LOVE IS LAW

PROTECTING LGBTQUIA+ FAMILIES IN A CHANGING LEGAL LANDSCAPE

PRESENTED BY:

pollock | begg
Dedicated to Family Law

TRELLIS LEGAL LLC

THE ESTATE PLANNING CENTERS
EPC
COULTER & MAY, P.C.

INTRODUCING: MARLENE VAN NELSON, ESQ. TRELLIS LEGAL LLC

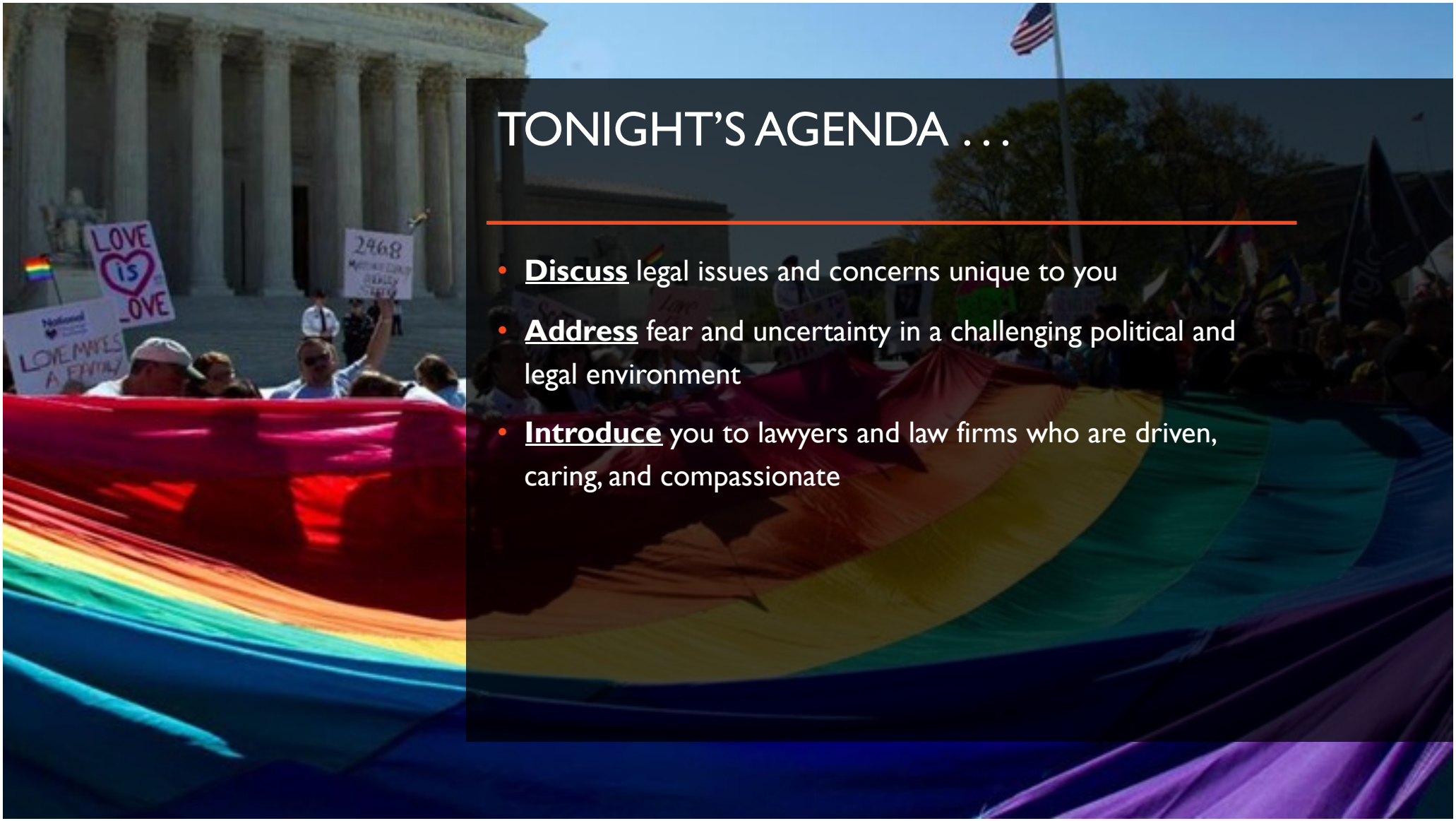
- **Legal Services:** entity formation, governing documents, contract review and negotiation, commercial lease review and negotiation, other transactional small business and non profit needs
- Template Library with operating agreements, intellectual property language, client contracts, etc,:
  - https://www.trellispgh.com/templates
- Free Resources: https://www.trellispgh.com/free-legal-resources
  - Free checklists, guides, and more to help you better understand your business's legal needs and determine next steps. Including our legal health checklist!
- Blog: https://www.trellispgh.com/blog
- Instagram: @Trellispgh
- Facebook: www.facebook.com/trellispgh
- marlene@trellispgh.com, 412-450-0298

INTRODUCING: MORGAN M. BONEKOVIC, ESQ. POLLOCK BEGG

- Family Law Attorney since 2017, handling cases involving divorce, custody, child support, adoption, and protection from abuse
- Member of the Pennsylvania and Allegheny County Bar Association Family Law and LGBTQIA+ Rights Committees
- Member of Pennsylvania Interbranch Commission for Gender, Racial & Ethnic Fairness LGBTQ Rights Committee

INTRODUCING: COLIN B. MAY, ESQ.
ESTATE PLANNING CENTERS AT COULTER & MAY, P.C.

- Estate and Trust Attorney with Coulter & May, P.C. since 2017
- LGBTQUIA+ Friendly Firm
- Planning for Families and Situations of all types
- Web: estateplanningcenters.com
- Email: cmay@ecpenters.com
- (412) 253-7526
- Free initial consultations!



TONIGHT'S AGENDA . . .

- **Discuss** legal issues and concerns unique to you
- **Address** fear and uncertainty in a challenging political and legal environment
- **Introduce** you to lawyers and law firms who are driven, caring, and compassionate

DISCUSSING LEGAL ISSUES

- Estate Planning and Administration
- Marital law and custody
- Small Business Planning

DISCLAIMER: THIS PRESENTATION IS NOT LEGAL ADVICE. THIS IS GENERAL INFORMATION AND DOES NOT CREATE AN ATTORNEY CLIENT RELATIONSHIP WITH ANY OF THE PRESENTERS. PLEASE ENGAGE WITH AN ATTORNEY FOR LEGAL ADVICE SPECIFIC TO YOUR SITUATION.

ADDRESSING FEAR AND UNCERTAINTY

- *Dobbs v. Jackson Women's Health*
  - Justice Thomas' hostility to fundamental rights
- The sky is **not** falling!
  - The law is on our side
  - Professionals who can help navigate a changing landscape
- We are thinking of **you**

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WHAT IS ESTATE PLANNING?

- Wills
- Trusts
- Powers of Attorney
- Healthcare Powers/Proxies
- Living Wills/Advance Directives
- Guardianship Directives
- Spousal Planning
- Tax Planning

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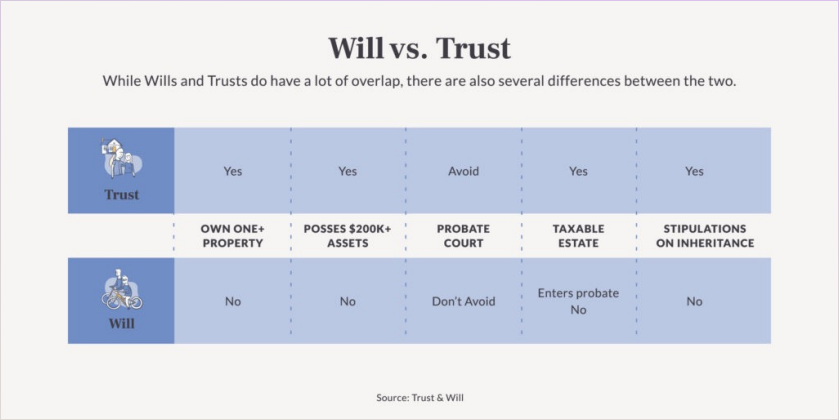
WILLS AND TRUSTS:



Will vs. Trust

While Wills and Trusts do have a lot of overlap, there are also several differences between the two.

	OWN ONE+ PROPERTY	POSSES $200K+ ASSETS	PROBATE COURT	TAXABLE ESTATE	STIPULATIONS ON INHERITANCE
Trust	Yes	Yes	Avoid	Yes	Yes
Will	No	No	Don't Avoid	Enters probate No	No

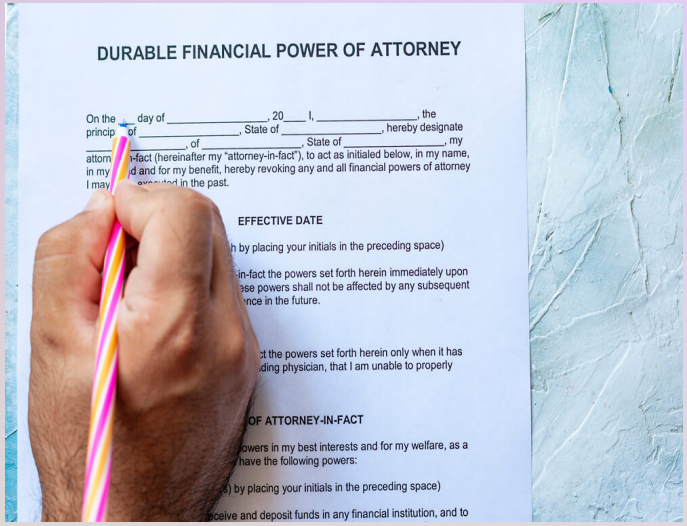
Source: Trust & Will

- Not just about who gets your property when you pass away.
- The people in your life!
  - Experiences with them
  - Who you know them to be
  - Ways you can protect them
- Protecting spouses and children
- Changes in Law or in life?
  - Change is inevitable, but…

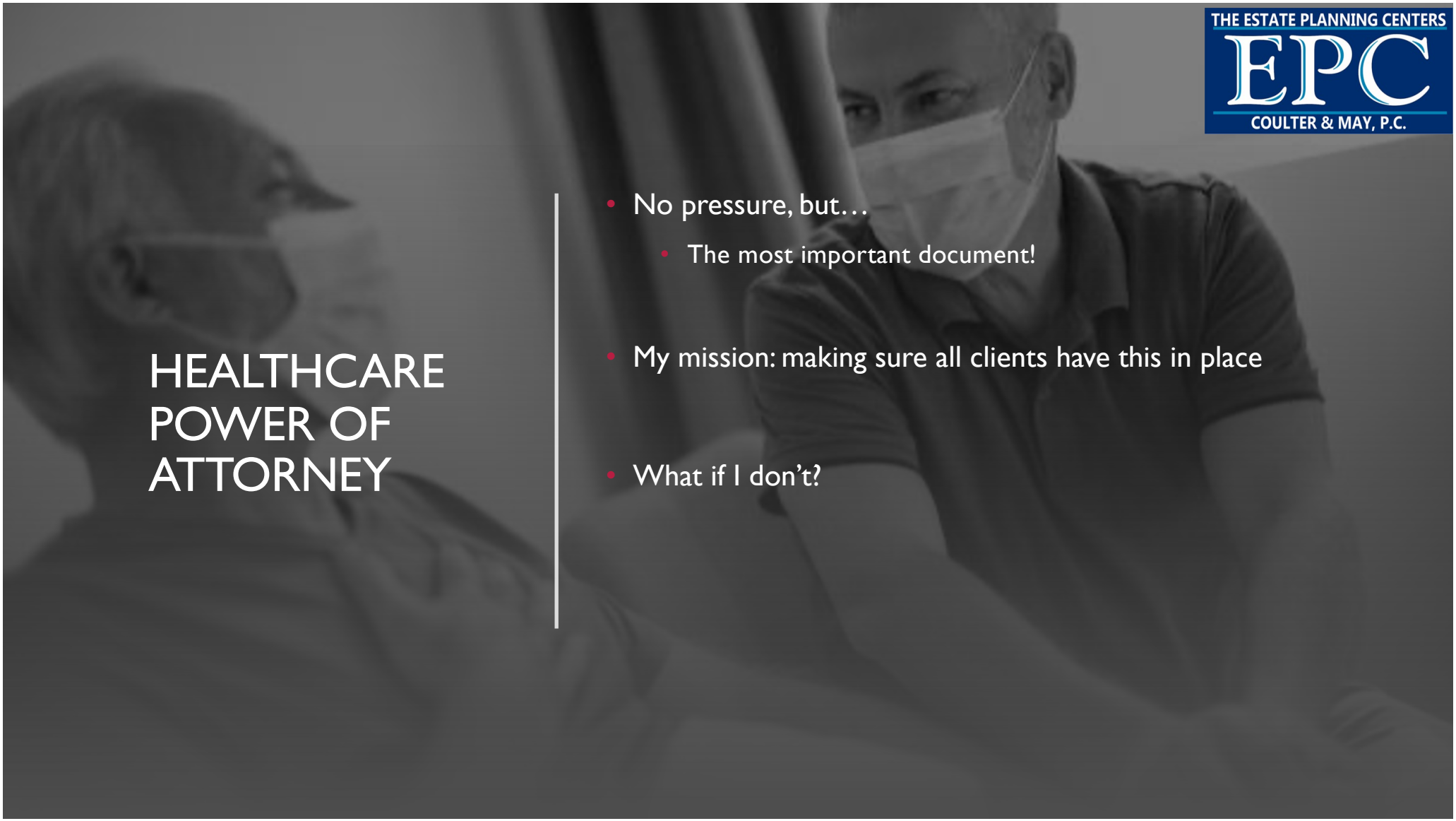
WILLS AND TRUSTS: AREAS OF CONCERN

- Ongoing financial protection for young children, natural or adopted
- Providing for those that you love
- Changes in marital law? Unlikely, but…
  - Planning Principle: "Live in the now, plan for the *what if?*"
- Financial and Estate Planning for Non-Married Persons
- Tax Planning

FINANCIAL POWER OF ATTORNEY
A/K/A FINANCIAL DURABLE POWER OF ATTORNEY



- Bad Bump on the Head. Who can take care of my things?
- Who is the most responsible?
- Polyamorous Couples:
  - Minimizing tension among loved ones
  - Financial support of loved ones in the event of crisis
- Same sex married couples?
  - Protective provisions in document



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HEALTHCARE POWER OF ATTORNEY

- No pressure, but…
  - The most important document!
- My mission: making sure all clients have this in place
- What if I don't?

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LIVING WILL
A/K/A ADVANCE DIRECTIVE

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HIPAA AUTHORIZATION

- HIPAA laws can create a barriers
- Every family is unique, yours is no exception
- Update as your life changes – maintain ongoing relationships with clients

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TAX LAWS: STATE AND FEDERAL

- **Death Taxes**
  - PA Inheritance Tax
  - Federal Estate Tax
- **Income Taxes** – Capital Gains and income tax
- **Local and State Taxes** – PA Realty Transfer Tax

DEATH TAXES: PA INHERITANCE TAX

- PA Inheritance Tax
  - 0%
  - 4.5%
  - 12%
  - 15%

DEATH TAXES: FEDERAL ESTATE TAX

- 40% after a sizable deduction
  - ~$11,000,000.00 individual
  - ~$22,000,000.00 married couple
- Most people won't have a federal estate tax issue!
- Well that's one less problem (for most), but…

INCOME AND CAPITAL GAINS TAXES

- IRAs to Spouses and others
  - Spousal Rollover
  - Non-spouses, inherited IRAs
- Real Estate –Capital Gain Potential
  - Stepped-up basis – wipe away capital gains
- Investments (non-retirement)

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LOCAL TAX: REALTY TRANSFER TAX

- Realty Transfer Tax Exclusions for:
  - Living Trusts
  - spouse, children, siblings, grandchildren, etc.
  - Under Will
- Be wary of transferring property to non-spouses!

GUARDIANSHIP OF MINOR CHILDREN

- Permanent Guardianship under Last Will and Testament
- Consider: protective trust for minor children?
- Standby Guardianship: for the here and now

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FAMILY COURT BASICS

Family Court is divided into two branches: Juvenile Section and Adult Section.

- Juvenile Section consists of cases involving dependency, delinquency, termination of parental rights and other similar matters.
- Adult Section deals with child support, custody, divorce and other issues.

"ONE JUDGE ONE FAMILY"

When the judge hears a case involving a family, the judge continues to preside over all matters involving that family throughout the entire case and even if the case crosses into the other section of the Family Division.

MARRIAGE AND DIVORCE

- Obergefell v. Hodges
  - Landmark case in which SCOTUS held, in 5-4 decision, that state bans on same-sex marriage and on recognizing same sex marriages duly performed in other jurisdictions are unconstitutional under the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution.
- Despite the *Dobbs* decision, there are no immediate changes to a person's right to marry.
- However, the Constitution is what the Supreme Court says it is, and there will likely be challenges to the *Obergefell* decision in the future.

MARRIAGE AND DIVORCE

- If *Obergefell* is overturned, it will likely only affect future prospective marriages and not invalidate current marriages.
- Likewise, divorce will not be affected for marriages that are not invalidated

CHILD CUSTODY

- Custody vs. Guardianship
- Two types of custody: legal and physical
  - Legal: The right to participate in major life decisions such as education, religious decisions and medical decisions.
  - Physical: Where the child is at any given time.
- Sole, primary, shared, partial, and supervised

HOW DOES A JUDGE DECIDE CUSTODY?

- The judge or Officer decides the custody arrangement based on what is in the **best interest of the child**. They give more consideration to factors that affect the safety of the child.
- 18 factors are listed by the law for the court to consider

- Examples:
  - Which party is more likely to permit continued contact between child and other party.
  - The need for stability in education, family and community life.
  - Attempts to turn child against other parent.
  - Which party attends to needs of child.
  - Willingness of parties to cooperate with one another.
  - History of drug/alcohol abuse of party or household member.
  - Mental and physical condition of party or household member.

CHILD CUSTODY AND STANDING

- What is standing?
  - Standing is the determination of whether a specific person is the proper party to bring a matter to the court.
- Why is this important?
  - Often when two people are not both the biological parents of a child, the Court will need to determine if the non-biological parent has standing to participate in custody litigation.

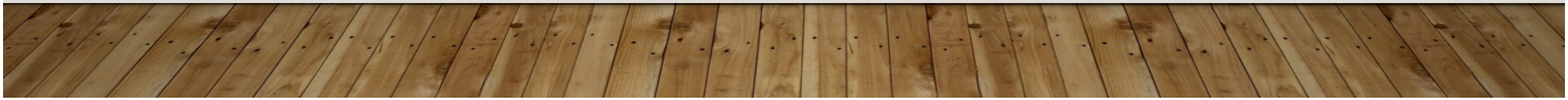
- In Pennsylvania, standing requirements limit who may seek custody of a child to the following individuals:
  1. A parent of the child
  2. A person who stands in loco parentis to the child (A 3rd party who acts as a parent)
  3. A grandparent or great-grandparent of the child under certain conditions
  4. Other individuals *under certain conditions*

HOW TO AVOID HAVING TO PROVE STANDING?

- Second Parent Adoption
  - Non-biological parent can adopt the child if they are not on the child's birth certificate.
- Name on child's birth certificate
  - Ensure you are on the child's birth certificate. If a hospital denies you this option, contact an attorney.

LEGAL PLANNING FOR YOUR BUSINESS

- Not too many specialized considerations
- If spouses or couple both involved in business potentially more beneficial for protection to put both on entity
  - If not, authorized agent resolution
- Account for authority/transfers in governing document
- Make sure operating agreement, bylaws, etc. match with estate planning documents



THANK YOU!

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