

# THE NEW LAW OF *Love*

Since June 2011, couples of any gender have been able to enter into **CIVIL UNIONS** with their partners. But what are the legal ramifications of this not-quite-marriage law? BY GEMMA ALLEN

**I**t's name may not be romantic, but the Civil Union Act has set many Illinois hearts free. Technically known as the Illinois Religious Freedom Protection and Civil Union Act, it's Illinois' answer to the gay marriage question: It provides a status equal to marriage, but separate from it.

As a result, civil union couples in Illinois can be treated like traditional spouses in many rights that really matter: they can make life and death medical decisions for each other, inherit from each other and divorce each other. While the right to divorce can seem like the least appealing of benefits, it may be the most meaningful. It's hard to feel safe in a relationship that has no clear rules of property ownership or "rules of the road" should a break up occur. As Judge Michele Lowrance, author of *The Good Karma Divorce*, says, "Breakups are a part of our evolution, and frankly, the only way to avoid one is solitary confinement."

In a civil union, almost all the protections that marriage offers are present; it's the "almost" that will make this law and Illinois love lives more challenging. When we view the gut-wrenching battle over gay marriage on a federal level, it's easy to see why Illinois decided to avoid confronting the issue directly. But like every political compromise, the civil union solution is less than perfect.

## LESS THAN PERFECT UNIONS

Everyone needs to understand the Civil Union Act because it's available to any unmarried couple, whether in a same-sex or opposite-sex relationship. Part of the genius of the Illinois law is that it's not restricted to gay couples; it's a viable alternative to marriage for those who feel it may work better for them. But the pros and cons need to be carefully evaluated.

For same sex couples, most of the problems will flow from the fact that federal law trumps state law. As long as the federal Defense of Marriage Act (DOMA) is the law of the land, a "spouse" can only be of the opposite sex. That means federal spousal benefits that married couples take for granted, like joint tax returns, retirement benefits, insurance coverage and many aspects of health and welfare, will not be available to those who are civilly united. It's been estimated that there are over 1,000 such advantages tied to the federal definition of a spouse. Whether or not the estimate is accurate, it's impossible to deny that the "separate" status of life in a civil union is not all that equal.

The other glaring inequality of civil unions is their legal uncertainty amidst political war games in other states. The legal and social landscape of our country on same-sex relationships is constantly changing, which means crossing state lines can be dangerous to your legal status. While 19 states now recognize some form of same-sex relationships, they run the gamut from domestic partnerships to civil unions all the way to marriage.

When a couple in a civil union from Illinois moves or even travels to a state that recognizes none of the above, it's inevitable that lawyers and uncertainty will be involved. Recently, a newly civil unionized woman from Illinois suffered the tragic loss of her partner in a stage collapse in Indiana. In Indiana, no form of same-sex relationships are legally recognized, and only surviving spouses or family members technically have rights to sue for the kind of loss the surviving woman suffered. Time will tell if she'll be allowed to recover.

Judge Nancy Katz of the Cook County Domestic Relations Division has already granted one dissolution under the Act for an Illinois couple who had originally been married in Massachusetts in 2000, separated in 2002, and because they no longer satisfied the residency requirement in Massachusetts, could not divorce there or anywhere. She was literally able to release them from "legal limbo" due to our Civil Union Act. Judge Katz has officiated at perhaps a dozen civil unions. Most of the couples had been together in excess of 10 years; their civil union ceremonies celebrated the recognition of relationships that up to that moment had been lives lived "without any reliable legal protection."

Many same sex couples, however, are turned off by either the separate and not entirely equal status of civil unions, or by its worrisome lack of portability. Due to either principle or pragmatism, they say they'll just live together until the "real" (gay marriage) thing comes along.

## THE SECOND CHAPTER

For many couples living the second chapter of their love lives, civil unions have some real appeal. The very negatives of the "separate but equal" status of civil unions may well work for older couples who don't want to share their pensions, Social Security or estates and actually like the fact that the federal government will not view them as married. But opposite-sex civil union couples have to be just as legally guarded as same-sex partners. Both types of couples risk great uncertainty as to the future legal status of their union. It seems more than likely that the federal government could take away the civil union loophole for opposite-sex couples without extending those same benefits to same-sex couples.

Everyone contemplating a civil union from either the same-sex or opposite-sex side of the aisle needs to consult their lawyers, accountants and estate planners. If you or your partner already have children, or plan to adopt or have children, consult with the experts all over again. The civil union law is admittedly complex and far from perfect, but at least in Illinois, our relationship options just got a little more civil. ■