

Civil unions: Not so easy to walk away from



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Anecdotally, we're seeing an influx in younger persons (or even those on their second significant relationships) choosing a civil union partnership over a "traditional marriage" arrangement.

Persons entering into a civil union relationship often mistakenly think that by doing so that they will not be subjected to the same requirements to dissolve their relationship or be on the hook for alimony, property distribution, or other equitable relief.

However, at least in Maryland, the courts treat a civil union partnership as the same as a marriage arrangement for the purposes of divorce and division of property rights.

Although not limited to same-sex partners, historically, and before the federal recognition of same sex marriage in Obergefell, persons in same-sex relationships chose civil unions as a way to recognize their relationship in a marriage-like arrangement.

There are many reasons to choose a civil union over a marriage relationship these days, including wanting similar legal protections as a marital arrangement but without the actual marriage. A civil union often bestows the benefits of inheritance rights, bereavement leave, employment benefits – including health insurance – and next-of-kin designations.

Although carrying some of the same trappings as a marriage, civil

unions are still distinct from marriage arrangements. Unlike marriages, civil unions are not recognized by federal law and only a limited number of states even offer them as an avenue.

Because civil unions are not federally recognized, those couples do not have entitlement to Social Security benefits through their partner. This may also affect or limit a partner's ability to claim certain immigration protections and to receive benefits from a partner who is a federal employee.

And because not every state recognizes civil unions, your right to dissolve a partnership or to take under property rights afforded a married couple may be limited or even nonexistent.

Published right before the world and Maryland went into COVID lockdown, the Court of Special Appeals addressed this very issue in *Sherman v. Rouse*.

In 2003, Sherman and Rouse entered into a civil union in Vermont. They remained in a civil union and never converted the civil union partnership into a marriage relationship.

During their relationship, Sherman and Rouse adopted two children and become co-owners of a family residence in Montgomery County.

In 2018, Sherman filed for a complaint for absolute divorce in the Circuit Court for Montgomery County. Sherman sought a determination of custody, use and possession, divorce, alimony, equitable distribution of property, and a monetary award.

Rouse moved to dismiss Sherman's complaint for divorce and related relief based on a failure to state a claim. Rouse argued that because the two had never converted their civil union into a marriage, that Sherman was not able to obtain a divorce in Maryland.

Sherman argued, in pertinent part, that under the doctrine of comity that the court could recognize the Vermont civil union and dissolve the relationship and award him relief under the

Maryland Family Law Article.

The Montgomery County Circuit Court agreed, in part, with *Rouse* but on the basis that "if the right to seek a divorce, and to seek awards of alimony and equitable distribution are to be extended to individuals joined by civil union, it is a matter of legislature, not the courts."

Sherman noted an appeal to the Court of Special Appeals. Several special interest groups also filed amicus curiae briefs with the court in support of Sherman's argument and further arguing that because civil unions impose the same substantive rights and obligations of marriage, they implicitly must also have access to the same state laws that terminate a marital relationship.

The Court of Special Appeals first acknowledged the Court of Appeals' prior holding in *Port v. Cowan*, which recognized, under the doctrine of comity, a same-sex California marriage as neither contrary to nor repugnant to Maryland law or public policy.

There, because the doctrine of comity afforded recognition of the valid, albeit out-of-state marriage, the court held that the relationship could be dissolved by divorce under the laws of the State of Maryland.

Using that analysis, the Court of Special Appeals ruled in Sherman that the same recognition is afforded to civil unions. The court explained that "applying the doctrine of comity, Maryland courts will recognize the spousal relationship of parties to a [] civil union" with the same rights and protections afforded to Maryland residents in a marital relationship.

With this in mind, counsel would be wise to have conversations with couples in civil union partnerships to determine what property or other equitable rights they may have accrued.

Elizabeth J. McInturff, Esq., a partner at JDkatz, PC, represents clients in complex family, civil and commercial disputes. For more information, visit www.jdkatz.com.