

For same-sex couples, a patchwork of marriage laws

By DAVID CRARY (AP) – May 9, 2010

PHILADELPHIA — When government forms inquire of her marital status, Isabelle Barker sometimes resorts to an asterisk and an explanatory note.

She and her wife, Cara Palladino, got married five years ago in Massachusetts. Six months later, for job reasons, they moved to Pennsylvania — one of the majority of states that do not recognize same-sex marriages.

Hence the asterisk.

"I'm not single. I'm married in Massachusetts, but I'm not married in Pennsylvania, I'm not married in the eyes of the federal government," she said. "It's this weird limbo, this legal netherworld."

Barker and Palladino, and their 15-month-old son, Will, have plenty of company across the United States as gay and lesbian couples confront an unprecedented and often confusing patchwork of marriage laws.

Historically, such laws have been the jurisdiction of the states, not the federal government, and the common practice throughout U.S. history has been for any given state to recognize a marriage performed legally in another state.

The advent of same-sex marriage in 2004 has changed all that.

Five states — Massachusetts, Connecticut, Vermont, New Hampshire and Iowa — and the District of Columbia have legalized same-sex marriage. New York and Maryland recognize those marriages even though same-sex couples can't wed within their borders. California had legal same-sex marriage for about five months in 2008.

However, the federal government doesn't recognize same-sex marriage, nor do the vast majority of states, including Pennsylvania. Even with a valid out-of-state marriage license, gay and lesbian couples in those states face uncertainty, extra legal bills and inevitable rebuffs that straight couples avoid.

Barker and Palladino, who began dating in 1998, moved from New York to Massachusetts in 2004 and married in February 2005 in a low-key ceremony at a Northampton coffee shop.

They had previously exchanged commitment rings — the chief motive for marrying was to obtain health insurance for Barker through Palladino's job at the University of Massachusetts.

Later in 2005, Barker's own academic job ended and she was offered a postdoctoral fellowship at Bryn Mawr College outside Philadelphia. The couple decided to move, though they knew there'd be drawbacks.

"In Massachusetts, people understood what our relationship was," Palladino said. "I miss being able to say, 'Oh, we're married' and not having to explain it any further."

Barker elaborated.

"When you're in Pennsylvania, you're constantly having to wonder, "Do they get this? Do they not get this?" she said. "You get these looks of befuddlement."

Day to day, there's plenty of support from friends, neighbors and employers — Barker coordinates summer programs at Bryn Mawr, Palladino is a fundraiser at the University of Pennsylvania. They feel comfortable in their diverse Philadelphia neighborhood, Mount Airy, and send Will to a day-care center patronized by several other lesbian couples.

But frustration was evident as they told of the hoops they had to jump through, at extra cost, to amass legal documents they wouldn't have needed in Massachusetts — including a second-parent adoption giving Palladino parental rights along with Barker, who is Will's biological mother.

At their lawyer's advice, the two women have stored their legal forms on flash drives that they carry constantly.

"We're 12 years into our relationship," Palladino said. "I'd just like to know when we're done proving it over and over. ... To have to work harder and save harder to make up for what everybody else gets just as an entitlement does really make me angry."

Photo 1 of 3



In this Wednesday, April 28, 2010 photo, Cara Palladino, left, and Isabelle Barker, right, play with their son, Will Palladino, 1, at their home in Philadelphia. (AP Photo/Matt Slocum)



Map



Same-sex couples in non-recognition states received a modest boost from President Obama in April, when he ordered new rules providing such couples with visitation and medical decision-making rights in any hospital participating in Medicaid or Medicare.

Evan Wolfson, who heads the advocacy group Freedom to Marry, called the directive "a small, but welcome step forward."

"Of course, the real cure is to end exclusion from marriage," Wolfson added. "Piecemeal steps, addressing one protection at a time, will take up a lot more time than either the administration or American families can afford."

Wolfson says the current patchwork not only discriminates against gay families, but also causes headaches for employers who have to consider the diverse laws as they weigh transfers of employees with same-sex partners.

Gay and lesbian couples who turn to the courts when they break up are getting mixed results in non-recognition states. Judges in Oklahoma and Pennsylvania recently denied divorces to same-sex couples who had married in Canada and Massachusetts, while New York and New Jersey have granted such divorces even though they don't allow same-sex marriage.

In Texas, Attorney General Greg Abbott is appealing the decisions of judges in Dallas and Austin to grant same-sex divorces. In Arizona, some lawyers have succeeded in getting out-of-state same-sex marriages annulled on grounds they were never legal under state law in the first place.

The Alliance Defense Fund, a conservative legal group, represented the speaker of the Oklahoma House of Representatives in a recent unsuccessful lawsuit by a woman who'd had a same-sex wedding in Canada and sought to divorce in Oklahoma.

"The government cannot issue a divorce for a marriage it doesn't recognize," said ADF senior legal counsel Austin Nimocks.

The uneven legal landscape poses daunting challenges for lawyers who work with same-sex couples — not only on divorces but also on estate planning, parental rights and other matters.

"It seems like every state has a different law," said Phoenix lawyer Kathy Gummere. "We have people who are married in some states and not married in others, which, in this day and age of everybody moving around all the time, is ludicrous."

For some couples, among the most galling problems is trying ensure that both are legally recognized as parents of their children. Many states allow second-parent adoption for same-sex couples, which addresses this situation, but many other states do not.

That's been a problem for Cari Searcy and Kim McKeand of Mobile, Ala. They married in California in September 2008 during the brief period before same-sex marriages were banned there by a ballot measure, Proposition 8.

It was a whirlwind wedding trip, and the couple promptly returned to Alabama — a state unlikely to recognize same-sex unions without some sort of federal mandate that for now seems far away.

Even with a marriage license, Searcy has been unable to complete a second-parent adoption and is not recognized by Alabama as a legal parent of the couple's son, Khaya, whom McKeand gave birth to in 2006. Yet despite that rebuff, there's no talk of moving out.

"We're from the South — this is our home," Searcy said. "If everybody moves to states that recognize, it, how are we going to change?"

Day to day in Mobile, there's little practical benefit to being married, Searcy said, though she and McKeand enjoy referring to each other as "my wife."

"One of the biggest things — now that Khaya is talking — he's constantly going around telling people, 'My mommies are married,'" Searcy said. "He's really proud of that. Seeing that through his eyes, that's pretty special."

Carrington Mead, a lesbian attorney from Jacksonville, Fla., struggles with the complex array of laws both in her practice and in private life. She considers herself married, based on a civil union obtained in Vermont in 2008 — but Florida doesn't recognize the relationship.

"I feel I'm beating my head against the wall," said Mead, a Navy veteran. "It's frustrating to be an officer of the court, charged with upholding the law, and sit there realizing you have fewer rights than the people you're serving."

Attorney Tiffany Palmer counsels gay and lesbian couples in Philadelphia, helping them sort through the array of legal protections they might need in a state that doesn't recognize their unions.

When clients raise the possibility of an out-of-state marriage, "I often advise them, it's probably

better that they don't," Palmer said.

"But there are so many things attached to marriage beyond legal conditions," she said. "They go forward anyway, even though it's not necessarily an easy path."

Indeed, Palmer and her partner of 10 years plan to ignore the legal cautions themselves and get married July 4 in Vermont. Their 3-year-old daughter will be the flower girl.

"She's starting to learn and understand what marriage is," Palmer said. "Now she knows that two adults who love each other, even if they're two women or two men, can get married."

Unlike Alabama, Pennsylvania is receptive to second-parent adoptions, so same-sex couples can fairly readily establish that both are legal parents of any children they have.

Tracy and Mia Levesque, Philadelphians who got married in Canada in 2003, said the marriage license helped speed a second-parent adoption after the birth of their 3-year-old daughter, Josephine — with the judge seeing no need for detailed questions about their relationship.

On other fronts, though, lack of marriage recognition can be grating — for example, when they file separate tax forms, with separate deductions, despite raising a daughter together and jointly owning a website design firm.

"It's ridiculous," Tracy Levesque said.

Another Philadelphia couple, Gisele Pinck and Kathy Coyle, has been going through tri-state legal gyrations.

They own a house in Massachusetts, where they married in 2004 and still spend the summers. They work and pay taxes in Pennsylvania, which won't let them file jointly. And last year, they decided that Pinck would give birth to their son in New Jersey because that state's laws — unlike Pennsylvania's — allowed them both to be listed as parents on the original birth certificate.

They still felt a need to spend roughly \$2,500 for Coyle to go through a second-parent adoption in Pennsylvania so she'd have parental rights there.

"In some ways that doesn't seem fair," Pinck said.

On the other hand, Pinck and Coyle say their employer, a Quaker secondary school, fully supports their relationship. That's a trend nationwide, as more employers respect the marital status of gay and lesbian workers even if state governments don't.

In Lawrence, Kan., Dave Greenbaum and Mike Silverman say there are upsides and downsides to being husbands in a state which voted by a 70 percent majority in 2005 to ban recognition of any same-sex union.

They got married in California in 2008 but never seriously considered abandoning Lawrence, where Greenbaum runs a computer business.

"Even in a state like Kansas, unless someone is a complete bigot, they're going to respect the intent behind the marriage license even if they can't officially recognize it," Silverman said.

Then there's the nomenclature benefit.

"Until our marriage, I'd get semi-awkward questions from people — 'What do you call Mike? Your partner? Your spouse?'" Greenbaum said. "Now it's easier for family and friends. 'OK, he's your husband.' It's a framework that everyone understands."

But the acceptance doesn't carry over to tax season.

"Any time you're filling out a tax form, you have to lie by declaring yourself single even though you're married, so you don't get in trouble with the government," Silverman said.

Jennifer Pizer, marriage project director for the national gay-rights group Lambda Legal, says attitudes and laws affecting same-sex couples vary widely across the country — generating an evolving flow of "incredibly interesting legal questions."

If a married same-sex couple wants to move to a non-recognition state, "it's important to do everything they can do, with private legal documents and commitments from employers, to protect their families," she said.

"It's going to keep happening. People don't decide whether to walk down the aisle or not based on the intricacies of interstate family recognition."

On the Net:

- Map of state laws:

http://www.thetaskforce.org/downloads/reports/issue_maps/rel_recog_3_10_color.pdf

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