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FREQUENTLY ASKED QUESTIONS POST-OBERGEFELL**

Note: The following is just a brief overview of some of the most frequent questions. Please call us if you have any other questions or need help with estate planning, family law, or any other civil law issues.

Q: Can I now get married to my same-sex partner in any state?

A: Yes, so long as you meet the legal requirements to marry and are not already married in another state. You should first obtain a divorce if you have ever entered into a valid out-of-state marriage contract – even if your home state did not recognize the marriage contract at the time.

Q: Should I get married?

A: Maybe, depending on a whole host of other factors. For example, if you are on Medicaid, SSI, or any other means-tested benefits, you may lose those benefits if you marry. You may also lose survivor benefits from an ex-spouse if you remarry. Be sure to talk to a tax advisor about potential income tax consequences.

Q: I already got married out-of-state – do I need to do anything to make it official?

A: No, every marriage contract between people of the same sex is now recognized nationwide. However, if you have entered into a domestic partnership or an equivalent out-of-state relationship, then you must get married to obtain the rights and benefits.

Q: Can I now get a divorce from my same-sex spouse in any state?

A: Yes, you can obtain a divorce in the state where you are domiciled. However, there are residency requirements that must first be satisfied. In Ohio, a person seeking a divorce must be an Ohio resident for six months immediately preceding the filing of the complaint.

Q: Can my partner and I adopt a child?

A: Maybe, depending on state law. In Ohio, second-parent adoption is available only if the couple is married. However, if the child is one partner's biological child and you do not wish to get married, you can enter into a co-custody agreement giving the non-biological parent most custodial rights short of adoption.

Q: My spouse recently passed away. Am I the surviving spouse?

A: Most likely, but if an estate has already been opened and the assets have been distributed then contact an attorney. A spouse has certain property rights during and after the life of the other spouse, but the determination hinges upon whether or not the marriage contract is recognized retroactively.

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