

KNOW YOUR RIGHTS

Relationship Recognition & Protection

2013 was a big year for the Lesbian, Gay, Bisexual, and Transgender community. With marriage victories sweeping the country, the lives of many loving and committed same-sex couples have been enriched by these significant strides towards equality. While South Carolina still does not legally recognize same-sex marriage within its borders, same-sex couples now, more than ever, have greater access to options that can help provide a sense of security their families. As we continue to work across our state to make equality for all a reality, SC Equality is determined to make sure that you and your family **Know Your Rights**.

Questions to Ask a Lawyer

We recommend that you and your loved ones take the information and questions contained on this page and seek the input of a lawyer in South Carolina who practices estate planning in order to safeguard your rights.

Medical Decision-Making

- *How can I best protect the wishes of my partner in the event of a health-related emergency?*

There are options that exist for couples who would like to honor the wishes of their partner when it comes to important life-making decisions. A **Healthcare Power of Attorney** and **living wills** are legal documents that are designed to honor the wishes of a person who cannot speak for themselves regarding health care decisions. Without these documents, it may be difficult for same-sex couples to make the already tough decisions on behalf of their partner due to a lack of legal recognition.

Preparing for the Unexpected

- *How can my partner and I best protect our financial assets if one of us dies or becomes incapacitated?*

An estate attorney can provide you and your partner legal resources that serve some of the needs of your relationship. For example, a **durable power of attorney** allows you to give permission to your partner to make financial decisions on your behalf. A **Last Will and Testament** is necessary to ensure that your last wishes are honored in terms of who gets what.

Structuring Finances

- *Can my partner and I have structure regarding our financial assets during our relationship, providing guidance in the event that it ends?*

A family law lawyer with experience in same-sex couples' issues can provide you and your partner with resources that serve some of the needs of your relationship. For example, the purchase and financing of a home is a significant investment in which both partners deserve to be equally protected. At present, opposite-sex married couples go to Family Court for a supervised means of dividing the assets of their relationship. For same-sex couples, a **Partnership Agreement** can address how to handle finances during the relationship, as well as provide a structure for helping dissolve jointly owned assets.



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Parental Recognition & Protections

- *What legal protections are my partner and I entitled to when it comes to parenting rights?*

According to data from the Movement Advancement Project, **1 in 4** of South Carolina's same-sex couples are raising children -- that is a lot of mothers, fathers, and children who face daily uncertainty. While state's laws simply do not address same-sex couples, there are steps that can be taken to maximize your rights as parents. A **Guardianship Agreement** allows the biological parent to clearly indicate the caregiver of choice in the event that something were to happen to them, while a **Co-parenting Agreement** allows couples to share parental responsibilities of a child when legal adoption is not available.

Federal Marriage Recognition

- *My partner and I were legally married in another state but live in South Carolina where our marriage is not legally recognized; what benefits are we entitled to, if any?*

If you and your partner are legally married but currently reside in South Carolina, understanding your rights in regards to your entitled marriage benefits is confusing, ever-changing, and at times, incredibly overwhelming. Just recently the US Justice Department announced that all marriages, regardless of genders and regardless of how your state treats your marriage, will receive full recognition from the federal judicial system. Translation: the government is on your side. As these issues continue everyday to work themselves out, it is important that you and your partner know what you are entitled to. Here are just a few examples:

Currently your marriage will be considered by:

- The Department of Defense – Entitling you to spousal benefits.
- The Department of Veterans Affairs
- Federal Retirement benefits – may vary by department
- Immigration and Naturalization Service (INS)
 - Allows you to apply for a Green Card on behalf a spouse who is a non US citizen
- Internal Revenue Service
 - You must file your federal return as married
 - **Special Note:** SC Department of Revenue has issued special guidance for legally married, same-sex couples living in South Carolina.
- Social Security Administration for Supplemental Security Insurance (SSI) determination
 - You will be considered married when determining eligibility

These federal agencies/departments have issued final determinations since the striking down of the Federal Defense of Marriage Act Part 3:

- Social Security Administration regarding: Death Benefits, Retirement Benefits, Survivorship Benefits
- Medicare regarding spousal eligibility

Visit our website for more information and links to resources to safeguard your relationship.

