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Couples planning and the new civil-union act

The Religious Freedom and Civil Union Act is a critical step toward equality in Illinois. The ramifications for same-sex couples cannot be understated, especially in the areas of healthcare, disability, and death. After the governor signs the bill and the law is enacted next summer, the state of Illinois will offer the opportunity for legal recognition to same-sex couples to the same extent as heterosexual couples entering into marriage.

Under the act, a civil union “means, and shall be included in, any definition or use of the terms ‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’ and other terms that denote the spousal relationship, as those terms are used throughout the law.” This single sentence will allow civilly united same-sex couples to enjoy hundreds of default rights under Illinois law, which married couples currently enjoy. The current lack of default rights relating to healthcare, disability, and death have had particularly tragic consequences for same-sex couples. Examples include a partner not being able to make health decisions for his or her dying partner, and a partner being stripped of his or her deceased partner’s personal property because of the failure to execute a will. With the passage of the civil-union act, however, the gay community can breathe a sigh of relief.

Below is an outline of many of the important provisions regarding healthcare, disability, and death that will apply to couples entering into a civil union:

Default protections upon incapacity of one partner

—**Health decisions:** While competent, we make our own healthcare decisions. However, if we become incapable of making such decisions, someone else needs to be designated as healthcare decision-maker. An individual can execute a power of attorney for healthcare and nominate the person he or she wants to serve as his or her agent. If an individual does not execute a power of attorney for healthcare and is incapable of making health decisions, Illinois law has long provided a priority list of default decision-makers. A spouse is at the top of this list, and now, thanks to the civil-union act, the term spouse will include individuals who enter into civil unions. This means that hospitals must look to a civil union partner as healthcare decision-maker before anyone else, such as your parents or siblings. Before the act, partners fell under the “close friend of the patient” category, which is almost last in line. This virtually ensured that an incapable individual’s partner would not be his or her healthcare decision-maker.

—**Guardianship:** Guardianship is the court procedure through which an alleged disabled person is found to be incapable of making personal or financial decisions for himself or herself and a guardian is appointed to make those decisions on the disabled person’s behalf. If a same-sex couple enters into a civil union, the law will require a petitioner to give notice of the guardianship petition to the alleged disabled person’s partner. Prior to the civil-union act, partners were not entitled to notice of this proceeding.

—**Statutory custodial claim:** An individual who enters into a civil union and subsequently takes personal care of his or her partner for at least three years due to the partner’s disability, will be entitled to a “statutory custodial claim” of a minimum of \$45,000. This claim is filed against the disabled partner’s estate after his or her death. The purpose of this statute is to recognize the sacrifices individuals make to care for disabled family members. Before the civil-union act, same-sex partners were not eligible to even file this claim.

Default protections upon death of one partner

—**Heirship:** An individual who enters into a civil union will be considered his or her partner’s heir at law upon the death of his or her partner. As an heir, the law will afford a partner numerous protections, some of which are discussed below.

—**Notice:** The law will require that an heir receive notice (1) if someone opens an estate to collect and distribute his or her deceased partner’s assets; and (2) if someone contests his or her deceased partner’s will.

—**Spousal award:** When one partner passes away, the surviving partner will be entitled to a “spousal award,” in the amount of at least \$20,000, which must be distributed to him or her before any other distributions are made from the estate. This is to ensure the surviving partner has adequate funds during the course of estate administration.

—**If a partner did not execute a will (inheritance):** An individual who enters into a civil union will have the right to receive a share of his or her partner’s estate even if he or she did not execute a will. If the deceased partner did not have any children, the surviving partner will receive his or her entire estate. If the deceased partner had a child, the surviving partner will receive one-half of his or her estate and the other half will be divided between children. Before the civil-union act, the only way a surviving partner was entitled to a share of a deceased partner’s estate was if he or she executed a will or trust.

—**If a partner did not execute a will (administration):** An individual who enters into a civil union will have priority to administer his or her partner’s estate. If the surviving partner decides not to administer the estate, he or she may choose an individual to serve as Administrator. Before the civil-union act, the surviving partner had no say in the matter.

—**If a partner dies with a will (spousal award):** An individual who enters into a civil union will be allowed to renounce the benefits he or she receives under his or her partner’s will and accept a “statutory share” of his or her estate. The public policy behind this law is to ensure that the decedent’s surviving spouse, or in this case, the surviving partner, is not completely disinherited by the decedent. Before the civil-union act, a partner could disinherit his or her partner, and the surviving partner would have no recourse.

—**If a partner dies with a will (will contest):** An individual who enters into a civil union may contest his or her deceased partner’s will because he or she is considered an heir-at-law. Before the civil-union act, partners had no automatic right to contest his or her partner’s will.

While the passage of the Religious Freedom

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and Civil Union Act is cause for celebration, it does not mean that same-sex couples no longer need to worry about health and estate planning. While the default rights discussed above certainly will provide security to same-sex couples, these rights do not always equal the level of security provided by executing a personalized estate plan. For example, everyone, whether straight or gay, single or committed, should execute powers of attorney for healthcare and property. These are legal documents that allow you to identify the individual you want to make health and financial decisions for you, if you become unable to do so. These documents are simple, inexpensive and will give individuals peace of mind.

In sum, we should celebrate now, but know that everyone should consult an attorney to analyze what estate-plan is most appropriate for them.

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