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## Alas, Gay Marriage Will Yield Gay Divorce. Prenups Are in Order

By [Bonnie Rochman](#) Friday, July 29, 2011

As gay couples in New York gear up for the first full weekend during which they're eligible to tie the knot, someone they hope they'll never run into has a few words of caution: be careful.

That someone is the divorce lawyer, the antidote to petits fours and place settings, with an admonishment to homosexual brides- and grooms-to-be to legally protect themselves before saying "I do." "Not to take a bloom off this romantic rose, but as people are lining up for marriage licenses, it's something to think about," says Lois Liberman, a divorce attorney and partner at Blank Rome LLP, one of New York City's largest matrimonial firms.

Sometimes, the sheer act of getting married is enough to torpedo a relationship. "I would hate to call that a trend, but I've seen people together for 18 years, then they finally got married, and after several years, the chafing of legal bounds do a number on people," says Liberman.

About half of U.S. marriages end in divorce, and it's probably inevitable that gay and lesbian unions — including the [659 couples](#) who were issued marriage licenses in New York City on July 24, when New York officially became the sixth state where gays could wed — may succumb at a similar rate. Many gay couples now rushing to wed have likely been together for years. That shared longevity could lull them into a false sense of security, yet gay couples — like straight ones — need to make sure their assets and interests are protected in the event they split up. That might take the form of a prenuptial agreement that acknowledges how long a couple has been together. In the case of a break-up, a court wouldn't mistakenly consider the relationship a new one, which matters in terms of splitting assets and property.

"Most couples walk into marriage blindly, not knowing what the divorce laws are," says Paul Talbert, a divorce attorney at New York City's Chemtob Moss Forman & Talbert, which represents high net-worth clients. "You have same-sex couples that have been together for 20 years, but once they get married, everything is now in a different legal framework than the day before they got married." Consider a stereotypical older, established gay man marrying a younger man. "Don't we need to protect him too, just like we would with a heterosexual couple, to make sure the young stud isn't going to be a golddigger?" says Liberman.

Gay couples, in particular, face complicated issues surrounding their children. It's likely that far more gay than straight couples getting hitched are bringing children into the mix. Gay marriage may be illegal in much of the country, but same-sex couples haven't let that stop them from building a family life that looks every bit like the picket-fenced, two-kids-and-a-dog tableau that their heterosexual counterparts have created. Advances in fertility treatments means that same-sex couples having kids is hardly even worthy of an arched eyebrow anymore in many parts of the country.

Yet precisely because they haven't been married, children they've raised jointly have, barring adoption, legally belonged only to the biological parent. If one woman in a lesbian couple used a sperm donor to have a child, that woman is considered the mother; the other partner — even if she may have quit her job and stayed home to raise the child — has no legal standing.

For gay partners who stayed at home to raise kids, marriage confers a big benefit. Should a lesbian couple marry and then divorce — even if the non-biological “mother” had not adopted her partner's child — the non-biological parent should now have similar parental rights to the child. “Gay marriage should now serve to protect the non-biological parent by recognizing that now-married spouse's rights to the child of the marriage,” says Liberman. “Custody-related issues in a divorce should now proceed theoretically just as in a heterosexual marriage.”

Giddiness over the ability to get hitched aside, it's important to consider what should happen in the event things don't turn out happily ever after.

Marriage is a complicated financial partnership, notes Talbert. “It's a wonderful thing that there's now equality in marriage, but the next step is to determine whether marriage and all the rights and obligations that are attendant with it is right for you,” he says.

That's no different than in any marriage, and sage advice, regardless of whom you're considering marrying.

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