

LGBT SideBar

A Newsletter From

VISHNICK MCGOVERN MILIZIO LLP

Specifically for the Lesbian-Gay-Bisexual-Transgender

(LGBT) Community


Dear Valued Friends and Clients:

As I write this, the temperature outside my office is hovering around 6 degrees. My schedule includes an HRC committee meeting in the City this evening, and it's not likely to get warmer before then. My brain is saying "go home, surround yourself in fleece, sip a glass of red wine and share the couch with warm dogs."

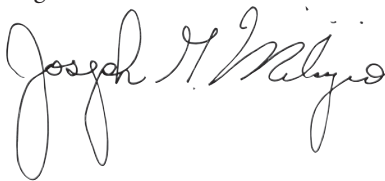
But I know that there is more work to be done – a lot more work – before the LGBT community can stand on equal ground. Whatever I contribute, no matter how small, will make a positive impact. Although the inner voice is calling, the couch can wait. There is much to be done.

The year 2013 was a whirlwind of court cases, legislation, changes in the law and recognition of the LGBT community. It seemed like hardly a week went by without another state embracing marriage equality. The Supreme Court changed federal law and the resultant federal rights that go along with recognizing marriage between all individuals, same-sex or otherwise. Employment equality took steps forward. President Obama designated gay and lesbian individuals to represent the United States at the 2014 Winter Olympics in Sochi.

Many people assume that appropriate protections automatically accompany changes in the law. They do not. Proper planning is a must, and skilled representation is a necessity.

Vishnick McGovern Milizio has a long-standing history as a full-service law firm. Our dedicated practice areas assure up-to-date, skilled representation for all our clients' needs. I'm happy to speak to you anytime, whether it's a minor question needing clarification, a major life plan that needs to be implemented or anything in between. Please take a moment to review our practice areas on the back of this newsletter. We are here for you. 

Best Regards,




Joseph G. Milizio, Esq.

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Treasury and IRS mandate equality for same-sex marriages

By Morris Sabbagh, Esq.

In a landmark ruling, the IRS and the U.S. Treasury Department announced in September that legally married same-sex couples will be recognized as “married” for all federal tax purposes, regardless of where they reside. This ruling answers the lingering question of whether the federal government would recognize marriages based upon the “place of celebration” or the state of residency. Any marriage between same-sex individuals legally entered into in one of the U.S. states that authorize marriage between individuals of the same sex, the District of Columbia or a foreign country that authorizes such marriages will be covered by the ruling.

The ruling provides that same-sex married couples will be treated as married for all federal tax purposes, including income, gift and estate taxes. As stated by Treasury Secretary Jacob J. Lew: “It provides access to benefits, responsibilities and protections under federal tax law that all Americans deserve.”

A significant aspect of the ruling is that all legally married couples

Same-sex married couples will be treated as married for all federal tax purposes

must file their 2013 federal income tax returns using either the married filing jointly or married filing separately status. For married couples who are residents of non-recognition states, they must still file their state returns as single. Marriages between same-sex individuals will not be recognized for state purposes in non-recognition states, despite the fact that they will be recognized for federal purposes. Couples should consult with their tax advisors as to whether or not filing amended federal returns for prior tax years makes sense for them.

Couples should also review their estate plans to make sure they take advantage of all estate and gift tax benefits afforded to married couples. Both employers and employees must review their employee benefit and pension plans, spousal elections, waivers and required notices, as well as the tax treatment of benefits provided to same-sex spouses. **M**

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Being gay no longer basis for jury exclusions

By Joseph G. Milizio, Esq.

Last month, a federal appellate court ruled that gay people can't be excluded from serving on juries because of their sexual orientation.

The U.S. Court of Appeals for the Ninth Circuit on Jan. 21 became the first federal appeals court to rule that laws depriving gays and lesbians of equal protection will be subject to "heightened judicial scrutiny," a level of judicial review that is higher than "rational basis review," the traditional standard for equal protection challenges based on sexual orientation.

SmithKline Beecham brought a lawsuit against Abbott Laboratories regarding a licensing agreement and pricing for HIV medications. During the jury selection process, the attorney for Abbott Labs rejected the only self-identified gay member of the jury pool. SmithKline Beecham challenged the rejection and the lower-court judge denied the challenge.

In the appellate court decision Judge Stephen Reinhardt wrote that using someone's sexual orientation as the basis for jury exclusions furthers a "deplorable tradition of treating gays and lesbians as undeserving of participation in our nation's most cherished rites and rituals," and such exclusions "tell the individual who has been struck, the litigants...and the public that our judicial system treats gays and lesbians differently."

According to an article in the New York Law Journal, the Court's decision to utilize heightened judicial scrutiny "will help protect public school teachers and students, police officers and the citizens with whom they interact, and many others when the government treats them differently on the basis of orientation."

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A promise is a promise

By Joseph Trotti, Esq. and Eun Chong (EJ) Thorsen, Esq.



There is hope for unmarried individuals who could not marry their loved ones before the New York Marriage Equality Act and so, made a commitment to stay at home to raise a family based on promises to one another to share in the working partner's income and assets. And a stay at home partner, who relied on such an agreement or promise, will not be without remedy or claims to the working partner's property or assets, if the relationship were to end without marriage.

Consider two women – Laura and Dena – who lived together as an unmarried couple for almost 20 years. In their years together, the couple became parents to two children, and the family assumed a common arrangement: Laura, who previously had a full-time job, stayed at home to take care of the children while Dena maintained her full-time job to financially support the household.

After the couple split, and because they were not married, Laura

could not make a claim for Dena's retirement benefits under the laws of equitable distribution, which grant a non-titled spouse rights to share in the other's property in a divorce. So Laura sued Dena instead for, among other things, breach of contract, claiming that she quit her full time job and gave up accompanying retirement benefits only after the couple verbally agreed as follows: that Laura would stay at home and raise their children in exchange for Dena financially supporting the household, and for a share of Dena's retirement benefits for the time period she did not hold a paying job.

While living together without marrying does not grant the financial or property rights enjoyed by married couples, doing so also does not automatically disqualify the couple from making agreements that are otherwise valid and enforceable. So, in this recent court case, Laura's claims based upon the alleged oral agreement of the couple were upheld by the court ruling, and she was permitted to proceed to trial to prove the oral agreement.

Although this was a victory for Laura, proving the agreement and winning at trial may not be easy, and a written contract would have been a critical and powerful piece of evidence to support her claim.

For information regarding these types of agreements or to receive assistance in their preparation, we at Vishnick McGovern Milizio are here to help.

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news & Events

Help, they need somebody

A November article in Financial Advisor highlighted the attitudes among same-sex couples since the Defense of Marriage Act was overturned.

A survey by the Insured Retirement Institute revealed that while about 90% have money saved for retirement, only seven in 10 believe they will have enough money to retire comfortably.

Excerpted from the article:

“This change, essentially overnight, altered the retirement planning landscape for these couples,” said Cathy Weatherford, IRI president and CEO. “These events will lead numerous couples to seek the assistance of a financial professional to help navigate both changes to personal circumstances and the application of federal law.”

Toward corporate equality

At the end of June 2013, the Human Rights Commission’s Workplace Project held a panel event in New York City.

In addition to Workplace Project representatives, the panel featured **Joseph G. Milizio, Esq.**, Vishnick McGovern Milizio’s Managing Partner; Derrick M. Brown, Executive Director for NGLCCNY; and Gabriel Blau of the Family Equality Council.

Based on their knowledge of how the financial and LGBT worlds intersect, panelists spoke at length about the economic impact of marriage equality. The Workplace Project, in particular, emphasized the importance of corporate equality in attracting and retaining top talent, as well as the impact marriage equality could have on business relocation or expansion.



Taxing topics

Joseph G. Milizio spoke at the 11th annual Long Island Tax Professionals Symposium on changes in federal law as it relates to same-sex couples – income tax, estate and gift tax, inheritance rights, employee benefits and pension plans, as well as issues with respect to states that do not recognize same-sex marriages. Topics included divorce, non-marital breakups, child custody and adoption requirements. More than 700 fellow professionals, exhibitors, vendors, IRS and New York State tax representatives attended the three-day event.

And the award goes to ...

Joseph G. Milizio received Long Island Business News' Leadership in Law award, which recognizes individuals whose leadership, both in the legal profession and the community, has had a positive impact on Long Island. He received his award at a Nov. 14 event held at the Crest Hollow Country Club.



LIBN Advertising Director Ken Kroncke presents Joe Milizio with the Leadership in Law award.

At the 20th anniversary celebration of Pride for Youth, an organization whose mission is to provide service and advocacy for LGBTQ youth, Vishnick McGovern Milizio received a Ground-breaker award. The honor recognizes those who, through their efforts, have forged a path of dignity and equality and have advocated for the civil rights of LGBTQ individuals in all communities. **Joseph G. Milizio** accepted the award at the November 15 event on behalf of the firm.

Vishnick McGovern Milizio received an All-Star Award at the 2013 Long Island Gay and Lesbian Film Festival. The award is given to those businesses or groups that continuously support awareness and acceptance of the LGBT community, and have devoted their time and experience to the success of the Long Island Gay and Lesbian Film Festival. "Vishnick McGovern Milizio has been a dedicated supporter of the film festival. They have appeared at the film festival several times offering support and information on our rapidly changing LGBT rights," said Jim Stewart, festival director. "They have worked tirelessly on keeping themselves and our community educated on the intricacies of each and every legal decision that affects our community."

For more than 40 years, Vishnick McGovern Milizio LLP has provided personal attention and quality service to our clients. We apply our broad experience representing business, charitable organizations, families and individuals and our deep knowledge of many areas of the law to develop a customized approach for each client.

Our work is infused with integrity, enthusiasm and innovation. We represent our clients in the following practice areas:

- **Trusts & Estates**
- **Estate Litigation**
- **Business & Transactional Law**
- **Litigation**
- **Matrimonial & Family Law**
- **Fiduciary Accounting & Charitable Bequest Management**
- **Real Estate Law**
- **Employment Law**
- **LGBT Representation**
- **Elder Law**



Find out the latest news at:

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Vishnick McGovern Milizio LLP attorneys advocate for and strongly believe in the rights of gay, lesbian, bisexual and transgender individuals. The LGBT community has the same concerns and the same needs as the larger community. Unfortunately, society does not automatically grant the same legal rights, or offer the same legal benefits to the LGBT community. However, with proper planning, many of those rights and benefits can be fulfilled. Whether counseling individuals, families, or businesses, we understand the issues and are well versed in strategies that protect our clients and satisfy their wishes.

We offer a number of services that uniquely address the issues that matter most to the LGBT community.

The content of this newsletter is for informational purposes only. Please contact us if you would like legal counsel.



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