Residency and Jurisdictional Barriers to Same-Sex Divorce in New York

1. Same-sex couple marries in and lives in New York for two years.
   - One year after couple moves to “Mini-DOMA” state, one of the parties returns to New York.
   - Six months after returning to New York, party seeks a divorce.
   - Plaintiff cannot obtain divorce, as DRL § 230 residency requirement not satisfied.

2. Same-sex couple marries in and lives in New York for two years.
   - Eight years after couple moves to “Mini-DOMA” state, one of the parties returns to New York.
   - One year after returning to New York, party seeks a divorce.
   - In 1st or 2nd Dep’t divorce action, court cannot resolve financial issues, as long-arm jurisdiction lacking under CPLR § 302(b).* Court’s ability to adjudicate finances also questionable in 3rd Dep’t and unlikely in 4th Dep’t.

   - Three years after living in “Mini-DOMA” state post-marriage, one of the parties relocates to New York.
   - One year after moving to New York, party seeks a divorce.
   - Court cannot resolve financial issues in divorce action, as long-arm jurisdiction lacking under CPLR § 302(b).*

*See, e.g., Klette v. Klette, 167 A.D.2d 197 (1st Dep’t 1990); Lieb v. Lieb, 53 A.D.2d 67 (2d Dep’t 1976); Levy v. Levy, 185 A.D.2d 15 (3rd Dep’t 1993); Paparella v. Paparella, 74 A.D.2d 106 (4th Dep’t 1980). Note, however, that where the plaintiff spouse has met the residency requirement of DRL § 230 but the court lacks personal jurisdiction over the defendant under CPLR § 302(b), the court may dissolve the marriage under CPLR § 314(1), but it may not award maintenance, support, or counsel fees or dispose of any property belonging to defendant outside of New York.