

## What's tougher to get than a same-sex marriage? A same-sex divorce

**'They've given us no choice but to be married forever,' says a Rhode Island woman. Her state doesn't recognize gay marriage, and the state where she was wed limits divorces to residents.**

By Sue Horton, Los Angeles Times Staff Writer

PROVIDENCE, R.I. -- On the morning of May 26, 2004, Cassandra Ormiston and her long-time partner Margaret Chambers arose early, hopped in the car and raced across the border into Massachusetts.

Then-Gov. Mitt Romney, a staunch opponent of same-sex marriage, had already ordered some Massachusetts cities to stop issuing marriage licenses to gay couples who lived outside the state, and Ormiston and Chambers hoped to get to nearby Fall River before the ban took effect there.

By afternoon, they were married.



Steven Senne / Associated Press

Cassandra Ormiston is surrounded by books and a typewriter in her Providence, R.I., home Wednesday, April 9. Ormiston married Margaret Chambers in Massachusetts in 2004, but the two are unable to get divorced in their home state of Rhode Island.

"I was so elated," Ormiston said. "When I was in college, I was Chapter 9 in abnormal psych. To be able to marry the woman I loved at the age of 58 -- my feet didn't touch the ground for days."

Then, after two years of marriage, the 10-year relationship soured, and Chambers filed for divorce. That put the couple into a legal limbo that is becoming increasingly common as same-sex couples married in one state try to divorce in another.

A judge in Family Court, where divorces are handled, asked the Rhode Island Supreme Court for a ruling on whether his court had jurisdiction, given that Rhode Island doesn't recognize gay marriage. The state Supreme Court decided that the women weren't legally married in the eyes of the state and therefore couldn't get divorced.

Chambers then tried filing for divorce in the state's Superior Court, but last month a judge there ruled that the court had no jurisdiction over marriage dissolutions. A Massachusetts divorce isn't an option because only residents who have lived in the state for a year can file there.

"They've given us no choice but to be married forever," said Ormiston. "Their worst nightmare."

Around the country, same-sex couples are discovering that getting divorced can be far more complicated than getting married. Sometimes, as with Ormiston and Chambers, the problems stem from living in a state with different laws from the state where the marriage took place.

But even in Massachusetts and California, where married gay couples have the same right to divorce as heterosexual couples, a clash between federal and state laws makes the process anything but equal.

Because federal law defines marriage as being between a man and a woman, the federal government doesn't extend many standard divorce benefits to same-sex couples. As a result, say lawyers familiar with the issues, even in states where gay couples are allowed to divorce, they face financial consequences that heterosexual couples don't. Among them:

- \* If a judge orders a heterosexual couple to divide a pension during a divorce, federal law allows the pension to be divided without triggering early-withdrawal penalties. Divorcing gay couples must pay the penalties.

- \* Court-ordered alimony payments can be deducted from federal income taxes in straight divorces, but not in same-sex divorces.

- \* In gay divorces, when a judge orders one party to give money or other assets to a spouse, those assets may be subject to gift or income taxes.

- \* When real property is transferred from joint ownership to one gay spouse by a court order, capital-gains taxes are often triggered.

Opponents of same-sex marriage say the issues were to be expected.

"These problems illustrate why it is a bad idea to redefine marriage in California in a way that is at odds with the rest of the country," said Andrew Pugno, legal advisor to [protectmarriage.com](http://protectmarriage.com), a coalition of churches, organizations and individuals supporting the California Marriage Protection Act on the November ballot.

Same-sex couples who choose to marry, he said, have to understand that "the federal government doesn't recognize any marriage that's not between a man and a woman."

Oakland attorney **Fred Hertz**, co-author of [A Legal Guide for Lesbian and Gay Couples](#), sees the federal government's stance as discriminatory. For nearly 200 years, he noted, the federal government recognized as legal any marriage that was recognized by the state it occurred in. That changed, he said, when Congress passed the Defense of Marriage Act in 1996.

The act, signed into law by then-President Clinton, prohibited the federal government from recognizing any same-sex relationship as a legal marriage. It also gave states the explicit right not to recognize same-sex marriages performed in states where they were legal.

"Imagine if this involved race, if black couples or Jewish couples or Asian couples were subject to different rules," said **Hertz**. "Would anyone think that's fair?"

States vary in their policies on gay marriages and divorces. Most states have passed statutes or constitutional amendments defining marriage as being between a man and a woman. But it is the courts that will ultimately rule on whether that means that married gay couples should not be allowed to divorce.

New York Gov. David Paterson has said his state will recognize gay marriages performed in other states, and gay divorces are proceeding in the state.

In Oklahoma, a judge unwittingly granted a divorce to two gay women who had married in Canada. The women had filed using just their first initials and last names. On discovering that both members of the couple were women, the judge revoked the divorce, on grounds that they had never been legally married. The state's Supreme Court ruled earlier this month that although the judge had the right to throw out the divorce, he erred in not giving the women proper notice.

Ormiston said she didn't go into marriage with the intention of divorcing. She said her relationship with Chambers, who has not talked to the press, started to deteriorate after they moved from a large house into a smaller condominium. When she ultimately moved out, it was with great sadness, she said, but she never imagined that divorce wouldn't be an option.

"I'm a 61-year-old woman who always votes and pays my taxes," said Ormiston, who is retired after a career working for nonprofit organizations and in real estate. "I'm a good citizen, a good American. And then to be told I don't have the same rights as everyone else."

Boston attorney Jo Ann Citron, who has handled gay divorces in Massachusetts and New York, said couples seldom anticipate divorce when they marry. Nevertheless, she said, "the single most important benefit of marriage is divorce . . . a predictable process by which property is divided, debt is apportioned and custodial arrangements are made for children."

In the absence of that option, Ormiston and Chambers are trying to work out an agreement on their own to divide property and assets. But Ormiston said she worries about the future.

"If I fall in love again to that degree and want to spend the rest of my life with a person, I want the option of marriage," she said.

But to marry again without first obtaining a divorce would be considered bigamy under the law.

The way Pugno sees it, situations like Ormiston's, though unfortunate, are predictable outcomes of bad public policy.

"California and Massachusetts have taken a radical departure from the norm in terms of marriage," he said. "Couples who take advantage of same-sex marriage laws in those places have to face that they will have a difficult time bringing those marriages back to their home states."

Ormiston said her legal setbacks have left her determined to keep fighting.

"I was not an activist before, she said. "But I will be one forever now."

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