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New York Divorce and Family Law Blog

[Man Entitled to Inherit Same-Sex Spouse's Estate](#)

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Courts throughout New York continue to expand the rights of parties in same-sex marriages. For the first time, a judge has ruled that the survivor of a [legal same-sex marriage is entitled to inherit from his spouse's estate.](#)

Although New York will not recognize a same-sex marriage performed within the state, with a few exceptions, courts and state agencies will recognize marriages solemnized in Canada, Massachusetts and other states where same sex marriage is legal.

In Matter of the Estate of H. Kenneth Ranftle, Surrogate Judge Kristin Booth Glen designated J. Craig Leiby as the "surviving spouse and sole distributee" of H. Kenneth Ranftle, who died on Nov. 1, 2008, just five months after they married in Quebec.

This decision confirms that a person may provide for his/her same sex spouse to inherit his/her estate as a spouse. But this decision, raises an interesting question- in New York, a spouse cannot be dis-inherited. Each spouse has a right of election to take a prescribed minimum percentage of his/her spouse's estate. This right of election ensures that one spouse inherits something from the other.

The question then becomes, what would happen if Mr. Ranftle died with a will that made no provision for his spouse, Mr., Leiby- would the court allow Mr. Leiby to assert his right of election? It seems to me it would be that it would be inconsistent not to.

Likewise, had Mr. Ranftle died without a will (intestate), would Mr. Leiby have the right to inherit as his spouse, as would be the case in a heterosexual marriage?

If New York is going to recognize, as valid, marriages lawfully performed in jurisdictions that permit same sex marriages, then, Courts will have to recognize and enforce all of the rights that

arise from a lawful marriage. It follows that same sex spouses should have the rights of election and to inherit in cases of intestacy.