



Divorce Toolkit for Same-Sex Couples in New York



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Divorce can be a complex and emotionally draining process, especially for same-sex couples in New York, where specific legal considerations may arise. This comprehensive divorce toolkit is designed to provide guidance on navigating the process with clarity, ensuring that same-sex couples are aware of their rights, responsibilities, and options.

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1. Understanding New York Divorce Laws for Same-Sex Couples

In 2011, New York legalized same-sex marriage under the Marriage Equality Act, granting same-sex couples the same legal rights as opposite-sex couples. When it comes to divorce, same-sex couples must follow the same process as any married couple in New York. However, specific issues, such as establishing parental rights or dividing assets accumulated before marriage due to the unequal recognition of same-sex relationships over time, may require extra attention.

Key Points:

- New York is an equitable distribution state, meaning assets are divided fairly but not necessarily equally.
- Same-sex couples should be aware of how long their marriage is legally recognized to determine the duration for spousal support calculations.

2. Grounds for Divorce in New York

New York offers both no-fault and fault-based grounds for divorce:

- **No-Fault Divorce:** Couples can file for divorce by citing an irretrievable breakdown of the marriage for at least six months.
- **Fault-Based Divorce:** Grounds include cruel treatment, abandonment, adultery, and imprisonment.

For same-sex couples, no-fault divorce is often the preferred option as it requires less litigation and emotional strain.

3. Division of Assets

The equitable distribution of assets can be complex for same-sex couples, especially if they were together for years before their marriage was legally recognized. Couples should consider:

- **Marital Property:** Any assets acquired during the marriage.
- **Separate Property:** Assets owned before the marriage or received as a gift/inheritance.
- When dividing assets, courts take into account factors such as income, property value, and the duration of the marriage. Same-sex couples should work with experienced attorneys to ensure that pre-legalization contributions to the relationship are considered.

4. Spousal Support (Alimony)

Spousal support laws apply equally to same-sex couples in New York. Courts will consider factors such as:

- Length of the marriage
- Income of both spouses
- The standard of living during the marriage
- If the marriage was only recently recognized by law but the couple has been together for many years, this may impact the spousal support arrangement.

5. Child Custody and Support

One of the most emotionally charged issues in same-sex divorce is child custody, especially if one parent is not the legal or biological parent. In New York:

- Both parents in a same-sex marriage are presumed to be the legal parents of a child born during the marriage.
- For children adopted by same-sex couples, custody and visitation follow the same guidelines as opposite-sex couples.
- Child Support: Calculated based on the incomes of both parents.

Same-sex couples should ensure they have established legal parentage through adoption or other legal means to avoid custody disputes.

6. Legal Documents Needed for Divorce

Same-sex couples must provide the same documents as opposite-sex couples, including:

- A valid marriage certificate
- Financial records (bank statements, tax returns, etc.)
- Documentation of property ownership

If a same-sex couple was married outside New York, they should confirm that the marriage is recognized in New York before proceeding with the divorce.

7. Mediation and Collaborative Divorce

Many same-sex couples choose mediation or collaborative divorce to avoid lengthy court battles. These processes allow for a more amicable and private resolution of issues like asset division, spousal support, and custody. It's crucial to select mediators or attorneys experienced in LGBTQ+ issues to ensure that the unique aspects of a same-sex divorce are handled sensitively.

8. Same-Sex Divorce and Immigration Status

If one spouse in a same-sex couple holds a visa or green card based on marriage, divorce can complicate immigration status. It's essential to:

- Consult an immigration attorney to discuss options such as retaining legal residency.
- Explore the potential for filing for a waiver if the foreign spouse wishes to stay in the U.S. post-divorce.

9. Emotional and Mental Health Support

Divorce can be particularly challenging for same-sex couples who may face additional social stigmas or isolation. Seeking support from LGBTQ+-friendly therapists, counselors, or divorce support groups can provide emotional relief during this time.

10. Resources for Same-Sex Couples

New York offers a variety of legal and emotional support resources for same-sex couples going through divorce, including:

- The Law Firm of Figeroux & Associates: LGBTQ+ friendly law firm.
- SAGE: Services & Advocacy for LGBTQ+ Elders, offering support and resources for older same-sex couples.