

TYING THE KNOT: THE PROPOSED “MARRIAGE AMENDMENT” TO THE MISSOURI CONSTITUTION

Is there an existing Remedy or Provision in MO. Law Right Now?

In many ways, these laws or lack thereof actually impact not only homosexual couples, but heterosexuals living without a marriage contract.

Should the Amendment pass or fail, there may be a ripple effect for both type couples after consideration of the types of issues about which I am speaking today....

- I. Orders of Protection a/k/a Adult Abuse Orders
 - a. Adult Orders RsMO 455.010(5) “Family or Household Member” as defined, makes Act available to either married or unmarried individuals
 - i. Married – Remedy? Yes- “spouses, former spouses, adults related by blood or marriage”
 1. Available rights/remedies
 - a. Both Temporary and Full Orders
 - b. Temp Orders
 - i. Restraining the abuse
 - ii. Awarding possession of a residence
 - iii. Restraining communication
 - iv. Custody
 - c. Full Orders
 - i. Restraining the abuse
 - ii. Awarding possession of a residence
 - iii. Restraining communication
 - iv. Award custody & visitation
 - v. Award child support
 - vi. Award maintenance
 - vii. Order rent or mortgage paid in certain circumstances (jt interest or Pet alone generally)
 - viii. Order rent at another residence for Pet

- ix. Temporary possession of personal property
- x. TRO on mutually owned/leased property
- xi. Counseling
- xii. Housing fees returned for shelters, etc
- xiii. Court costs
- xiv. Medical of Petitioner

2. Limitations - Statutory - Temps

- a. No money orders
- b. No property rights (personal effects)
- c. No fees

3. Limitations – Colloquial- Full Order

- a. Custody
- b. Money
- c. Counseling
- d. Medical
- e. Fees

4. Court Generally says “file a divorce petition” – court doesn’t want to get involved...leaves people hanging

ii. Not Married – Remedy? Yes – “adults presently residing together or who have resided together in the past, adult in a continuing social relationship of an intimate or romantic nature w/ victim...or adults who have a child in common”

1. (child in common – see adoption later)

2. Available Rights/remedies are exactly same as above stated

3. Limitations – Court averse in general to more orders

- a. No custody – 2d parent adoption untested
- b. Counseling – attitude is just “get apart”
- c. No money – don’t want to get involved...

b. Child Orders RsMO 210.110(12)

i. Married – Remedy? Yes “parents, guardians, members of the child’s household” as defined

1. Available Rights/remedies

2. Limitations –

a. Prior custody orders prevent action

b. Must file MTM the prior order, even if emergent

ii. Not Married – Remedy? Yes – same by definition

1. Available Rights/remedies

a. The definition is more broad in its attempt to protect the CHILD from any harmful adult

b. But – what if there’s a parenting agreement? Could it limit the right to do something like a “prior custody order” at some time in the future

c. No parental definition other than biology, otherwise

2. Limitations – desire of court to GET OUT

II. Other Domestic Violence/Torts

a. Mandatory Counterclaim in DOM/Legal Separation suits

i. Liability for attorneys filing suit

b. Civil Suits available in all other situations

i. More flexibility for the practitioner

III. Property Rights

a. Married

i. Division of Property mandatory: RsMO 452.330

1. Acquired during marriage = marital property regardless of title

2. Marital property if transferred into joint names
 3. rights based on “separate” or contribution claims
- ii. Division of Debt Mandatory

b. Not Married

- i. Partition Suits -
 1. Title based
 2. No mandatory division of debt
 3. Automatic atty fee award to Plaintiff in R/Est case
 - a. No such automatic for DOM cases
- ii. Contracts & Equity
 1. Writings to set out rights
 2. No fees provided in equity by statute
 3. Make sure there's consideration in the K

IV. Support Rights (Maintenance)

- a. Married RsMO 452.335
 - i. Statutory right for either spouse to claim
- b. Not Married
 - i. No rights to support on breakup
 - ii. Domestic Partnership contracts
 1. No contracts tested in court

V. Custody of Children

a. Married

- i. Statutory RsMO 452.375
- ii. No presumptions as to gender in statute

b. Not Married

- i. No rights in general
- ii. Third party rights
 1. some awards in MO to neither parents
 2. may be a “third party” – although actively involved in everything child does
 3. mostly grandparents in case law at this time
- iii. Second parent adoptions as listed below
- iv. Parenting agreements/contracts – not tested

VI. Adoption

a. Married

- i. Private or agency
- ii. Stepparent – limited success

b. Unmarried

- i. Second parent adoptions
 1. recognized in 8 states & Dist of Columbia
- ii. Single parent adoptions
 1. many gay couples treated accordingly

VII. Support of Children

a. Married

- i. Statutory – RsMO 452.340
- ii. Benefits from Federal/state coffers by virtue of consanguinity

b. Unmarried

- i. No rights by statute
- ii. Contractual attempts – untested

VIII. Social Security Benefits

- a. Married
 - i. Spouse gets them on death or disability
 - 1. Right to claim based on 10 years marriage, whether married or divorced previously (the best ex-spouse wins)
 - ii. With children
- b. Unmarried
 - i. Partner has no rights/remedies per se if you're retired or disabled
 - 1. see recent case where grandmother was the caretaker and grandchildren got benefits when she died – they were found to be “dependent on her”
 - 2. May open the door for other claims in third party considerations
 - ii. With children
 - 1. No surviving parent benefits
 - 2. No child's benefit w/o legal finding or action like a 2d parent adoption

IX. Inheritance (Intestate Succession)

- a. Married –statutory provision
 - i. Ways to minimize tax consequences
 - ii. Retirement rollovers – no tax
- b. Unmarried – estate planning only
 - i. Tax consequences on transfer in most cases
 - ii. Inability to shelter like marrieds

X. Health Care and Insurance

- a. Married
 - i. Spouse and dependents entitled
 - ii. DOM – must be maintained during pendency - not lawful to drop
 - iii. COBRA rights after DOM
 - iv. Spouse received continued insurance tied to pensions in many companies
 - v. Family & Medical Leave Act “Parents, children & spouses”

b. Not married

- i. Select coverage in some states by some companies
 - 1. in MO, Anheuser Busch (same) & AG Edwards (same & opposite sex) in select circumstances
- ii. No rights or limits during breakups
- iii. Some states
 - 1. New Jersey – domestic partnership agreement allows one partner to make medical decisions for other
- iv. Need for living wills, medical directives, other preparation type contracts

XI. Income Tax Filing/Status

a. Married

- i. Filing status joint or not, your choice
- ii. Determine benefits of exemptions or deductions individually

b. Unmarried

- i. No rights in general
- ii. Claims of dependency made - iffy
- iii. New Jersey – joint filing allowed by domestic partnership law just passed

**TYING THE KNOT: THE MISSOURI MARRIAGE AMENDMENT
IMPACT ON THE PRACTICE**

Susan L. Ward, Esq
THE LAW OFFICES OF SUSAN L. WARD LLC

IS THERE AN EXISTING REMEDY/PROVISION IN MISSOURI?

ISSUE	MARRIED	NOT MARRIED
ORDERS OF PROTECTION:	Yes	Yes, w/ limitations on additional orders
OTHER DOMESTIC VIOLENCE/TORTS	Yes	Yes
PROPERTY RIGHTS	Yes	Yes, but limited in equity
DIVISION OF DEBT	Yes	Yes, but limited in equity
SUPPORT RIGHTS (MAINTENANCE)	Yes	No
CUSTODY OF CHILDREN	Yes	No
ADOPTION	Yes	No
SUPPORT OF CHILDREN	Yes	No
SOCIAL SECURITY BENEFITS	Yes	No
INHERITANCE (Intestate Succession)	Yes	No
HEALTH CARE & INSURANCE	Yes	No
INCOME TAX FILING/STATUS	Yes	No