

**WHAT'S THE DIFFERENCE?
COMPARISON OF LEGAL RIGHTS OF
MARRIED VS. UNMARRIED COUPLES IN NEW YORK STATE**

Marital status (or lack of it) determines many rights and obligations. Some differences can be compensated for by effective estate planning.

ISSUE	MARRIED	UNMARRIED	SOLUTION
Estate tax-marital deduction	yes	no marital deduction	charitable vehicles or GRITS, GRATS, GRUTS
Gift tax	unlimited gifts to US citizen spouses	limited to \$11,000 plus other Section 2503 gifts	charitable vehicles or GRITS, GRATS, GRUTS
Income tax filing	joint return	none	none
Intestate succession (no will)	spouse only, survivor gets all; if spouse and children, spouse gets \$50K plus half	no rights	will
Administration	spouse has priority to be administrator	no rights	will
Health care decisions	right to be present, make decisions	no rights	health care proxy, HIPAA designation
Right of children to inherit from parent	yes; paternity assumed	establish parental relationship	will; sign paternity documents or adopt
Guardianship of minor children	automatic preference	no automatic right	establish parenthood, involvement; will; 2 nd parent adoption
Medical decisions re: children	automatic	no automatic right	establish paternity; written instructions
Decisions re: burial/cremation	spouse decides	no rights	prepare affidavit stating choices
Medical insurance	yes	no	depends on employer
IRA withdrawal	roll over rights	no roll over rights, can be beneficiary	none
Annuity withdrawals	right to annuitize	usually no right	depends on company
Property rights on dissolution of relationship	statutory provisions; prenuptial agreements enforced	not law	make a contract and hope for the best
Right to inherit on dissolution of relationship	rights end with divorce; bequests canceled	not clear	revise documents promptly to remove gifts
Privileged communications	spousal privilege	no spousal privilege	none
Immigration	preference	negative impact	none
Real estate/coop right to take over	usual for spouse	not usual	depends
Right to sue for wrongful death	spousal rights for consortium, support	no rights	none, although now challenged in NY
Adoption	status positive fact	often a negative	depends
Social Security	survivor benefits	no rights	none

c. Barbara H. Cane 2004.

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