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**THE BATTLE OVER SAME-SEX MARRIAGE**  
After the wedding bells, gays face maze of legal obstacles

Monday, April 26, 2004  
**San Francisco Chronicle**  
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Harriet Chiang, Chronicle Legal Affairs Writer



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Gay and lesbian couples who were married at San Francisco City Hall may still be basking in the romantic glow, but some now face a dilemma of whether to call themselves legally wed if they want to buy a house, have a baby or get health coverage for both partners.

Veteran lawyers say they have never encountered a situation such as the one confronting the more than 4,000 same-sex couples who got married in San Francisco -- one in which the marriages are in jeopardy of being wiped off the books.

"We understand that these licenses are in a state of legal uncertainty," said Kate Kendall, executive director of the National Center for Lesbian Rights in San Francisco.

The California Supreme Court also seems stumped by the situation. Earlier this month the court asked lawyers for the city, state and anti-gay marriage groups whether it should declare the unions void if it rules that San Francisco officials exceeded their authority in issuing same-sex marriage licenses.

Lawyers for the city and a group of gay couples are urging the court to put off a ruling until the justices decide the heart of the issue -- whether state laws banning same-sex marriage are unconstitutional, a decision they say is at least a year away.

In a case similar to San Francisco's, an Oregon judge ordered Multnomah County officials last week to stop issuing same-sex marriage licenses but told the state to validate the marriages of the 3,000 gay and lesbian couples to whom the county had already issued licenses.

Many of San Francisco's newlyweds have begun

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to maneuver through a legal obstacle course in hopes of protecting themselves when they refinance their home or have a baby.

"It's wise to structure a safety net so if they're ultimately not recognized, people will be covered," said Vikram Amar, who teaches constitutional law at the UC's Hastings College of the Law. Attorneys who represent gay couples in cases involving family issues, property rights, estates and wills have been meeting to map out strategies for their clients without jeopardizing their marital status.

"We are all finding our way here, blindfolded in a dark room," said Kendall, one of the lawyers for six gay couples challenging California laws against same-sex marriage.

"In this moment of complete upheaval, everything has become more complicated and more expensive," said Deborah Wald, a San Francisco lawyer who has spent a decade helping same-sex couples adopt children. "I'm trying to figure out new and professional ways to say, 'I don't know.' "

Because of the couples' tenuous legal status, experts say those who have a child must still go through an adoption process to ensure their parental rights. They also may be forced to call themselves unmarried when dealing with mortgage companies, insurers and credit card companies. And lawyers say they should make allowances for the fact that if one partner dies, the survivor won't be entitled to the deceased's Social Security benefits.

All this takes time, effort and, in many cases, thousands of dollars in attorney fees.

There's an outside chance complications will arise even before the California high court rules. "The first case seeking to invalidate a marriage could be brought by a wealthy gay person who doesn't want to share with their now-ex-spouse," said Fred Hertz, a San Francisco lawyer who represents gay and lesbian couples who are ending their relationships.

Dave and Jeff Chandler of San Francisco have spent thousands of dollars in recent years for an array of legal rights that married couples take for granted. They've drawn up special trusts in case one of them dies and paid extra money for life insurance and for getting their tax returns done. "You can't take anything for granted," said Dave, who has been with Jeff for 11 years and married him at City Hall on Valentine's Day, their 8-month-old baby Jacob in tow.

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They are buying a home, and the title company had no problem recognizing them as married. But they had to shop around for a homeowner's insurance company that would recognize their union. Dave also is awaiting word from the bank where he works as a senior examiner about getting life insurance and long-term care benefits for Jeff.

"Not only is it a headache, but for the life insurance for Jeff we're paying higher premiums for less coverage," Dave said.

The Chandlers are not only newlyweds but domestic partners. It's a status that lawyers say gives them crucial backup protection if the marriages are voided. But there's a snag: Current law says couples can't be married and domestic partners at the same time. That will change once a strengthened partners law takes effect Jan. 1. In the meantime, Hertz says, "don't break up or die before Dec. 31."

Despite the steps they've taken, couples such as the Chandlers are already running into problems getting benefits that heterosexual married couples automatically enjoy, such as health insurance for spouses.

The catch here is that health coverage for an employee's domestic partner is included in the employee's taxable income. Coverage for the spouse of a married employee is tax-free.

Internal Revenue Service spokesman Jesse Weller noted that the 1996 Defense of Marriage Act limits marriage to heterosexual couples. "Nothing changes on the federal side for taxes imposed," he said.

In fact, whenever federal laws come up, lawyers are advising couples not to risk relying on their marital status. When refinancing a mortgage, Kendall said, couples should not list themselves as married because many lending laws involve federal regulations.

One of the biggest challenges for couples and their lawyers is figuring out how to protect their rights as parents.

If a couple had a child before they got married, lawyers are advising them to go through a stepparent adoption as if they are married and as domestic partners, in case the gay marriages are voided. It's a relatively simple task because the procedure is the same for both kinds of adoptions.

The more perplexing situation is if a couple

marries and then has a baby.

California law says married couples who have a baby are presumed to be the legal parents. But lawyers caution against gay couples relying on the law as the only basis for their status as parents.

Margot McShane and Alexandra D'Amario, who married Feb. 12, are expecting twins in July. Because D'Amario is carrying the babies and McShane is the egg donor, their lawyer is preparing a special court request to establish the Napa couple's parental rights.

It's time-consuming and will cost several thousand dollars, but McShane said it is necessary. The validity of same-sex marriages "could get duked out in court for years," she said. "In the meantime (the twins) both need parents, and we'd be in a bad situation if I didn't have equal rights and something happened to Alex."

In the more common cases, where one spouse is both carrying the baby and is the egg donor, lawyers are advising the other spouse to adopt the child, using the stepparent/domestic partner route. Regardless of whether the same-sex marriages are ultimately upheld, legal experts say couples should go to a lawyer and draw up their own agreement to decide who gets the house, the pension or the Christmas bonus if they decide to split up or one dies.

"Every relationship ends, either in death or disillusionment," Hertz said. "The couples can let the state take control of their lives or they can take control of it themselves."

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