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LGBTQ+ Considerations in Separation and Divorce



Partnership Structures

- No formal partnership structure: parentage and civil legal matters come into play. Parentage determines rights over kids, and other legal proceedings determine property rights in dispute.
- Domestic Partnerships: No new ones since 2011. Dissolved by Affidavit of Termination.
- Civil Unions: Similar to Divorce. Petition for Dissolution of Civil Union, serve your partner, and undergo a process similar to divorce.
- Marriages: Divorce starts with a Petition for Dissolution of Marriage, and serving your spouse.



Specific Considerations: Assets and Debts

Specific Considerations: Support

Guideline Method

- $(33.3\% \text{ of payer's monthly net income}) - (25\% \text{ of receiver's monthly net income}) = \text{Amount paid per month.}$
- Cannot be more than 40% of the parties' combined net income.
- Duration of alimony is standardized based on the length of the marriage.

Non-Guideline Method

- Some good reasons to deviate from guidelines.
- Court must calculate guideline maintenance and explain why it chose to deviate.
- May be equitable to deviate from guidelines by considering a couple married for longer than they legally were allowed to be.

Specific Considerations: Parentage

- In Illinois, if a partner is married to the birth parent of the child, that partner is presumed to be the parent of the child regardless of LGBTQ+ identities.
- For two cis men, being the “presumed” parent of the child of the marriage usually includes adoption.
- Same-sex couples are now allowed to put both names on the child’s birth certificate, which can help.

Beliefs and Fears

- **Belief:** LGBTQ+ parents are disfavored in parenting, and straight or straight-seeming parents are preferred.
- **Reality:** In Illinois, the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act govern how the courts decide parenting. All parents are presumed to be fit unless they are proven unfit. An LGBTQ+ identity is not among the reasons a parent can be deemed unfit.
- **Belief:** Judges who do not understand LGBTQ+ issues make uninformed decisions that negatively affect families with LGBTQ+ members.
- **Reality:** In Cook County and most collar counties, a judge is the last person to make a parenting determination. Before a judge decides anything, parents are usually required by rule or order to attempt agreement. If no agreement, a Guardian ad Litem will usually be appointed to become an expert on the family.

Questions

