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FEDERAL LAW ECONOMICALLY DISCRIMINATES AGAINST SAME-SEX COUPLES

By Mark B. Baer, Esq.



Author Lillian Faderman autographs her books for Circle of Life member Ken Bennett, pictured, and his partner, Dr. Richard Wagner. Lillian was the guest speaker at the annual Circle of Life Luncheon on Aug. 21 at the W Hotel.

Same-sex couples pay more in taxes yet receive fewer tax breaks than married couples under federal and state law, and the impact of this is clearly defined in a new nationwide study by the American Sociological Association.

The recent study shows that many economically disadvantaged married couples in America are now choosing long-term separation over divorce, particularly if they have young children. While separation may not be their first choice, the study suggests that unhappily married couples would rather separate than divorce because they would lose valuable

benefits. These same benefits are presently denied to same-sex couples who want to marry but cannot under state and federal law.

Married couples currently receive a benefit to insure their spouse on their medical insurance at little or no additional cost, which would be lost if they were to divorce. Employers are only legally required to offer such benefits to spouses, as defined by federal law. Further, legally married couples are not taxed on employer-provided health benefits to spouses while same-sex couples are taxed.

By divorcing, married couples would also lose the benefit of filing joint federal income tax returns, which tend to save couples thousands of dollars

annually. Since same-sex marriage is not federally recognized, those couples cannot file joint federal tax returns.

Same-sex married couples and registered domestic partners in California establish community property rights under the state's community property law to the same extent that they would in a federally recognized marriage. As a result, the IRS has ruled that those California couples must combine their income for federal tax purposes, and then each report half of the total income and half of the total withholdings on their separate tax returns. Those same couples are required to file a joint income tax return in California. This increases the cost of preparing such income tax returns because it involves additional steps not necessary for federally recognized married couples.

Inequality of Retirement Benefits

Another financial benefit for married couples is the ability for a spouse to receive retirement benefits, survivor benefits and lump-sum death benefits afforded through Social Security. Same-sex couples do not have these rights.

Federal benefits law prohibits non-spouses from dividing retirement benefits

Continued on Page 3

Inside This Issue:

- Understanding Beneficiary Designations
- Financial Planning Trends

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Did You Know?

The following are not controlled by the terms of your will, but instead use beneficiary designation forms to determine who receives them:

- » IRAs
- » Retirement plans, including 401(k), 403(b), 457 plans, SEP and simple IRAs, pension plans, and ESOPs
- » Life insurance
- » Insurance annuities
- » Group term life insurance
- » Stock options
- » Restricted stock
- » Stock appreciation rights (SARs)
- » Employee stock purchase plans (ESPPs)
- » Nonqualified deferred compensation (NQDC) plans
- » Transfer on death (TOD) accounts

Continued from Page 1

without penalty. Since same-sex couples are not recognized as spouses under federal law, such couples are unable to divide the community property interest in their retirement accounts without penalty. In the event of dissolution of the marriage or registered domestic partnership, this makes it much more difficult to divide the community property assets because they must have the financial resources to buy out the community property interest. This is not an issue for federally recognized married couples.

Additional Family Inequities

There is also inequitable treatment for the children raised in same-sex households under the Child Tax Credit, which only includes biological children, step-children, and adopted children. Since same-sex couples cannot legally marry under federal law, they are precluded from being step-parents.

Additionally, spouses of living military personnel are eligible to receive many benefits, including health care, family separation pay and relocation assistance, while same-sex spouses are not eligible for such services and benefits.



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The Numbers

According to the 2010 Census, there were about 646,464 same-sex couple households in the U.S., consisting of 131,729 same-sex married couples and 514,735 same-sex unmarried couples. As of that time, 125,516 same-sex couples were residing in California, approximately 25,000 who are legally married under state law and 54,000 who are state-registered domestic partners.

The California city with the most same-sex couples is Los Angeles, where 15,492 such couples reside. Thus, this issue of same-sex discrimination is of specific importance in Los Angeles.

The Results

Clearly, there is inequity in obtaining access to governmental services and benefits based upon the legal definition of marriage under federal law, although same-sex couples pay more in taxes than married couples because of this inequity.

The ASA study demonstrates that the receipt of such benefits is the difference between sinking and swimming financially. If people who want to divorce are tying up their lives by separating instead of divorcing, then those benefits must be pretty important to them. This study clearly illustrates why marriage is not merely a religious institution and why the issue of same-sex marriage is a civil rights issue.

Mark Baer is a California family law attorney, who has been practicing in Los Angeles for more than 20 years, with an office in Pasadena, Calif.



From left: Benjamin Britt, Bill White, Elliot Hochman and Benjamin Teller enjoy the annual Sustaining Donors' Dinner, held this year at the Village on Sept. 15.