and get even better tax breaks and benefits.

^ | v · Reply · Share ›




**whocaresqq** → Sam · 22 days ago

I'm aoina to take a wild guess you didn't bother reading the


I'm going to take a wild guess you didn't bother reading the article.

1 ^ | v • Reply • Share ›

 **Sam** → whocaresqq • 22 days ago


I read it and my opinion stands.

^ | v • Reply • Share ›

 **Tim** → Sam • 21 days ago

Or making healthcare decisions or hospital visitation rights?

^ | v • Reply • Share ›

 **whocaresqq** → Sam • 22 days ago

Okay smart guy, please tell me how forming an LLC would help with Power of Attorney?

^ | v • Reply • Share ›

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