



WE CAN GET MARRIED NOW—BUT SHOULD WE?

The dust has settled for the time being in the battle in Indiana for the freedom to marry for same sex couples. Many of those who did not rush to the courthouse to marry when it was first legalized are now planning more elaborate weddings, and yet others are giving serious consideration to marriage. In this article, I will address important factors that a couple should evaluate in deciding whether or not to marry.

Couples in the gay and lesbian community have been “marrying” for decades, whether in their accepting church, or in their back yard ceremony, publicly professing their love and commitment for each other. Fully recognized civil marriage, however, means “Commitment” with a capital “C,” and comes with legal parameters not applicable to “living together” couples.

You may recall that the fight for marriage equality was to access those 1100 plus federal marriage benefits and protections. Indiana law, as well, uses civil marriage to grant rights to, and ***impose responsibilities upon***, couples and families in 614 ways. These far-reaching effects of marriage can include additional benefits, but also additional restrictions, burdens and costs.

While any couple considering marriage should carefully weigh the legal and financial pros and cons, those in long term relationships and those with significant assets (retirement, home, small business) and income have a greater need to cautiously evaluate how marriage will affect their current situation. Couples would be wise to consult with their professional advisors—accountant, financial advisor, attorney, insurance agent. Other resources include federal and state agency websites and inquiries to your workplace benefits office. Beware, however, that not every advisor will be well versed in these matters.

Some of the legal and financial consequences of marriage include:

Income Taxes. A couple’s total income tax bill could increase (the “marriage penalty”) or decrease as the result of marriage. Generally, couples most likely to benefit are those with a significant disparity in income. Consult an accountant, or run

the figures yourself to see what your tax bill would be as a married couple.

Student Aid. If either member of a couple or the child of one of them is receiving or intends to apply for need-based student aid, marriage may result in disqualification for aid due to the spouse's income.

Asset or Income-Based Benefits. Government benefits tied to assets or income may be lost if a couple marries and the assets of both parties are counted. This can include subsidized health care premiums under the ACA, SSI benefits, Medicaid and food stamps. The laws can be confusing and complex, so consultation with an expert is advisable.

Social Security Spousal Benefits. Marriage ordinarily provides a couple with many more options to maximize SS retirement and survivor benefits. However, marriage could result in a loss of benefits if either spouse is collecting spousal benefits based on a deceased spouse or an ex-spouse.

Adoption Tax Credit. The adoptive parent in a second parent adoption is eligible to receive a tax credit for adoption expenses. This credit is not available if the couple is married.

Debt and Bankruptcy. If either party has significant debt or is considering bankruptcy, marriage may eliminate eligibility for bankruptcy or render the spouse liable for the other's debt. Consult a bankruptcy attorney before marrying!

No Separate Property. Indiana law provides that all property owned by either spouse before the marriage, or acquired by either spouse during the marriage, becomes part of the marital estate. In a divorce, the marital estate is divided in a "just and reasonable manner," with the initial presumption of an equal division of all assets, including retirement accounts and inheritances.

Divorce. Unmarried cohabitants can simply go their separate ways. A married couple must

obtain a court order of divorce and division of property.

A prenuptial or premarital agreement can serve to alter some of the consequences of marriage, including property division upon divorce, debt, spousal inheritance rights, etc. Even couples with an existing domestic partnership agreement need to see their attorney before the marriage in order to amend the agreement. Otherwise, the domestic partnership agreement may be considered void after the marriage. While the parties can enter into a postnuptial agreement after the marriage, such agreements are at greater risk of being declared invalid if challenged.

Marriage is a civil right, not a requirement. The newfound freedom to marry includes the freedom not to marry and the responsibility to evaluate whether the new legal status will be beneficial for your relationship.