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PROTECTIONS, BENEFITS AND OBLIGATIONS OF MARRIAGE
UNDER MASSACHUSETTS AND FEDERAL LAW:
SOME KEY PROVISIONS OF A WORK-IN-PROGRESS¹

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1. Laws Relating to the Acquisition, Ownership or Transfer of Real or Personal Property and Retirement Assets During Life or at Death, Including Title, Probate, Administration of Estates, or Intestate Succession.

A. Married Couples Generally Have the Right to be Treated as an Economic Unit.

- **Property Ownership Protections** Married spouses have the right to own real estate as tenants by the entirety, a form of ownership which provides maximum protection to the couple against creditors, and allows the automatic descent of the property to the surviving spouse without going through probate. G.L. c. 184, § 7.

Same-sex couples cannot own property as tenants by the entirety, and thus do not have the protections such a tenancy affords. The other alternative is jointly held property, but creditors may attach the property readily, and the value of the property is counted as part of the estate for tax purposes when one of the joint owners dies, thereby either potentially triggering, or adding to, the tax burden upon the estate after the death of the partner.

- **“Homestead” Protection of Family Home Against Creditors** Either a married or unmarried person may file for homestead on their home, thereby securing \$300,000 worth of the property from creditors. The advantage to a married person is that the homestead is for the benefit of the spouses and their children. G.L. c. 188, § 1. These protections continue for the benefit of the surviving spouse and children after the death of one person in the couple.

If a same-sex couple owns a home together, both parties may file for homestead protection, but it is possible that only the first of the two to file the homestead will secure the protections of homestead. (If joint owners of a property live in two different households, an argument can be made that each joint owner may claim a homestead estate, but this is little comfort to a couple which has one home in which they live together). By contrast, the homestead protection available to a married person extends to his or her spouse and children and the benefits continue after the death of the owner of the homestead estate. If one partner in an unmarried couple has filed a homestead, the homestead protection expires upon death and there is no protection for the surviving partner.

- **Ability to Transfer Property** Spouses have an unlimited ability to make gifts and transfer property to each other while alive (and at death) without tax consequences. 26 U.S.C. §§ 1041, 2523.

Same-sex couples do not have the right to move money or assets back and forth as makes sense for them economically without thinking about the possible tax consequences. For a same-sex couple, any transfer of property or assets in excess of \$10,000 in a year (such as placing a home in joint names) requires the person making the “gift” to file a federal gift tax return. Depending on how much the individual “gives” away over his or her lifetime to people who are not his or her spouse or children (presently capped at \$675,000), the individual may be responsible for gift taxes. Certainly upon death, a partner who inherits the estate is subject to estate taxes (if beyond the amount exempted for all individuals). (See discussion below: With the marital deduction, surviving spouses never have to pay taxes on assets they inherit until their own death. 26 U.S.C. §§ 2051-2056). Consider the situation of a couple splitting the IRA of one of them upon a separation. If the IRA holder is under age 59 ¼ (the age at which distributions are permitted), there would be a premature withdrawal penalty (10%) and income tax in the amount distributed payable by the IRA holder. In addition, the recipient would incur gift tax liability.

- **Responsibility for Debts** Spouses are generally jointly or severally liable for the debts of the other incurred for necessities (food, clothing, housing, medical care) furnished to either spouse or their family. G.L. c. 209, § 1.

Same-sex couples do not shoulder these obligations as a legal matter, although many couples have merged their finances in such a way as to provide for each other’s debts and care.

- **Wage Assignment Requires Both Spouses’ Consent** A spouse must consent to his or her spouse’s assignment of wages or the wage assignment is invalid. G.L. c.154, § 2.

Same-sex couples do not have wage assignment protections.

- **Sharing Fishing Licenses** A noncommercial fishing permit for lobster or crab allows a person and his or her immediate family who live with them (spouse, parents, children, grandparents, siblings) to take and eat lobster or crab without obtaining their own licenses. G.L. c.130, § 38.

These protections for fishing activities do not apply to same-sex couples. Technically speaking, if one member of a same-sex couple has the permit, the other is not allowed to fish for, take or eat the lobster or crab caught by his or her partner.

B. IRA and Pension Issues

Generally Pension plans come in many types. There are different rules governing federal civil service, military, Foreign Service, CIA, railroad, private, state and local pension plans. The overwhelming majority of these systems recognize only married spouses when it comes to survivor protections and divorce.

- **Joint and Survivor Annuity for Surviving Spouse** Under many pension plans (especially defined benefit plans), a worker has the option to select a “joint and survivor annuity.” This means that in exchange for taking a smaller amount during his or her life, the surviving spouse can still collect on the pension even after the worker has died. For pensions governed by the Federal Employee Retirement Income Security Act (ERISA), which trumps all state laws in this regard, the pension must be paid to a married retiree in the form of a qualified joint and survivor annuity unless the non-participant spouse agrees in writing to waive it. The survivor benefit is not less than 50% or greater than 100% of the amount payable during the joint lives of the participant and the spouse. ERISA § 205(d)(1).

These protections are foreclosed to same-sex couples. If a retired worker dies one month after retirement and is not married, in most instances, the pension dies with him or her. By contrast, if the worker was married and elected a joint and survivor annuity (where it is not automatic), the surviving spouse can continue to enjoy a majority of the pension benefits for his or her life. The spousal consent provisions under federal law do not apply to same-sex partners.

- **Ability to Roll Over Spouse’s IRA or 401(k) Plan** If one spouse has a 401(k) plan or certain types of pension or retirement plans and dies, the spouse beneficiary can roll over the amount in the 401(k) into an Individual Retirement Account (IRA) and let the money continue growing tax free, and would not be required to begin taking distributions until the surviving spouse reached the age at which distributions are required. There is no tax due on the 401(k) at the time of the first spouse’s death, and taxes can be deferred until the surviving spouse must withdraw under IRA rules (usually, by age 70 ½). The roll-over into a tax-free account and tax deferral on the income distributed by the deceased spouse allow the surviving spouse to maintain the economic security the two had as a couple.

An unmarried partner cannot “roll-over” his or her deceased partner’s retirement plan assets into an IRA in the surviving partner’s own name. This means that the survivor, as the beneficiary, must begin to take distributions immediately, although he or she can do so over a period of time based on his or her life expectancy. Thus, the surviving partner is responsible for federal income taxes immediately on any distributions and there is no period in which those 401(k) assets can continue to grow tax free. In addition, if the surviving partner is under age 59 ½ there is an

early withdrawal penalty of 10% on the value of the IRA or 401(k). Finally, Massachusetts taxes any gains from the IRA (the amount of the contribution itself is exempt from Massachusetts income tax.) As a practical matter, this means is that same-sex couples – even if they are fortunate enough to have a 401(k) plan -- have an extremely hard time achieving the same kind of economic security available to married couples.

C. Protections for a Surviving Spouse

- **Control Over the Deceased Spouse’s Estate** The surviving spouse has first priority to administer the estate of the deceased spouse if he or she died without a will, and the right to consent to any other person serving as administrator. G.L. c. 193, §§ 1, 2.

Not only is this automatic protection unavailable to same-sex couples, but because of laws about who may be appointed as an administrator of an estate, the courts may have to appoint a “public administrator” (i.e. someone totally unknown to the deceased person) instead of the deceased person’s partner.

- **Right to Inherit Without a Will** A surviving spouse is entitled automatically to a large (and sometimes total) share of spouse’s property where spouse dies without a will. G.L. c. 190, § 1

This protection is not available to same-sex couples.

- **Tax Benefit of Unlimited Marital Deduction** Spouses (who are U.S. citizens) have an unlimited ability to make gifts and transfer property to each other at death without paying gift taxes or estate taxes until the second spouse dies. This is called the unlimited marital deduction and means that any property which passes from a deceased person’s estate to his or her surviving spouse is not included in the estate for tax purposes. 26 U.S.C. §§ 1041, 2523.

Upon death, all of the assets of the unmarried and deceased partner, including the deceased person’s share of assets owned jointly with the surviving partner, are added into the value of the deceased’s estate. I.R.C. §2040(a). For example, the full value of a jointly-owned home will be included in the deceased’s estate and the burden will be on the surviving partner to prove that he or she owned a share of the property which should not be included in the deceased’s taxable estate. This increases the value of the estate, and even though the surviving partner will gain sole ownership of the house, the estate may well have to pay taxes on the value of the home.

Finally, any estate taxes owed by a surviving same-sex partner must be paid immediately whereas married couples have an unlimited marital deduction and can defer their taxes until after the death of the second spouse. If a same-sex couple has not purchased adequate life insurance or doesn't have other assets to pay estate taxes, then the taxes could force the sale of the home. Note that when the second owner dies, the property will again be subject to estate taxes.

- **Right to Waive the Will and Take a Life Estate** Where a deceased spouse has a will but it does not provide adequately for the surviving spouse, the surviving spouse can waive the will and take a lifetime estate in at least one-third of the deceased person's probate estate. G.L. c. 191, § 15 (called the "elective share"). The surviving spouse has the right of dower, *i.e.*, the right to hold for life one third of all land owned by a deceased spouse at the time of death. G.L. c. 189, § 1 *et seq.* This requires the spouse to choose the elective share discussed above.

This protection is not available to same-sex couples.

- **Protections for the Family In Transition Period After Death** The surviving spouse and children have access to short term allowances (for food, housing and clothing to assist them in adjusting to their new status), as well as their right to six months of occupancy in the home of the deceased spouse without paying rent . G.L. c. 196, §§ 1, 2.

This protection is not available to same-sex couples.

- **Advance Payments** The surviving spouse and children have access to advance payments from the estate of the deceased spouse/parent for their maintenance. G.L. c. 193, § 13.

This protection is not available to same-sex couples.

- **Continuation of Insurance** A surviving spouse may continue to receive insurance coverage under a deceased spouse health insurance plan for up to 36 months. *See e.g.* G.L. c. 176J, § 9. *See also* 29 U.S.C. §§ 1161, 1163 (COBRA).

This protection is not available to same-sex couples.

- **Transfer of Motor Vehicles** A "pleasure vehicle" (*e.g.*, car or other vehicle) owned by a married person is presumed to have been owned jointly with his or her spouse so that the interest of the decedent passes automatically to the surviving spouse unless stated otherwise in a will. G.L. c. 90D, § 15A.

This protection is not available to same-sex couples.

- **Spouse's Right to Collect Monies Owed to and Property of Deceased Spouse** Wages owed to a deceased employee may be paid to the surviving spouse after a certain amount of time has passed and as long as the executor has not demanded the wages. (See, e.g., G.L. c.149, § 178A (generally); G.L. c.149, § 178C (public employees); G.L. c. 161A, § 19B (MBTA employees; wages paid to named beneficiary or if none, then spouse or next of kin); G.L. c 35, § 19B (county employees).

This protection is not available to same-sex couples.

- **Bank Accounts** After a spouse's death, a bank or credit union may pay the balance of monies in an account to the surviving spouse or next-of-kin in certain circumstances. G.L. c. 167D, § 33(banks); G.L. c.171, § 42 (credit unions).

This protection is not available to same-sex couples.

- **Stock Registration** A surviving spouse may register stock in his or her own name which had been owned individually by the spouse after the spouse's death if at least 30 days have passed and amounts do not exceed statutory limit. G.L. c. 196, § 9.

This protection is not available to same-sex couples.

- **Insurance Payments** A surviving spouse or heir-at-law (next-of-kin, i.e., blood relatives) may collect payments from an insurance company owed to the deceased person's estate which are \$10,000 or less as long as 60 days have passed, unless the estate itself makes a claim. G.L. c. 175, § 187E.

This protection is not available to same-sex couples.

- **Funeral Expenses** A life insurance company may pay \$250 to the executor or surviving spouse for funeral expenses. G.L. c. 175, § 134.

This protection is not available to same-sex couples.

2. Laws Relating to Government Protections, Including Workers' Compensation, Unemployment Insurance, Public Assistance, Transfer of Licenses upon Death, and Ability to Apply for Absentee Ballots and Other Documents for a Spouse.

A. Employment Issues

- **Mass Family and Medical Leave Act** Under the state version of the Family and Medical Leave Act (FMLA), an employee can take time off for a child's school meetings or an elderly relative's medical appointments only if they are related to the employee. For children, they must be related to the worker through blood or

adoption. For elderly relatives, they must be related through blood or marriage. G.L. c.149, § 52D.

These protections are not available to same-sex couples, except that those couples who have both adopted their children may be able to take time off for school appointments. As discussed above, these adoptions are not always possible. There is no secured right for a person in a same-sex relationship to take time off from work to help care for a partner's parent or other ailing relative, even if they live in the same household.

- **Federal Family and Medical Leave Act** Under the Federal Family and Medical Leave Act, a worker may take up to twelve weeks off every twelve months because of the birth or adoption of a child, or to care for a spouse, child or parent with a serious health problem. 29 U.S. C. §§ 2611(13) (definition); 2612(1) (eligibility for benefits).

These protections do not allow a partner in a same-sex couple time off to care for his or her partner, the partner's biological or adoptive child, or the partner's parent, even if they are all living in the same household.

- **Unemployment Benefits for Worker's Children** If parent is on unemployment, payments may be made to an unemployed worker with a dependency benefit for children. G.L. c. 151A, § 29.

This benefit will not be available to children of same-sex couples when the parents have not been able to do a joint adoption.

B. Public Employment Issues

- **Salary Protection for Family** A surviving spouse of a firefighter, police officer or corrections officer killed in the performance of duty shall be paid annually the maximum salary the deceased employee could have received. G.L. c. 32, § 100. If the surviving spouse remarries, any minor children are still eligible for some benefits.

This protection is not available to same-sex couples.

- **Line of Duty Benefits for Family** A one-time award of \$100,000 in "line of duty" benefits shall be paid to a surviving spouse (or certain family members) of a deceased firefighter, public prosecutor, police officer or corrections officer. G.L. c. 32, § 100A.

This protection is not available to same-sex couples.

- **Spousal Allowances** Widows or widowers of disabled, retired employees are entitled to annual allowance of \$6,000. G.L. c. 32, § 101.

This protection is not available to same-sex couples.

- **Cost of Living Increases** All benefits paid to surviving spouses of public employees (e.g., retirement allowance, pension or annuity) may be increased as the cost of living increases. G.L. c. 32, §§ 102, 103.

This protection is not available to same-sex couples.

- **State Pension System** Generally, under the Massachusetts government pension system, retired workers have several options for the payout of their pension. One option allows them to take a smaller amount while they are alive, but allows them to name a spouse, child, or certain other relatives as a continued beneficiary after the worker's death. This "joint and last survivor allowance" is the only way to provide substantial, ongoing protection for a named person. Under the law, the named beneficiary receives two-thirds of the benefits the retiree had been receiving after the retired employee dies. G.L. c. 32, § 12(2) Option (a).

The joint and last survivor allowance is not available for a same-sex couple. It is the option which provides maximum protection to the family of a deceased retiree. A retired worker who wishes to provide continued protection for a same-sex partner can select the "Cash Refund Annuity Option." This means that the beneficiary may receive the unpaid balance of the monies the worker contributed to the retirement system (usually around 10% of the total pension), but only to the extent the worker's contribution has not already been paid out. G.L. c. 32, § 12.

- **State Pension Protections for Surviving Spouse Where Worker Died Before Retirement** The Massachusetts state plan provides that a "Member Survivor Allowance" of two-thirds of the employee's pension amount shall be available to surviving spouses. G.L. c. 32, § 12(2)(c), (d). This is available only if the worker dies before retirement. The 2/3 calculation is based on what the employee would have been entitled to if he or she had died on the date of retirement.

This protection does not apply to a worker with a same-sex partner. If a state worker dies before retirement, only a tiny fraction of the total possible pension can be paid to a surviving partner.

- **Accidental Death Benefit for State Workers** The Massachusetts pension system also provides an accidental death benefit to the surviving spouse of a worker who dies because of an injury sustained or hazard undergone as part of his or her job. G.L. c. 32, § 9(1), (2)(a).

The accidental death benefit is not available to the surviving same-sex partner of a deceased state employee.

C. Worker's Compensation Protections

- **Protection for Family of Injured or Killed Worker** Workers' compensation is an insurance program intended to assist an employee and an employee's dependents (family or next of kin) if these people were wholly or partially dependent on the employee at the time of the employee's injury or death and the injury or death is job-related. G.L. c.152, § 1.

Gay and lesbian families are not included within the law's protection of family and next of kin.

- **Spouse Presumed to Be Dependent If Employee Injured** The workers' compensation program protects the interest of a spouse by conclusively presuming he or she was wholly dependent for support upon an injured employee. G.L. c.152, § 35A.

The partners of employees in same-sex relationships are not entitled to any protections, either as spouses or next of kin, thereby defeating one major purpose of the program.

- **Spouse Presumed to Be Dependent If Employee Killed** The workers' compensation program protects the interest of a surviving spouse by conclusively presuming he or she was wholly dependent for support upon deceased employee. G.L. c.152, § 32.

The partners of employees in same-sex relationships are not entitled to any protections, either as spouses or next of kin, thereby defeating one major purpose of the program.

- **Death Benefit for Surviving Spouse** In the case of a deceased employee, the workers' compensation program protects the surviving spouse by providing him or her with two-thirds of the working wage of deceased employee until such time as the surviving spouse remarries. G.L. c.152, § 31.

This protection is not available for same-sex couples.

D. Veteran's Issues

- **Employment Preferences for Veteran's Spouses** The law allows a surviving spouse or parent of a veteran killed in action or who died from service-connected disability incurred during a war to be accorded preference for civil service (along with others). G.L. c. 31, §§ 26, 28.

The protections for spouses do not apply to same-sex families.

- **Veterans' Services Available to Families** Veterans and their dependents (spouse, surviving spouse, child or parent) may use state Department of Veterans' Services for information, advice and assistance regarding employment, educational opportunities, hospitalization, medical care, pensions and other veterans' benefits. G.L. c.115, §§ 1, 10. There are even more extensive benefits at the federal level.

These protections are unavailable to same-sex families except where the veteran gave birth to or adopted a child. There are no protections available for the partner.

E. Abuse Protection

- **Spouses Entitled to Protection from Abuse** The laws concerning abuse and domestic violence allow spouses or ex-spouses to seek protection from abuse based solely on the circumstances of the case. G.L. c. 209A, §1

For an unmarried couple, there is no automatic protection because before examining the circumstances of the case, the person must prove either a shared residence or that the two were in a dating relationship. G.L. c. 209A, § 1.

F. Absentee Ballots

- The law permits a "family member" of a voter to apply for an absentee ballot on his or her behalf. G.L. c. 54, §89.

Given the number of laws which define "family" restrictively, it is far from certain that same-sex couples enjoy this protection.

G. License Transfer to Surviving Spouse Upon Death

- For a large number of professions, state law allows the surviving spouse of a registered professional who has died to carry on the business under the supervision of another professional. These include continuations of the businesses of:

- an insurance agent or broker. G.L. c. 175, § 174D.

- a registered pharmacist. G.L. c. 112, § 36.
- a registered dentist. G.L. c.112, § 53.
- a registered optometrist. G.L. c.112, § 73.
- a funeral director. G.L. c.112, § 83.

These protections are not available to same-sex couples.

H. Social Security and Old Age Benefits

- **Social Security Benefits for Entire Family** Under social security law, if a covered spouse is retired, disabled or dies, the other spouse may in some circumstances claim benefits for the benefit of himself or herself and any children based on the other spouse's work credits. The benefits extend to the other spouse and children up until the children reach age 16 and then the children only continue to receive benefits until age 18. 42 U.S.C. § 402 (b-f).

This protection is not available to same-sex couples.

- **Spouse's Increased Social Security Payments** Under social security law, if one person in a married couple was a lower earner because of other familial responsibilities, social security tries to address the inequity in social security payments by providing options for the other spouse. For example, if one spouse is covered by social security and the other has never worked, the non-worker can start collecting on the spouse's social security at age 62. An even more common example involves a couple where both parties collect social security, but one has a much higher benefit level than the other. In such cases, if the second spouse's benefit is less than one-half of the first spouse's benefit, the second spouse is eligible for increased benefits (up to a designated maximum) based on the earnings of the higher earning spouse. As a final example, in situations where the higher earning spouse predeceases the lower or non-earning spouse, that spouse (if of retirement age) is eligible for 100% of the former spouse's benefit amount in lieu of his or her own benefit. *See* 42 U.S.C. § 402 (e), (f).

Same-sex couples do not have access to these protections.

- **Social Security Death Benefit** Social security provides a one-time death benefit of \$255 for a surviving spouse (or a dependent parent if there is no surviving spouse). 42 U.S.C. § 402 (i).

This protection does not extend to same-sex couples.

- **Social Security Disability Protections** Under federal law, a worker who is disabled and eligible for social security disability benefits receives full benefits for himself or herself. The spouse also receives an additional one-half of that amount if he or she is raising children under age 16. If there are no young children and the other spouse is

at least age 62, then he or she is eligible for an additional payment based on the spouse's disability.

These protections are not available to same-sex couples.

I. Nursing Home Issues

Generally, state and federal law provide protections to married couples when one is institutionalized – for example, in a nursing home – and the other continues to live in the community. The goal of the law is to preserve the couple's resources and income so that the community-based spouse may meet his or her living expenses and the assets of the institutionalized spouse are available to pay for his or her care.

- **Unlimited Ability to Transfer Assets** Under laws and regulations dealing with the transfer of assets, an institutionalized spouse may transfer assets to his or her spouse on an unlimited basis with no loss consequence for eligibility for MassHealth. 130 C.M.R. § 520.019 (D)(1).

Except for spouses, MassHealth will look back to the three years preceding a person's application for benefits and assumes that any gratuitous transfers made were made for the purpose of qualifying for benefits. Thus, if a same-sex couple transferred assets as a married couple did, they could easily be disqualified from access to MassHealth for a period of several years.

- **Certain Assets and Home Protected from Spend Down Provisions** Under federal Medicaid law and the state MassHealth program which administers federal Medicaid benefits, when one member of a married couple needs nursing home care, the spouses must "spend down" their own assets (whether individually or jointly owned) before MassHealth (formerly Medicaid) will cover the costs of nursing home care. Certain assets are protected from the spend-down requirement, including their home in which one spouse is still living, as well as \$87,000 in cash or other assets for the non-institutionalized or "community" spouse, and \$2,000 in assets for the institutionalized spouse. See 130 C.M.R. § 520.016

These laws may be a burden or a benefit to same-sex couples.

Consider the situation of a same-sex couple with few to moderate assets which are jointly owned with rights of survivorship. Joint bank accounts and certificates of deposit of a same-sex couple are rebuttably presumed to be owned by the person in the nursing home. Thus, while the community partner can fight to protect these assets to some degree, there is no automatic set aside of \$87,000 in assets. Due to the joint ownership, the law is a burden because it requires a spend down of the joint assets which could deplete the resources of the community spouse.

(The principal way to provide any sort of “protection” is to have the couples assets owned individually so that the community partner’s assets cannot be counted, but this defies the economic unity couples try to attain, increases the burdens of probate and may be difficult for other reasons as well.)

On the other hand, consider the situation of a couple where one of the partners has significant assets in his or her own name. If he or she is not institutionalized, then that person can continue to enjoy his or her assets. But, if the wealthier partner is institutionalized, his or her solely-owned assets will have to be spent-down and the community partner will have no right even to the \$87,000 available to a spouse.

- **Protection of the Family Home** For purposes of eligibility for MassHealth, if a married person owns a home, the residence will not be a countable asset for purposes of either spending down assets or for state reimbursement to MassHealth. G.L. c. 118E, § 25; 130 C.M.R. § 520.008 (A). Moreover, any recovery by MassHealth after the institutionalized spouse dies will be delayed until the second spouse dies.

By contrast, the jointly owned home of an unmarried couple will not be shielded automatically from having a lien placed on it by the Commonwealth simply because the unmarried partner lives in the home. The lien can affect the partner’s ability to refinance or sell.

- **Allowances for Spouse or Community** The Division of Medical Assistance has standards for a “family maintenance allowance” and “monthly maintenance needs allowance” of the community spouse (the spouse who was not institutionalized) which allow additional assets of the couple to flow through to the community spouse. See 130 C.M.R. § 520.016 et seq. If the partner remaining in the community has income below a certain monthly minimum, he or she may look to the income of the institutionalized spouse to recover the difference between what she makes and the federally mandated minimum. 42 U.S.C. §1396 (r). It is also possible after a hearing for the community spouse to retain a greater share of combined spousal assets. G.L. c. 118E, § 21A.

By contrast, no such right to allowances from the assets or income of the institutionalized partner exists for a partner in a same-sex relationship. Once the partner is institutionalized on MassHealth, the community partner can no longer look to that person’s income for any support or allowances. Thus, even after a lifetime together, if one partner was a lower earner because he or she cared for children in the home, for example, the assets and income of the higher earner will remain off limits to provide the lower earner security in her old age.

3. **Laws Relating to Domestic Relations and Family Maintenance, Including the Rights and Obligations of Support During and After a Relationship, Division of Marital Property, and Evidentiary Privileges.**

A. **Laws Recognizing and Protecting the Confidential and Intimate Nature of the Spousal Relationship**

- **Duty of Support** Spouses have a general right to expect support from each other. The criminal laws even impose a penalty on a spouse (or parent) for abandoning a spouse (or child) without making reasonable provisions for their support. G.L. c. 273, §§ 1, 15A.

Same-sex couples do not have these obligations, but married same-sex couples would shoulder these responsibilities in addition to the protections of marriage.

- **Testimonial Privileges** Spouses have the right to share information, thoughts and ideas with each other without having to worry that someone will make them testify about those conversations in a civil or criminal legal proceeding. G.L. c.233, § 20(1); Massachusetts Rules of Evidence 504(b) (known as the “marital disqualification”).

Absent a development in the law, couples in a same-sex relationship have no protection for their private conversations, and could even be compelled to testify against each other in a criminal proceeding.

- **Right to Share Confidential Information with Spouse** Some laws are very specific in protecting conversations between spouses. For example, a worker has the right to share with his or her spouse confidential information about hazardous chemical substances to which the worker was exposed at work whereas any other disclosure would result in \$5000.00 fine. G.L. c. 111F, § 21.

This protection does not apply to conversations between a same-sex couple.

- **Duty of Fidelity** Spouses have the right to expect faithfulness from each other. There are criminal penalties for violating these obligations of marriage, even though they are seldom enforced. G.L. c. 272, §§ 14, 15.

Same-sex couples do not have these obligations, but married same-sex couples would shoulder these responsibilities in addition to the protections of marriage.

- **Spouse Can't Be Charged as Accessory to Crime** A spouse has an automatic defense against a criminal charge of being an accessory after the fact for harboring, concealing, or assisting a spouse before or after the spouse committed a felony. G.L. c. 274, § 4. This law simply takes note of emotional reality – who wouldn't help his or her spouse!?

Same-sex couples do not enjoy these protections.

B. The Right to Divorce

Generally, the law provides an orderly system for people to end their relationships. Divorce is both a benefit of marriage (at least one which is ending) and a burden in the sense that a person needs the state's involvement before they can permanently end a relationship. Property division laws recognize the contributions of both spouses to the marriage, even if one is the sole earner or a higher earner than the other, and can protect the more economically vulnerable spouse. Children also benefit by having a system which recognizes that decisions about custody, visitation and support will be made based on their best interests.

- **Equitable Property Division** Divorce provides an orderly and equitable sorting out of property and assets acquired during the marriage, no matter who "earned" them or whose name they are in. This includes pensions, 401(k) plans, business partnerships and other assets. G.L. c. 208, § 34.

Same-sex couples do not have access to the rules and system of divorce. See e.g. Collins v. Guggenheim, 417 Mass. 615, 617-618 (1994).

- **Transfer Without Tax Consequences** As a general rule, ex-spouses can transfer property at divorce without tax consequences in order to achieve a fair balance of assets. See e.g. 26 U.S.C. §1041.

If same-sex couples transfer property to each other worth more than \$10,000 at any time, including when they separate, they are subject to paying gift taxes.

- **Support After Divorce** Upon divorce, the court looks at the financial needs of both parties, including whether or not one spouse should pay support to the other on a short or long term basis to help compensate for time out of the job market spent raising children or supporting household needs. Support may be paid on a short-term basis to allow the non-earner spouse to get more education and possibly jump-start a career.

Same-sex couples are not presently eligible for spousal support, no matter how long they have been together or how needy one partner may be. Davis v. Misiano, 373 Mass. 261, 263 (1973). This is a matter which can

be taken up in contract, but very few people enter into such contracts. Wilcox v. Trautz, 427 Mass. 326, 332 (1998).

Even if there is a contract for support, a partner in a same-sex relationship cannot deduct from income taxes the amount spent on alimony, as could a divorced spouse who had been married. 26 U.S.C. §§ 62(a)(10), 215.

- **Forum for Child Custody, Visitation and Support Disputes** Divorce provides an orderly method for sorting out child custody, child visitation and child support issues. Any fit parent who wants visitation will be entitled to at least some visitation with their children.

Same-sex couples do not have access to divorce and thus don't have access to the conflict resolving rules of divorce. See also discussion at #4 below. Parents in same-sex couples who are not the legal parent of their children (by birth, or by adoption from DSS or through a private agency) must jointly adopt to ensure they will have access to their children upon separation. Even when they have done a second parent adoption, there are no established mechanisms in the law for sorting out custody, visitation and support.

In addition, many couples simply can't afford the joint adoption process, or are too hassled from the stresses of having young children to go through it. In those circumstances, a parent who has no existing legal tie must prove that he or she is a de facto parent which means, among other things, that the person has provided at least as much caretaking to the child as the legal parent. See E.N.O. v. L.M.M., 429 Mass. 824 (1999). This hurdle is not imposed on married parents so that a working mom or working dad with a high-powered job who does not do "at least as much caretaking" as the other parent will still have the opportunity to pursue custody and visitation with their children. Thus, a gay or lesbian partner and parent may be deprived of any opportunity for continued contact with his or her own children because the person did not meet the threshold of providing "at least as much caretaking."

- **Continuation in Spouse's Health Plan After Divorce** After a divorce, the ex-spouse still has access to economic protections, including the ability to continue in ex-spouse's health insurance plan. See e.g. G.L. c. 175, § 110I.

These protections are not automatically available to same-sex partners. Some employers provide these benefits voluntarily.

- **Government Assistance Seeking Overdue Support Payments** After a divorce, the ex-spouse may seek government assistance in tracking down spousal support and child support which are owed but not paid.

These protections are not available for spousal support, but may in some instances be available for child support.

- **Premarital Agreements** Spouses can enter into premarital agreements setting forth who will own what property and assets in the event of a divorce and like matters. But it will only be enforced by the courts if both parties made a full disclosure of their assets and liabilities, each had the opportunity to be represented by counsel, and the agreement is fair and reasonable both at the time it was made and the time it is enforced.

Same-sex couples can enter into contracts regarding assets, but the agreements are treated as contracts without the protections for each party listed above. Wilcox v. Trautz, 427 Mass. 326 (1998).

4. Laws Relating to Child Custody, Visitation, Step-Parent Adoption and Assisted Reproductive Technology, and Child Support.

Generally as discussed above, children born to married parents are considered the children of those parents. Children born or adopted into same-sex relationships are every bit as much the children of both parents and are virtually always the result of careful planning and a deep commitment. A child can only have two legal parents after going through the legal process of a joint adoption by both partners. The process is financially prohibitive for some people, too intrusive for others, and simply impossible for some folks who are struggling to keep pace with young children and other responsibilities. Thus, the usual rights of a parent are sometimes unavailable to one parent in a same-sex relationship. This situation is as much a detriment for the child as for anyone else.

A. Parental Rights and Obligations (Which Also Benefit the Children)

- **Child Support** Parents are responsible for the support of their children.

At present, in the absence of a joint adoption, these obligations are moral. In some circumstances, one parent may be able to establish that the other parent is a de facto parent and therefore has obligations of support, but this involves complicated legal proceedings and an uncertain outcome. If a joint adoption has been completed, a parent may be able to pursue child support through equity, or perhaps even under the paternity statute.

- **Presumption of Parentage for Child Born During Marriage** A child born to a married couple is presumed to be the child of both parties in the couple,

regardless of the facts of actual biology. G.L. c. 209C, § 6. This is also true in situations where the child is born with the assistance of donor sperm. G.L. c. 46, § 4B.

Children who are born to a same-sex couple (a matter which involves a tremendous amount of planning and forethought) have to go through a process of joint adoption in order to secure legal rights for both partners. Unfortunately, due to the pressures on young families and the costs involved, not all couples are able to secure this legal protection.

If a couple has not gone through the expense and legal process for a joint adoption, then if the non-biological or non-adoptive parent dies, the child will have no right to collect on that parent's social security. If the couple separates, absent a court finding of defacto parenthood, the other parent may be able to prevent the child and other parent from seeing each other.

- **Standby Guardian for Ill Parent** A parent can name a standby guardian in the event the parent's illness – whether short or long-term – makes it difficult to care for their child for a time.

A parent of a child who has not gone through the joint adoption process does not have this option.

- **Guardian Upon Parent's Death** A parent has the right to name a guardian for a minor child which designation which may take effect upon the parent's death. G.L. c. 201, § 3. These designations are given great respect by the courts.

A parent of a child who has not gone through the joint adoption process does not have this option.

- **Parent's Control Over Whereabouts of Child** Parents have the right of habeas corpus (return of custody of the child) to ensure that the child is not placed somewhere against the will of the parents. *See* G.L. c. 248.

A parent of a child who has not gone through the joint adoption process does not have this option.

- **Parent's Rights When Child in Ambulance** A parent has the right to accompany a sick or injured child in an ambulance. G.L. c.110, § 10A.

A parent of a child who has not gone through the joint adoption process does not have this option.

- **Parental Responsibility for Children's Misdeeds** Parents are responsible for the willful acts of children aged seven to seventeen which result in injury, death or property damage. G.L. c. 231, § 85G.

A parent of a child who has not gone through the joint adoption process does not have this obligation, unless perhaps the injured party were to prove first that the partner is a de facto parent..

- **Parental Responsibility for Child’s Rehabilitation Treatment** The parents must pay the costs of maintenance and treatment of a child in a public drug rehabilitation facility. G.L. c. 111E, § 17.

A parent of a child who has not gone through the joint adoption process does not have this obligation.

B. Legal Mechanisms to Sort Out Disputes Regarding Child Custody and Visitation

- **Divorce Laws** Generally, there are several chapters of state law which help adults to resolve child custody and visitation disputes under an orderly and predictable system of rules. For example, G.L. c. 208 (Divorce Law) allows the court to allocate custody and visitation of children based on their best interests in divorce proceedings.

Since same-sex couples cannot divorce, the child custody, visitation and support rules in the divorce process are not available to them. With respect to children born to a same-sex couple, upon separation, those couples may rely upon the equity powers of the Probate and Family Court to secure some degree of protection, although the proceedings are not parallel with those provided above. Equity is available both for disputes after a couple has done a joint adoption as well as when they are seeking a declaration of de facto parenthood.

- **UCCJA** G.L. c. 209B (Uniform Child Custody Jurisdiction Act) which provides a framework for interstate custody proceedings, including actions for divorce, separation, guardianship and care and protection.

Since same-sex couples don’t have access to divorce, the UCCJA is only rarely available to assist a same-sex couple. This law may apply in limited circumstances to a same-sex couple with an interstate dispute, but will not apply in most circumstances.

- **Paternity Law** G.L. c. 209C (Paternity Law) which sets out a framework for children born to a man and a woman who are not married to each other, including how to resolve custody and support of the child.

The paternity law is of no assistance to a same-sex couple who is seeking a ruling on their respective parental rights and responsibilities after the

couple's separation. See E.N.O. v. L.M.M., 429 Mass. 824 (1999). Some judges might allow a claim for child support if the couple who separated had previously completed a joint adoption.

5. Laws Relating to Taxes, Including Joint Filing of Income Taxes, Marital Tax Rates, Marital Tax Exemptions, Estate Tax Exemptions and Nontaxable Treatment of Employer Provided Spousal Health Insurance Benefits.

Generally, this document can only touch the surface of the many and various tax laws which affect married people and unmarried couples differently. For example, at the federal level alone, there are 57 provisions of the federal income tax code which distinguish between people based on marital status. Rep. No. GA01, OGC-97-16 (31 Jan. 1997), <http://www.gao.gov/AIndexFY97/abstracts/og97016.htm>. See 29 U.S.C. § 1738C; 1 U.S.C. § 7. The following provide basic illustrations.

- **Joint Filing** The law of tax is another area in which the married couple is treated as an economic unit. Other portions of this document have addressed the non-taxability of transfers between spouses during life, at divorce, and at death. Massachusetts largely models its income tax structure on the federal tax structure. Married couples may file income taxes jointly and combine their expenses for purposes of deductions. Although tax law is complicated, most experts agree that the tax rates for couples filing as “married filing jointly” are the most favorable when one of the two partners earns substantially less than the other.

Same-sex couples do not enjoy the right to file jointly. Since they cannot file jointly, they do not have the ability to aggregate expenses for purposes of claiming the maximum deductions and exemptions even though those expenses were likely paid out of one household budget. Filing as “single” provides less favorable tax rates for most taxpayers than would filing as a “head of household” or “married filing jointly.”

- **Tax Rates** Married couples may pay a “marriage penalty” or receive a “marriage bonus” because the tax code allows different standard deductions in determining the taxable incomes of couples and single taxpayers, has different rates for given levels of taxable income for the two groups, and provides the earned income tax credit without regard to marital status. Couples in which spouses have similar incomes generally can claim smaller deductions, face higher marginal tax rates, and use some or all of the earned income tax credit they would have if they filed individual tax returns and thus incurred marriage penalties. Couples in which one spouse earns much less than the other or doesn't work face the opposite situation – a marriage bonus. They may qualify for larger deductions, incur lower tax rates, and receive more earned income tax credits than under individual filing.

Same sex couples do not file as a household (although parent may file as “head of household” for herself and children) and thus incur neither the marriage penalty nor the marriage bonus.

- **Taxation of Benefits** When an employer provides benefits to an employee and his or her family, those benefits are not taxable to the employee, even though they are a form of compensation. 26 U.S.C. §106.

For same-sex couples, benefits provided to the “domestic partner” of the employee are taxable as income to the employee (unless the partner qualifies as a tax dependent).

For those employers who provide health insurance, there is an added burden on the employee who must pay taxes on the value of the benefit, as well as for the employer who must pay social security and unemployment taxes on the value of the benefit.

- **Tax Exemptions** For people of limited means, Massachusetts law allows a small exemption in property taxes on a family’s home after a spouse dies. G.L. c. 59, § 5, cl. (17), (17C), (17D).

These exemptions are not available to a same-sex family.

6. Laws Relating to Health Insurance Coverage for Spouses, Family Care and Medical Leave, Bereavement Leave, and Coverage of Spouses under Medical, Dental and Life Insurance.

A. Access to Family Insurance Policies

- **Health Insurance** In the area of medical insurance, health insurance policies may cover any two or more eligible members of family, including husband and wife, dependent children or any child under age nineteen. G.L. c. 175, § 108.

A same-sex couple cannot purchase a joint policy of insurance for health on the open market.

- **Spouse Included as Dependent** A “dependent” for purposes of a health insurance, as well as dental, and optometric, always includes a spouse and eligible children. See G.L. c. 176B, § 1 (medical service corporation); G.L. c. 176A, § 1 (non-profit hospitals); G.L. c. 176E, § 1 (dental service corporation); G.L. c. 176F, § 1 (optometric service corporation); G.L. c. 176J, § 1 (GMBP Health); G.L. c. 176M, § 1 (non-group health insurance plans).

A same-sex couple cannot purchase a joint policy of insurance for health

on the open market.

- **Spousal Protections in General Liability Coverage** In the area of general liability coverage (e.g. tenant’s insurance, homeowner’s insurance), “family coverage” is limited to an insured, an insured’s spouse, and unmarried dependent children under age twenty three. G.L. c. 175, § 111G.

Under Massachusetts law, a same-sex couple who own a home together is not entitled to a family policy. Some companies have begun underwriting such coverage, perhaps because of consumer demand or because of the non-discrimination laws. G.L. c. 151 B, § 4(4)(14).

- **Life Insurance** In the area of life insurance, when trying to obtain a policy for two or more members of a family, “members of a family” include only spouses and children. G.L. c. 175, § 123.

Life insurance options for same-sex couples are more restrictive than for married couples.

- **State and Municipal Employee Insurance** Under the state insurance laws for public employees (state and municipal), a “dependent” eligible for coverage through the employee may only be a spouse or eligible child.

State and municipal employees cannot obtain coverage for their partners or their partner’s children under state law. See also, Connors v. Boston, 430 Mass. 31 (1999).

B. Other Protections

- **Continuation Protection for Spouses** If a person is covered by insurance (other than state and municipal employees) and dies or is laid off, the coverage shall continue for up to 39 more weeks for the insured as well as his or her spouse and dependents. G.L. c.175, § 110G. *See also* G.L. c. 176A, § 8D (non-profit hospital service corporations); G.L. c. 176B, § 6 (same with medical service corporations).

Same-sex couples do not have this automatic protection. Some employers voluntarily provide coverage.

- **Continued Health Insurance After Divorce** A divorced spouse has the right to continued insurance benefits under former spouse’s plan. G.L. c.175, § 110I.

Same-sex couples do not have the right to this automatic protection. Some employers voluntarily provided coverage.

- **Bereavement Leave** In most workplaces, bereavement leave is only available if the employee is related by blood or marriage to the deceased.

These protections are not available to the same-sex partner grieving the loss of a partner let alone an “in-law.”

7. Laws Involving Legal Claims Related to or Dependent upon Spousal Status, Including but Not Limited to Claims for Wrongful Death, Intentional or Negligent Infliction of Emotional Distress, Loss of Consortium, and Victim’s Compensation Rights.

A. Protection for Families of Crime Victims

- **Family’s Right to Know** Among the rights provided to crime victims is the right of the “family” members (spouse, children, step-children, siblings, parent, stepparent, and dependent) to receive information about and be present at court proceedings, secure information about their protection, and receive family support services. G.L. c. 258B, §§ 2, 9.

The definition of “family” does not include a same-sex couple. It may be possible to argue that a same-sex partner is a “person who is wholly or partially dependent for support upon the victim at the time of injury or death” and therefore entitled to compensation, but this requires showing that the survivor was financially dependent on the deceased victim (which may not be true), and is the last thing anyone wants to argue about at a time of intense stress.

- **Compensation When Victim Killed** Another protection for families of crime victims is compensation of up to a total of \$25,000 for reimbursement of burial expenses, medical expenses of the deceased, counseling for the family, and lost wages. G.L. c. 258C, §§ 2, 3.

Same-sex couples are not included in the automatic protections for family members. In some cases, it may be possible to argue that a same-sex partner is a “person who is wholly or partially dependent for support upon the victim at the time of injury or death” and therefore entitled to compensation.

- **Victim Impact Statement** A person has the right to make a victim impact statement if the crime had an affect on the victim’s personal welfare or family relationship. G.L. c. 279, § 4B.

It is not clear if a person could make a statement if the harm to them was a negative affect on their family relationship with a same-sex partner.

B. Negligently Caused Death or Harm to Spouse

- **Wrongful Death** The wrongful death law provides that when someone negligently or recklessly causes another’s death, then that person shall be liable for compensatory and punitive damages. The first person entitled to compensation as a result of a wrongful death is the surviving spouse. G.L. c. 229, § 1. If there is a surviving spouse and child or children, all are entitled to compensation. The wrongful death law is the exclusive source of any claim for damages based on lost companionship when the injured party has died. G.L. c. 229, §2. Finally, the wrongful death law is the exclusive source of any claim for damages based on loss of financial support when there is death. *Doyon v. Travelers Indemnity Company of America*, 22 Mass. App. Ct. 336, 339, *rev. den.* 398 Mass. 1103 (1986).

The list of possible statutory beneficiaries who may bring a claim wrongful death does not include a surviving same-sex partner, no matter how committed, loving, or long-lasting their relationship.

- **Loss of Consortium** A spouse may sue for loss of consortium, *i.e.* loss of the spouse’s companionship, when his or her spouse is injured through another’s negligence.

Loss of consortium damages are not available to unmarried couples. Feliciano v. Rosemar Silver Co., 401 Mass. 141 (1987).

- **Wrongful Autopsy** A spouse may sue for “wrongful autopsy” if his or her decedent was improperly mutilated after death or an autopsy took place without authorization. *Kelly v. Brigham & Women’s Hospital*, 51 Mass. App. Ct. 297, 301 (2001).

This protection does not apply to same-sex couples.

8. **Laws Relating to Hospital Visitation, Medical Consent, Conservatorship, Guardianship, Anatomical Gifts, Disposition of Remains, and Rights of Burial in Family Cemeteries.**

- **Hospital Visitation** A spouse has an automatic preference for hospital visitation and access to intensive care for his or her spouse.

This automatic protection does not extend to a same-sex partner.

- **Family's Access When Patient Transferred** If a patient must be transferred to a different health care facility because a doctor refuses to honor the decision of a health care proxy, the transfer must be to a place reasonably accessible to the patient's family. G.L. c. 201D, §§ 14, 15.

This automatic protection does not extend to a same-sex partner.

- **Medical Decision-Making** A spouse or family member has automatic preference for making medical decisions for a disabled or incompetent spouse, absent contrary written directions from the spouse in a health care proxy. *See e.g. Shine v. Vega*, 429 Mass. 456, 466 (1999).

This automatic protection does not extend to a same-sex partner, although a person could prepare a health care proxy in advance. Many people do not prepare these documents and even if they do, often the documents are unavailable in an emergency.

- **Control of Deceased Spouse's Body** A spouse has the automatic right to take possession of a spouse's body and plan for the disposition of remains unless the deceased person has stated otherwise in writing. *Stackhouse v. Todisco*, 370 Mass. 860, 860 (1976); *Vaughan v. Vaughan*, 294 Mass. 164 (1936)(deceased spouse prevails in conflict with biological family), *In Re Spring*, 380 Mass. 629, 635 (1980)(next-of-kin take possession of body in absence of instructions).

This automatic protection does not extend to a same-sex partner.

- **Burial in Family Cemetery** A spouse has the right to be buried in a family cemetery or in any burial lot owned by a deceased spouse. G.L. c. 114, §§ 29- 33.

This automatic protection does not extend to a same-sex partner.

- **Anatomical Gift Decision-Making** A spouse has the right to make anatomical gifts for a deceased spouse if the deceased spouse has not already expressed his or her wishes about doing so. G.L. c. 113, § 8. After organ donations, custody of body goes to surviving spouse, next of kin or other responsible person under obligation to dispose of the body. G.L. c.113, § 13.

These automatic protections do not extend to a same-sex partner.

- **Right to Be Present at Autopsy** The next of kin may have own physician present at autopsy of person who commits suicide or dies under police custody. G.L. c. 40, § 36A.

This automatic protection does not extend to a same-sex partner.

9. Laws Prohibiting Discrimination Based on Marital Status and Familial Status.

A variety of laws protect people based on their status of being married or not. These include:

- **Housing Discrimination** Marital status discrimination in housing accommodations is prohibited and the Massachusetts Commission Against Discrimination has the power to investigate such claims. G.L. c. 151B, §§ 3, 4
- **Civil Service** The State Civil Service laws and municipal personnel systems require fair treatment of all applicants and employees without regard to marital status. G.L. c. 31; G.L. c. 31A.

10. Laws Relating to Obligations to Make Disclosures Regarding Spousal Relationships and to Take Other Steps to Prevent Conflicts of Interest and Self-Dealing.

A. General Obligations On Spouses to Disclose Relationships and Avoid Self-Dealing

Generally, the law assumes spouses and families will act in the best interests of their own family. As a result, in a wide variety of situations which raise the possibility of a conflict of interest between a person's family obligations and some other obligation or duty, the law requires people to disclose their family relationship, their business dealings, or ownership of particular types of assets.

- **Jurors** Jurors are required to disclose that they are married as well as the spouse's business and the name and address of spouse's employer G.L. c. 234, § 4.

This rule does not apply to same-sex couples, although people often voluntarily disclose relationships which may create an impression of impropriety.

- **Private Detectives** Conflict of interest rules in the context of obtaining a license to engage in the private detective business or a private security systems business require the support of three citizens not related to applicant by blood or marriage. G.L. c.147, §§ 24, 58.

This rule does not apply to same-sex couples, although people often voluntarily disclose relationships which may create an impression of impropriety.

B. Obligations of Public Officials

Generally, “immediate family” for purposes of the law defining the ethical conduct of public officials and employees includes only the employee’s spouse, parents, children, brothers and sisters. G.L. c. 268A, § 1.

- **Personal Financial Interest** Public employees must disclose any possible matter in which their job duties would appear to be of personal financial interest to the employee or his or her “immediate family.” G.L. c. 268A, § 1 et seq.

This rule does not apply to same-sex couples because they are not considered to be “immediate family.”

- **Improper Influence** Attempting to influence improperly a public employee or a member of his or her “immediate family” is a crime. G.L. c. 268A, § 1 et seq.

This rule does not apply to same-sex couples because they are not considered to be “immediate family.”

- **State Ethics** State Ethics Commission exists to ensure there are financial disclosures of public employees concerning them individually as well as associated businesses and those of “immediate family,” *i.e.* spouse and dependent children. G.L. c. 268B, § 1, et seq.

This rule does not apply to same-sex couples because they are not considered to be “immediate family.”

- **State Lottery** Federal, state, county and municipal employees and their “immediate family” members may not sell or be issued a license to sell lottery tickets. G.L. c.10, § 27.

This rule does not apply to same-sex couples because they are not considered to be “immediate family.”