

Executive Summary

The Minnesota State Bar Association is committed to fostering diversity and preventing discrimination in Minnesota's legal community, which includes lawyers and clients alike. To this end, the Minnesota State Bar General Assembly approved a resolution creating the Task Force on the Rights of Unmarried Couples in April 2008. In particular, the Task Force was charged as follows:

That, in light of the disparity between legal rights and protections available to same-sex couples as compared to different-sex couples, the President of the Minnesota State Bar Association create a task force to review the current state of Minnesota law and to make recommendations as to desirable changes, if any, in the law to address this disparity.

The Task Force prepared the following Report, which represents a “piecemeal” fix to a global problem – protecting the rights of unmarried couples under Minnesota law. In preparing the Report, the Task Force conducted a comprehensive review of Minnesota law to identify key instances of disparate treatment between unmarried and married couples. From this, the Task Force recommends to the Minnesota State Bar Association specific areas of law that are ripe for legislative change. Identifying certain areas for possible reform, while seeming to ignore others, should not be interpreted as saying that these other areas are irrelevant; arguably, unmarried couples are harmed by denial of even “minor” legal rights. Ultimately, though, the purpose of this report is to suggest ways in which to begin remedying the disparate impact of Minnesota law on unmarried couples.

Why Should Unmarried and Married Couples be Treated Equally Under Minnesota Law

Marriage, as a state-sanctioned institution, affords a couple certain legal rights and obligations. Marriage, as a social institution, affords couples a particular social status. Indeed, “marriage” is a globally-recognized means of affirming the importance and validity of the relationship between two people, and of affording that relationship legal protections based on the understanding that doing so provides benefits not only to the couple involved, but to society as a whole.

Unlike states such as Pennsylvania and Texas, Minnesota does not recognize common-law marriage, thus preventing committed cohabiting opposite-sex couples holding themselves out to the world as spouses from receiving the rights afforded those couples in state-sanctioned marriages. Though these opposite-sex couples have the ability to have their relationships recognized by the state, some choose not to for religious, personal or political reasons. In addition to avoiding disparate treatment of same-sex couples, Minnesota law should not penalize opposite-sex couples exercising their religious, personal or political beliefs around the institution of marriage.

Minnesota, though, openly limits the scope of the state-sanctioned institution of marriage to that between a man and a woman. And unlike a cohabitating heterosexual couple who may choose to marry, a committed same-sex couple is wholly excluded from Minnesota's state institution of marriage, and the rights and responsibilities that flow therefrom. The deprivation of access to marriage these couples experience works real harm. Though in most other respects indistinguishable from heterosexual couples who affirm their commitment through marriage, same-sex couples are systematically denied the legal protections and obligations marriage would provide, leaving these couples and their families vulnerable to concerns and disparities not faced by married couples. In many instances, there are no means available to these couples to arrange these protections outside of marriage, e.g., through private contract. This absolute exclusion fosters a state approved, second class-citizenship, and casts same-sex couples into a legal void.

Further, as stated in Minnesota Statute § 363A.02, "It is the public policy of this state to secure for persons in this state, freedom from discrimination in employment...housing and real property...public accommodations...public services...and education because of...marital status...[and] sexual orientation" because "[s]uch discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy."

As the report of Project 515 – Unequal Under the Law¹ – evidences, Minnesota's legal scheme encompasses an alarming number of statutes that impact unmarried couples differently than married couples, thereby violating Minnesota's codified public policy interest in preventing discrimination based on a citizen's marital status or sexual orientation. Though not all statutes examined by the Task Force or Project 515 deal with the enumerated matters of Minnesota Statute § 363A.02, the public policy reason remains. It is imperative to amend Minnesota laws to remove all instances of discrimination and ensure equal treatment for married and unmarried couples.

An Evolving Issue

The Minnesota State Bar Association undertakes this review of the rights afforded to unmarried couples against the backdrop of a significant debate about the degree of legal recognition, if any, which should be provided to same-sex couples. A number of states now recognize same-sex marriages – Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, and Maine – while others are considering legislation that no longer limits state-sanctioned marriage to only between a man and a woman. Minnesota, however, remains one state that continues to deny same-sex couples all access to marriage. This absolute limitation is the impetus for this Report.

Further, it is undeniable that various parts of Minnesota law continue to disparately impact unmarried couples over married couples. Such disparity based on a couples' legal status as married raises significant concerns for Minnesota's legal community. Though a comprehensive solution to this disparate impact exists – marriage for all persons and may

¹ *Unequal Under the Law: 515 Ways Minnesota Laws Discriminate Against Couples and Families*. Project 515. October 2007.

well be desirable – such a solution is not imminent, nor was evaluating a global solution part of this Task Force’s charge.

As this report reflects, the impact of the disparate treatment is far reaching and detrimental to couples who are not afforded the opportunity to seek the legal protections and obligations of marriage, or who, for various reasons, choose not to have the state sanction their relationships.

The legislative amendments recommended herein are priority areas that are critical to ensuring Minnesota’s legal system recognizes the very real fact that committed couples exist outside the state institution of marriage. Failing to recognize this simple fact results in a disservice to our fellow Minnesotans, who rely on Minnesota law for various legal rights and protections.

Where Next?

Steps must be taken to ensure that Minnesota law reflects the people it is meant to serve, which includes unmarried couples. This report provides the first steps necessary to provide unmarried couples the critical legal protections afforded to married couples. Indeed, the proposed legislative amendments should be seriously considered, as they provide useful benefits to couples and reflect Minnesota’s public policy against discrimination. Further, the provision of equal protections to unmarried couples does not disturb or infringe on the rights already afforded to Minnesota’s married couples. But we must remember that this Report only scratches the surface of laws that discriminate based on marital status. The changes proposed herein will not effectuate comprehensive equality for unmarried couples, and should not be seen as a sufficient alternative to a comprehensive solution.

Nevertheless, the Minnesota State Bar Association views the following proposals for discrete reform as limited – but potentially important – steps the State may take in the short term to afford unmarried couples critical legal protections, while moving toward a viable long-term solution to the problem of the wholesale exclusion of same-sex couples from the protection of our legal system.