

of New York, for five years, together with any interest due thereon, less such legal fees as he may be entitled to. • The requirement for completion of a certificate of completion from an approved food education program does not apply to a food store that has as its only full-time employees the owner, or the parent, spouse or child of the owner, and not more than two full-time employees. • A late application for an agricultural assessment with respect to land used for agricultural production within an agricultural district may be forgiven due to the death or illness of an applicant's spouse. • License or permit to sell alcoholic beverages may include questions as to whether applicant's spouse has ever had such a license, and whether applicant's spouse has ever been convicted of a crime. • Procedures for cancellation or revocation of an alcoholic beverage license may apply to a license holder who has failed to pay child or spousal support. • A person may not be denied an alcoholic beverage license solely because he or she is the spouse of a public servant. • All contracts pursuant to this section must contain and make reference to language that no persons will be discriminated against on the basis of marital status. • "Accredited investor" is defined, for purposes of the Arts and Cultural Affairs Law, to include an individual with a specified net worth or income, either joint with spouse or exclusive of their income and the income of their spouse. • When approving of certain contracts for the services of infants, courts may set aside certain proportions of the earnings of infants, taking into account, if the infant is married, the needs of the infant's family. • Information about assets held by a husband or wife may be furnished to the State Department of Social Services, Department of Mental Hygiene, mental hygiene legal service, representatives of boards of child welfare and children's court by banking organizations if requested by them. • Paper on which a bank may make a loan may include a mobile home chattel paper, including paper for a mobile home purchased to be used as a spouse's residence. • A promissory note may be secured by mobile home chattel paper if used as a residence of a spouse. • No person may serve on a board of trustees if such person or such person's spouse is related to one of the five highest paid salaried officers of that institution. • If the borrowers on any loan are husband and wife, joint credit life insurance and joint credit accident or health insurance may be issued on a loan pursuant to this section. • Savings and loans associations may make loans on mobile home chattel paper of a mobile home secured as a residence of a spouse. • A person may not be elected a director of a savings and loan association if that person's spouse is a director or top salaried officer of the association, or if one of such individuals is the spouse of the person's child, grandchild, brother or sister. • Where a person is a member of a credit union or directly eligible for membership, members of his or her immediate family (including his or her spouse) are also eligible for membership. • No person is eligible to be a director of a credit union if such person's spouse is a director or one of the highest salaried officers of that credit union. • A bank superintendent may deny an application if he determines that a license of the applicant's spouse has been previously revoked under this section. • Certain organizations, such as Masonic lodges, fraternal organizations, and labor unions, may unite and form a corporation for the purpose of acquiring a home for the aged and/or their dependent spouses or orphans. • A N.Y. corporation formed pursuant to this section organized to form a trust for the aged and/or their spouses or orphans, may place for adoption minors placed in their custody. • A person or person's spouse's beneficial ownership of ten percent or more of a corporation's outstanding voting stock shall create a presumption that such person has control of such corporation. • Spouses of persons employed by the canal system and occupying a N.Y. property belonging to it shall be deemed to be all canal-owned property when the employee is discharged from employment. • CPLR actions that must be commenced within three years include actions for an annulment of marriage on the ground of fraud. • In a matrimonial action, a court may exercise personal jurisdiction over a respondent or defendant even though he or she is no longer a New York resident. • In matrimonial actions, personal service must be done in a way prescribed by law. • Personal service may be made on an adult spouse with whom an infant resides. • For matrimonial actions, service may be made without the state in same way as in the matrimonial state. • For matrimonial actions, service by publication must be done in a way prescribed by law. • In the representation of an infant, the infant may appear by an adult spouse residing with the infant. • A court may order property to be distributed to the adult spouse of the infant to be used for the benefit of the infant. • Upon motion by an adult spouse living with an infant, courts may order settlement of a matrimonial action commenced for or on behalf of an infant. • In an action for separation or divorce, the nature and circumstances of a party's alleged misconduct, if any, and the time and place of each act complained of, if any, shall be specified in the complaint or counterclaim as the case may be. • Except in a matrimonial action, a party may not serve written interrogatories on another party and also demand production of particular of the same party. • In a matrimonial action, summary judgment may not be granted in favor of the non-moving party. • In a matrimonial action, no finding of fact in writing shall be necessary to the entry of a judgment on default. • Except in a matrimonial action, at any time not later than ten days before trial, any party against whom a claim is asserted, and against whom a separate judgment may be taken, may serve upon the claimant a written offer to allow judgment to be taken against him for a sum or property. • An action, except a matrimonial action, may be commenced by filing with the court clerk a submission of the controversy, acknowledged by all parties in the form required to entitle a deed to be recorded. • A court shall not conduct an in-camera interview of an infant in any action or proceeding to fix temporary or permanent custody or to modify judgments and orders of custody concerning marital separation, divorce, annulment of marriage and dissolution of marriage unless a stenographic record of such interview is made. • Except in matrimonial actions or where the reference is to a judicial hearing officer, a person to whom all the parties object may not be designated a referee.

# 1324 Reasons for Marriage Equality in New York State

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Leave of court and designation by the court of the referee are required for references in matrimonial actions, unless such action is brought by the Attorney General, or actions where a defendant is an infant. • Husbands and wives may not be compelled to testify about statements made to each other during their marriage. • A physician or nurse must disclose privileged information as to the mental or physical condition of a dead patient when the privilege has been waived by the surviving spouse. • A person shall not be excluded or excused from being a witness by reason of his interest in the event or because he is a party or the spouse of a party. • An original certificate of a marriage made by the person by whom it was solemnized within the state, or the original entry thereof made pursuant to law in the office of the clerk of a city or a town within the state, is prima facie evidence of marriage. • Personal property exempt from application to satisfy a money judgment includes an award for support of the wife or the wife is the dependent debtor. • The homestead exemption from satisfaction of a money judgment continues through the lifetime of a surviving spouse. • If the earnings of the judgment debtor are subject to deductions for alimony, support or maintenance for family members or former spouses, the amount withheld from the judgment debtor's earnings shall not exceed the amount by which 25 percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings. • In describing income execution for support enforcement, "order of support" is any temporary or final order, judgment, agreement or stipulation incorporated by reference in such judgment or decree in a matrimonial action which directs the payment of alimony, maintenance, support or child support. • Where income paid is compensation to a debtor for personal services, the amount withheld shall not exceed a certain percentage of the debtor's earnings where the debtor owes spousal or child support. • An order of attachment may not be granted in a matrimonial action. • County clerk entitled to a fee of five dollars for preparing a copy of a marriage record. • A person shall be subject to discrimination in his or her civil rights or harassment in the exercise of such rights on the basis of marital status by any firm, corporation, institution or the state or any agency or subdivision of the state. • Petition for change of name shall indicate whether petitioner owes any child or spousal support obligations. • Any person may, upon marriage, assume a new name. • No person shall be imprisoned for longer than three months for failure to pay no more than \$500 in alimony or other payments due because of matrimonial or divorce actions. • Although a person sentenced to imprisonment for life is considered civilly dead, that person may marry while on parole or after discharged from parole. • Nothing in this article contained shall be construed to bar a right of action for the recovery of chattel, money or securities, or the rescission of a deed to real property that was transferred in contemplation of a marriage that did not occur. • When certain positions are eliminated, demotion or replacement is made in the inverse order of the original appointment, except that the spouse of a fully disabled veteran is deemed to have been appointed 60 months earlier than the actual date of appointment. • Survivor's benefits agreed to between the state and employee organizations shall be paid to surviving spouse and children (and other similar agreements extend to spouses and children as well). • A confidential survivor's benefit shall be paid to employee's surviving spouse and children in the same proportion as the death benefit provided by the workers compensation law. • Contracts of health insurance for state employees shall include certain persons working for the public organizations of the state and their spouses and dependent children. • Each employee shall be entitled to have his spouse and dependent children included in state employee insurance coverage upon agreeing to pay his contribution, if any, to the cost of such coverage for such dependents. • Certain health insurance coverage is available to un-remarried spouse and dependents if the civil service individual is covered at time of death. • Certain health insurance coverage is available to un-remarried spouse and dependents of deceased civil service individual. • The Commissioner of correctional services may permit an inmate (except an inmate confined for death) to leave a correctional facility temporarily upon the death of a husband or wife. • Whenever any person has been convicted and sentenced to imprisonment for life, his or her husband or wife may apply to the Supreme Court to care for property. • A petition of appointment for the care of property of a person who is imprisoned for less than life may be made by a prisoner's husband or wife. • To the support of the prisoner's spouse and children. • If a physician at the request of the superintendent of a correctional institution determines that an inmate is in fact mentally ill, the physician shall make out a certificate to this effect, which shall be delivered to the husband or wife of the inmate. • Regarding the commitment to an institution for the retarded in the department of correction, a copy of certification by a physician that the inmate should be delivered to such a facility shall be delivered to husband or wife of the inmate. • The spouse of a guard or correctional employee may elect to receive the actuarial equivalent of the employee's pension at the time of retirement. • Certain benefits will be paid to a widow of a guard or employee of the state correctional system until she is married again. • No female detained on civil process, or for contempt, or as a witness, shall not be permitted to be kept in the same room with a man, except her husband. • A husband and his wife may be put or kept together, in a room wherein there are no other prisoners. • A sheriff of a local correctional facility or a designee may permit an inmate to visit certain relatives, including a husband or wife, if they are ill and death is imminent. • If a convicted person does not indicate to whom such person's body shall be delivered, or if the person's request is contrary to law, the Commissioner may deliver the convicted person's body to a relative by blood or marriage. • "Leave of absence" is defined as a privilege granted for an inmate to leave the institution and visit (or attend the funeral of) his spouse or other family members. • The superintendent of a county tuberculosis hospital shall cause to be kept proper accounts and records of the admission of all patients, including their marital condition. • Upon application, a spouse may receive a copy of a coroner's report. • The court may as a condition of an adjournment in contemplation of dismissal order in a misdemeanor complaint charging violence between spouses order that defendant participate in an Education program regarding spousal violence. • Family court jurisdiction over certain family offense matters, including such offenses between spouses or former spouses. • The court may issue a temporary protective order in a pending complaint alleging a violation of the crime between spouses or former spouses. • N.Y. Debt. & Cred. § 72 (2007) Where a petitioner's wife resides outside the state, the court may, upon the application of any creditor, make an order, requiring the petitioner to bring his wife before the court at the hearing or trial so that she may be examined as a witness. • Any creditor may contradict or impeach, by other competent evidence, the testimony of the insolvent or of his wife. • If there is reason to believe that a debtor or a spouse of a debtor has embezzled trust property, a judge may cause the debtor or the spouse of the debtor to come before the court to be examined. • Incestuous and void marriages (ancestor/descendant, brother/sister, etc.) are defined and notice given that any person knowingly solemnizing such marriage may be fined and/or imprisoned. • Marriage is defined as void if contracted by a person who is still married to another. • Marriages including marriage to an underage spouse, marriage to a spouse with a cognitive or physical impairment, an involuntary marriage or a marriage by fraud are defined as void or voidable. • A party may marry after a former marriage has been dissolved by divorce. • Marriage is defined as a civil contract requiring the consent of the parties. • A marriage may be solemnized by people including clergy, a judge, or specified public officials who have specific duties and obligations. • A witness and public official acting as husband and wife are required in order for a marriage to be solemnized. Opt-out requirements exist for religious, Quaker or other recognized denominations that have a manner of solemnization practiced prior to the statute's enactment. • Parties to a marriage must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. • It shall be necessary for all persons intending to be married in New York State to obtain a marriage license from a town or city clerk in New York State and to deliver said license within sixty days to the clergyman or magistrate who is to officiate before the marriage ceremony may be performed. • No application for a marriage license may be denied solely on the basis of a positive

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# Introduction

## DEFINING MARRIAGE

What is “marriage?” While some perceive it as having an absolute and immutable definition, even modern dictionaries recognize that “marriage” has multiple meanings, with definitions of marriage ranging from “the relationship between spouses” to “any close or intimate union.”<sup>1</sup> Still, most people can probably agree that today marriage in the United States is to a large extent about commitment, mutual economic and emotional support, and love. But marriage is also about the law. For the two people who enter into it, marriage is the gateway to a vast and vital array of legal rights and responsibilities, the overwhelming majority of which cannot be secured through any other means.

This report seeks to catalog all of the legal rights and duties that New York statutes and regulations confer on married individuals. As the pages that follow demonstrate, the panoply of rights and responsibilities that accompany marriage is vast and far-reaching, and ranges from the profound to the mundane. Many of the 1,324 statutes and regulations documented here involve literally life and death matters, or give special privileges to help couples support each other and their children. A few examples of these laws include provisions that:

- Ensure that one spouse may not disinherit the other, and that a surviving spouse may elect to take a share of his or her deceased spouse’s estate against the decedent estate’s wishes (N.Y. EST. POWERS & TRUSTS § 5-1.1-A, listed on page 23);
- Guarantee that a child born to a married couple shall be deemed the legitimate and natural child of the husband and wife for all purposes, including custody, visitation, and child support, even if the child was conceived through artificial insemination by a third party (N.Y. DOM. REL. § 73, listed on page 16);
- Award priority in public housing assignments to the widows of veterans (9 N.Y. COMP. CODES R. & REGS. § 1727-1.1, listed on page 67);
- Enable spouses of military servicemembers to attend New York community colleges at the same cost as New York residents (N.Y. EDUC. § 6305, listed on page 21);
- Protect a married person from being compelled to testify in a court proceeding about communications with his or her spouse during marriage (N.Y. C.P.L.R. § 4502, listed on page 12); and
- Require a spouse to continue supporting his or her ex-spouse, even after divorce, if without such support the recipient spouse would be otherwise incapable of self-support and therefore likely to become a public charge (N.Y. GEN. OBLIG. § 5-311, listed on page 29).

Other benefits and duties described here, although seemingly trivial, nevertheless serve to underscore the extraordinary breadth of marriage-related law in New York, and how minutely interwoven this body of law is in — and how diversely it impacts — people’s everyday lives. For example, under New York law, a spouse has first priority in deciding whether to donate the organs of his or her deceased spouse (10 N.Y.

COMP. CODES R. & REGS. § 405.25, listed on page 72), and the spouse of a senior citizen may access the services of publicly-funded senior service centers whether or not the spouse is sixty years of age or older (18 N.Y. COMP. CODES R. & REGS. § 459.2, listed on page 89). A spouse may even assume his or her deceased spouse's commercial fish, lobster, or crab license (N.Y. ENVTL. CONSERV. § 13-0328, listed on page 23)!

New York law also recognizes that people in intimate relationships may not always be — or appear to be — objective and neutral with respect to matters which touch upon their loved ones. Thus, the law imposes responsibilities on married couples — for example, financial disclosure reporting requirements for married elected officials which are designed to prevent conflicts of interest (see, e.g., N.Y. PUB. OFF. § 73-A, listed on page 41), and provisions which bar spouses of convicted criminals from obtaining certain types of licenses, such as a bingo operator's license (N.Y. GEN. MUN. § 476, listed on page 28) or a license to sell alcoholic beverages (N.Y. ALCO. BEV. CONT. § 110, listed on page 10). The sheer immensity and variety of the laws recited here demonstrates the degree to which the institution of civil marriage permeates state law and also, in many ways, defines the everyday experience of married couples in New York.

While New York law is the focus of this report, it is important to note that federal law extends an equally wide safety net of rights and responsibilities to married individuals. A similar compendium prepared by the federal government's General Accounting Office (GAO) in 1997 and updated in 2004 found that fully 1,138 additional federal statutes confer benefits, rights, and privileges on married couples.<sup>2</sup> These federal marriage-related laws relate to such crucial benefits as: the eligibility of spouses and divorced spouses (as well as widows and widowers) for Social Security payments computed based on their marriages, rather than on their individual earnings; immigration priority for spouses of aliens who are granted asylum or receive special status by virtue of their employment in the U.S.; the ability of spouses to file joint tax returns; exemptions from gift and estate taxes for property given or left to a taxpayer's spouse; the eligibility of individuals whose spouses receive Medicaid benefits for medical assistance themselves; the entitlement of veterans' surviving spouses to pensions and preferences in federal employment; and the protection of spouses under federal family violence laws.

## A LEGAL LIMBO FOR SAME-SEX COUPLES

Most of the protections and duties outlined in this report cannot be secured by any means other than through marriage. They are given to people who say "I do," whether these individuals realize it or not. In fact, civil marriage is embedded so deeply in our society, and its legal status so universally recognized, that the extent of its benefits is often taken for granted by opposite-sex couples. Indeed, this legal certainty created by marriage is one of the attributes that makes it such a potent source of protection for families. Married couples and their children can predict with relative confidence how they will be treated in each of the situations implicated by the 1,324 rights and responsibilities outlined in this report.

The same cannot be said for same-sex couples and their children.

It is true that New York's legislative, executive, and judicial branches have accorded marriage-like treatment to committed same-sex couples in a number of important contexts. For example, New York has recognized that committed same-sex couples are entitled to the same protections as opposite sex couples with respect

## TESTIMONIALS

### Kitty Lambert and Cheryle Rudd

Kitty Lambert and Cheryle Rudd have been together for seven years. They moved to Buffalo four years ago from Arizona. At earlier points in their lives, both were married to men, and between them they have five children and twelve grandchildren.

Cheryle has Complex Partial Seizure Disorder and periodically must be taken to the emergency room when having an attack. Cheryle's first seizure after moving to Buffalo occurred in 2004. When Kitty took Cheryle to a local hospital, emergency room personnel refused to accept Kitty's out-of-state medical proxy for Cheryle. Treating Kitty as a legal stranger to Cheryle, they made Kitty leave the room and tried to obtain the necessary medical information from Cheryle, who was disoriented and unable to respond.

Cheryle was eventually able to provide the name of a daughter living in Arizona. When reached on the phone, the daughter became upset, as she had always relied upon Kitty to be the person in charge of her mother's medical treatment and as a result was not familiar with the medical details necessary to assist her mother when a seizure occurred.

When hospital personnel finally turned to Kitty at the daughter's insistence, they asked about the nature of Kitty's relationship to Cheryle. Upon being told that they were lesbians in a loving and committed relationship, the doctor expressed shock and became uncomfortable with the situation. When Kitty inquired with administrative staff about procedures for obtaining a medical proxy for Cheryle that would be recognized in New York State, they ridiculed Kitty because she and Cheryle were a couple.

Having both been married before, Kitty and Cheryle were accustomed to having access to the many legal protections marriage provides to two people in a committed and caring relationship. This time, however, because they were of the same sex, Kitty and Cheryle experienced what it meant to have those rights and responsibilities denied to them. In fact, the one protection they fought to acquire — Kitty's medical proxy for Cheryle — turned out to be useless at the very moment they most needed it.

"We do not need government to live as a married couple," Kitty and Cheryle have said. "We've already been doing that with our families' blessings for close to a decade. All we want from our government is the ability to get married and have the same legal protections and responsibilities that marriage provides to two people who want to take care of each other."

"All we want is the same legal protections and responsibilities that marriage provides to two people who want to take care of each other."





to: the inheritance of rent-controlled apartments;<sup>3</sup> health benefits for domestic partners of state employees;<sup>4</sup> eligibility for September 11th relief;<sup>5</sup> hospital and nursing home visitation;<sup>6</sup> and the disposition of a deceased partner's remains.<sup>7</sup> New York has not enacted a so-called "Defense of Marriage Act" prohibiting the recognition in New York of marriages of same-sex couples entered into in other jurisdictions. Indeed, some state government entities and many New York localities, including the New York State and Local Retirement System, the New York State Civil Service Department and its New York State Health Insurance Program, the Cities of Albany, Buffalo, New York, and Rochester, and Westchester County, have all stated that they will respect the marriages lawfully entered into by same-sex couples in other jurisdictions.<sup>8</sup>

However, New York's protections for same-sex couples and their children have until now developed on a case-by-case, law-by-law, and sometimes even family-by-family basis, with each protection reflecting the particular issue presented to the legislature, court, or administrative agency at a given time. This piecemeal

## TESTIMONIALS

### Wilhelmina Perry

Wilhelmina Perry, 72, lives in New York City and had a thirty-year committed relationship with Antonia Pantoja. When Antonia was diagnosed with cancer four years ago and given three months to live, Wilhelmina not only had to deal with the devastation of Antonia's pending death, but also had to begin thinking about what it would mean to live alone without the benefits of a legally protected relationship.

When Wilhelmina, or Mina, wanted to do nothing but care for Antonia during her last weeks of life, she instead had to focus on getting their legal and financial affairs in order. This meant making sure that a will, a power of attorney, a medical proxy, insurance, bank accounts, and property ownership were executed properly. Had Mina and Antonia been married, much of this would have automatically been in place.

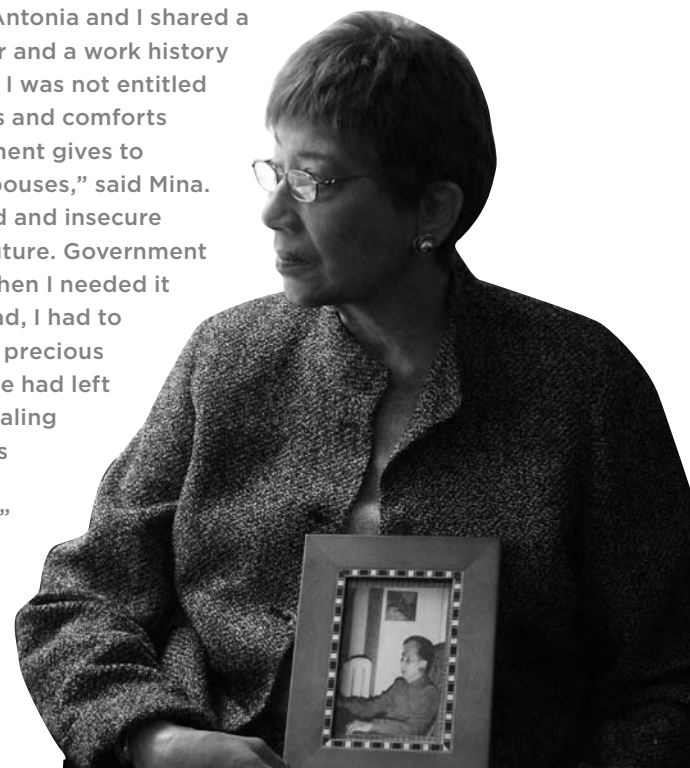
When Mina informed Antonia's family of the diagnosis, they showed up from Puerto Rico with no notice and attempted to take Antonia back with them. Antonia, still of sound mind at the time, was able to delay the move. Mina, despite being Antonia's thirty-year partner and primary care provider, had no legal say in the matter because they were not married.

After Antonia died, Mina's living situation changed instantly. Her household income was reduced by half. Anything Mina inherited from Antonia was heavily taxed. Mina also had no ability to collect survivor benefits such

as social security, a benefit many married survivors depend upon for much of their financial security following the death of a spouse.

The safety net the government provides for surviving spouses did not exist for Mina. Even had she hired the best attorney, she could not have obtained any of the benefits that make up this safety net because it is marriage that provides access to them.

"Although Antonia and I shared a life together and a work history of 30 years, I was not entitled to the rights and comforts my government gives to surviving spouses," said Mina. "I was afraid and insecure about my future. Government failed me when I needed it most. Instead, I had to spend what precious little time we had left together dealing with lawyers and legal documents."



approach has resulted in both inequality and confusion, often leaving same-sex couples in a legal limbo of conflicting laws and policies. Tragically, many same-sex couples are forced to face this uncertainty when they are least equipped to deal with it, such as when death or illness strikes. Same-sex couples are forced to live without predictability or certainty, and they are often at the mercy of a court or agency to decide whether their relationship will be deemed sufficiently committed or whether they will instead be seen as mere strangers in the eyes of the law.

Many same-sex couples draw up contracts and other legal instruments in an effort to reduce this uncertainty. But whether relying on cohabitation agreements, wills, trusts, powers of attorney, health care proxies, or other documents they may take the initiative and spend the money to create,<sup>9</sup> same-sex couples still lack the certainty – and most of the crucial rights and responsibilities – that flow from marriage. Because the overwhelming majority of these rights and responsibilities have been created by statutes and regulations specifically for spouses, same-sex couples and their families are by definition denied most of the protections that other families take for granted, notwithstanding any private contractual arrangements and other “work-arounds” these same-sex couples may endeavor to create. For example, Workers’ Compensation survivor benefits – like the vast majority of entitlement programs – are statutorily limited to spouses; they cannot be bequeathed to any other dependent, including a domestic partner, no matter what a will or other private legal agreement between partners might say.

## **PROTECTING FAMILIES IS GOOD PUBLIC POLICY**

The benefits for society as a whole of the family protections that come with marriage are far from abstract. Government long ago recognized that strong families make for strong communities. Day-to-day existence for the tens of thousands of lesbian, gay, bisexual, and transgender (LGBT) couples living in New York State is colored with an uncertainty that married couples are spared. Three such families are profiled in these pages, families which are struggling with such issues as inheritance, child custody, and health care, to name a few, simply because they lack the ability to marry in New York State.

As much as other families, same-sex couples and their children need the protective framework afforded by the government through marriage. The 2000 U.S. census counted 46,490 New York households as being comprised of same-sex “unmarried partners,” with one in four of these couples raising an average of two children. This number is widely viewed as representing only a fraction of the actual number in New York State, as many same-sex unmarried partners are reluctant to disclose their relationship to a government entity out of fear of reprisal or discrimination. Absent the hundreds of forms of support that government provides to married couples to care for each other – and the duty it imposes on them to do so – these families will be more vulnerable and thus more likely to require state-funded social services and financial assistance.

The uncertainty faced by LGBT families also creates unnecessary burdens and inefficiency for courts and administrative agencies. In matters involving married couples, the legal status of their relationship is ordinarily clear, and for the most part there is no need to inquire into the strength of their commitment to one another or, except in the context of divorce, the extent of their financial interdependence. Because same-sex couples do not benefit from the same automatic presumptions as married couples, courts and



administrative agencies have to conduct complicated and unnecessarily intrusive inquiries into the lives of the same-sex couples appearing before them. In the absence of marriage, the legislature, courts, and administrative agencies have had to craft highly particularized remedies to decide how to treat same-sex couples seeking relief from their government. The state does not need to fashion such idiosyncratic remedies for married couples, as the rights and responsibilities extend automatically as legal incidents of marriage.

Several other states have created statewide mechanisms like civil unions and domestic partnerships to support same-sex couples and their families. In fact, every one of New York's bordering neighbors, with the exception of Pennsylvania, offers some sort of comprehensive mechanism for protecting LGBT families: civil unions in Vermont, Connecticut, New Jersey, and New Hampshire, and marriage in Massachusetts and Canada. While civil unions and domestic partnerships are a step in the right direction, at this time neither confers any of the federal rights and responsibilities that come with marriage. As a number of recent court decisions reflect, it is also unclear to what extent these legal arrangements will be recognized by states other than those that grant them. Members of a same-sex couple with a civil union who relocate or travel, for example, may not be able to enforce their relationship rights and duties in other states, as spouses are able to do. Nor have private employers or businesses consistently accorded benefits to civil union couples on the same basis as to spouses. In New Jersey, where a civil union law was recently enacted, for example, some employers have refused to add civil union partners to an employee's health insurance because the partners are not married.<sup>10</sup> Finally, these separate-and-unequal institutions create a second-class status by denying loving same-sex couples even the choice of entering into marriage, the legal status available to all other loving adult couples willing to commit to a life together.

The 1,324 rights and responsibilities of marriage detailed in the pages that follow demonstrate the great emphasis New York rightly places on strong families. They also painfully illustrate just how much same-sex couples and the children they raise together are denied by the continued withholding of marriage equality.

1 Webster's New World College Dictionary 881 (4th ed. 1999).

2 See <http://www.gao.gov/new.items/d04353r.pdf>; <http://www.gao.gov/archive/1997/og97016.pdf>. The GAO report identified only the statutes, not the regulations, concerning marriage.

3 See *Braschi v. Stahl Assoc. Co.*, 543 N.E.2d 49 (1989) (codified as a N.Y. COMP. CODES R. & REGS. SEC. 2520.6 (2007)).

4 See, e.g., State of N.Y. Civil Serv. Employee Benefits Div., Instructions for Enrolling Domestic Partners in the N.Y. State Health Ins., Dental and Vision Programs; *State Senate to Offer Health Benefits to Domestic Partners*, PRESS & SUN-BULLETIN (Binghamton, N.Y.), Jan. 20, 2001.

5 See, e.g., Exec. Order No. 113.30 (Oct. 10, 2001) (making surviving domestic partners of 9/11 victims eligible for Crime Victims Board assistance); N.Y. State Dep't of Taxation and Finance, N.Y. State World Trade Center Relief Fund Surviving Spouse Application (Jan. 2002) (using the term "surviving spouse / domestic partner" throughout the application and stating that, "A surviving spouse includes a domestic partner."); World Trade Center Memorial Scholarship, ch. 16 (July 23, 2002) (making surviving domestic partners of 9/11 victims as eligible for a state scholarship); Ch. 467 (Aug. 20, 2002) (codified as N.Y. WORK. COMP. LAW § 4, making surviving domestic partners of 9/11 victims eligible for workers' compensation death benefits).

6 See Ch. 471 (Sept. 21, 2004) (codified as N.Y. PUB. HEALTH LAW § 4201).

7 See Ch. 768 (Feb. 3, 2006) (codified as N.Y. PUB. HEALTH LAW § 2805-o).

8 See, e.g., Statement of Gerald D. Jennings, Mayor of Albany, dated October 1, 2005; Letter from Anthony W. Crowell, Esq., Special Counsel to the Mayor of the City of New York, to Alan Van Capelle, Executive Director, Empire State Pride Agenda, of Apr. 6, 2005; Executive Order of Westchester County Executive Andrew J. Spano, dated June 6, 2006 (all available at <http://www.prideagenda.org/issues/marriage/LEGISLATION.html>).

9 See Thomas Crampton, *What Marriage Means to Gays: All That Law Allows Others*, N.Y. TIMES, Mar. 30, 2004 at B1 (observing that it can cost same-sex couples thousands of dollars to create the best legal approximation of some of the protections and benefits that come with marriage, approximations which still fall far short of the legal marriage right).

10 See Tina Kelly, *2 Months After New Jersey's Civil Union Law, Problems Finding True Equality*, N.Y. TIMES, Apr. 13, 2007 (quoting Thomas H. Prol, co-chair of the New Jersey Bar Association's committee on gay issues as saying, "The word's starting to spread that civil unions aren't working in the real world.").

## TESTIMONIALS

### Dean DeFruscio and Dalton Boynton

Dean DeFruscio, 42, and Dalton Boynton, 43, have been together for fourteen years and live in Cohoes in the Capital District. They have a two-and-a-half year old son, Spencer, whom they adopted.

Initially, the court required a legal procedure known as second-parent adoption, which would have forced Dean and Dalton to adopt Spencer one at a time. Not only would this process make the adoption twice as expensive due to two sets of court and attorney fees, but it would also have given Spencer only one legal parent during the time it would take for the second adoption to be completed. Had the first parent to adopt died before the second adoption was finalized, Spencer would have been a legal orphan.

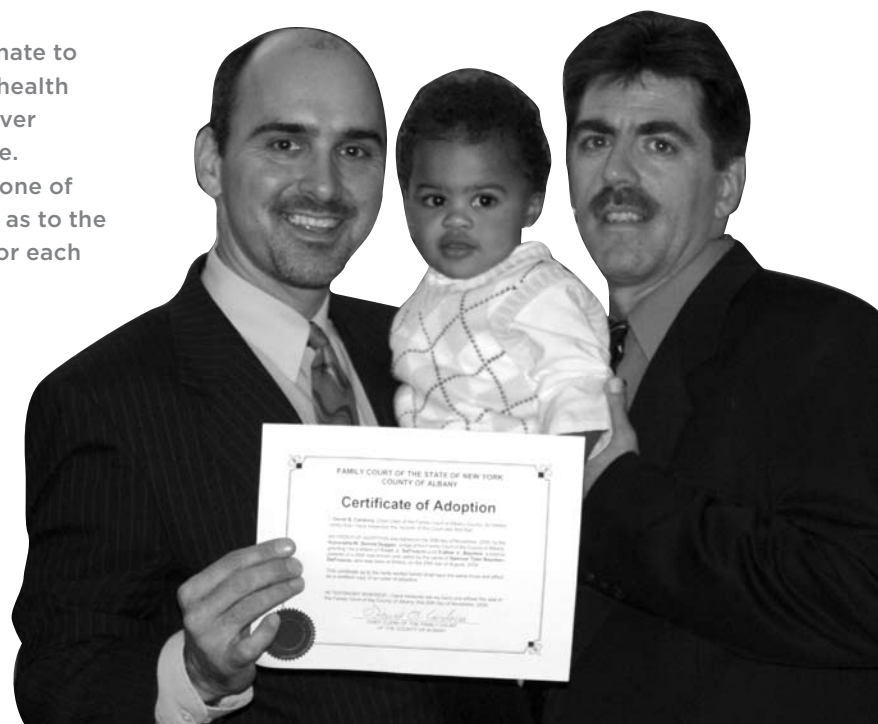
Dean and Dalton's attorney challenged the requirement that they adopt sequentially, relying on case law in New York where some judges have allowed gay couples to adopt jointly as a couple. While this decision for unmarried couples is left up to the discretion of the judge, as compared to married couples who have the right to adopt jointly, Dean and Dalton were fortunate, and the court eventually allowed for the joint adoption.

Dean and Dalton still worry, though, about their family's security, because the legal ties between the two of them fall far short of the legal ties between two people who are married. Even though their legal status as parents is completely sound in New York, Dean and Dalton still worry how their adoption of Spencer will be treated in another state.

The two went to Vermont several years ago to obtain a civil union certificate in order to further strengthen their legal connection to each other and their child. However, the authority of a civil union certificate in New York State is very unclear. Now they take the extra precaution of always carrying Spencer's birth certificate and adoption license with them when they travel out of state.

Dean is employed by New York State and is fortunate to be able to provide Dalton with domestic partner health insurance. Should Dean's employment situation ever change, Dalton may no longer have such coverage. Likewise, should something happen medically to one of them, there are real limitations in New York State as to the decisions two "unrelated" individuals can make for each other, even though they are each other's primary care providers. "Our family needs the security marriage provides and Spencer deserves the reassurance that comes from knowing his parents can take care of each other in times of crisis," say Dean and Dalton. "Love will always be in our family, but we need the law to be there, too, and that means being able to marry."

“Love will always be in our family, but we need the law to be there, too, and that means being able to marry.”



# New York State Statutes Protecting Married Couples

The following is a catalog of the New York State statutes that confer a benefit or responsibility through marriage:

## Abandoned Property Law

### Article II. Escheat of Real Property

- 1** N.Y. ABAN. PROP. § 206 (2007) A surviving husband or widow may bring a petition for interest in real property believed to have reverted to the state by reason of failure of the heirs or the incapacity of any of the petitioner's alleged predecessors.
- 2** N.Y. ABAN. PROP. § 208 (2007) The Commissioner may release real property to persons including a surviving husband or widow without consideration upon certain findings.

### Article VI. Unclaimed or Unknown Owner Court Funds

- 3** N.Y. ABAN. PROP. § 600 (2007) Unclaimed or unknown owner court funds shall include any money paid to a support bureau of a family court for the support of a spouse or child which shall have remained in the custody of a county treasurer or the Commissioner of Finance of the City of New York for five years, together with any interest due thereon, less legal fees.

## Agriculture and Markets Law

### Article 20-C. Licensing of Food Processing Establishments

- 4** N.Y. AGRIC. & MKTS. § 251-Z-12 (2007) The requirement for obtaining a certificate of completion from an approved food safety education program does not apply to a food store that has as its only full-time employees the owner, or the parent, spouse, or child of the owner, and not more than two full-time employees.

### Article 25-AA. Agricultural Districts

- 5** N.Y. AGRIC. & MKTS. § 305 (2007) A late application for an agricultural assessment with respect to land used for agricultural production within an agricultural district may be forgiven due to the death or illness of an applicant's spouse.

## Alcoholic Beverage Control Law

### Article 8. General Provisions

- 6** N.Y. ALCO. BEV. CONT. § 110 (2007) A license or permit to sell alcoholic beverages may include questions as to whether the applicant's spouse has ever had such a license, and whether the applicant's spouse has ever been convicted of a crime.
- 7** N.Y. ALCO. BEV. CONT. § 119 (2007) Procedures for cancellation or revocation of an alcoholic beverage license may apply to a license holder who has failed to pay child or spousal support.
- 8** N.Y. ALCO. BEV. CONT. § 128 (2007) A person may not be denied an alcoholic beverage license solely because he or she is the spouse of a public servant.

## Arts and Cultural Affairs Law

### Title B. Promotion of the Arts

#### Article 3. Council on the Arts

- 9** N.Y. ARTS & CULT. AFF. § 3.07 (2007) All contracts pursuant to this section must contain and make reference to language that no persons will be discriminated against on the basis of marital status.

#### Title F. Theatrical Syndication Financing

- 10** N.Y. ARTS & CULT. AFF. § 23.03 (2007) "Accredited investor" is defined, for purposes of the Arts and Cultural Affairs Law, to include an individual with a specified net worth or income, either joint with his or her spouse or exclusive of his or her income with his or her spouse.

#### Title L. Protection of Child Performers and Models

- 11** N.Y. ART & CULT. AFFR. § 35.03 (2007) When approving of certain contracts for the services of infants, courts may set aside certain proportions of the earnings of infants, taking into account, if the infant is married, the needs of the infant's family.

## Banking Law

### Article I. Short Title; Definitions; Miscellaneous Provisions

- 12** N.Y. BANKING § 4 (2007) Banking organizations may furnish information about assets held by a husband or wife to the State Department of Social Services, Department of Mental Hygiene, mental hygiene legal service, representatives of boards of child welfare, and children's court if requested by them.

### Article III. Banks and Trust Companies

- 13** N.Y. BANKING § 108 (2007) Paper on which a bank may make a loan may include a mobile home chattel paper, including papers for a mobile home purchased as a spouse's residence.

### Article VI. Savings Banks

- 14** N.Y. BANKING § 235 (2007) A promissory note may be secured by mobile home chattel paper if used as a residence of a spouse.
- 15** N.Y. BANKING § 246 (2007) No person may serve on a bank's board of trustees if such person or such person's spouse is related to one of the highest paid officers of that institution.

### Article IX. Licensed Lenders

- 16** N.Y. BANKING § 357 (2007) If the borrowers on any loan are husband and wife, joint credit life insurance and joint credit accident or health insurance may be issued on a loan pursuant to this section.

### Article X. Savings and Loan Associations

- 17** N.Y. BANKING § 380 (2007) Savings and loans associations may make loans on chattel paper of a mobile home secured as a residence of a spouse.
- 18** N.Y. BANKING § 397 (2007) A person may not be elected a director of a savings and loan association if that person's spouse is a director or one of the highest paid officers of the association, or if one of such individuals is the spouse of the person's child, grandchild, brother, or sister.

### Article XI. Credit Unions

- 19** N.Y. BANKING § 451 (2007) Where a person is a member of a credit union or directly eligible for membership, members of his or her immediate family (including his or her spouse) are also eligible for membership.
- 20** N.Y. BANKING § 470 (2007) No person is eligible to be a director of a credit union if such person's spouse is a director or one of the highest paid officers of that credit union.

### Article XI-B. Sales Finance Companies

- 21** N.Y. BANKING § 493 (2007) The Superintendent of Banks may deny an application if he determines that a license

of the applicant's spouse has been previously revoked under this section.

## Benevolent Orders Law

### Article 2. General Provisions

- 22** N.Y. BEN. ORD. § 7 (2007) Certain organizations, such as Masonic lodges, may unite and form a corporation for the purpose of acquiring a home for the aged and/or their dependent spouses or orphans.
- 23** N.Y. BEN. ORD. § 12 (2007) A N.Y. corporation organized to form a home for the aged and/or their spouses or orphans pursuant to this section may place for adoption minors placed in their custody.

## Business Corporations Law

### Article 9. Merger or Consolidation

- 24** N.Y. BUS. CORP. § 912 (2007) A person's or person's spouse's beneficial ownership of 10% or more of a corporation's outstanding voting stock shall create a presumption that such person has control of such corporation.

## Canal Law

### Article 11. Canal Employees

- 25** N.Y. CANAL § 113 (2007) Spouses of persons employed by the canal system and occupying a N.Y. property belonging to the canal system shall return such property when the employee is discharged from employment.

## Civil Practice Law and Rules

### Article 2. Limitations of Time

- 26** N.Y. C.P.L.R. § 214 (2007) C.P.L.R. actions that must be commenced within three years include actions for an annulment of marriage on the grounds of fraud.

### Article 3. Jurisdiction and Service

- 27** N.Y. C.P.L.R. § 302 (2007) In a matrimonial action, courts may exercise personal jurisdiction over a respondent or defendant even though he or she is no longer a New York resident.
- 28** N.Y. C.P.L.R. § 308 (2007) In matrimonial actions, personal service must be effected in a way prescribed by law.
- 29** N.Y. C.P.L.R. § 309 (2007) Personal service may be made on an adult spouse with whom a party infant resides.

**30** N.Y. C.P.L.R. § 314 (2007) In matrimonial actions, service may be made outside the state in the same manner as inside the state.

**31** N.Y. C.P.L.R. § 316 (2007) In matrimonial actions, service by publication must be effected in a manner prescribed by law.

#### **Article 12. Infants, Incompetents, and Conservatees**

**32** N.Y. C.P.L.R. § 1201 (2007) In the representation of an infant, an adult spouse residing with the infant may appear on behalf of the infant.

**33** N.Y. C.P.L.R. § 1206 (2007) A court may order property to be distributed to the adult spouse of an infant, to be used for the benefit of the infant.

**34** N.Y. C.P.L.R. § 1207 (2007) Upon motion by an adult spouse living with an infant, courts may order settlement of a N.Y. action commenced for or on behalf of the infant.

#### **Article 30. Remedies and Pleadings**

**35** N.Y. C.P.L.R. § 3016 (2007) In an action for separation or divorce, the nature and circumstances of a party's alleged misconduct, if any, and the time and place of each act complained of, if any, shall be specified in the complaint or counterclaim.

#### **Article 31. Disclosure**

**36** N.Y. C.P.L.R. § 3130 (2007) Except in a matrimonial action, a party may not serve written interrogatories on another party and also demand a bill of particulars of the same party.

#### **Article 32. Accelerated Judgment**

**37** N.Y. C.P.L.R. § 3212 (2007) In a matrimonial action, summary judgment may not be granted in favor of the non-moving party.

**38** N.Y. C.P.L.R. § 3215 (2007) In a matrimonial action, it is not necessary for the entry of a judgment on default for any finding of fact to be in writing.

**39** N.Y. C.P.L.R. § 3221 (2007) Except in a matrimonial action, at any time not later than ten days before trial, any party against whom a claim is asserted, and against whom a separate judgment may be taken, may serve upon the claimant a written offer to allow judgment to be taken against him for a sum or property.

**40** N.Y. C.P.L.R. § 3222 (2007) An action, except a matrimonial action, may be commenced by filing with the clerk a submission of the controversy, acknowledged by all parties in the form required to entitle a deed to be recorded.

#### **Article 40. Trial Generally**

**41** N.Y. C.P.L.R. § 4019 (2007) Courts shall not conduct an *in-camera* interview of an infant in any action or proceeding to fix temporary or permanent custody or

to modify judgments and orders of custody concerning marital separation, divorce, annulment of marriage, or dissolution of marriage unless a stenographic record of such interview is made.

#### **Article 43. Trial By A Referee**

**42** N.Y. C.P.L.R. § 4312 (2007) Except in matrimonial actions or where the reference is to a judicial hearing officer, a person to whom all the parties object may not be designated as a referee.

**43** N.Y. C.P.L.R. § 4317 (2007) Leave of court and designation by a court of the referee are required for references in a matrimonial action, unless such action is brought by the Attorney General or the defendant in the action is an infant.

#### **Article 45. Evidence**

**44** N.Y. C.P.L.R. § 4502 (2007) Husbands and wives may not be compelled to testify about statements made to each other during their marriage.

**45** N.Y. C.P.L.R. § 4504 (2007) A physician or nurse must disclose privileged information as to the mental or physical condition of a dead patient when the privilege has been waived by the patient's surviving spouse.

**46** N.Y. C.P.L.R. § 4512 (2007) A person shall not be excluded or excused from being a witness by reason of his interest in the event or because he is a party or the spouse of a party.

**47** N.Y. C.P.L.R. § 4526 (2007) An original certificate of marriage made by the person by whom it was solemnized within the state, or the original entry thereof made pursuant to law in the office of the clerk of a city or a town within the state, is *prima facie* evidence of marriage.

#### **Article 52. Enforcement of Money Judgments**

**48** N.Y. C.P.L.R. § 5205 (2007) Personal property exempt from application to satisfy a money judgment includes an award for support of a wife where the wife is the dependent debtor.

**49** N.Y. C.P.L.R. § 5206 (2007) The homestead exemption from satisfaction of a money judgment continues through the lifetime of a surviving spouse.

**50** N.Y. C.P.L.R. § 5231 (2007) If the earnings of a judgment debtor are also subject to deductions for alimony, support, or maintenance for family members or former spouses, the amount withheld from the judgment debtor's earnings shall not exceed the amount by which 25% of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings.

**51** N.Y. C.P.L.R. § 5241 (2007) In describing income execution for support enforcement, an "order of support" is any temporary or final order, judgment,



agreement, or stipulation incorporated by reference in such judgment or decree in a matrimonial action which directs the payment of alimony, maintenance, support, or child support.

- 52** N.Y. C.P.L.R. § 5242 (2007) Where income paid is compensation to a debtor for personal services, the amount withheld shall not exceed a certain percentage of the debtor's earnings where the debtor owes spousal or child support.

**Article 62. Attachment**

- 53** N.Y. C.P.L.R. § 6201 (2007) An order of attachment may not be granted in a matrimonial action.

**Article 80. Fees**

- 54** N.Y. C.P.L.R. § 8021 (2007) County clerks are entitled to a fee of \$5 for preparing a copy of a marriage record.

## Civil Rights Law

**Article 4. Equal Rights in Places of Public Accommodation and Amusement**

- 55** N.Y. CIV. RIGHTS § 40-C (2007) No person shall be subject to discrimination in his or her civil rights or harassment in the exercise of such rights on the basis of marital status by any firm, corporation, institution, or the state, or any agency or subdivision of the state.

**Article 6. Change of Name**

- 56** N.Y. CIV. RIGHTS § 61 (2007) A petition for change of name shall indicate whether the petitioner owes any child or spousal support obligations.
- 57** N.Y. CIV. RIGHTS § 65 (2007) Any person may, upon marriage, assume a new name.

**Article 7. Miscellaneous Rights and Immunities**

- 58** N.Y. CIV. RIGHTS § 72 (2007) No person shall be imprisoned for longer than three months for failure to pay no more than \$500 in alimony or other payments due because of matrimonial or divorce actions.
- 59** N.Y. CIV. RIGHTS § 79-A (2007) Although a person sentenced to imprisonment for life is considered civilly dead, that person may marry while on parole or after discharge from parole.

**Article 8. Causes of Action for Alienation of Affections, Criminal Conversation, Sedition, and Breach of Contract to Marry Abolished**

- 60** N.Y. CIV. RIGHTS § 80-B (2007) Nothing in this article shall be construed to bar a right of action for the recovery of chattel, money, or securities, or the rescission of a deed to real property that was transferred in contemplation of a marriage that did not occur.

## Civil Service Law

**Article VI. Special Rights for Veterans and Exempt Volunteer Firemen**

- 61** N.Y. CIV. SERV. § 85 (2007) When certain positions are eliminated, demotion or displacement is made in the reverse order of the original appointment, except that the spouse of a fully disabled veteran is deemed to have been appointed sixty months earlier than the actual date of appointment.

**Article X. Miscellaneous Provisions**

- 62** N.Y. CIV. SERV. § 154-B (2007) Survivor's benefits agreed to between the state and employee organizations and benefits for other similar agreements shall be paid to a surviving spouse and children.
- 63** N.Y. CIV. SERV. § 154-C (2007) A confidential survivor's benefit shall be paid to an employee's surviving spouse and children in the same proportion as the death benefit provided by the Workers' Compensation Law.

**Article XI. Health Insurance for State and Retired State Employees**

- 64** N.Y. CIV. SERV. § 163 (2007) Contracts of health insurance for state employees shall include certain persons working for the public organizations of the state, their spouses, and dependent children.
- 65** N.Y. CIV. SERV. § 164 (2007) Each employee shall be entitled to have his spouse and dependent children included in his or her state employee insurance coverage upon agreeing to pay his or her contribution, if any, to the cost of such additional coverage.
- 66** N.Y. CIV. SERV. § 165 (2007) Certain health insurance coverage is available to an un-remarried spouse and dependents of a civil service employee covered at time of death.
- 67** N.Y. CIV. SERV. § 165-A (2007) Certain health insurance coverage is available to an un-remarried spouse and dependents of a deceased civil service individual.

## Correction Law

**Article 6. Management of Correctional Facilities**

- 68** N.Y. CORRECT. § 113 (2007) The Commissioner of Correctional Services may permit an inmate (except an inmate confined for death) to leave a correctional facility temporarily upon the death of a husband or wife.

**Article 13. Care of Property of Person Confined for Life**

- 69** N.Y. CORRECT § 320 (2007) Whenever any person has been convicted and sentenced to imprisonment for life,



his or her wife or husband may apply to the Supreme Court to care for such person's property.

**Article 14.** Care of Property of Person Confined for Less Than Life

- 70** N.Y. CORRECT. § 351 (2007) A petition of appointment for the care of property of a person who is imprisoned for less than life may be made by a prisoner's husband or wife.
- 71** N.Y. CORRECT. § 359 (2007) A trustee may apply the surplus of any money of a prisoner (after allocations to debts, etc.) to the support of the prisoner's spouse and children.

**Article 16.** Provisions Relating to Mentally Ill Inmates

- 72** N.Y. CORRECT. § 402 (2007) If a physician, at the request of the Superintendent of a Correctional Institution, determines that an inmate is in fact mentally ill, the physician shall make out a certificate to this effect, which shall be delivered to the husband or wife of the inmate.

**Article 17.** Institutions for the Retarded in the Department of Correction

- 73** N.Y. CORRECT. § 439 (2007) The husband or wife of an inmate shall receive a copy of the certification by a physician that the inmate should be committed to an institution for the retarded in the Department of Correction.

**Article 18.** Retirement of Employees of the Department of Correction and State Correctional Institutions

- 74** N.Y. CORRECT. § 470-B (2007) The spouse of a deceased guard or correctional employee may elect to receive the actuarial equivalent of the employee's pension at the time of retirement.
- 75** N.Y. CORRECT. § 472 (2007) Certain benefits will be paid to a widow of a guard or employee of the state correctional system until she is married again.

**Article 20.** Local Correctional Facilities

- 76** N.Y. CORRECT. § 500 (2007) No female detained on civil process, or for contempt, or as a witness, shall be put or kept in the same room with a man, except her husband.
- 77** N.Y. CORRECT. § 500-N (2007) A husband and his wife may be put or kept together in a room in which there are no other prisoners.
- 78** N.Y. CORRECT. § 509 (2007) A sheriff of a local correctional facility or his designee may permit an inmate to visit certain relatives, including a husband or wife, if they are ill and death is imminent.

**Article 22-B.** The Death Penalty

- 79** N.Y. CORRECT. § 662 (2007) If a convicted person does not indicate to whom such person's body shall be delivered, or if the person's request is contrary to law,

the Commissioner may deliver the convicted person's body to a relative by blood or marriage.

**Article 26.** Temporary Release Programs for State Correctional Institutions

- 80** N.Y. CORRECT. § 851 (2007) "Leave of absence" is defined as a privilege granted for an inmate to leave the institution and visit (or attend the funeral of) his spouse or other family members.

## County Law

**Article 7-A.** County Tuberculosis Hospitals

- 81** N.Y. COUNTY § 388 (2007) The superintendent of a county tuberculosis hospital shall cause to be kept proper accounts and records of the admission of all patients, including their marital status.

**Article 17-A.** Coroner, Coroner's Physician and Medical Examiner

- 82** N.Y. COUNTY § 677 (2007) Upon application, a spouse may receive a copy of a coroner's report.

## Criminal Procedure Law

**Part Two.** The Principal Proceedings

**Title H.** Preliminary Proceedings in Local Criminal Court

**Article 170.** Proceedings Upon Information, Simplified Traffic Information, Prosecutor's Information and Misdemeanor Complaint from Arraignment to Plea

- 83** N.Y. CRIM. PROC. § 170.55 (2007) Courts may, as a condition of an adjournment in contemplation of a dismissal order in a misdemeanor complaint charging violence between spouses, order that a defendant participate in an educational program regarding spousal violence.

**Part Three.** Special Proceedings and Miscellaneous Procedures

**Title P.** Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control at Court

- 84** N.Y. CRIM. PROC. § 530.11 (2007) Family Court has jurisdiction over certain family offense matters, including such offenses between spouses or former spouses.
- 85** N.Y. CRIM. PROC. § 530.12 (2007) Courts may issue a temporary protective order in a pending complaint alleging a violent crime between spouses or former spouses.

## Debtor and Creditor Law

### Article 3. Insolvent's Discharge from Debts

- 86** N.Y. DEBT. & CRED. § 72 (2007) If a petitioner's wife resides outside the state, courts may, upon the application of any creditor, require the petitioner to bring his wife before the court at a hearing or trial so that she may be examined as a witness.
- 87** N.Y. DEBT. & CRED. § 73 (2007) Any creditor may contradict or impeach, by other competent evidence, the testimony of an insolvent person or his wife.

### Article 7. Trustees for Insolvent and Imprisoned Debtors

- 88** N.Y. DEBT. & CRED. § 170 (2007) If there is reason to believe that a debtor or a spouse of a debtor has embezzled trust property, judges may cause the debtor or the spouse of the debtor to come before the court to be examined.

## Domestic Relations Law

### Article 2. Marriages

- 89** N.Y. DOM. REL. § 5 (2007) A marriage between an ancestor and his or her descendant, a brother and sister, an uncle and niece, or an aunt and nephew is incestuous and is therefore void. Any person knowingly solemnizing such a marriage may be fined and/or imprisoned.
- 90** N.Y. DOM. REL. § 6 (2007) A marriage is void if contracted by a person who is still married to another, unless the former marriage has been annulled or dissolved.
- 91** N.Y. DOM. REL. § 7 (2007) Certain types of marriage, including marriage to an underage spouse, marriage to a spouse with a cognitive or physical impairment, an involuntary marriage, or a marriage by fraud, are void or voidable.
- 92** N.Y. DOM. REL. § 8 (2007) A party may marry after a former marriage has been dissolved by divorce.

### Article 3. Solemnization, Proof, and Effect of Marriage

- 93** N.Y. DOM. REL. § 10 (2007) Marriage is a civil contract requiring the consent of the parties.
- 94** N.Y. DOM. REL. § 11 (2007) A marriage may be solemnized by members of the clergy, a judge, one of an enumerated class of public officials, or a written contract of marriage signed by both parties and at least two witnesses.
- 95** N.Y. DOM. REL. § 11-(A-C) (2007) The city clerk of a city of over one million inhabitants, and up to four of his or her deputies, may perform marriage ceremonies. Every person authorized to perform a marriage ceremony in New York City shall register his or her name and address in the Office of the City Clerk. A witness and public declaration by the participants as husband and wife

are required in order for a marriage to be solemnized. Opt-out requirements exist for Quakers or other recognized religious denominations that have a manner of solemnizing that was practiced prior to the statute's enactment.

- 96** N.Y. DOM. REL. § 12 (2007) Parties to a marriage must solemnly declare in the presence of a clergyman or magistrate and an attending witness or witnesses that they take each other as husband and wife.
- 97** N.Y. DOM. REL. § 13 (2007) All persons intending to be married in New York State must obtain a marriage license from a town or city clerk in New York State and deliver the license, within sixty days, to the person who is to officiate before the marriage ceremony may be performed.
- 98** N.Y. DOM. REL. § 13-AA (2007) Each applicant for a marriage license who is not of the Caucasian, Indian, or Oriental race must be tested for sickle cell anemia and notified of the results of such test. No application for a marriage license may be denied solely on the basis of a positive sickle cell anemia test, nor shall a marriage be deemed invalid for that reason.
- 99** N.Y. DOM. REL. § 13-B (2007) A marriage shall not be solemnized within twenty-four hours after the issuance of the marriage license, nor shall it be solemnized after sixty days from the date of the issuance of the marriage license. A person who solemnizes a marriage in violation of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of \$50 for each offense, and his or her right to solemnize a marriage shall be suspended for ninety days.
- 100** N.Y. DOM. REL. § 13-D (2007) A city clerk, or another clerk acting in his or her stead, must upon the issuance of a marriage license display to the parties certain materials concerning rubella and other diseases.
- 101** N.Y. DOM. REL. § 15 (2007) It shall be the duty of a town or city clerk upon receipt of an application for a marriage license to require each of the parties to sign and verify a statement or affidavit before such clerk or one of his or her deputies concerning certain identification and national origin information and containing a statement as to whether the former husband or husbands or the former wife or wives of the respective applicants are living or dead and/or to whether either or both said applicants are divorced persons.
- 102** N.Y. DOM. REL. § 15-A (2007) Any marriage in which either party is under the age of fourteen years is prohibited. Any town or city clerk who knowingly issues a marriage license to any such persons shall be guilty of a misdemeanor and shall be fined \$100.
- 103** N.Y. DOM. REL. § 16 (2007) Any person who in any affidavit or statement required or provided for in this article willfully and falsely swears an affidavit in regard

to any material fact as to the competency of any person for whose marriage the license in question or concerning the procuring or issuing of which such affidavit or statement may be made shall be deemed guilty of perjury.

- 104** N.Y. DOM. REL. § 17 (2007) A clergyman or other officer who solemnizes a marriage without a license being presented to him, or with the knowledge that either party is incompetent to contract to marry, shall be guilty of a misdemeanor.
- 105** N.Y. DOM. REL. § 19 (2007) Town and city clerks shall keep records of marriage certificates.
- 106** N.Y. DOM. REL. § 19-A (2007) The master, chief officer, or ship's surgeon, or the company, corporation, charterer, or person having the management and control of any vessel which arrives at the port of New York shall report in writing to the City Clerk of the City of New York within three days after the arrival of such vessel the marriage of any city resident occurring at sea, and shall file with the clerk a transcript of the entry made in the log book of such vessel in respect to any such marriage.
- 107** N.Y. DOM. REL. § 20 (2007) The State Commissioner of Health shall upon request supply to any applicant a certified transcript of any marriage registered under the provisions of this article, unless the Commissioner is satisfied that the transcript does not appear to be necessary or required for judicial or other proper purposes.
- 108** N.Y. DOM. REL. § 21 (2007) The proper books for marriage registration, blank forms for marriage licenses, certificates, statements, and affidavits and such other blanks as shall be necessary to comply with the provisions of this article shall be prepared by the State Department of Health and furnished at the expense of the state to town and city clerks filing records with the State Department of Health in such quantities as they require.
- 109** N.Y. DOM. REL. § 23 (2007) The registration and recording of all marriages outside the City of New York shall be supervised by the State Commissioner of Health.
- 110** N.Y. DOM. REL. § 24 (2007) Any child born of parents who enter into a civil or religious marriage or who have consummated a common law marriage where such marriage is recognized as valid, whether such child is born prior or subsequent to the marriage, is the legitimate child of the parents even if the marriage is void, voidable, annulled, or judicially declared void.
- 111** N.Y. DOM. REL. § 25 (2007) Nothing in this article shall be construed to render void, by reason of a failure to procure a marriage license, any marriage solemnized between persons of full age, nor to render void any marriage between minors or with a minor under the legal age of consent where the consent of a parent or

guardian has been given, and such marriage shall be for such cause voidable only as to minors or a minor upon complaint of such minor or minors or the parent or guardian thereof.

#### **Article 4. Certain Rights and Liabilities of Husband and Wife**

- 112** N.Y. DOM. REL. § 50 (2007) Pre-marital property of a married woman does not become the husband's property upon marriage, and shall not be subject to his control or disposal or liable for his debts.
- 113** N.Y. DOM. REL. § 52 (2007) A married person's right to cause the life of his or her spouse to be insured is governed by the Insurance Law and by laws governing the rights of a married person with respect to property and the acquisition, use, enjoyment, and disposition thereof.
- 114** N.Y. DOM. REL. § 58 (2007) A pardon granted to a person sentenced to imprisonment for life within this state does not restore that person to the rights of a previous marriage or to the guardianship of a child who is the issue of such a marriage.
- 115** N.Y. DOM. REL. § 61 (2007) The domicile of a married man or woman shall be established for all purposes without regard to sex.

#### **Article 5. The Custody and Wages of Children**

- 116** N.Y. DOM. REL. §§ 70-73 (2007) A child born to a married woman and man by artificial insemination by a third person in a physician's office shall be deemed to be the legitimate and natural child of the husband and wife for all purposes, including custody and visitation rights described elsewhere in this chapter.

#### **Article 5-A. Uniform Child Custody Jurisdiction and Enforcement Act**

- 117** N.Y. DOM. REL. §§ 75-78 (2007) The Uniform Child Custody Jurisdictional and Enforcement Act allows people who are legally recognized parents of a child to obtain and enforce custody orders when the child is removed from the state.

#### **Article 6. Guardians**

- 118** N.Y. DOM. REL. § 81 (2007) A married woman is a joint guardian of her children with her husband, with equal powers, rights, and duties in regard to them.

#### **Article 7. Adoption**

##### **Title I. Adoptions Generally**

- 119** N.Y. DOM. REL. § 110 (2007) An adult married couple may adopt a child together, as can an adult legally separated from his or her spouse by written agreement, or a married adult living separate and apart from his or her spouse for three years. An adult or minor husband may together with his adult or minor wife adopt a child that was born to either spouse in or out of wedlock, and one spouse may adopt the child of the other spouse.

- 120** N.Y. DOM. REL. § 111 & § 111-A (2007) Notice of and/or consent to adoption is required of: the adoptive child, if over fourteen years of age; the parents or surviving parent of a child conceived or born out of wedlock; the parents or surviving parent; and certain out-of-wedlock fathers.

#### **Title II. Adoption from an Authorized Agency**

- 121** N.Y. DOM. REL. § 112 (2007) An adoptive parent or parents must appear before a judge or surrogate and may be asked to say whether or not they are married.

#### **Title III. Private-Placement Adoption**

- 122** N.Y. DOM. REL. § 115-A & B (2007) A written adoption application shall include information about whether the parent(s) are married or unmarried.
- 123** N.Y. DOM. REL. § 115-D (2007) A person petitioning for certification as qualified to be an adoptive parent must provide to the court information about marital status.
- 124** N.Y. DOM. REL. § 116 (2007) Post-placement investigators shall issue a report regarding adoptions, and such reports shall disclose the marital status of the adoptive parents.

#### **Title IV. Effect of Adoption from an Authorized Agency, of Private-Placement Adoption, and Abrogations Thereof**

- 125** N.Y. DOM. REL. § 117 (2007) When a birth or adoptive parent, having lawful custody of a child, marries or remarries, and consents that the stepparent may adopt such child, such consent shall not relieve the consenting parent of any parental duty toward the child, nor shall the consent or order of adoption affect the rights of the consenting spouse and the adoptive child to inherit from and through each other and the birth and adopted kindred of the consenting spouse.

#### **Article 8. Surrogate Parenting Contracts**

- 126** N.Y. DOM. REL. § 121 (2007) “Surrogate parenting contract” shall mean any agreement, oral or written, in which: (a) a woman agrees either to be inseminated with the sperm of a man who is not her husband or to be impregnated with an embryo that is the product of an ovum fertilized with the sperm of a man who is not her husband; and (b) the woman agrees to, or intends to, surrender or consent to the adoption of the child born as a result of such insemination or impregnation. Such contracts are void and unenforceable in New York as contrary to public policy.
- 127** N.Y. DOM. REL. § 123 (2007) A birth mother or her husband, a genetic father and his wife, and, if the genetic mother is not the birth mother, the genetic mother and her husband who make certain types of payments for surrogate parenting contracts in violation of this section shall be subject to a civil penalty not to exceed \$500.

#### **Article 9. Action to Annul a Marriage or Declare It Void**

- 128** N.Y. DOM. REL. § 140 (2007) A marriage may be declared void or annulled for reasons including: one of the parties to the marriage had a different living spouse at the time of the marriage, the former marriage still being in force; one of the parties was under the age of consent; one of the parties was mentally retarded or had a mental illness; one of the parties lacked physical capacity; or the consent of one of the parties was obtained by force, duress, or fraud.
- 129** N.Y. DOM. REL. § 141 (2007) A marriage may be annulled on the ground that a spouse has had an incurable mental illness for five years, subject to certain conditions. If a marriage is annulled on this basis, the court may include in the judgment an order providing for his or her suitable support, care, and maintenance from the property and income of the other spouse.
- 130** N.Y. DOM. REL. § 142 (2007) Where the next friend of an infant, mentally retarded person, or mentally ill person maintains an action annulling a marriage, the courts may dismiss the complaint if justice so requires, although in a similar case, the party to the marriage, if the plaintiff, will be entitled to judgment.
- 131** N.Y. DOM. REL. § 143 (2007) In an action to annul a marriage, except one founded upon an allegation of the physical incapacity of one of the spouses, there is a right to trial by a jury of all the issues of fact.
- 132** N.Y. DOM. REL. § 144 (2007) Proof of the facts upon which an allegation of nullity is forwarded, other than the declaration or confession of either party to a marriage, is required in an action to annul a marriage. The plaintiff shall prove that there has been no such cohabitation between the parties as would bar a judgment, except that in an action under subdivision 61 of section 141 the plaintiff may prove instead that the mental illness still continues.
- 133** N.Y. DOM. REL. § 146 (2007) A final judgment annulling a marriage rendered during the lifetime of both the parties is conclusive evidence of the invalidity of the marriage in every court, and in any action or special proceeding, civil or criminal. Such a judgment rendered after the death of either party to the marriage is conclusive as against the parties to the action and those claiming under them.

#### **Article 10. Action for Divorce**

- 134** N.Y. DOM. REL. § 170 (2007) An action for divorce may be maintained by a husband or wife upon the grounds of cruelty, abandonment, imprisonment, adultery, or living apart for one year pursuant to a written separation agreement or following a separation judgment.
- 135** N.Y. DOM. REL. § 170-A (2007) A spouse against whom a divorce or separation was obtained prior to 1970 may bring a special proceeding to recover the amount or



value of any economic or property rights of which the spouse was deprived by virtue of that decree.

- 136** N.Y. DOM. REL. § 171 (2007) A divorce will be denied, although adultery is proved: if the spouse procured, connived, or forgave the adultery; if the spouse does not file for divorce within five years after discovering the adultery; or if both spouses are guilty of adultery.
- 137** N.Y. DOM. REL. § 172 (2007) In an action for divorce on the ground of adultery, a plaintiff or defendant may serve a copy of the pleading on a co-respondent named in the pleading. If the allegations are not proven against the co-respondent, he or she shall be entitled to a bill of costs against the plaintiff spouse, such bill to consist of the sum allowed by law or a trial fee, and disbursement.
- 138** N.Y. DOM. REL. § 173 (2007) In an action for divorce, there is a right to trial by jury regarding the grounds for granting the divorce.
- 139** N.Y. DOM. REL. § 175 (2007) A divorce judgment arising from an action commenced by a mother will not affect the legitimacy of children born before commencement of the action. A divorce judgment arising from an action commenced by the father will not affect the legitimacy of a child born or conceived before the commission of the offense charged by the father; but the legitimacy of any other child of the wife may be determined as one of the issues in the action. Children conceived before commencement of the divorce action are presumed to be children of marriage.

#### **Article 11. Action for Separation**

- 140** N.Y. DOM. REL. § 200 & 202 (2007) An action may be maintained by a husband or wife to procure a separation on grounds of cruelty, abandonment, neglect or failure to support, adultery, or the confinement of the defendant in prison for a period of three or more consecutive years.

#### **Article 11-A. Special Provisions Relating to Divorce and Separation**

- 141** N.Y. DOM. REL. § 210 (2007) No action for divorce or separation may be maintained on a ground which arose more than five years before the date of the commencement of the action, unless certain grounds are alleged.
- 142** N.Y. DOM. REL. 211 (2007) Pleadings, proof, and motions in a matrimonial action must adhere to certain notice and procedural requirements set forth in this provision.

#### **Article 12. Dissolution of Marriage on Ground of Absence**

- 143** N.Y. DOM. REL. § 220 & 221 (2007) A marriage may be dissolved based on the disappearance of one of the spouses for five years or more, provided, among other requirements, that the petitioner believes his or her spouse is dead.

#### **Article 13. Provisions Applicable to More than One Type of Matrimonial Action**

- 144** N.Y. DOM. REL. § 230 & 231 (2007) Parties to a matrimonial action are subject to certain residency requirements set forth in this provision.
- 145** N.Y. DOM. REL. § 232 (2007) A plaintiff in a matrimonial action must satisfy certain notice and proof of service requirements set forth in this provision.
- 146** N.Y. DOM. REL. § 233 & 234 (2007) Courts shall have the power to sequester real and personal property and award title and possession between spouses, including occupancy and control of a residence, in actions for divorce, separation, or annulment, particularly when personal service cannot be made upon the defendant.
- 147** N.Y. DOM. REL. § 235 (2007) The documents involved in matrimonial proceedings shall be confidential. Court proceedings, including examination of witnesses, may exclude the public if in the court's discretion it is in the public interest.
- 148** N.Y. DOM. REL. § 236 (2007) Rights and obligations that spouses have to each other with respect to alimony, maintenance, and other legal interests, including division of property, equity claims, inheritance and pension rights, insurance (health and life), and child custody and support shall be determined as prescribed in this provision. The parties in a matrimonial action are subject to certain compulsory financial disclosure and enforcement mechanisms set forth here.
- 149** N.Y. DOM. REL. § 237 (2007) Courts may direct a spouse in a matrimonial action to pay such counsel fees of the other spouse as justice requires.
- 150** N.Y. DOM. REL. § 238 (2007) Courts may direct either spouse to pay the expenses of the other in enforcement proceedings from a judgment or order entered in an action for divorce, separation, annulment, or declaration of the nullity of a marriage.
- 151** N.Y. DOM. REL. § 239 (2007) In an action for divorce or separation, courts may refuse to grant an order to stay proceedings where the only default of payment is the failure of a spouse to pay alimony, maintenance, or counsel fees due to his or her inability to make such payments.
- 152** N.Y. DOM. REL. § 240 (2007) Courts shall have the power to make orders in a matrimonial proceeding concerning child custody and child support (including the provision of health insurance) for children of the marriage.
- 153** N.Y. DOM. REL. § 243 (2007) Courts may require the provision by one spouse of reasonable security for support or maintenance payments by him or her in actions for divorce, separation, annulment, or the declaration of the nullity of a void marriage.

- 154** N.Y. DOM. REL. § 244 & 244-A (2007) Spouses in actions for divorce, separation, annulment, or the declaration of the nullity of a void marriage who default on payments ordered in such actions are subject to certain enforcement mechanisms set forth in this provision.
- 155** N.Y. DOM. REL. § 244-B (2007) Courts may order the suspension of a spouse's or ex-spouse's driving privileges for non-payment of child support or enforcement of arrears.
- 156** N.Y. DOM. REL. § 244-C (2007) Courts may order the suspension of a spouse's or ex-spouse's professional, occupational, and business licenses for non-payment of child support or enforcement of arrears.
- 157** N.Y. DOM. REL. § 244-D (2007) Courts may order the suspension of a spouse's or ex-spouse's recreational license for non-payment of child support or enforcement of arrears.
- 158** N.Y. DOM. REL. § 245 (2007) Special enforcement rights afforded to spouses include fines and/or imprisonment for contempt upon default of a judgment or order in an action for divorce, separation, or annulment.
- 159** N.Y. DOM. REL. § 246 (2007) Courts may make special arrangements for persons who are financially unable to comply with a court's order for alimony or child support.
- 160** N.Y. DOM. REL. § 247 (2007) The requirement of payments of moneys by a former spouse for a contempt arising from his or her failure to pay court-ordered spousal support shall be suspended during the time he or she is confined in prison.
- 161** N.Y. DOM. REL. § 248 (2007) The obligation of a person to pay support to a former spouse shall terminate upon the former spouse's remarriage and may be modified upon proof that the former spouse is cohabiting and holding himself or herself out as the spouse of another.
- 162** N.Y. DOM. REL. § 249 (2007) A divorce, separation, annulment action, or action to enjoin prosecution in another jurisdiction for divorce may, at the court's discretion, be entitled to preference on the court's trial calendar.
- 163** N.Y. DOM. REL. § 251 (2007) When, in a matrimonial action, the Supreme Court refers the issues of support, custody, or visitation to the Family Court, the order or judgment shall provide that a copy of the order shall be filed by the plaintiff's attorney within ten days with the clerk of the Family Court specified therein.
- 164** N.Y. DOM. REL. § 252 (2007) Pending an action for divorce, separation, or annulment, a spouse with or without a child in common may seek a temporary or final order of protection (as well as counsel fees for the order of protection, temporary custody support, visitation orders, and orders directing the surrendering of firearms and restitution) from Supreme Court or Family Court.

- 165** N.Y. DOM. REL. § 253 (2007) Any party to a marriage who commences a proceeding to annul a marriage or for a divorce must allege in his or her verified complaint: (i) that, to the best of his or her knowledge, he or she has taken or that he or she will take all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision. Procedures for removal of any barrier to remarriage are set forth in this provision.
- 166** N.Y. DOM. REL. § 254 (2007) Spouses in a custody, support, divorce, separation, or annulment proceeding, with or without an order of protection, may keep their (and/or their child's) residential addresses confidential.

## Education Law

### Title I. General Provisions

#### Part I. General Organization

- 167** N.Y. EDUC. § 202 (2007) Every Regent must file a statement each year with the Secretary of State detailing his or her and his or her spouse's financial interest in any activity subject to the jurisdiction of the State Education Department.

#### Part II. Libraries

- 168** N.Y. EDUC. § 272 (2007) Each public library system shall provide access to the internet in designated libraries located within their systems for the purpose of connecting residents of this state who are serving in the military on active duty in a combat theater or combat zone of operations to family members, including spouses.

### Article 7. Commissioner of Education

- 169** N.Y. EDUC. § 313 (2007) To ensure equality of opportunity in admission to educational institutions, it shall be an unfair educational practice to discriminate on the basis of marital status.
- 170** N.Y. EDUC. § 313-A (2007) No application for admission to any educational institution in the State of New York shall contain any questions requiring the involuntary disclosure of the marital status of the parents of an applicant.

### Article 8. State University and State Financial Assistance for Higher Education

- 171** N.Y. EDUC. § 355 (2007) Tuition for a member of the Armed Forces on full-time duty or his or her spouse may not be higher than in-state tuition rates.



**Article 11. State Teachers' Retirement System for Public School Teachers**

- 172** N.Y. EDUC. § 532 (2007) Supplemental retirement is available to teachers and to their widows or widowers.
- 173** N.Y. EDUC. § 532-A (2007) The surviving spouse of a deceased retired member who retired under the option that provides benefits for life to a surviving spouse after the death of the retired member shall be entitled to adjusted cost of living benefits.

**Article 12-A. Elementary and Secondary Education Opportunity Program**

- 174** N.Y. EDUC. § 561 (2007) For the Arthur O. Eve Elementary and Secondary Education Opportunity Program, "parent" is defined as a New York resident who is a parent, stepparent, adoptive parent, or a spouse of an adoptive parent of a public school pupil.

**Article 13. Higher Education Student Financial Aid**

- 175** N.Y. EDUC. § 604 (2007) Memorial scholarships are available for family members of deceased firefighters, volunteer firefighters, police officers, peace officers, and emergency medical service workers, including spouses and children of spouses.
- 176** N.Y. EDUC. § 608 (2007) Scholarships are available to family members of innocent persons who died or became severely or permanently disabled on September 11, 2001, including spouses and children of spouses.
- 177** N.Y. EDUC. § 608-A (2007) Under the Military Enhanced Recognition, Incentive, and Tribute ("M.E.R.I.T.") program, scholarships are available to family members of eligible members of the military who died or became permanently disabled, including spouses and children of spouses.

**Article 14. New York State Higher Education Services Corporation**

**Part II. Student Financial Aid**

**Subpart I. General Provisions**

- 178** N.Y. EDUC. § 661 (2007) Residency requirements for certain awards and loans are waived for full-time duty members of the Armed Forces or their spouses.
- 179** N.Y. EDUC. § 663 (2007) For the purpose of determining the amount of financial aid awards, "income" shall be the total of the combined net taxable income of the applicant, the applicant's spouse, and the applicant's parents as reported in New York State income tax returns for the calendar year next preceding the beginning of the school year for which application for assistance is made. The parent's income shall not be included if the applicant is married.
- 180** N.Y. EDUC. § 665 (2007) If a student receives a financial aid payment as a result of a false or erroneous

statement on his application or financial form or any other act of omission or commission on the part of the student, his spouse, or his parents such that the recipient would otherwise have been considered ineligible to receive such payment, the recipient shall be required to refund the improper payment to the state.

- 181** N.Y. EDUC. § 668-B (2007) Children, spouses, children of spouses, and financial dependents of deceased firefighters, volunteer firefighters, police officers, peace officers, and emergency medical service workers who die in the line of duty are eligible for special memorial scholarships from the state.
- 182** N.Y. EDUC. § 668-D (2007) Children, spouses, and children of spouses of innocent persons who died or became severely or permanently disabled as a result of September 11th are eligible for special memorial scholarships from the state.
- 183** N.Y. EDUC. § 668-E (2007) Children, spouses, and children of spouses of persons who died or became permanently disabled as a result of military service while legally a resident of New York State are eligible for special scholarships from the state.
- 184** N.Y. EDUC. § 668-F (2007) Children, spouses, and children of spouses of persons who died as a direct result of the crash of American Airlines flight 587 on November 12, 2001 are eligible to receive a special scholarship from the state.

**Title II. School District Organization**

**Article 41. District Meetings**

**Part I. General Provisions**

- 185** N.Y. EDUC. § 2018-A & B (2007) For school district elections, where a person is or would be, if he were a qualified voter, entitled to apply for the right to vote by absentee ballot, his spouse, if a qualified voter and a resident of the same school district, shall be entitled to vote as an absentee voter upon personally making and signing an application and showing, *inter alia*, that he expects to be absent from the school district on the day of the school district election by reason of accompanying or being with the spouse who is or would be, if he were a qualified voter, so entitled to apply for the right to vote by absentee ballot.

**Article 52-A. New York City Community School District System**

- 186** N.Y. EDUC. § 2590-E (2007) Community district education council members, candidates for community district education councils, the community superintendent, and any other officer or employee in schools and programs under the jurisdiction of the community councils are required to submit to the city

board and the community council financial reports for themselves and their spouses.

- 187** N.Y. EDUC. § 2590-G (2007) City board members are required to submit financial reports that include spousal finances.
- 188** N.Y. EDUC. § 2590-H (2007) The Chancellor of Schools has the ability to prescribe regulations and by-laws requiring members of the city board, the Chancellor, and any other officer or employee of the school system or related programs under the jurisdiction of the city board to submit financial reports for themselves and their spouses.

#### **Title IV. Teachers and Pupils**

##### **Article 61. Teachers and Supervisory and Administrative Staff**

- 189** N.Y. EDUC. § 3016 (2007) No person who is related by blood or marriage to a trustee or member of the Board of Education shall be employed in such district as a teacher except on consent of two-thirds of the voters of such district present or of two-thirds of the Board of Education.

##### **Article 65. Compulsory Education and School Census**

###### **Part I. Compulsory Education**

- 190** N.Y. EDUC. § 3210 (2007) A school district may presume that either parent of a student has the authority to obtain the release of a minor from school attendance unless the school district has been provided with a certified copy of a legally binding instrument such as the court order or decree of divorce, separation, or custody which provides evidence to the contrary.

#### **Title VII. State and City Colleges and Institutions**

##### **Article 125-B. City University Construction Fund**

- 191** N.Y. EDUC. § 6271 & 6273 (2007) The City University Construction Fund is created to provide facilities for the university, with “facility” being defined as a housing unit for the use of students, married students, faculty, staff, and the families of such married students, faculty, and staff, an academic building, administration building, library, laboratory, classroom, or other building or structure essential, necessary, or useful in the academic program of the City University.
- 192** N.Y. EDUC. § 6276 (2007) Housing units provided under the City University Construction Fund under the dormitory authority may be subject to leases with faculty, staff, and married students.
- 193** N.Y. EDUC. § 6305 (2007) The spouse of a full-time active member of the U.S. military serving in New York shall be charged the same tuition for community college as that charged to New York residents.

#### **Title VIII. The Professions**

##### **Article 130. General Provisions**

###### **Subarticle 3. Professional Misconduct**

- 194** N.Y. EDUC. §§ 6509-B, 6509-C & 6511 (2007) It shall be professional misconduct for a licensed professional to be in arrears of child and spousal support, or to fail to comply with a child or spousal support proceeding, which can result in censure, reprimand, suspension, revocation of a license, a fine or a requirement to perform public service.

### **Elder Law**

#### **Article II. Programs for the Elderly**

##### **Title 3. Program for Elderly Pharmaceutical Insurance Coverage**

- 195** N.Y. ELDER § 242 (2007) Persons eligible for the Elderly Pharmaceutical Insurance Coverage (“E.P.I.C.”) program include unmarried persons whose income is \$20,000 or less, or married persons with a combined income of \$26,000 or less.
- 196** N.Y. ELDER § 244 (2007) The E.P.I.C. panel shall prepare a yearly report regarding elderly insurance coverage which shall include information about the marital status of study participants.
- 197** N.Y. ELDER § 247 (2007) A specific quarterly cost-sharing schedule exists for married program participants.
- 198** N.Y. ELDER § 248 (2007) Cost-sharing responsibilities for catastrophic coverage are distinct for married versus unmarried program participants.

### **Election Law**

#### **Article 3. Election Officials**

##### **Title IV. Election Inspectors and Poll Clerks**

- 199** N.Y. ELEC. § 3-400 (2007) No person may serve as an election inspector or a poll clerk if he or she is the spouse of a candidate for any public office or who is a candidate in that district.

#### **Article 5. Registration and Enrollment of Voters**

##### **Title I. General Provisions**

- 200** N.Y. ELEC. § 5-104 (2007) In determining whether an individual is qualified to vote, the election board to which the voting application is made may consider the marital status and residence of spouses.

## Title II. Registration and Enrollment

- 201** N.Y. ELEC. § 5-215 (2007) The application for a veteran's absentee ballot may be signed by the spouse of a veteran who is located in a veterans hospital outside New York.

### Article 7. Election Ballot

#### Title I. Form of Ballots

- 202** N.Y. ELEC. § 7-123 (2007) A ballot for a military voter must contain a statement as to whether the voter is a member of the military or the spouse, parent, or child of a member of the military.

### Article 8. Conduct of Elections

#### Title IV. Absentee Voting

- 203** N.Y. ELEC. § 8-400 (2007) A qualified voter may be entitled to an absentee ballot if, among other things, he is accompanying a spouse and is absent from New York City.
- 204** N.Y. ELEC. § 8-404 (2007) The spouse of a veteran may apply for the absentee ballot of certain hospitalized veterans.

### Article 10. Voting By Member of Armed Forces

- 205** N.Y. ELEC. § 10-104 (2007) A qualified military voter of New York and an accompanying spouse who by reason of military service are absent from the voting district shall be entitled to vote as fully as if they were present at their polling place.
- 206** N.Y. ELEC. § 10-106 (2007) A spouse accompanying a person who is soon to be inducted into the military may register before the board of elections of his county of residence, and his or her ballot shall be stamped "military ballot."

### Article 11. Special Presidential and Special Federal Voters and Special Ballots

#### Title I. Special Presidential Voters

- 207** N.Y. ELEC. § 11-104 (2007) Special application forms may be provided to an individual's spouse for a special presidential ballot.

### Article 14. Campaign Receipts and Expenditures

- 208** N.Y. ELEC. § 14-100 (2007) "Contribution" to a candidate does not include any monies received by a candidate or his spouse that is independent of the candidate or of his agents or authorized political committees.
- 209** N.Y. ELEC. § 14-114 (2007) The statutory caps on the amount of contributions that may be made by a candidate's spouse or children to that candidate are higher than the caps for non-family members.

### Article 15. Village Elections

- 210** N.Y. ELEC. § 15-120 (2007) A qualified voter is entitled to an absentee ballot for village elections if he is

accompanying a spouse who is out of the county for certain reasons specified in the statute.

- 211** N.Y. ELEC. § 15-122 (2007) Applications for absentee voting at village elections for persons unable to appear because of illness or physical disability must be furnished upon the request of a voter or the voter's spouse.

## Employer's Liability Law

### Article 2. Employers' Liability

- 212** N.Y. EMPL'RS LIAB. § 2 (2007) The executor or administrator of an estate of an employee with a surviving spouse who has been killed as a result of on-the-job injuries shall have the same rights as the employee would have had with regard to the employer's liability.
- 213** N.Y. EMPL'RS LIAB. § 10 (2007) Payments are established for widows or next of kin if an employee is killed as a result of an on-the-job injury.

## Environmental Conservation Law

### Article 11. Fish and Wildlife

- 214** N.Y. ENVTL. CONSERV. § 11-0523 (2007) Owners and lessees and members of their immediate families, including spouses, actually occupying or cultivating lands may, without a permit, take unprotected wildlife (including bear, rabbits, skunks, raccoons, coyotes, foxes, and others) when such wildlife is injuring their property or has become a nuisance thereon.
- 215** N.Y. ENVTL. CONSERV. § 11-0707 (2007) Resident owners and members of their immediate families, including spouses, actually occupying and cultivating farm lands shall have the right to hunt, trap, and fish on such farm lands and waters.
- 216** N.Y. ENVTL. CONSERV. § 11-0709 (2007) The holder of a farm fish pond license and members of his immediate family, including a spouse, may, without a fishing license, take fish from such fish ponds. The holder of a fishing preserve license and members of his immediate family, including a spouse, may, without a fishing or netting license, take fish from such fishing preserve waters.
- 217** N.Y. ENVTL. CONSERV. § 11-0913 (2007) For deer management permits, "owner" means the owner or spouse of the owner of record of a parcel of land.
- 218** N.Y. ENVTL. CONSERV. § 11-0931 (2007) No person other than the owner or lessee of a dwelling house, farm building, or farm structure, or members of his immediate family, including a spouse, actually residing therein shall discharge a firearm or long bow within 500 feet from the building.

**Article 13. Marine and Coastal Resources**

- 219** N.Y. ENVTL. CONSERV. § 13-0315 (2007) A Class E permit for the shipping and processing of shellfish shall allow the holder thereof and members of the permit holder's immediate family, including a spouse, to shuck and pack bay scallops which have been received from the holder of a digger's permit, and to ship such scallops in the form of fresh shucked stock only in intrastate commerce.
- 220** N.Y. ENVTL. CONSERV. § 13-0328 (2007) A commercial food fish, commercial lobster, commercial crab, or commercial whelk or conch license or permit may be reissued to a member of the immediate family, including the spouse, of the prior holder of such license or permit. A license or permit holder may designate in writing a member of his or her immediate family, including a spouse, to whom the license or permit shall be reissued in the event that the license or permit holder dies prior to surrendering his or her license or permit to the department.

**Article 15. Water Resources**

- 221** N.Y. ENVTL. CONSERV. § 15-2117 (2007) When cemeteries need to be relocated for river regulation, surviving spouses shall have certain rights over the remains. Members of the same family, including spouses, buried together shall be interred in the new location in contiguous graves.

**Article 52. Implementation of Environmental Quality Bond Act of 1986****Title 1. General Provisions**

- 222** N.Y. ENVTL. CONSERV. § 52-0111 (2007) Contracts and bids for contracts for government work under the Environmental Quality Bond Act shall contain a statement regarding a contractor's equal opportunity employment opportunity policy, which shall forbid discrimination on the basis of marital status.

**Estates, Powers, and Trusts Law****Article 2. Rules Governing Dispositions Subject to this Law**

- 223** N.Y. EST. POWERS & TRUSTS § 2-1.5 (2007) Advancements and their adjustment shall not decrease the elective share of a surviving spouse.
- 224** N.Y. EST. POWERS & TRUSTS § 2-1.11 (2007) An attorney-in-fact may make a renunciation of property interests if the instrument appointing the attorney in fact expressly authorizes a renunciation in favor of the attorney-in-fact or the attorney-in-fact's spouse.

**Article 3. Substantive Law of Wills**

- 225** N.Y. EST. POWERS & TRUSTS § 3-3.9 (2007) Nothing in the law regarding testamentary direction to purchase

annuities shall impair the right of election of a surviving spouse.

**Article 4. Descent and Distribution of an Intestate Estate**

- 226** N.Y. EST. POWERS & TRUSTS § 4-1.1 (2007) The descent and distribution of a decedent's intestate estate goes to the surviving spouse, or if there are children, then the first \$50,000 goes to the spouse and half of the residue to the spouse and half to issue.
- 227** N.Y. EST. POWERS & TRUSTS § 4-1.2 (2007) Regarding intestate succession, a non-marital child is the legitimate child of a mother and may inherit. A non-marital child is the legitimate child of a father and may inherit under intestate provisions if paternity is established.

**Article 5. Family Rights****Part 1. Right of Election by Surviving Spouse**

- 228** N.Y. EST. POWERS & TRUSTS § 5-1.1 & 5-1.1-A (2007) A surviving spouse may not be disinherited and has a right to elect against a decedent's spouse's will.
- 229** N.Y. EST. POWERS & TRUSTS § 5-1.2 (2007) A "surviving spouse" is the legal husband or wife, and spouses of marriages that are bigamous, incestuous, annulled, abandoned, post-separation order, or otherwise prohibited are disqualified from electing against a will.
- 230** N.Y. EST. POWERS & TRUSTS § 5-1.3 (2007) If a will was made and testator married after execution of the will (post-1930), then the surviving spouse is entitled to elect an intestate share.
- 231** N.Y. EST. POWERS & TRUSTS § 5-1.4 (2007) If a testator once married is divorced, the marriage is annulled, or the marriage is declared void, then any dispositions in the will made to the former spouse are revoked unless the testator expressly provides otherwise.

**Part 3. Rights of the Family Unit**

- 232** N.Y. EST. POWERS & TRUSTS § 5-3.1 (2007) Certain items of property (including household furniture, appliances, personal effects, family pictures, car, family bible, etc.) are not part of an estate but instead shall be set off for the benefit of the surviving spouse.
- 233** N.Y. EST. POWERS & TRUSTS LAW § 5-3.4 (2007) If the administration of an estate has been completed and the estate distributed, an action may be brought by a surviving spouse against testamentary beneficiaries or distributees.

**Part 4. Rights of Members of Family Resulting From Wrongful Act, Neglect, or Default Causing Death of Decedent**

- 234** N.Y. EST. POWERS & TRUSTS § 5-4.4 (2007) A surviving spouse has the right to share in damages received in wrongful death actions.



- 235** N.Y. EST. POWERS & TRUSTS § 5-4.5 (2007) A non-marital child is the distributee of his father and paternal kindred, and the father and paternal kindred of a non-marital child are that child's distributees.

**Article 6. Classification, Creation, Definition of and Rules Governing Estates in Property**

**Part 2. Estates Classified as to Number of Persons**

- 236** N.Y. EST. POWERS & TRUSTS § 6-2.2 (2007) A disposition of property to a husband and wife is automatically assumed to create a tenancy by the entirety.

**Part 6. Disposition of Community Property Rights at Death**

- 237** N.Y. EST. POWERS & TRUSTS § 6-6.2 (2007) In determining whether specific property acquired during a marriage shall at the death of a married person be considered community property, it shall be a rebuttable presumption that property acquired while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to be community property, and property acquired while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be community property.
- 238** N.Y. EST. POWERS & TRUSTS § 6-6.3 (2007) Upon the death of a married person, one-half of the community property is the property of the surviving spouse and is not subject to testamentary disposition by the decedent nor to the laws of descent and distribution.
- 239** N.Y. EST. POWERS & TRUSTS § 6-6.4 (2007) If the title to any community property was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the surrogate's court or by execution of an instrument by the personal representative or the testamentary beneficiaries or distributees of the decedent. Neither the personal representative nor the court has a duty to discover or attempt to discover whether property held by the decedent is community property unless a written demand is made by the surviving spouse or the spouse's successor in interest. If the title to any property to which this part applies is held by the surviving spouse at the time of the decedent's death, the personal representative or a testamentary beneficiary or distributee of the decedent may institute an action to perfect title to the property.
- 240** N.Y. EST. POWERS & TRUSTS § 6-6.5 (2007) If a surviving spouse has apparent title to community property, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or a testamentary beneficiary or distributee of the decedent. If a personal representative

or a testamentary beneficiary or distributee of the decedent has apparent title to community property, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

**Article 7. Trusts**

**Part 1. Rules Governing Trusts**

- 241** N.Y. EST. POWERS & TRUSTS § 7-1.5 (2007) The beneficiary of an express trust may transfer the trust income property to his or her spouse.
- 242** N.Y. EST. POWERS & TRUSTS § 7-1.12 (2007) In order to qualify for an *inter vivos* supplemental needs trust established for persons with severe and chronic or persistent disabilities, the creator of the trust must be a person or entity other than the beneficiary or the beneficiary's spouse.
- 243** N.Y. EST. POWERS & TRUSTS § 7-1.13 (2007) Trustees may establish certain separate trusts for spouses and surviving spouses.

**Part 3. Rights of Purchasers, Creditors, and Other Persons**

- 244** N.Y. EST. POWERS & TRUSTS § 7-3.1 (2007) Provisions in certain trusts that redirect principal/income if the creator's spouse should apply for medical assistance, etc. are void as against public policy.

**Part 5. Bank Accounts in Trust Form**

- 245** N.Y. EST. POWERS & TRUSTS § 7-5.5 (2007) Bank accounts in trust form do not affect the rights of the surviving spouse of the depositor.

**Part 6. Uniform Transfers To Minors Act**

- 246** N.Y. EST. POWERS & TRUSTS § 7-6.7 (2007) A person who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor, or if no guardian is available, to an adult member of the minor's family, including a spouse.
- 247** N.Y. EST. POWERS & TRUSTS § 7-6.18 (2007) If no custodian exists for the property of or liquidated debt to a minor, a minor fourteen years of age or older may designate an adult member of the minor's family, including his or her spouse, to be the custodian. An adult family member, including a spouse, may petition the court to appoint a custodian of a minor under the age of fourteen without a guardian.
- 248** N.Y. EST. POWERS & TRUSTS § 7-6.19 (2007) A minor who has attained the age of fourteen years, or an adult member of the minor's family, including a spouse, may petition the court for an accounting by the custodian or the custodian's legal representative.

**Article 8. Charitable Trusts****Part 1. Rules Governing Charitable Trusts**

**249** N.Y. EST. POWERS & TRUSTS § 8-1.3 (2007) The creator of a charitable trust may designate himself or herself or his or her spouse to perform duties associated with the trust.

**Article 9. Perpetuities and Accumulations****Part 1. Perpetuities**

**250** N.Y. EST. POWERS & TRUSTS § 9-1.3 (2007) If an estate would otherwise be invalid because of the reference to a spouse without any further identification, the reference is presumed to be the spouse as of the effective date of the instrument.

**Article 11. Fiduciaries: Powers, Duties, and Limitations; Actions by or against in Representative or Individual Capacities****Part 1. Fiduciaries: Powers, Duties, and Limitations**

**251** N.Y. EST. POWERS & TRUSTS § 11-1.1 (2007) A fiduciary may join with a decedent's spouse in a joint tax return in certain circumstances.

**252** N.Y. EST. POWERS & TRUSTS § 11-1.2 (2007) Dispositions to surviving spouses are eligible for an estate tax marital deduction.

**253** N.Y. EST. POWERS & TRUSTS § 11-1.11 (2007) Trustees have the power to amend a trust for certain tax purposes, including to meet the needs of a qualified domestic trust for a surviving spouse who is not a U.S. citizen.

**Part 12. Fiduciaries: Powers, Duties, and Limitations**

**254** N.Y. EST. POWERS & TRUSTS § 11-2.3 (2007) A trustee may not make an adjustment that would reduce the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction is claimed.

**Article 11-A. Uniform Principal and Income Act****Part 2. Decedent's Estate or Terminating Income Interest**

**255** N.Y. EST. POWERS & TRUSTS § 11-A-2.1 (2007) When a decedent dies or an income interest in a trust ends, the fiduciary is authorized to pay certain administrative expenses and taxes out of income passing to a trust, for which he may claim a marital tax deduction.

**Part 4. Allocation of Receipts during Administration of Trust****Subpart 3. Receipts Normally Apportioned**

**256** N.Y. EST. POWERS & TRUSTS § 11-A-4.9 (2007) With respect to deferred compensation, annuities, and similar payments, if, in order to obtain an estate tax marital deduction for a trust, a trustee must allocate more as payment for services rendered or property transferred in exchange for future payments to income than is provided for by this section, the trustee shall allocate to

income the additional amount necessary to obtain the marital deduction.

**257** N.Y. EST. POWERS & TRUSTS § 11-A-4.13 (2007) A beneficiary spouse may direct the trustee to make changes to certain trusts if the trust is not producing income.

**Article 12. Actions by Creditors and Other Persons against Distributees and Testamentary Beneficiaries****Part 1. Liability of Distributees and Testamentary Beneficiaries and Action Thereon**

**258** N.Y. EST. POWERS & TRUSTS § 12-1.2 (2007) A surviving spouse to whom a disposition has been made that qualifies for the estate tax marital deduction is last on the list as liable against creditors.

**Article 13. Other Provisions Affecting Estates****Part 1. Assets of Decedent's Estate**

**259** N.Y. EST. POWERS & TRUSTS § 13-1.3 (2007) Any disposition to a surviving spouse which qualifies for the estate tax marital deduction is last on the list as chargeable for estate obligations.

**Executive Law****Article 6. Department of State**

**260** N.Y. EXEC § 94 (2007) A person required to file a financial disclosure statement to the State Ethics Commission may request an exemption from identifying the information of a spouse.

**Article 7-A. Solicitation and Collection of Funds for Charitable Purposes**

**261** N.Y. EXEC § 175 (2007) The Attorney General has the authority to prosecute actions for violations by charitable organizations and their representatives, including law enforcement support organizations that represent that funds collected will benefit the widows of slain police officers when the organization offers no such benefit.

**Article 11. Division of State Police**

**262** N.Y. EXEC § 214 (2007) The surviving spouse of a state police officer killed in the line of duty shall, if otherwise qualified, have a prior and preferred right over other applicants for appointment to a state police training school or academy.

**263** N.Y. EXEC § 227-A (2007) The widow of a member of the state police whose death has been caused by injury or disease contracted in the performance of duty may receive certain death benefits until she or he is married again.



**Article 15. Human Rights Law**

- 264** N.Y. EXEC § 291 (2007) The opportunity to obtain employment without discrimination because of marital status is recognized as and declared to be a civil right. The opportunity to obtain education, the use of places of public accommodation, and the ownership, use, and occupancy of housing accommodations and commercial space without discrimination because of marital status is recognized as and declared to be a civil right.
- 265** N.Y. EXEC § 292 (2007) A person employed by his or her spouse is not considered an employee of the spouse for civil rights protection purposes.
- 266** N.Y. EXEC § 295 (2007) The Human Rights Division has the authority to create advisory councils to research the problem of discrimination on the basis of marital status, and may also create state plans to minimize such discrimination.
- 267** N.Y. EXEC § 296 (2007) Regarding unlawful discriminatory practices, the provisions of this section do not pertain to certain individuals who provide housing to older individuals and their spouses.
- 268** N.Y. EXEC § 296-A (2007) No provision of this section regarding unlawful discriminatory practices which provides spouses the right to separately apply for credit, borrow money, or have separate credit histories maintained shall limit or foreclose the right of creditors, under any other provision of law, to hold one spouse legally liable for debts incurred by the other.
- 269** N.Y. EXEC § 297 (2007) An aggrieved individual may force a discriminating entity to take various affirmative steps to reduce discrimination based upon marital status.

**Article 15-A.** [Expires Dec. 31, 2018] **Participation by Minority Group Members and Women with Respect to State Contracts**

- 270** N.Y. EXEC § 312 (2007) With respect to state contracts and documents soliciting business, the contractor may not discriminate on the basis of marital status.

**Article 17. Veterans' Affairs**

- 271** N.Y. EXEC § 353 (2007) The Division of Veterans' Affairs shall provide seminars three times per year at locations throughout the state to advise veterans and their surviving spouses, who are sixty-two years or older, of veterans' benefits for which they may be eligible, and the means of obtaining such benefits. The Division shall have the authority to process all information received from nursing homes and residential health care facilities indicating veteran or veteran spouse status.
- 272** N.Y. EXEC § 354-B (2007) Surviving spouses of deceased military personnel who were killed in combat or duty subject to hostile fire or imminent danger are first in priority to be eligible recipients of the New York State supplemental burial allowance.

- 273** N.Y. EXEC § 362 & 363 (2007) Certain payments are provided to the widows or widowers of blind veterans.

- 274** N.Y. EXEC § 364 (2007) Where any veteran is disqualified for an annuity for any period solely because the veteran is incarcerated, the Director of Veterans' Affairs shall pay to his wife, if any, the annuity which such veteran would receive for that period. In case a widow of a deceased annuitant is being furnished hospital treatment, institutional care, or domiciliary care by the United States or the state, the annuity payable under this article to such a widow may be discontinued after the first day of the seventh calendar month following the month of admission for treatment or care. Payment of such annuity shall be resumed if such widow is discharged from the hospital, institution, or home, or if her treatment or care therein is otherwise terminated.

**Article 19-B. State Bingo Control Commission**

- 275** N.Y. EXEC § 435 (2007) An individual married to a person convicted of a crime, a current or former professional gambler or gambling promoter, or a person who for other reasons is not a person of good moral character, or a public officer or employee, among others, is ineligible to receive a license to conduct bingo games.

**Article 21. New York State Office for the Prevention of Domestic Violence**

- 276** N.Y. EXEC § 576 (2007) The Batters Project which seeks to reduce and prevent abusive behaviors, collects data of the Project's participants including their marital status.

**Article 22. Crime Victims Board**

- 277** N.Y. EXEC § 624 (2007) A surviving spouse of an individual who died as a direct result of a crime is eligible for Crime Victims benefits, as is a surviving spouse of a crime victim who died from causes not directly related to the crime, when such victim died prior to filing a claim with the board or subsequent to filing a claim but prior to the rendering of a decision by the board. Such award shall be limited to out-of-pocket loss incurred as a direct result of the crime and to compensation for a spouse of a victim of a crime who has sustained personal physical injury as a direct result of a crime.
- 278** N.Y. EXEC § 626 (2007) Costs to be reimbursed include the counseling of spouses of homicide victims and crime victims who have sustained personal physical injuries, as well as costs associated with residing at shelters for battered spouses.
- 279** N.Y. EXEC § 631 (2007) Where a police officer or firefighter, whether paid or volunteer, dies from injuries received in the line of duty as a direct result of a crime, an award may, without regard to the financial difficulty of the claimant, be made to the unreimbursed counseling expenses of family members, including the eligible spouse of such victim.

## General Business Law

### Article 4. Peddlers

**280** N.Y. GEN. BUS. § 32 (2007) Surviving spouses of veterans of the U.S. Armed Forces may, at no cost, receive licenses to sell goods and services.

**281** N.Y. GEN. BUS. § 35-A (2007) Specialized licenses to vend in cities of more than one million people transfer by operation of law to the spouse of a deceased disabled veteran.

### Article 7. Private Investigators, Bail Enforcement Agents, and Watch, Guard, and Patrol Agencies

**282** N.Y. GEN. BUS. § 72 (2007) A person subscribing to another person's license application may not be related to the applicant by marriage.

### Article 11. Employment Agencies

**283** N.Y. GEN. BUS. § 174 (2007) An employment agency license may not be granted to an organization whose name intimates that it discriminates on the basis of marital status.

### Article 11-A. Motor Vehicle Manufacturers

**284** N.Y. GEN. BUS. § 198-B (2007) A warranty for a used car that is sold or leased may be transferred to the spouse of a purchaser/lessee if the covered vehicle is transferred to the spouse during the life of the warranty.

### Article 11-B. Franchises for the Sale of Motor Fuel

**285** N.Y. GEN. BUS. § 199-I (2007) A franchise for the sale of motor fuel may devolve to the surviving spouse of a dealer.

### Article 15. Specious Cash Sales

**286** N.Y. GEN. BUS. § 254 (2007) There is a rebuttable presumption that a creditor knowingly participated in or shall have been directly connected with a consumer sale if the creditor is the spouse of the seller.

### Article 19. Oil and Distilled Spirits

**287** N.Y. GEN. BUS. § 307 (2007) Every person violating the provisions of this article relating to the test for refined petroleum and oil shall forfeit to the people of the state the sum of \$500 for each violation. The monies received will be deposited into the Widows and Orphans Fund of the fire department.

### Article 21. Publications

**288** N.Y. GEN. BUS. § 337 (2007) It is a misdemeanor to advertise or offer to assist another in the procurement of a divorce or an annulment of a marriage.

### Article 23-A. Fraudulent Practices in Respect to Stocks, Bonds, and Other Securities

**289** N.Y. GEN. BUS. § 352-E (2007) In real estate syndication offerings, eligible senior citizens and their spouses and

eligible disabled citizens and their spouses shall have certain protections, including being protected from eviction proceedings and unconscionable rent increases.

**290** N.Y. GEN. BUS. § 352-EEE (2007) In conversions to cooperative or condominium ownership in certain cities, towns, and villages located in the counties of Nassau, Westchester, and Rockland, and New York City, certain protections are given to the spouses of eligible senior citizens and disabled citizens.

### Article 26. Miscellaneous

**291** N.Y. GEN. BUS. § 396-Z (2007) With regard to rental vehicle protections, including caps on rates for insurance coverage, "authorized drivers" includes spouses of the renters. A rental company may hold an authorized driver and his or her spouse liable for damage to or loss of a rental vehicle.

### Article 33-A. Dealer Agreements for the Sale of Farm Equipment

**292** N.Y. GEN. BUS. § 696-B (2007) It is a violation for a supplier to unreasonably withhold consent, in the event of the death of a dealer or the principal owner of a dealership, to the transfer of the dealer's interest in the dealership to a member or members of the family of the dealer or the principal owner of the dealership, including the dealer's spouse.

### Article 39-E. Uniform Athlete Agents Act

**293** N.Y. GEN. BUS. § 899-A (2007) An "athlete agent" is an individual other than a spouse who enters into an agency contract with a student-athlete or directly or indirectly recruits or solicits a student-athlete to enter into an agency contract.

## General City Law

### Article 2. General Provisions

**294** N.Y. GEN. CITY § 16-A (2007) Discrimination on the basis of marital status is prohibited in the election or appointment of volunteer members of fire companies.

### Article 2-A. Powers of Cities

**295** N.Y. GEN. CITY § 20 (2007) Every city is empowered to manage and administer funds for pensions and annuities for retirement of city officers and employees, their widows, and dependents.

### Article 2-D. City Personal Tax on Residents

**296** N.Y. GEN. CITY § 25-A (2007) A taxpayer's status as "husband," "wife," or "spouse" can affect the determination of city taxes.

**297** N.Y. GEN. CITY § 25-B (2007) Certain levels of city tax credits are dependent upon marital status, and a taxpayer's marital or other status under this section

shall be the same as his or her marital or other status for purposes of establishing the applicable federal income tax rates.

## General Municipal Law

### Article 6. Public Health and Safety

- 298** N.Y. GEN. MUN. § 126-B (2007) The Board of Supervisors of Broome County is authorized to establish a nursing home, which shall be required to keep records of admissions of patients, including their marital status.
- 299** N.Y. GEN. MUN. § 129 (2007) The superintendent of a public hospital is required to keep proper records of patients, including their marital status.

### Article 7. Trusts for Parks and Libraries in Villages and Towns

- 300** N.Y. GEN. MUN. § 146 (2007) This article shall not be construed or held to authorize any devise or bequest whatever of more than one-half of the estate of a testator or testatrix over and above the payment of debts, liabilities, and expenses, in case he or she shall leave a husband, wife, child, descendant, or parent surviving. The validity of a devise or bequest for more than such one-half may be contested only by a surviving husband, wife, child, descendant, or parent.

### Article 7-A. Burial of Veterans and Their Families

- 301** N.Y. GEN. MUN. § 148 (2007) The burial and headstones of spouses of those who have been honorably discharged from the Armed Forces of the United States shall, in the event that they cannot afford the expenses, be provided.

### Article 8. Cemeteries

- 302** N.Y. GEN. MUN. § 163 (2007) A spouse and children who survive the owner of a cemetery lot shall have in common the possession, care, and control of such lot during the life of the surviving spouse, and if no children, the surviving spouse shall have sole possession, care, and control. The surviving spouse shall have the right of interment for his or her body in such lot, or in a tomb in such lot, and a right to have his or her body remain permanently interred or entombed therein. No conveyance or device shall deprive the surviving spouse of his or her right in such a lot.

### Article 10. Fireman and Policemen

- 303** N.Y. GEN. MUN. § 205 (2007) If a volunteer fireman dies in the course of his duties as a volunteer fireman, his relatives shall be entitled to a pension if the city maintains one, or a \$3,000 payment to his widow if it does not.
- 304** N.Y. GEN. MUN. § 205-A (2006) A surviving wife of a firefighter may be entitled to receive money because

of a person's failure to comply with this statute which resulted in the firefighter's death.

- 305** N.Y. GEN. MUN. § 205-E (2007) The surviving spouse of a police officer is entitled to receive not less than \$5,000 in a cause of action if the police officer died as a result of negligence while performing his or her official duties.
- 306** N.Y. GEN. MUN. § 207-I (2007) Payment of a supplemental retirement allowance is provided for the spouses of deceased firefighter and police pensioners.
- 307** N.Y. GEN. MUN. § 208-B (2007) The widows of certain policemen and firemen may receive various benefits.
- 308** N.Y. GEN. MUN. § 208-C (2007) Death benefits to survivors of police and firefighters may be given to a decedent's dependent mother or father if there is no widow or the widow died before the receipt of the entirety of the benefits or the decedent leaves no surviving child under the age of eighteen.
- 309** N.Y. GEN. MUN. § 208-F (2007) A widow or widower of certain government employees is entitled to certain accidental death benefits.
- 310** N.Y. GEN. MUN. § 209-EE (2007) Every fire company must adopt a code of ethics which requires an officer of a volunteer fire company to publicly disclose any contract with the fire company in which his spouse may have an interest.

### Article 11-A. Service Award Programs

- 311** N.Y. GEN. MUN. § 217 (2007) No firefighter service award may be assigned or alienated except to provide for the legally obligated support of minor children or a spouse.

### Article 11-AA. Defined Contribution Service Award Programs for Volunteer Ambulance Workers

- 312** N.Y. GEN. MUN. § 219-F (2007) No volunteer ambulance worker contribution service award may be assigned or alienated except to provide for the legally obligated support of minor children or a spouse.

### Article 11-AAA. Defined Benefit Service Award Programs for Volunteer Ambulance Workers

- 313** N.Y. GEN. MUN. § 219-N (2007) No volunteer ambulance worker defined benefit service award may be assigned or alienated except to provide for the legally obligated support of minor children or a spouse.

### Article 11-AAAA. Supplemental Service Awards for Volunteer Ambulance Workers and Firefighters

- 314** N.Y. GEN. MUN. § 219-T (2007) No volunteer ambulance worker and firefighter supplemental service award may be assigned or alienated except to provide for the legally obligated support of minor children or a spouse.

#### **Article 14-H. Local Option for Conduct of Bingo by Certain Organizations**

- 315** N.Y. GEN. MUN. § 476 (2007) Certain individuals (such as convicted criminals) and their spouses are not eligible to be authorized commercial lessors to conduct a bingo operation.

#### **Article 16. Urban Development Action Area Act**

- 316** N.Y. GEN. MUN. § 695 (2007) A municipality cannot, in applying the Urban Development Action Area Act, transfer property to the spouse of the property's former owner.

#### **Article 18. Conflicts of Interest of Municipal Officers and Employees**

- 317** N.Y. GEN. MUN. § 800 (2007) A municipal officer or employee is deemed to have an interest in a contract if his or her spouse is a party to the contract.
- 318** N.Y. GEN. MUN. § 803 (2007) A municipal employee is obligated to publicly disclose any contract in which he or his spouse has an interest.
- 319** N.Y. GEN. MUN. § 805-B (2007) No public officer authorized to solemnize marriages shall be prohibited from accepting any gift or benefit having a value of \$75 or less for the solemnization of a marriage.
- 320** N.Y. GEN. MUN. § 809 (2007) Regarding requests involving zoning and planning regulations, an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them is involved in the application.
- 321** N.Y. GEN. MUN. § 812 (2007) Local elected officials and certain officers and employees of counties, cities, towns, and villages are required to complete financial disclosures for themselves and their spouses for such things as: any office, trusteeship, directorship, partnership, or position of any nature including honorary positions with any firm, corporation, association, partnership, or other organization; engagement in any occupation, employment, trade, business, or profession which activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or did business with, or had matters before, any state or local agency; any interest in excess of \$1,000 in any contract made or executed by a state or local agency; each source of gifts in excess of \$1,000; the nature and amount of any income in excess of \$1,000 including but not limited to salary for government employment, income from other compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale

or exchange of real or other property; each assignment of income in excess of \$1,000, and each transfer for less than fair consideration of an interest in a trust, estate, or other beneficial interest, securities or real property in excess of \$1,000; the type and market value of securities held in excess of \$1,000; any real property in which any vested or contingent interest in excess of \$1,000 is held; and all liabilities in excess of \$5,000.

## General Obligations Law

### **Article 3. Capacity; Effect of Status or of Certain Relationships or Occupations upon the Creation, Definition, or Enforcement of Obligations**

#### **Title 1. Infancy**

- 322** N.Y. GEN. OBLIG. § 3-101 (2007) A husband and wife may enter into certain contracts related to real property without regard to either or both of their minority status and neither can disaffirm, based upon infancy, any contract authorized under this section.
- 323** N.Y. GEN. OBLIG. § 3-102 (2007) An obligation incurred by a married minor for hospital, medical, and surgical treatment and care for such minor or such minor's children shall not be voidable because of minority. Subsequent judgment of divorce or annulment shall not alter the obligation previously incurred.
- 324** N.Y. GEN. OBLIG. § 3-103 (2007) Pursuant to the "Servicemen's Readjustment Act of 1944," certain veterans and their spouses, regardless of the minority status of either or both, have the power to enter into certain real estate contracts which cannot be disavowed by reason of infancy.

#### **Title 3. Husband and Wife**

- 325** N.Y. GEN. OBLIG. § 3-301 (2007) Damages received by a married woman to her person, estate, or character shall be the separate property of the wife.
- 326** N.Y. GEN. OBLIG. § 3-303 (2007) A contract made between persons in contemplation of marriage remains in full force after the marriage takes place.
- 327** N.Y. GEN. OBLIG. § 3-307 (2007) A husband who acquires property of his wife, by antenuptial contract or otherwise, is liable for her debts contracted before marriage, but only to the extent of the property so acquired.
- 328** N.Y. GEN. OBLIG. § 3-309 (2007) Husband and wife may transfer real or personal property to each other without the participation of a third party.
- 329** N.Y. GEN. OBLIG. § 3-313 (2007) Husband and wife are liable for personal or property injuries they inflict upon each other.



## Article 5. Creation, Definition, and Enforcement of Contractual Obligations

### Title 3. Certain Prohibited Contracts and Provisions of Contracts

**330** N.Y. GEN. OBLIG. § 5-311 (2007) A husband and wife cannot contract to alter or dissolve their marriage or to relieve either of his or her liability to support the other in such a manner that he or she will become incapable of self-support and therefore is likely to become a public charge.

### Title 7. Requirements of Writing, Execution, or Acknowledgment for Effectiveness or Enforceability

**331** N.Y. GEN. OBLIG. § 5-701 (2007) Every agreement made in consideration of marriage is void unless it is written, except in the case of mutual promises to marry.

### Title 15. Statutory Short Form Power of Attorney

**332** N.Y. GEN. OBLIG. § 5-1502F (2007) Pursuant to a power of attorney, a spouse may procure new insurance or take out a loan against an existing insurance policy and be the beneficiary to the new policy.

**333** N.Y. GEN. OBLIG. § 5-1502I (2007) A power of attorney may authorize the agent to make provisions for the care of the spouse of the principal.

**334** N.Y. GEN. OBLIG. § 5-1502J (2007) A power of attorney may authorize the agent to seek benefits from the military service of any person related by blood or marriage to the principal.

**335** N.Y. GEN. OBLIG. § 5-1502L (2007) Pursuant to a power of attorney, a spouse may designate himself or herself as the beneficiary of retirement benefit plans.

**336** N.Y. GEN. OBLIG. § 5-1502M (2007) A power of attorney may authorize the agent to make gifts to the principal's spouse not to exceed \$10,000/year.

### Title 17. Structured Settlement Protection Act

**337** N.Y. GEN. OBLIG. § 5-1705 (2007) A petition for approval of transfer of structured settlement payment rights shall include a listing of the payee's dependents, including a spouse.

**338** N.Y. GEN. OBLIG. § 5-1706 (2007) A transfer of structured settlement payment rights must be found by a court to be in the best interest of the payee, taking into account the welfare and support of the payee's dependents, including a spouse.

**339** N.Y. GEN. OBLIG. § 5-1708-A (2007) An annuity issuer shall be permitted to waive the commission or other compensation otherwise payable as a result of the sale of an insurance policy or contract to a member of the immediate family, including the spouse, of a person who was a victim of September 11th terrorist attacks, and the insurance company may at the election of the policy owner or contract owner contribute the amount

of such waived commission or other compensation to a charitable organization for the benefit of families of victims of such attack or deduct from the premium an amount equal to such waived commission or other compensation otherwise payable as a result of the sale.

## Article 11. Obligations to Make Compensation or Restitution

### Title 1. Compensation

**340** N.Y. GEN. OBLIG. § 11-100 (2007) If an individual under the age of twenty-one causes another's death by reason of his or her intoxication, the cause of action to recover against the individual who caused the intoxication survives death and is recoverable by a husband or wife.

**341** N.Y. GEN. OBLIG. § 11-101 (2007) If an individual causes another's death by reason of his or her intoxication, the cause of action to recover against the individual who unlawfully sold the alcohol survives death and is recoverable by a husband or wife.

**342** N.Y. GEN. OBLIG. § 11-103 (2007) If an individual causes another's death by reason of his or her use of an illegal controlled substance, the cause of action to recover against the individual who unlawfully sold the illegal controlled substance survives death and is recoverable by a husband or wife.

## Article 12. Drug Dealer Liability Act

**343** N.Y. GEN. OBLIG. § 12-104 (2007) The spouse of an individual drug user may bring a cause of action against a drug dealer or certain others for costs incurred as a result of the illegal drug use.

## Indian Law

### Article 2. General Provisions

**344** N.Y. INDIAN § 3 (2007) The laws of the state relating to the capacity to contract marriage, the solemnization of marriage, the annulment of the marriage contract, and divorce, are applicable to Indians. Subject to the jurisdiction of the peacemakers' courts of the Seneca nation to grant divorces, the same courts shall have jurisdiction of actions arising thereunder. But Indians who have heretofore contracted marriage according to the Indian custom or usage, and shall cohabit as husband and wife, shall be deemed lawfully married. Indian marriages may be solemnized by peacemakers within their jurisdiction with the same force and effect as by a justice of the peace.

### Article 4. The Seneca Indians

**345** N.Y. INDIAN § 46 (2007) The peacemakers of certain reservations have the jurisdiction to grant divorces to Indians living on such reservations.

## Insurance Law

### Article 11. Licensing of Insurers

**346** N.Y. INS. § 1113 (2007) Regarding “credit insurance,” an adoptive parent is indemnified for certain expenses paid on behalf of the birth mother when one or both of the birth parents withhold their consent to adoption. “Adoptive parent” includes the parent and his or her spouse.

### Article 21. Agents, Brokers, Adjusters, Consultants, and Intermediaries

**347** N.Y. INS. § 2103 (2007) The Superintendent of Insurance is authorized to obtain a written statement from an individual applicant for licensing as an insurance agent stating that he or she does not derive more than 10% of his or her commissions from insurance on the property and risks of the spouse of the individual applicant, and of any corporation of which such applicant or his or her spouse owns more than 50% of the shares.

**348** N.Y. INS. § 2108 (2007) Five citizens of the community who are not related to the applicant by marriage are required to sign an adjuster’s licensing application.

### Article 23. Property/Casualty Insurance Rates

**349** N.Y. INS. § 2330 (2007) If the spouse of a person insured for no-fault motor vehicle insurance is eligible for certain Medicare benefits, the premium will be modified to reflect a decreased exposure to loss.

**350** N.Y. INS. § 2331 (2007) No filing of a rate, rating plan, rating rule, or rate manual applicable to insurance for loss of or damage to a motor vehicle other than by collision or upset shall be approved by the Superintendent if the filing is based, in whole or in part, on the marital status of an owner or operator of an insured motor vehicle, unless such filing is supported by and reflective of actuarially sound statistical data.

### Article 26. Unfair Claim Settlement Practices; Other Misconduct; Discrimination

**351** N.Y. INS. § 2607 (2007) No individual or entity shall refuse to issue, cancel, or decline to renew any policy of insurance because of the marital status of the applicant or policyholder.

**352** N.Y. INS. § 2609 (2007) No person, firm, or corporation engaged in the business of issuing performance or surety bonds shall refuse to issue such a bond to any person, firm, or corporation solely because of the marital status of the applicant.

### Article 28. Use of Credit Information

**353** N.Y. INS. § 2802 (2007) An insurer cannot use a credit score calculated using an applicant’s marital status.

### Article 31. Insurance Contracts — General

**354** N.Y. INS. § 3113 (2007) A policyholder may not borrow from the cash value of an insurance policy or change the beneficiary if, through separation or divorce settlement, the policyholder’s former spouse is an irrevocable beneficiary, and such spouse must be notified if a policy is set to lapse due to nonpayment.

### Article 32. Insurance Contracts — Life, Accident, and Health, Annuities

**355** N.Y. INS. § 3205 (2007) A wife or husband may effectuate insurance upon the person of the other.

**356** N.Y. INS. § 3207 (2007) A minor fourteen and a half years or older may purchase life insurance, but the beneficiary may only be from a certain group of individuals, which includes the minor’s spouse.

**357** N.Y. INS. § 3209 (2007) Certain life insurance policies require a disclosure that includes that the purchase of such insurance policies may not be appropriate if the purchaser’s intent is to provide a survivorship benefit for the spouse in the event of death prior to retirement.

**358** N.Y. INS. § 3212 (2007) Certain insurance and annuity contract proceeds are protected from creditors if the decedent’s spouse is the beneficiary.

**359** N.Y. INS. § 3216 (2007) A health or accident insurance policy may ensure the members of a family, including a spouse. Family members, including spouses, who no longer fit the definition of “family,” as in the case of divorce or annulment, shall be entitled to an application for an individual conversion policy. Such policy shall provide the same or substantially the same benefits as those provided in the family policy.

**360** N.Y. INS. § 3220 (2007) For group life insurances with conditions pertaining to family status, the insurer can pay the insurance to a wife or husband if no beneficiary is named. At the option of the employee or member, any converted policy shall provide coverage for the dependents of such employee or member who were insured under the group policy, with the conversion privilege being available upon the death of the employee or member to the surviving spouse, or upon the divorce or annulment of the marriage of the employee or member, to the spouse or former spouse of such employee or member.

**361** N.Y. INS. § 3221 (2007) For group accident and health insurances, a conversion provision shall be available upon the death of the employee or member to the surviving spouse. It shall also be available upon the divorce or annulment of the marriage of the employee or member to the former spouse of such employee or member. Every insurer delivering a group or school blanket policy which provides coverage for inpatient hospital care must provide coverage for at least sixty outpatient visits in any calendar year for the diagnosis



and treatment of chemical dependence, of which up to twenty may be for family members, including spouses. Except as otherwise provided in the applicable policy or contract, no insurer delivering a group or school blanket policy or issuing a group or school blanket policy providing coverage for alcoholism or substance abuse services shall deny coverage to a family member who identifies himself or herself as a family member of a person suffering from the disease of alcoholism, substance abuse, or chemical dependency and who seeks treatment as a family member who is otherwise covered by the applicable policy or contract pursuant to this section. Continuation of benefits under the group policy for any person shall terminate at the divorce or legal separation of the employee or member from his or her spouse. If an active duty employee or member insured who elects the supplementary continuation right or coverage under the group plan is suspended, and such employee or member insured dies during the period of active duty, the conversion right provided by this section shall be available to the surviving spouse. It shall also be available upon the divorce or annulment of the marriage of the employee or member insured to the former spouse of such employee or member insured, if such divorce or annulment occurs during the period of active duty. Where an eligible insured or dependent of an insured rejects initial enrollment in a group or blanket policy that provides hospital, surgical, or medical expense insurance, an insurer shall permit an insured or dependent of an insured to enroll for coverage under the terms of the policy if coverage under the other plan or policy was subsequently terminated as a result of loss of eligibility for death of the spouse, or legal separation, divorce, or annulment.

- 362** N.Y. INS. § 3230 (2007) A notice is required to suggest consultation with the appropriate social service agency to determine how accelerated payments of life insurance death benefits may affect a person's or a person's spouse's eligibility for public benefits.

**Article 34. Insurance Contracts - Property/Casualty**

- 363** N.Y. INS. § 3420 (2007) Vehicular liability insurance is available for injuries an individual causes to his or her spouse.
- 364** N.Y. INS. § 3440 (2007) Motor vehicle liability insurance policies for certain vehicles must include a provision providing that the coverage extends to rental vehicles as well. The vehicle may be owned by the individual or the individual's husband or wife.

**Article 42. Life Insurance Companies and Accident and Health Insurance Companies and Legal Services Insurance Companies**

- 365** N.Y. INS. § 4216 (2007) A group life insurance policy may specify that benefits be paid upon the death of an insured employee's spouse so long as the coverage

does not exceed the amount for which the employee is eligible.

- 366** N.Y. INS. § 4221 (2007) Non-payment provisions are required to be in certain life insurance policies, and the cash surrender value of a family policy which provides term insurance for the primary insured's spouse shall be an amount not less than the sum of the cash surrender value for an otherwise similar policy.
- 367** N.Y. INS. § 4235 (2007) The benefits payable under group health or accident insurance shall be payable to the insured member of the group or to some beneficiary designated by him or her, but if no beneficiary is designated, then the insurer may pay such insurance to a wife or husband. The payment of benefits for expenses incurred on account of hospitalization or medical or surgical aid after the death of a member of the insured group for such person's spouse may be made by the insurer to the surviving spouse. Any group accident or group health insurance may include provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, medical, or surgical care, or physical and occupational therapy by licensed physical and occupational therapists upon the prescription or referral of a physician for the member of the insured group and his spouse, his child or children, or other persons chiefly dependent upon him for support and maintenance. A policy under which coverage of a dependent spouse would terminate upon such spouse attaining the eligibility age for Medicare shall not so terminate if such dependent spouse is not then eligible for all of such benefits for as long as the policy remains in force and such dependent spouse remains ineligible to receive any of such Medicare benefits.
- 368** N.Y. INS. § 4236 (2007) Insurers are authorized to join with one another to provide insurance to individuals sixty-five years and over and their spouses.

**Article 43. Non-Profit Medical and Dental Indemnity, or Health and Hospital Service Corporations**

- 369** N.Y. INS. § 4301 (2007) An individual who or whose spouse is an officer, director or owner of more than 10% of the stock of a corporation whose sales to hospitals, medical professionals, and facilities of a health service exceed 5% of total sales may not be a director of a corporation organized under this article.
- 370** N.Y. INS. § 4304 (2007) Insurance coverage may be provided under a "family contract" where benefits will be furnished to a husband and wife, or a husband, wife, and their dependent child or children, or any child or children not over nineteen years of age, provided that an unmarried student at an accredited institution of learning may be considered a dependent until he becomes twenty-three years of age, provided that the coverage of any such "family contract" may include, at the option of the insurer, any unmarried child until

attaining age twenty-five, and provided also that the coverage of any such “family contract” shall include any other unmarried child, regardless of age, who is incapable of self-sustaining employment by reason of mental illness, developmental disability, mental retardation, or physical handicap. Every “family contract” under which coverage of a dependent spouse or contract holder would terminate upon such spouse or contract holder attaining the eligibility age for Medicare age shall not so terminate, if such dependent spouse is not eligible for all of such benefits, for as long as the contract remains in force and such dependent spouse remains ineligible to receive any of such Medicare benefits. Coverage of an unmarried dependent child who is incapable of self-sustaining employment by reason of mental illness, developmental disability, or mental retardation or physical handicap and who is chiefly dependent upon the contract holder for support and maintenance, shall not terminate while the policy remains in force and the dependent remains in such condition. If any such contract is terminated because a spouse is no longer covered under the contract because of divorce from the contract holder or annulment of the marriage, or any such contract is terminated because of the death of the contract holder, then such individual, former spouse, or surviving spouse covered under the contract, shall be entitled to convert, without evidence of insurability, upon application and the making of the first payment to a contract of a type which provides coverage most nearly comparable to the type of coverage under the contract from which the individual converted, which coverage shall be no less than the minimum standards for basic hospital, basic medical, or major medical coverage. Continuation of benefits under a group remittance contract for any person shall terminate upon the divorce or legal separation of the employee or member from his or her spouse.

- 371** N.Y. INS. § 4305 (2007) Any group contract may provide that benefits will be furnished to a member of a covered group for himself, his spouse, or his children, provided that a contract under which coverage of a dependent of a member terminates at a specified age shall, with respect to an unmarried child who is incapable of self-sustaining employment by reason of mental illness, developmental disability, mental retardation, or physical handicap and who is chiefly dependent upon such member for support and maintenance, not so terminate while the contract remains in force and the dependent remains in such condition. Any such contract under which coverage of a dependent spouse or group member would terminate upon such spouse or group member attaining the eligibility age for Medicare shall not terminate if such dependent spouse is not then eligible for all of such benefits for as long as the contract remains in force and such dependent spouse remains ineligible to receive any such Medicare benefits. Conversion policies shall be available upon the divorce or annulment of

the marriage of a member to the divorced spouse or former spouse of such member, or upon the death of the member to the surviving spouse. Continuation of benefits under the group contract for any person shall terminate upon the divorce or legal separation of the employee or member from his or her spouse. If an armed services member insured elects the supplementary continuation right or coverage under the group plan, and such member insured dies during the period of active duty, the conversion right shall be available to the surviving spouse. It shall also be available upon the divorce or annulment of the marriage of the employee or member insured to the former spouse of such employee or member insured if such divorce or annulment occurs during the period of active duty. Where an eligible subscriber or dependent of a subscriber rejects initial enrollment in a group or blanket contract that provides hospital, surgical, or medical expense insurance, a corporation shall permit a subscriber or dependent of a subscriber to enroll for coverage if coverage under the other plan or contract was terminated as a result of death of the spouse or legal separation, divorce, or annulment.

- 372** N.Y. INS. § 4326 (2007) A program is established for the purpose of making standardized health insurance contracts available to qualifying small employers and qualifying individuals. Such program is designed to encourage small employers to offer health insurance coverage to their employees and to also make coverage available to uninsured employees whose employers do not provide group health insurance. A “qualifying individual” is defined to include certain individuals who lost their health insurance in the preceding twelve months due to divorce.

#### **Article 45. Fraternal Benefit Societies**

- 373** N.Y. INS. § 4509 (2007) An authorized fraternal benefit society shall issue to each insured member, except a spouse, a certificate specifying the amount of insurance benefits provided thereby.
- 374** N.Y. INS. § 4522 (2007) Any organization which limits its membership to the employees of a corporation having more than 5,000 employees may provide for hospital, surgical, and medical benefits for the employee, his or her spouse, and his or her child or children not over eighteen years of age.

#### **Article 49. Utilization Review and External Appeal**

##### **Title 1. Registration of Agents and Review Process**

- 375** N.Y. INS. § 4913 (2007) No external appeal agent or officer, director, or management employee, or clinical peer reviewer engaged thereby to conduct any external appeal shall be a spouse of: any officer, director, or management employee of the health care plan; any health care provider, physician’s medical group, independent practice association, or provider of

pharmaceutical products or services or durable medical equipment proposing to provide or supply the health service; or the insured whose health care service is the subject of the appeal, or the insured's designee.

**Article 51. Comprehensive Motor Vehicle Insurance Reparations**

**376** N.Y. INS. § 5103 (2007) Every owner's policy of liability insurance issued on a motor vehicle shall also provide for: every owner who maintains another form of financial security on a motor vehicle shall be liable for; and every owner of a motor vehicle shall be liable for the payment of first-party benefits to: In the case of occupants of a bus other than operators, owners, and employees of the owner or operator of the bus, the coverage for first party benefits afforded under the policy, providing first-party benefits to the injured person and a spouse for loss arising out of the use or operation of any motor vehicle of such household; the named insured and a spouse for loss arising out of the use or operation of an uninsured motor vehicle or motorcycle within the United States, its territories or possessions, or Canada; and an insured motor vehicle or motorcycle outside of this state and within the United States, its territories or possessions, or Canada.

**Article 73. Conversion to Different Type of Insurer**

**377** N.Y. INS. § 7312 (2007) For the reorganization of a domestic mutual life insurer into a domestic stock life insurer, no officers, directors, or employees of the mutual or reorganized reinsurer or their spouses may acquire beneficial ownership of any securities of the reorganized insurer, except in certain circumstances.

**Article 78. Viatical Settlements**

**378** N.Y. INS. § 7807 (2007) An application for a viatical settlement shall include a notice suggesting consulting with the appropriate social services organization concerning how receipt will affect the eligibility of the recipient and the recipient's spouse or dependents for public benefits.

**379** N.Y. INS. § 7808 (2007) A viatical settlement company shall not discriminate on the basis of marital status.

## Judiciary Law

**Article 2. General Provisions Relating to Courts and Judges**

**380** N.Y. JUD. § 4 (2007) The sittings of every court within this state shall be public, and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, the court may, in its discretion, exclude all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court.

**Article 4. Appellate Division**

**381** N.Y. JUD. § 89 (2007) The chief administrator of the courts shall adopt a policy for the retention and disposition of records in all courts and agencies of the unified court system that shall include those that affect the marital status or rights of any person.

**382** N.Y. JUD. § 90 (2007) Certain attorneys who are in arrears in spousal support shall be ineligible to practice law in New York State.

**Article 4-A. Official Referees**

**383** N.Y. JUD. § 117 (2007) A referee does not have the jurisdiction and authority to preside over a matrimonial action unless such matrimonial action is before him by order of the Supreme Court.

**Article 7-A. Judicial Administration**

**384** N.Y. JUD. § 212 (2007) The chief administrator of the courts may, upon application, certify former judges or justices of the Unified Court System and former housing judges of the Civil Court of the City of New York who served for at least two years in such positions to solemnize marriages.

**385** N.Y. JUD. § 251-A (2007) No person holding the office of confidential clerk or law secretary to a justice of the Supreme Court shall hereafter be appointed by any court or judge in any action or proceeding instituted in the Supreme Court as a referee, receiver, or Commissioner, except that in uncontested matrimonial actions, a confidential clerk or law secretary who is an attorney in good standing admitted to practice in the state may be appointed by an administrative judge to serve without fee as a referee for the purpose of hearing and reporting to the court.

**Article 12. Interpreters**

**386** N.Y. JUD. § 390 (2007) The state will pay for the appointment of an interpreter during a court proceeding for a deaf immediate family member, such as a spouse, of a victim of a crime.

**Article 19. Contempts**

**387** N.Y. JUD. § 770 (2007) If an individual is in contempt for failure to pay alimony, maintenance, or counsel fees pursuant to an order of the court or judge in an action for divorce or separation and the defaulting spouse appears and satisfies the court or a judge before whom the application may be pending that he or she has no means or property or income to comply with the terms of the order at the time, the court or judge may in its discretion deny the application to punish the defaulting spouse, without prejudice to the applicant's rights and without prejudice to a renewal of the application upon notice and after proof that the financial condition of the defaulting spouse has changed.

## Labor Law

### Article 7. General Provisions

- 388** N.Y. LAB. § 202-I (2007) The spouse of a member of the military may take ten days unpaid leave of absence from work if his or her spouse is on leave from the military and has been deployed during a time of military conflict.

### Article 18. Unemployment Insurance Law

#### Title 2. Definitions

- 389** N.Y. LAB. § 511 (2007) “Employment” for the purposes of unemployment insurance does not include service for an employer by his spouse nor employment services rendered to an educational institution by the spouse of an enrolled student that is part of financial assistance.

#### Title 7. Benefits and Claims

- 390** N.Y. LAB. § 593 (2007) An individual may become disqualified for unemployment benefits for voluntary separation, which shall include voluntary separation due to claimant’s marriage.

### Article 19-A. Minimum Wage Standards and Protective Labor Practices for Farm Workers

- 391** N.Y. LAB. § 671 (2007) For the purpose of the law requiring minimum wages be paid to farm employees, “employee” does not include the spouse of an employer.

### Article 20. New York State Labor Relations Act

- 392** N.Y. LAB. § 701 (2007) For collective bargaining and labor organizing purposes, “employees” do not include those who are employed by their spouse.

### Article 23-B. Displaced Homemakers Act

- 393** N.Y. LAB. §§ 825 & 826 (2007) An individual who is supported as the parent of minor children by spousal support is eligible for displaced homemakers assistance, including job counseling, training, and placement.

### Article 24. Worker Adjustment Act

- 394** N.Y. LAB. § 835 (2007) A displaced homemaker who derived the substantial share of his or her support from a spouse and no longer receives such support due to the death, divorce, or permanent separation from the spouse is eligible for Workers Adjustment Act assistance for dislocated workers including training and retraining.

## Lien Law

### Article 2. Mechanics’ Liens

- 395** N.Y. LIEN § 3 (2007) Where the contract for an improvement is made with a husband or wife, and the property belongs to the other or both, the husband or wife contracting shall be presumed to be the agent of the other.

### Article 3. Enforcement of Liens on Real Property

- 396** N.Y. LIEN § 65 (2007) A social services organization may take a lien against the real property of an individual who is in arrears with respect to his or her spousal support obligation.

### Article 9. Enforcement of Liens on Personal Property

- 397** N.Y. LIEN § 211 (2007) A social services organization may take a lien against the personal property of an individual who is in arrears with respect to his or her spousal support obligation.

## Local Finance Law

### Article 2. Local Indebtedness

#### Title 8. Limitations on the Power to Contract Indebtedness

- 398** N.Y. LOCAL FIN. § 101.00 (2007) While the giving or loaning of municipal credit and contracting indebtedness for purposes other than municipal purposes is prohibited, a county, city, or town may increase pension benefits payable to retired members of a police or fire department or to widows, dependent children, or dependent parents of members or retired members of a police or fire department.

## Mental Hygiene Law

### Title B. Mental Health Act

#### Article 9. Hospitalization of the Mentally Ill

- 399** N.Y. MENTAL HYG. § 9.27 (2007) A husband or wife may make an application to involuntarily commit his or her spouse alleged to be mentally ill.
- 400** N.Y. MENTAL HYG. § 9.35 (2007) A husband or wife may request review of denial of release of an involuntary patient spouse without leave of the court.
- 401** N.Y. MENTAL HYG. § 9.45 (2007) A director of community services may direct the removal of any person to a hospital if the spouse of this person believes such removal is necessary to prevent serious harm to the person or others.
- 402** N.Y. MENTAL HYG. § 9.60 (2007) An individual may petition for a court order authorizing assisted outpatient treatment of his or her spouse.

### Title C. Mental Retardation and Developmental Disabilities Act

#### Article 13. Office of Mental Retardation and Developmental Disabilities

- 403** N.Y. MENTAL HYG. § 13.16 (2007) Certain social service agencies are required to file an annual fiscal report, including information on a brother, sister, first cousin,



aunt, and uncle of such person, and whether such relationship arises by reason of birth, marriage, or adoption.

**Article 15. Admission of the Mentally Retarded to Schools**

**404** N.Y. MENTAL HYG. § 15.27 (2007) A husband or wife may make an application to involuntarily commit his or her spouse alleged to be mentally retarded.

**405** N.Y. MENTAL HYG. § 15.35 (2007) A husband or wife may request review of denial of release of an involuntary patient spouse without leave of the court.

**Title D. Alcoholism and Substance Abuse Act**

**Article 22. Chemical Dependence Programs, Treatment Facilities, and Services**

**406** N.Y. MENTAL HYG. § 22.11 (2007) With respect to laws concerning the treatment of minors for chemical dependency, “minor” shall mean a person under eighteen years of age, but shall not include a person who is the parent of a child, who has married, or who is emancipated.

**Title E. General Provisions**

**Article 32. [Expires and Repealed April 1, 2009] Regulation and Quality Control of Chemical Dependence Services and Compulsive Gambling Services**

**407** N.Y. MENTAL HYG. § 32.39 (2007) Certain social service agencies are required to file an annual fiscal report, including information on a brother, sister, first cousin, aunt, and uncle of such person, and whether such relationship arises by reason of birth, marriage, or adoption.

**Article 33. Rights of Patients**

**408** N.Y. MENTAL HYG. § 33.08 (2007) For residents of state psychiatric centers and state operated alcoholism facilities, the income of the resident’s spouse is included for purposes of determining Supplemental Security Income benefits.

**409** N.Y. MENTAL HYG. § 33.16 (2007) An individual may be able to inspect the clinical mental health records of his or her spouse.

**410** N.Y. MENTAL HYG. § 33.17 (2007) Any female patient who is being transported to or from a facility shall be accompanied by another female, unless accompanied by her father, brother, husband, or son.

**411** N.Y. MENTAL HYG. § 33.21 (2007) The definition of “minor” for purposes of consent to mental health treatment does not include those individuals under the age of eighteen who are married.

**Article 43. Fees for Services**

**412** N.Y. MENTAL HYG. § 43.03 (2007) Spouses of patients are liable for fees for services rendered pursuant to the Mental Hygiene Law.

**Article 80. Surrogate Decision-Making for Medical Care and Treatment**

**413** N.Y. MENTAL HYG. § 80.05 (2007) A commission is to create surrogate decision-making committees for mentally ill patients in various places around the state. Such committees’ membership should include former patients or parents, spouses, adult children, siblings, or advocates of mentally disabled persons.

**414** N.Y. MENTAL HYG. § 80.07 (2007) A surrogate decision making committee may declare that a patient is in need of major medical care and lacks the capacity to consent to or refuse such care if the patient has no spouse or other relative prescribed in the law to make such decisions, or if the spouse or other relative agrees to allow the committee to act. The committee’s declaration shall be sent to the spouse. If at any time during the committee’s proceedings the spouse should object, the proceedings shall cease.

**415** N.Y. MENTAL HYG. § 80.09 (2007) A spouse of a patient being treated for a mental disorder may petition the Supreme Court for review of a panel’s issuance of a temporary restraining order.

**Article 81. Proceedings for Appointment of a Guardian for Personal Needs Or Property Management**

**416** N.Y. MENTAL HYG. § 81.07 (2007) The spouse of a person alleged to be incapacitated is entitled to receive notice of a proceeding pursuant to this section.

**417** N.Y. MENTAL HYG. § 81.19 (2007) A spouse is eligible to be a guardian to an incapacitated person.

**418** N.Y. MENTAL HYG. § 81.21 (2007) A guardian has power over an incapacitated individual’s property, including: the power to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incidental to joint tenancy or tenancy by the entirety, and the power to exercise any right to an elective share in the estate of the incapacitated person’s deceased spouse.

## Military Law

**Article 10. Pay and Allowances**

**419** N.Y. MIL. § 214 (2007) A widow shall receive certain benefits if her spouse who was an officer entitled to retire and to receive the compensation provided by this section dies before his retirement.

**420** N.Y. MIL. § 217 (2007) In case any member of the organized militia shall die as the result of any such wound, injury, or disease within one year after it has been incurred or contracted, the surviving spouse, children under twenty-one years of age, or dependent parent of such member shall receive such pension and



reward as persons under similar circumstances receive from the United States.

#### Article 11. Privileges, Prohibitions, and Penalties

- 421** N.Y. MIL. § 250 (2007) A spouse is entitled to certified copies of a veteran spouse's honorable discharge papers at no cost.
- 422** N.Y. MIL. § 250-A (2007) The spouse of a decedent who dies while on active duty is first in line to dispose of the remains of the decedent using the U.S. flag.
- 423** N.Y. MIL. § 254 (2007) The Division of Military and Naval Affairs shall make available teleconferencing facilities to families, which shall include spouses, to facilitate, in cooperation with the Department of Defense and the Armed Forces of the United States, communications between persons in military service and their families.

#### Article 13. New York State Soldiers' and Sailors' Civil Relief Act

- 424** N.Y. MIL. § 309 (2007) There shall be no eviction of a spouse of an individual in military service without leave of the court.
- 425** N.Y. MIL. § 310 (2007) An individual may terminate a lease for the residential dwelling of his or her spouse after the beginning of the spouse's military service.
- 426** N.Y. MIL. § 311-A (2007) An individual may terminate a lease for a motor vehicle of his or her spouse after the beginning of the spouse's military service.

## Navigation Law

#### Article 4. Vessels

##### Part 1. Vessels, General

- 427** N.Y. NAV. § 48 (2007) The owner of any vessel is liable for any injury that the vessel causes, but the owner is not required to hold insurance for liability for injuries caused to the property or person of the owner's spouse.

#### Article 6. Pilots and Pilotage Fees, Port of New York

N.Y. NAV. § 88 (2007) Retirement, pension, and sick benefits are to be paid to the spouses of Sandy Hook pilots.

## Not-for-Profit Corporation Law

#### Article 14. Special Not-For-Profit Corporations

- 429** N.Y. NOT-FOR-PROFIT CORP. § 1402 (2007) It is unlawful for a fire corporation to discriminate on the basis of marital status.

#### Article 15. Public Cemetery Corporations

- 430** N.Y. NOT-FOR-PROFIT CORP. § 1507 (2007) The Secretary of State will authorize payment from a state cemetery

fund to repair vandalized lots if the spouse of the lot owner has not provided the resources to do so.

- 431** N.Y. NOT-FOR-PROFIT CORP. § 1510 (2007) A surviving husband or wife may approve the removal of a decedent already interred.
- 432** N.Y. NOT-FOR-PROFIT CORP. § 1512 (2007) Upon a lot owner's death, the right of ownership in a cemetery lot passes to the spouse if there are no descendants. The surviving spouse of a deceased lot owner and other co-owners from time to time of the deceased lot owner's lot shall have in common the possession, care, and control of such lot. Whenever a lot shall be purchased by the executor of a decedent from estate funds for the burial of the decedent, the surviving spouse of the decedent shall have the right of interment therein. The surviving spouse shall have the right of interment for his or her body in a lot of which the deceased spouse was an owner or co-owner at the time of his or her death, except where all the available burial spaces in a lot have been designated for the interment of persons other than the surviving spouse. The remains of a spouse who is an owner or co-owner of a lot may be interred in such lot or tomb without the consent of any person claiming any interest therein.
- 433** N.Y. NOT-FOR-PROFIT CORP. § 1513 (2007) Burial rights may be conveyed, but may be subject to the right of a spouse to be interred.
- 434** N.Y. NOT-FOR-PROFIT CORP. § 1513-A (2007) In certain circumstances, the spouse of a lot owner must be notified if a cemetery corporation wants to reacquire a lot or plot.

## Partnership Law

#### Article 2. Nature of a Partnership

- 435** N.Y. PARTNERSHIP § 11 (2007) While the receipt of profits is *prima facie* evidence that the recipient is a partner, no such inference shall be drawn if such profits were received in payment as an annuity to a surviving spouse or representative of a deceased partner.

## Penal Law

#### Part Three. Specific Offenses

**Title H. Offenses Against the Person Involving Physical Injury, Sexual Conduct, Restraint, and Intimidation**

#### Article 120. Assault and Related Offenses

- 436** N.Y. PENAL §§ 120.45, 120.50, 120.55 & 120.60 (2007) A person is guilty of stalking when he or she causes fear or harm to a person, a person's spouse, or a person's former spouse.

**Article 125. Homicide, Abortion, and Related Offenses**

**437** N.Y. PENAL § 125.27 (2007) Under certain circumstances, the murder of an immediate family member of a witness to a crime, including the murder of the husband or wife of the witness, is first degree murder.

**Article 130. Sex Offenses**

**438** N.Y. PENAL § 130.00 (2007) “Sexual contact” for the purposes of sex offenses means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party.

**439** N.Y. PENAL § 130.05 (2007) For purposes of laws relating to sex offenses, individuals in the care and custody of the Department of Correctional Services or a hospital are deemed incapable to consent to engage in a sexual act if the actor is an employee of the facility and not married to such individual.

**440** N.Y. PENAL § 130.10 (2007) In any prosecution under this sex offense provision in which the victim’s lack of consent to engage in a sex act is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, or a client or patient, and the actor is a health care provider, it shall be a defense that the defendant was married to the victim at the time the actor committed the offense against the victim.

**Title O. Offenses Against Marriage, the Family, and the Welfare of Children and Incompetents****Article 255. Offenses Affecting the Marital Relationship**

**441** N.Y. PENAL § 255.00 (2007) A person is guilty of unlawfully solemnizing a marriage when: knowing that he is not authorized by the laws of this state to do so, he performs a marriage ceremony or presumes to solemnize a marriage; or being authorized by the laws of this state to perform marriage ceremonies and to solemnize marriages, he performs a marriage ceremony or solemnizes a marriage knowing that a legal impediment to such marriage exists.

**442** N.Y. PENAL § 255.05 (2007) A person is guilty of unlawfully issuing a dissolution decree when, not being a judicial officer authorized to issue decrees of divorce or annulment, he issues a written instrument reciting or certifying that he or some other purportedly but not actually authorized person has issued a valid decree of civil divorce, annulment, or other dissolution of a marriage.

**443** N.Y. PENAL § 255.10 (2007) A person is guilty of unlawfully procuring a marriage license when he procures a license to marry another person at a time when he has a living spouse, or the other person has a living spouse.

**444** N.Y. PENAL § 255.15 (2007) A person is guilty of bigamy when he contracts or purports to contract a marriage with another person at a time when he has a living spouse, or the other person has a living spouse.

**445** N.Y. PENAL § 255.17 (2007) A person is guilty of adultery when he engages in sexual intercourse with another person at a time when he has a living spouse, or the other person has a living spouse.

**446** N.Y. PENAL § 255.20 (2007) In any prosecution for unlawfully procuring a marriage license, bigamy, or adultery, it is an affirmative defense that the defendant acted under a reasonable belief that both he and the other person to the marriage, prospective marriage, or sexual intercourse, as the case may be, were unmarried.

**447** N.Y. PENAL § 255.25 (2007) A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct, or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew, or niece.

**448** N.Y. PENAL § 255.26 (2007) A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree or criminal sexual act in the second degree against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew, or niece.

**449** N.Y. PENAL § 255.27 (2007) A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree or criminal sexual act in the first degree against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or half blood, uncle, aunt, nephew, or niece.

**450** N.Y. PENAL § 255.30 (2007) A person shall not be convicted of adultery or incest based solely on the testimony of the other person without other proof including but not limited to proof that that person had a living spouse at the time of the adulterous act or, in the case of incest, that the defendant married the other person.

**Article 260. Offenses Relating to Children, Disabled Persons, and Vulnerable Elderly Persons**

**451** N.Y. PENAL §§ 260.30, 260.32 & 260.34 (2007) For purposes of determining whether a person is guilty of endangering the welfare of a vulnerable elderly persons, “sexual contact” means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying the sexual desire of either party.

## Personal Property Law

### Article 3-A. Assignment of Earnings

- 452** N.Y. PERS. PROP. § 47-E (2007) The procedures that a person can take to vacate an assignment of his personal property to someone else do not apply to assignments of personal property as a result of matrimonial actions.

## Private Housing Finance Law

### Article II. Limited-Profit Housing Companies

- 453** N.Y. PRIV. HOUS. FIN. § 31 (2007) Certain limited profit housing projects may have a preference for surviving spouses of certain members of the military.

## Public Authorities Law

### Article 5. Public Utility Authorities

#### Title 1-A. Long Island Power Authority

- 454** N.Y. PUB. AUTH. § 1020-V (2007) Any company doing business with the Long Island Power Authority shall not discriminate on the basis of marital status.

#### Title 2-A. New York City Municipal Water Finance Authority

- 455** N.Y. PUB. AUTH. § 1045-X (2007) Any company doing business with the New York City Municipal Water Finance Authority shall not discriminate on the basis of marital status.

#### Title 2-B. Buffalo Municipal Water Finance Authority

- 456** N.Y. PUB. AUTH. § 1048-X (2007) Any company doing business with the Buffalo Municipal Water Finance Authority shall not discriminate on the basis of marital status.

#### Title 6. Albany Municipal Water Finance Authority

- 457** N.Y. PUB. AUTH. § 1115-X (2007) Any company doing business with the Albany Municipal Water Finance Authority shall not discriminate on the basis of marital status.

#### Title 8-B. Water Authority of Great Neck North

- 458** N.Y. PUB. AUTH. § 1197-Q (2007) Any company doing business with the Water Authority of Great Neck North shall not discriminate on the basis of marital status.

#### Title 8-D. Rensselaer County Water and Sewer Authority

- 459** N.Y. PUB. AUTH. § 1199-V (2007) Any company doing business with the Rensselaer County Water and Sewer Authority shall not discriminate on the basis of marital status.

### Title 9. New York City Transit Authority

- 460** N.Y. PUB. AUTH. § 1204 (2007) The New York City Public Transit Authority is authorized to make cash payments of accumulated and unused overtime to the spouses of deceased employees.

### Title 11. Metropolitan Commuter Transportation Authority

- 461** N.Y. PUB. AUTH. § 1266-C (2007) The Metropolitan Commuter Public Transportation Authority is authorized to make cash payments of accumulated and unused overtime compensation to the spouses of deceased employees.

### Article 8. Miscellaneous Authorities

#### Title 4. Dormitory Authority

- 462** N.Y. PUB. AUTH. § 1676 (2007) Dormitory housing in state-operated educational institutions shall be made available for married students.

- 463** N.Y. PUB. AUTH. § 1680 (2007) Dormitories at certain educational institutions other than state-operated institutions and statutory or contract colleges under the jurisdiction of the State University of New York shall provide housing for married students.

#### Title 7. Salamanca Hospital District Authority

- 464** N.Y. PUB. AUTH. § 1764 (2007) The head of the Salamanca Hospital District Authority must ensure that records are kept of the personal data of all patients upon admission to the Authority hospital(s), including such patients' marital status.

#### Title 13-G. Ulster County Resource Recovery Agency

- 465** N.Y. PUB. AUTH. § 2050-V (2007) Any company doing business with the Ulster County Resource Recovery Authority shall not discriminate on the basis of marital status.

#### Title 30. Western Finger Lakes Solid Waste Management Authority

- 466** N.Y. PUB. AUTH. § 2740 (2007) Any company doing business with the Western Finger Lakes Solid Waste Management Authority shall not discriminate on the basis of marital status.

#### Title 32. Albany County Airport Authority

- 467** N.Y. PUB. AUTH. § 2777 (2007) The Albany County Airport Authority follows the state policy of not discriminating on the basis of marital status.

## Public Health Law

### Article 2. Department of Health

#### Title I. Officers and Employees

- 468** N.Y. PUB. HEALTH § 201 (2007) The Department of Health has authority over and controls marriage registration.

- 469** N.Y. PUB. HEALTH § 206 (2007) The Commissioner of the Department of Health must obtain, collect, and preserve such information relating to marriage as may be useful in his or her duties or contribute to the promotion of health or the security of life in New York.

#### **Title II-D. Health Care Practitioner Referrals**

- 470** N.Y. PUB. HEALTH § 238-A (2007) A medical practitioner authorized to order clinical laboratory services, pharmacy services, radiation therapy services, physical therapy services, or x-ray or imaging services may not make a referral for such services to a health care provider authorized to provide such services where such practitioner or an immediate family member, including a spouse, of such practitioner has a financial relationship with such health care provider.
- 471** N.Y. PUB. HEALTH § 238-D (2007) A practitioner may not make a referral to a health care provider for the furnishing of any health or health-related items or services where such practitioner or an immediate family member, including a spouse, of such practitioner has certain financial relationships, without disclosing the financial relationship to the patient.

#### **Article 25. Maternal and Child Health**

##### **Title I. General Provisions**

- 472** N.Y. PUB. HEALTH § 2504 (2007) Any person who has married may give effective consent for medical, dental, health, and hospital services for himself or herself, and the consent of no other person shall be necessary.

##### **Article 26-A. New York State Veterans' Home**

- 473** N.Y. PUB. HEALTH § 2630 (2007) Certain veterans' homes shall be for veterans, their spouses, and un-remarried surviving spouses.
- 474** N.Y. PUB. HEALTH § 2632 (2007) An un-remarried surviving spouse may enter the home of a U.S. Armed Forces member who died on active duty.

##### **Article 27-F. HIV and AIDS Related Information**

- 475** N.Y. PUB. HEALTH § 2780 (2007) A spouse of a person infected with HIV who may have transmitted HIV to the spouse is protected by certain confidentiality requirements.

##### **Article 28. Hospitals**

- 476** N.Y. PUB. HEALTH § 2805-E (2007) Residential healthcare facilities are required to file an annual fiscal report, including information on financial interests of the spouse, brother, sister, first cousin, aunt, and uncle of the operator and parties with ownership in the facility, whether such relationships arise by reason of birth, marriage, or adoption.
- 477** N.Y. PUB. HEALTH § 2805-O (2007) Certain nursing homes are required to provide to residents identifying

themselves as veterans or spouses of veterans with information regarding the Division of Veterans' Affairs and local veterans' service agencies.

- 478** N.Y. PUB. HEALTH § 2807-T (2007) A "family unit" is a person who an insurer has agreed to provide reimbursement for hospital services, including a spouse. Insurers shall report the number of family units (including spouses) in each region, and it shall be assumed that the family unit resides in the region of the primary insured.

#### **Article 28-D. Practice of Nursing Home Administration**

##### **Title II. Licensing and Registration**

- 479** N.Y. PUB. HEALTH § 2896-H (2007) A spouse of a resident may request and obtain a copy of a nursing home's last inspection report.

##### **Article 29. Hospital Survey, Planning, and Review**

- 480** N.Y. PUB. HEALTH § 2904-B (2007) Members of health systems agencies shall include health care providers or their spouses, and shall have authority for such things as recommending construction of hospitals, promoting public education about health care services, performing surveys on regional health care needs, recommending state grants for health care, and improving health care delivery in the region.

##### **Article 29-B. Orders Not to Resuscitate**

- 481** N.Y. PUB. HEALTH §§ 2961 & 2964 (2007) Anyone who has married is considered an adult for purposes of consenting to an order not to resuscitate.
- 482** N.Y. PUB. HEALTH § 2965 (2007) The spouse of a nursing home patient has the authority, when the patient is unable to consent himself or herself and a surrogate is unavailable, to become the surrogate for purposes of making a decision regarding an order not to resuscitate. A spouse, acting as a surrogate, has the same right as the patient to receive medical information and medical records.

##### **Article 29-C. Health Care Agents and Proxies**

- 483** N.Y. PUB. HEALTH § 2980 (2007) Anyone who has married is considered to be an adult capable of appointing a health care agent to make medical decisions on his or her behalf or of being appointed as a health care agent to make medical decisions for another.
- 484** N.Y. PUB. HEALTH § 2981 (2007) An operator, administrator, or employee of a hospital may not be appointed as a health care agent by any person who is a patient or resident of such hospital, though spouses are exempt from this restriction. No physician affiliated with a mental hygiene facility or a psychiatric unit of a general hospital may serve as agent for a principal residing in or being treated by such facility or unit unless the physician is related to the principal by



blood, marriage, or adoption. No person who is not the spouse of the principal shall be appointed as a health care agent if he or she is presently appointed health care agent for ten principals.

- 485** N.Y. PUB. HEALTH § 2985 (2007) When a person has appointed his or her spouse as his or her health care agent, that appointment is revoked upon divorce or legal separation, unless the person specifies otherwise.

#### **Article 38. Veterans Health Manpower Center**

- 486** N.Y. PUB. HEALTH § 3803 (2007) The Veterans Health Care Information Program was created to educate veterans and their surviving spouses about military related health issues.

#### **Article 41. Vital Statistics**

##### **Title III. Registration of Births**

- 487** N.Y. PUB. HEALTH § 4135 (2007) A child is considered to be “born out of wedlock” for purposes of this article if the father is not the mother’s husband. The name of the putative father who is not the husband of the mother of a child shall not be entered on the certificate of birth prior to the filing of an acknowledgment of paternity executed by both the mother and putative father, and filed with the record of birth, prior to the entry or a court judgment relating to common parentage.

##### **Title III-A. Filing of Certificates of Dissolution of Marriage**

- 488** N.Y. PUB. HEALTH § 4139 (2007) When a marriage is dissolved by divorce, annulment, or some other means, the parties must file a certificate of dissolution with a county clerk, and the clerk must take certain actions to file it with the Department of Health.

##### **Title VII. Vital Statistics Records**

- 489** N.Y. PUB. HEALTH § 4174 (2007) An individual may request and receive a certified copy of the death certificate of his or her spouse.

#### **Article 42. Cadavers**

##### **Title I. Disposition**

- 490** N.Y. PUB. HEALTH § 4201 (2007) A decedent’s surviving spouse may have control over the disposition of a decedent’s remains.

##### **Title II. Autopsy and Dissection**

- 491** N.Y. PUB. HEALTH § 4210 (2007) A husband or wife may authorize the dissection and autopsy of his or her deceased spouse.
- 492** N.Y. PUB. HEALTH § 4222 (2007) If an anatomical gift has not been previously authorized, a coroner may provide the name of the decedent or the decedent’s spouse to a tissue bank or storage facility for the purposes of possibly procuring the decedent’s tissue for transplantation.

#### **Article 43. Anatomical Gifts**

- 493** N.Y. PUB. HEALTH § 4301 (2007) An individual may make an anatomical gift of his or her deceased spouse.
- 494** N.Y. PUB. HEALTH § 4306 (2007) Custody of the remains of a donated cadaver vests with the surviving spouse.
- 495** N.Y. PUB. HEALTH § 4351 (2007) A hospital or its designee shall cause a timely request to be made to a spouse to consent to the gift of all or any part of the decedent’s body, when persons in prior classes are not available and in the absence of actual notice of contrary intentions by the decedent, or actual notice of opposition by a person or persons in the highest priority available of the classes specified, or if the hospital has other reason to believe that an anatomic gift is contrary to the decedent’s religious beliefs.

#### **Article 46. Continuing Care Retirement Communities**

- 496** N.Y. PUB. HEALTH § 4608 (2007) A continuing care retirement contract shall contain certain information in plain language, including: a statement of the figures and terms concerning the entry of a spouse to the community and the consequences if the spouse does not meet the requirements for entry; and a statement of the conditions under which all or any portion of an entrance fee will be refunded in the event of the death of the resident and/or spouse following occupancy of a living unit.

#### **Article 46-A. Fee-For-Service Continuing Care Retirement Communities Demonstration Program**

- 497** N.Y. PUB. HEALTH § 4659 (2007) A fee-for-service continuing care contract shall contain certain information in plain language, including: a statement of the figures and terms concerning the entry of a spouse to the community and the consequences if the spouse does not meet the requirements for entry; and a statement of the conditions under which all or any portion of an entrance fee will be refunded in the event of the death of the resident and/or spouse following occupancy of a living unit.

### **Public Housing Law**

- 498** N.Y. PUB. HOUS. § 14 (2007) For purposes of Public Housing regulations, any member of a tenant’s family, including a spouse, shall succeed to the rights of a tenant where the tenant has permanently vacated the housing accommodation and such family member has resided with the tenant in the housing accommodation for a period of no less than two years. A landlord may periodically request the names of all family members residing in the housing accommodation.
- 499** N.Y. PUB. HOUS. § 156 (2007) Criteria for the selection of tenants by a public housing authority include whether



the potential tenant is the surviving spouse of a person who served in the U.S. Armed Forces.

### Public Officer's Law

#### Article 4. Powers and Duties of Public Officers

- 500** N.Y. PUB. OFF. § 73 (2007) Every legislative employee not subject to the provisions of section 73-a of this chapter is required to annually file with the legislative ethics committee a financial disclosure statement which includes each financial interest, direct or indirect, of himself and his spouse in any activity which is subject to the jurisdiction of a regulatory agency, the name of the entity in which the interest is had, and whether such interest is over or under \$5,000 in value.
- 501** N.Y. PUB. OFF. § 73-A (2007) Every statewide elected official, state officer or employee, member of the legislature, legislative employee, and political party chairman, and every candidate for statewide elected office or for member of the legislature shall file an annual statement of financial disclosure containing information about himself or herself and his or her spouse, including: any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by the spouse with any firm, corporation, association, partnership, or other organization other than the State of New York; the spouse's employment information if the spouse was engaged in any employment which activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters before, any state or local agency; any interest in excess of \$1,000 held by a spouse in any contract made or executed by a state or local agency; each source of gifts in excess of \$1,000 received by a spouse, excluding gifts from a spouse; any income in excess of \$1,000 from each source for a spouse; securities held by a spouse from each issuing entity in excess of \$1,000; ownership of real property by a spouse in excess of \$1,000; and liabilities of a spouse in excess of \$5,000.

### Public Service Law

- 502** N.Y. PUB. SERV. § 92 (2007) Telephone and telegraph rate schedules for members of the state military shall be negotiated at a bulk rate for military servicemenbers who are residents of this state and their families, including their spouses.

### Racing, Pari-Mutuel Wagering and Breeding Law

#### Article II. Thoroughbred Racing and Breeding

- 503** N.Y. RAC. PARI-MUT. WAG. & BREED. § 236 (2007) A corporation or association licensed to conduct pari-mutuel betting on races run on its racetrack may not issue free passes, cards, or badges except to certain persons, including spouses of owners.
- 504** N.Y. RAC. PARI-MUT. WAG. & BREED § 260 (2007) Discrimination based on marital status is prohibited for contractor hires.

### Real Property Actions and Proceedings Law

#### Article 7. Summary Proceeding to Recover Possession of Real Property

- 505** N.Y. REAL PROP. ACTS. § 711 (2007) Where a tenant dies during the term of a lease, and rent due has not been paid and no representative or person has taken possession of the premises and no administrator or executor has been appointed, a proceeding may be commenced after three months from the date of death of the tenant by joining the tenant's surviving spouse.

#### Article 9. Action for Partition

- 506** N.Y. REAL PROP. ACTS § 964 (2007) Where a property has been sold free from the lien of debts, a final judgment shall direct the proceeds of the sale remaining after the payment of the costs, referee's fees, expenses of sale and liens established before the death of the decedent, including any sum allowed to a widow in satisfaction of her right of dower.

#### Article 10. Action for Dower

- 507** N.Y. REAL PROP. ACTS § 1001 (2007) [Abolished by 1930 revision of New York Estate Laws.] An action for dower must be commenced by a widow within two years after the death of her husband if the husband dies on or after April 6, 1954.
- 508** N.Y. REAL PROP. ACTS § 1002 (2007) [Abolished by 1930 revision of New York Estate Laws.] The acceptance by a widow of an assignment of dower in satisfaction of her claim upon a given property in question bars an action for dower and may be pleaded by any defendant.
- 509** N.Y. REAL PROP. ACTS § 1013 (2007) [Abolished by 1930 revision of New York Estate Laws.] In an action to recover dower in a distinct parcel of real property of which the plaintiff's husband died in possession of or in all the real property which he aliened by one conveyance, all the persons in possession of or claiming title to the property, or any part thereof, may be made defendants, although they

possess or claim title to different portions thereof in severalty.

- 510** N.Y. REAL PROP. ACTS §§ 1021 & 1022 (2007) [Abolished by 1930 revision of New York Estate Laws.] Where a widow recovers dower in property of which her husband died in possession, she may also recover, in the same action, damages for withholding her dower.
- 511** N.Y. REAL PROP. ACTS § 1024 (2007) [Abolished by 1930 revision of New York Estate Laws.] Where a widow recovers dower in real property alienated by the heir of her husband, she may recover, in a separate action against the heir, her damages for withholding her dower, from the time of the death of her husband to the time of the alienation, not exceeding six years in the whole.
- 512** N.Y. REAL PROP. ACTS § 1031 (2007) [Abolished by 1930 revision of New York Estate Laws.] A complaint in an action for dower must describe the property claimed with common certainty, including setting forth the name of the plaintiff's husband.
- 513** N.Y. REAL PROP. ACTS § 1043 (2007) [Abolished by 1930 revision of New York Estate Laws.] In measuring and laying off the dower of a plaintiff (a distinct parcel), Commissioners must take into consideration any permanent improvements made upon the given parcel after the death of the plaintiff's husband or after the alienation thereof by him.
- 514** N.Y. REAL PROP. ACTS § 1093 (2007) [Abolished by 1930 revision of New York Estate Laws.] Where a widow, not having a right to dower, recovers dower against an infant by the default or collusion of his guardian, the infant shall not be prejudiced thereby; but when he comes of full age, he may bring an action of ejectment against the widow to recover the property so wrongfully awarded for dower, with damages from the time when she entered into possession.

**Article 11. Proceeding to Discover the Death of a Tenant for Life**

- 515** N.Y. REAL PROP. ACTS § 1101 (2007) A person entitled to claim real property after the death of another who has a prior estate therein may, under certain circumstances, apply by petition to the Supreme Court for an order directing the production of the tenant for life by a person, named in the petition, against whom an action of ejectment to recover the real property can be maintained, if the tenant for life is dead or, where there is no such person, by the guardian, husband, trustee, or other person who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate.

**Article 15. Action to Compel the Determination of a Claim to Real Property**

- 516** N.Y. REAL PROP. ACTS § 1501 (2007) An action against a woman who claims a right of dower in the whole or a part of a property cannot be commenced until

the expiration of four months after the death of the defendant's husband.

**Article 17. Special Proceeding for Disposition of Real Property of Infant, Incompetent, or Conservatee**

- 517** N.Y. REAL PROP. ACTS § 1753 (2007) A release of a just begun right to dower shall have the same effect as if the wife had joined with the husband in a deed or conveyance of the property affected thereby and had duly acknowledged the same in the manner required by law to pass the estate of married women.
- 518** N.Y. REAL PROP. ACTS § 1763 (2007) The court may determine how to invest or distribute amounts realized on the sale of property by the husband where an inchoate right of dower is released.

## Real Property Law

**Article 6. Dower and Curtesy**

- 519** N.Y. REAL PROP. § 191 (2007) [Abolished by 1930 revision of New York Estate Laws.] If a husband seized of an estate of inheritance in lands exchanges them for other lands, his widow shall not have dower of both, but she must make her election to be endowed of the lands given, or of those taken, in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.
- 520** N.Y. REAL PROP. § 192 (2007) [Abolished by 1930 revision of New York Estate Laws.] Where a person seized of an estate of inheritance in lands executes a mortgage thereof before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged as against every person except the mortgagee and those claiming under him.
- 521** N.Y. REAL PROP. § 193 (2007) [Abolished by 1930 revision of New York Estate Laws.] Where a husband purchases lands during the marriage and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not entitled to dower of those lands as against the mortgagee or those claiming under him although she did not unite in the mortgage, though she is entitled to her dower as against every other person.
- 522** N.Y. REAL PROP. § 194 (2007) [Abolished by 1930 revision of New York Estate Laws.] Where the mortgagee, or a person claiming under him, causes land mortgaged to be sold after the death of the husband, either under a power of sale contained in the mortgage or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life, as her dower.

- 523** N.Y. REAL PROP. § 195 (2007) [Abolished by 1930 revision of New York Estate Laws.] A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein during the marriage.
- 524** N.Y. REAL PROP. § 196 (2007) [Abolished by 1930 revision of New York Estate Laws.] In case of a divorce dissolving the marriage contract for the misconduct of the wife, she shall not receive dower.
- 525** N.Y. REAL PROP. § 196-A (2007) [Abolished by 1930 revision of New York Estate Laws.] In case of a dissolution of the marriage because of the absence of the wife for five successive years, she shall not receive dower.
- 526** N.Y. REAL PROP. § 197 (2007) [Abolished by 1930 revision of New York Estate Laws.] Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband, the assent of the wife to such a jointure is evidenced, if she is of full age, by her becoming a party to the conveyance by which it is settled or, if she be a minor, by her joining with her father or guardian in that conveyance.
- 527** N.Y. REAL PROP. § 198 (2007) [Abolished by 1930 revision of New York Estate Laws.] Any pecuniary provision made for the benefit of an intended wife and in lieu of dower, if assented to by her, bars her right or claim of dower in all the lands of her husband.
- 528** N.Y. REAL PROP. § 199 (2007) [Abolished by 1930 revision of New York Estate Laws.] If, before marriage but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband, but she is not entitled to both.
- 529** N.Y. REAL PROP. § 200 (2007) [Abolished by 1930 revision of New York Estate Laws.] If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband, but she is not entitled to both.
- 530** N.Y. REAL PROP. § 201 (2007) [Abolished by 1930 revision of New York Estate Laws.] The right of a spouse to elect what was granted in a will or to elect to take what the spouse may have by dower is subject to the spouse's adherence to procedural and timing requirements established in this provision. Where a spouse is entitled to an election, he or she is deemed to have elected to take the jointure, devise, or pecuniary provision unless within six months after the death of her spouse she enters upon the lands assigned to her for her dower, or commences an action for her dower. However, under certain circumstances during such period of six months after the death of the spouse, his or her time to make such election may be enlarged by court order.
- 531** N.Y. REAL PROP. § 203 (2007) [Abolished by 1930 revision of New York Estate Laws.] Spouses are ensured to have the right to the dower or the recovery of that dower even if the other spouse has conveyed or otherwise acted to deprive the other spouse of the dower without that spouse's permission, and this right is protected even as against an execution of civil or criminal judgment recovered against that spouse.
- 532** N.Y. REAL PROP. § 204 (2007) [Abolished by 1930 revision of New York Estate Laws.] A surviving spouse may remain in the principle residence of her spouse forty days after death and is entitled to reasonable living expenses from the estate even prior to the probate of the estate.
- 533** N.Y. REAL PROP. § 205 (2007) [Abolished by 1930 revision of New York Estate Laws.] A surviving spouse may continue to farm on land held in dower.
- 534** N.Y. REAL PROP. § 206 (2007) [Abolished by 1930 revision of New York Estate Laws.] A divorced woman may release her right to her dower in writing.
- 535** N.Y. REAL PROP. § 207 (2007) [Abolished by 1930 revision of New York Estate Laws.] A married woman of full age may release her right of dower in real property by attorney in fact in any case where she can personally release the same.

#### Article 7. Landlord and Tenant

- 536** N.Y. REAL PROP. § 227-A (2007) The tenant spouse of a senior citizen who is unable to live independently has protection from landlords, including the ability to surrender a lease without penalty. A landlord is subject to criminal penalties if, against the spouse of a senior citizen, the landlord or his agent knowingly seizes, holds, or detains the property of any person or spouse who has lawfully terminated the lease or rental agreement, or in any manner interferes with the removal of such property from the premises for the purpose of subjecting any such property to a purported claim for rent accruing after the date of termination or surrender of such lease or rental agreement.
- 537** N.Y. REAL PROP. § 235-F (2007) Under any lease or rental agreement, spouses have a right to reside together, and any prohibition is an unlawful restriction on occupancy. The children of a spouse may also reside in the home. Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant, provided that the tenant or the tenant's spouse occupies the premises as his or her primary residence. Any lease or rental agreement for residential

premises entered into by two or more tenants shall be construed to permit occupancy by tenants, immediate family of tenants, occupants, and dependent children of occupants; provided that the total number of tenants and occupants, excluding occupants' dependent children, does not exceed the number of tenants specified in the current lease or rental agreement, and that at least one tenant or tenant's spouse occupies the premises as his or her primary residence.

#### Article 8. Conveyances and Mortgages

- 538** N.Y. REAL PROP. § 240-B (2007) A person and/or group of people may convey real property or an interest in real property to themselves with others and treat the transfer as a conveyance as if from a stranger who owned the property or interest to the persons named as grantees in the conveyance, including between and among married people.
- 539** N.Y. REAL PROP. § 265-A (2007) For the purpose of home equity theft prevention, the term "equity purchaser" means any person who acquires title to any residence in foreclosure or, where applicable, default, or his or her representative as defined in this subdivision, except for certain persons who acquire such title, including from a spouse, or from a parent, grandparent, child, grandchild, or sibling of such person or such person's spouse.

#### Article 12. Registering Title to Real Property

- 540** N.Y. REAL PROP. § 378 (2007) When a petition for registration of title is made by certain persons following the transfer of real property, a spouse's name may also appear on the title.
- 541** N.Y. REAL PROP. § 423 (2007) Upon the death of an owner of registered real property, the surviving spouse or the joint tenant with right of survivorship is required to present to the registrar a petition for the transfer of the title into the name of the survivor.

#### Article 12-A. Real Estate Brokers and Real Estate Salesmen

- 542** N.Y. REAL PROP. § 441-C (2007) Failure to pay arrears of court-ordered spousal support in combination with child support can result in revocation and suspension of licenses, including for a licensed real estate broker or licensed real estate salesperson.

#### Article 14. Property Condition Disclosure in the Sale of Residential Real Property

- 543** N.Y. REAL PROP. § 463 (2007) A property condition disclosure statement shall not be required in connection with certain transfers of residential real property, including a transfer made to the transferor's spouse, or a transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation, or as a result of property settlement, agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation.

## Real Property Tax Law

#### Article 3. Taxable Real Property and Standard of Assessment

- 544** N.Y. REAL PROP. TAX § 336 (2007) Certain financial disclosures are required by a tax assessor's spouse.

#### Article 4. Exemptions

- 545** N.Y. REAL PROP. TAX § 421-H (2007) Transfers to a spouse are exempt from capital improvements to residential buildings.
- 546** N.Y. REAL PROP. TAX § 425 (2007) Certain exemptions from real estate tax on increases in value resulting from capital improvements to residential buildings cease when the buildings are transferred to someone other than the spouse of the owner.
- 547** N.Y. REAL PROP. TAX § 428 (2007) For fraternal organizations, the entire net income for education and relief of members is property tax exempt if the real property is used for the spouses and surviving spouses of members.
- 548** N.Y. REAL PROP. TAX § 457 (2007) For first-time homebuyers of newly-constructed homes, a person married during the prior three years to a first-time buyer homeowner is restricted from qualifying as first-time buyer for tax exempt status. A spouse's income is included as "household income" when determining eligibility.
- 549** N.Y. REAL PROP. TAX § 458 (2007) Spouses and surviving spouses are eligible for tax exemption for certain real property purchased with military insurance or pension funds or for a housing unit used by a disabled veteran.
- 550** N.Y. REAL PROP. TAX § 459-C (2007) Exemptions from taxation by municipal corporations are granted for real property owned by certain persons with disabilities or spouses of disabled persons.
- 551** N.Y. REAL PROP. TAX § 460 (2007) Surviving spouses of clergy may receive exemptions of up to \$1,500 from real estate taxes.
- 552** N.Y. REAL PROP. TAX §§ 466-A & 466-H (2007) Spouses of enrolled volunteer firefighters and ambulance workers in certain areas may receive exemptions from real property tax.
- 553** N.Y. REAL PROP. TAX § 467 (2007) Spouses of certain persons sixty-five years or older may receive exemptions from real property tax.
- 554** N.Y. REAL PROP. TAX § 467-C (2007) For purposes of the real estate tax exemption for property owned by certain housing companies and occupied by senior citizens or persons with disabilities, the spouse of a person eligible for an exemption as head of household is also a "qualified occupant."



- 555** N.Y. REAL PROP. TAX § 469 (2007) The spouse of the owner of living quarters for a qualifying parent or grandparent who qualifies for a real estate tax exemption is entitled to certain tax exemptions.

#### Article 5. Assessment Procedure

##### Title 1-A. Administrative Review of Assessments

- 556** N.Y. REAL PROP. TAX §§ 523 & 523-B (2007) The members appointed to the Board of Assessment Review shall be required to disclose any direct or indirect interest they or their spouses have in any property for which a complaint has been filed.

#### Article 7. Judicial Review

##### Title 1-A. Special Proceeding for Small Claims Assessment Review

- 557** N.Y. REAL PROP. TAX § 731 (2007) A hearing officer will be disqualified from a hearing and shall be required to disclose any direct or indirect interest that the officer or his or her spouse have in any property for which a petition has been filed.

#### Article 9. Levy and Collection of Taxes

##### Title 3. Collection of Taxes; Return of Collecting Officer

- 558** N.Y. REAL PROP. TAX § 925-D (2007) Spouses of members of the military qualify for deadline extensions for the collection of real property tax.

#### Article 13. Special Provisions Relating to School Districts

- 559** N.Y. REAL PROP. TAX § 1327 (2007) A surviving spouse of a senior citizen or a disabled spouse may pay certain city school district taxes in installments.

## Religious Corporations Law

#### Article 2. General Provisions

- 560** N.Y. RELIG. CORP. § 6 (2007) For the purpose of acquisition of property by religious corporations, spouses qualify as a class of persons for whom a religious corporation may acquire property for houses, church buildings, chapels, and mission-houses.
- 561** N.Y. RELIG. CORP. § 8 (2007) Spouses retain their rights to interment even upon sale or transfer of a cemetery by an owner or religious corporation.
- 562** N.Y. RELIG. CORP. § 9 (2007) A religious corporation may remove the human remains buried in a cemetery owned by it; however, the surviving spouse, upon obtaining the requisite permission of the applicable court, may at his or her own expense remove such remains and tombstones, monuments, or other erections and re-inter such remains and replace such tombstones, monuments, or other erections in some other cemetery selected by the applicant.

## Retirement and Social Security Law

#### Article 2. N.Y. State Employees' Retirement System

- 563** N.Y. RETIRE. & SOC. SEC. § 61 (2007) For purposes of accidental death benefits, a member's surviving spouse has the first right to pension payments and benefits.
- 564** N.Y. RETIRE. & SOC. SEC. § 78 (2007) Qualifying spouses and surviving spouses are entitled to a supplemental retirement allowance that shall be paid to pensioners of the retirement system who have retired prior to the calendar year 1994.
- 565** N.Y. RETIRE. & SOC. SEC. § 78-A (2007) Surviving spouses are entitled to receive a cost-of-living adjustment to his or her spouse's retirement pension.
- 566** N.Y. RETIRE. & SOC. SEC. § 90 (2007) For purposes of retirement plans, a surviving spouse is entitled to elect on behalf of the retiring spouse, if the retiring spouse is incompetent, to receive the option of the benefit of a single life allowance.
- 567** N.Y. RETIRE. & SOC. SEC. § 112 (2007) Benefits granted to spouses and surviving spouses of retirees are protected by statute. No other provision of law in any other statute which provides, at the expense of the state or of a participating employer, for pensions and retirement benefits for employees in government service and their widows, shall apply to members or beneficiaries of the retirement system continued by this article, or their widows or other dependents. This article shall not prevent extension of old-age and survivors insurance coverage to members of the retirement system or the receipt of benefits by such members, their wives or widows, or their other dependents.

#### Article 4. Supplemental Pension Act

- 568** N.Y. RETIRE. & SOC. SEC. § 162 (2007) Any county, town, city, or village is authorized to provide supplemental pensions for the surviving spouses of deceased members or deceased retired members of the police department or fire department for up to three months.

#### Article 8. New York State Policemen's and Firemen's Retirement System

- 569** N.Y. RETIRE. & SOC. SEC. § 361 (2007) A surviving spouse has the first right to the accidental death pension benefit of a member of the New York State Policemen's and Firemen's Retirement System ("PFRS"), which benefit is payable to the surviving spouse for his or her lifetime.
- 570** N.Y. RETIRE. & SOC. SEC. § 361-A (2007) The surviving spouse of a PFRS member is eligible for a special accidental death benefit from the pension accumulation fund, equal to the salary of the deceased member reduced by the sum of certain benefits received by the surviving spouse during his or her lifetime.



**571** N.Y. RETIRE. & SOC. SEC. § 378 (2007) Qualifying spouses of PFRS members may be eligible for a supplemental allowance if the PFRS pensioner retired prior to the year 1994. This supplemental allowance shall be paid to a policeman or fireman sixty-two years or older who is retired, any person retired for disability regardless of age, or any qualifying spouse. The spouse of a deceased pensioner who elected an option pursuant to this chapter which provides benefits for the spouse's life after death of the pensioner shall receive benefits for life and be entitled to a monthly supplemental retirement allowance equal in amount to one-half of the monthly supplemental retirement allowance the pensioner would be receiving if living.

**572** N.Y. RETIRE. & SOC. SEC. § 378-A (2007) The surviving spouse of a deceased PFRS member who retired under an option providing that surviving spouse benefits are to be continued for life to the spouse shall be entitled to receive a cost-of-living adjustment to the pension benefits received under this section.

**573** N.Y. RETIRE. & SOC. SEC. § 390 (2007) The spouse of a PFRS member may act on behalf of the member, if the member is incompetent, to elect to receive a single life allowance (a retirement allowance without optional modifications) or to receive the actuarial equivalent of this retirement allowance at the time of the spouse's retirement, in the form of a small entitlement allowance payable to the member for life, as well as other settlements.

**574** N.Y. RETIRE. & SOC. SEC. § 413 (2007) Benefits granted to spouses and surviving spouses of retirees are protected by statute. No other provision of law in any other statute which provides, at the expense of the state or of a participating employer, for pensions or retirement benefits for employees in government service, their widows, or other dependents shall apply to members or beneficiaries of the policemen's and firemen's retirement system established by this law, their widows, or other dependents.

**575** N.Y. RETIRE. & SOC. SEC. § 418 (2007) Surviving spouses of retired Yonkers policemen and firemen are eligible for an additional benefit from the city of Yonkers of \$250 a month.

**Article 14.** [Expires June 30, 2007] Coordinated-Escalator Retirement Plan

**576** N.Y. RETIRE. & SOC. SEC. § 501 (2007) The surviving spouse of a public employee is the first eligible beneficiary entitled, until remarriage, to the escalation of Coordinated Elevator Retirement Plan ("CERP") benefits authorized by statute, as long as he or she has not renounced survivorship rights in a separation agreement.

**577** N.Y. RETIRE. & SOC. SEC. § 514 (2007) The CERP member's spouse, on behalf of an incompetent spouse,

may elect to receive the actuarial equivalent of a retirement allowance at time of retirement, in the form of a smaller retirement allowance payable to the member for life.

**Article 15.** [Expires June 30, 2007] Coordinated Retirement Plan

**578** N.Y. RETIRE. & SOC. SEC. § 601 (2007) A surviving spouse of a public employee is the first eligible beneficiary entitled, until remarriage, to benefits of this coordinated retirement plan, as long as he or she has not renounced survivorship rights in a separation agreement.

**579** N.Y. RETIRE. & SOC. SEC. § 610 (2007) A member's spouse, on behalf of an incompetent spouse, may elect to receive benefits under several optional settlements.

**Article 18.** Provisions Generally Applicable to Public Retirement Systems

**580** N.Y. RETIRE. & SOC. SEC. § 803-A (2007) If, pursuant to a settlement agreement or court order arising out of a matrimonial or custody action, a member of the New York State and Local Employees' Retirement System or the New York State and Local Police and Fire Retirement System agrees or is ordered to select or change a retirement option or beneficiary and such member fails to comply with such agreement or order, the Comptroller is authorized to change or correct the retirement option or beneficiary consistent with a subsequent order by a court of competent jurisdiction directing the member to comply with the original agreement or order.

## Rural Electric Cooperative Law

**581** N.Y. RURAL ELEC. COOP. § 16 (2007) Spouses are permitted to hold joint membership in a rural electric cooperative.

**582** N.Y. RURAL ELEC. COOP. § 19 (2007) Only one spouse may serve on the board of directors of an electric cooperative if the married couple has a joint membership.

## Social Services Law

**Article 3.** Local Public Welfare Organization; Powers and Duties

**Title 5.** Records, Reports, Funds, and Appropriations

**583** N.Y. SOC. SERV. § 95 (2007) A spouse under court order to pay child or combined child and spousal support with an accumulated support arrears equivalent to or greater than the amount of current support due for a

period of four months is not eligible to participate in the food stamp program as a member of any household.

#### **Title 6. Powers to Enforce Support**

- 584** N.Y. SOC. SERV. § 101 (2007) A spouse or step-parent of a recipient of public assistance, if of sufficient ability, may be responsible for the support of such person.
- 585** N.Y. SOC. SERV. § 105 (2007) A surviving spouse may, if the surviving spouse is liable to become a public charge, have a first claim on insurance proceeds against a social services official who under this statute would otherwise have a preferred claim to such insurance.
- 586** N.Y. SOC. SERV. § 106 (2007) In receiving or disposing of a deed, mortgage, or lien following the death of a spouse, a public official who may otherwise enforce a claim as against real property is subject to certain limitations, while that property is occupied by the surviving spouse.
- 587** N.Y. SOC. SERV. § 110-A (2007) A spouse may be obligated to support a husband or wife, and special provisions may be made for legal services to enforce support, to recover costs of public assistance and care, and to establish paternity.

#### **Title 6-A. Establishment of Paternity and Enforcement of Support**

- 588** N.Y. SOC. SERV. § 111-B (2007) [Expired and repealed as of June 30, 2007] A spousal support order made in conjunction with a child support order, which has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, shall result in notification to the Department of Motor Vehicles to suspend the support obligor's driving privileges, as well as notification to the Department of Taxation and Finance authorized it to collect such arrearage.
- 589** N.Y. SOC. SERV. § 111-H (2007) A spouse who has an order of combined child and spousal support is entitled to the rights established for the recipients, including the right to the collection, accounting, and disbursement of monies, by the support collections unit.
- 590** N.Y. SOC. SERV. § 111-K (2007) One of the defenses to the procedures requiring genetic tests for paternity proceedings is based on a presumption of legitimacy of a child born to a married woman.
- 591** N.Y. SOC. SERV. § 111-S (2007) For purposes of establishing paternity, or establishing, modifying, or enforcing an order of support, the Department of Social Welfare or a social services district or its authorized representative and certain child support enforcement agencies shall have access to certain records of other state and local government agencies, including vital statistics (such as records of marriage, birth, and divorce) without the necessity of obtaining an order from any other judicial or administrative tribunal.

- 592** N.Y. SOC. SERV. § 111-U (2007) A spouse who is obligated under a court order to pay child support or combined child and spousal support and who has accumulated support arrears in an amount equal to or greater than the amount of support due for a period of four months may have a lien placed against his or her real or personal property by the Office of Temporary and Disability Assistance, a social services district, or its authorized representative.

#### **Title 6-B. Services for Enforcement of Support Provided By the Department of Social Services**

- 593** N.Y. SOC. SERV. §§ 111-Y & 111-Z (2007) A current or former spouse shall be credited with overpayments of tax on past-due spousal and child support to which he or she is owed or entitled to.

#### **Article 4. Residence and Removal**

- 594** N.Y. SOC. SERV. § 122 (2007) Certain spouses and surviving spouses of aliens otherwise prohibited may receive certain social service benefits not otherwise provided to non-citizens or unnaturalized aliens.

#### **Article 5. Assistance and Care**

##### **Title 1. General Provisions**

- 595** N.Y. SOC. SERV. § 131 (2007) No individual who is under the age of eighteen and is not married, who resides with and provides care for his or her dependent child, or is pregnant and otherwise entitled to family assistance shall receive family assistance for himself or herself unless the individual, individual and child, or pregnant woman resides in a place of residence maintained as a home by the individual's parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement.
- 596** N.Y. SOC. SERV. § 131-P (2007) A spouse may be able to receive certain subsidized insurance and any applicant for or recipient of safety net assistance or family assistance who is or becomes employed and whose employer provides group health insurance benefits, including benefits for a spouse and dependent children of such applicant or recipient, shall apply for and utilize such benefits as a condition of eligibility for safety net assistance or family assistance.
- 597** N.Y. SOC. SERV. § 131-Z (2007) A custodial spouse's income will be deemed to be available to other household members and will be deducted from child assistance payments.
- 598** N.Y. SOC. SERV. § 169 (2007) A spouse or an unremarried surviving spouse is eligible for veteran assistance if unable to provide for himself or herself or is unable to secure support from a legally responsible relative and is not receiving care from another source.
- 599** N.Y. SOC. SERV. § 208 (2007) Definitions relating to eligibility to receive additional payments for the

aged, blind, and disabled include “eligible couple” (an individual and his or her spouse), and “countable income” (which includes the income of a spouse).

#### **Title 9-B. Public Assistance Employment Programs**

**600** N.Y. SOC. SERV. § 335-B (2007) For purposes of determining eligibility for public assistance, a married person under the age of twenty who maintains satisfactory school attendance shall be deemed to be engaged in work to the extent allowed by federal law and regulations.

#### **Title 10. Aid to Dependent Children**

**601** N.Y. SOC. SERV. § 349 (2007) A person who is living with and related to a child by marriage may be granted an allowance for the aid of such child and be eligible to receive assistance on his or her behalf.

**602** N.Y. SOC. SERV. § 350 (2007) The time during which an individual receiving assistance was an unmarried minor is excluded from the calculation of prior assistance to needy families program.

**603** N.Y. SOC. SERV. § 350-J (2007) Under the Emergency Assistance to Needy Families with Children program, a person, including a migrant farm worker who is living with a child and related to a child by marriage, may be granted assistance to meet the emergency needs of such child and the household.

**604** N.Y. SOC. SERV. § 352 (2007) A person who has been abandoned or deserted by a spouse who is an absent parent is entitled to certain social services. The Social Services Department is under a duty to report the absent parent and to take steps in court and with other officials to locate and enforce the absent parent’s obligation to support the spouse and/or the child. Under this section, the definition of “absent parent” is a person who is legally responsible for a spouse or child.

#### **Title 11. Medical Assistance for Needy Persons**

**605** N.Y. SOC. SERV. § 366 (2007) Under the Married Assistance for Needy Persons program, the spouse of a cash public assistance recipient shall be given medical assistance if he or she requires such assistance, has insufficient income and resources, including available support from responsible relatives, to meet all the costs of medical care and services available under this title, and, among other things, his or her spouse lives with him or her and depends on him or her for his or her welfare.

**606** N.Y. SOC. SERV. § 366-A (2007) To determine eligibility for the provision of medical assistance for nursing facility services, an applicant shall disclose any interest a spouse has in an annuity or similar financial instrument, regardless of whether the annuity is irrevocable or is treated as an asset.

**607** N.Y. SOC. SERV. § 366-C (2007) Both spouses’ assets and income will be considered in determining an institutionalized spouse’s eligibility for public services, subsidized benefits, and medical assistance.

**608** N.Y. SOC. SERV. § 367-A (2007) For purposes of defining individual payment responsibility toward insurance as it relates to eligibility for the state medical assistance program, a spouse’s resources are deemed to include the resources of his or her spouse.

**609** N.Y. SOC. SERV. § 369 (2007) Spouses are entitled to certain limitations against liens on real property for non-payment of medical expenses if the remaining or surviving spouse is lawfully residing in the home while the needy spouse is institutionalized.

#### **Article 6. Children**

**610** N.Y. SOC. SERV. § 378-A (2007) A spouse who was the victim of spousal abuse and has a criminal record may not be automatically denied an application to become a foster parent or adoptive parent if he or she was convicted of spousal abuse as defined by §120.05 or §120.10 of the Penal Law.

**611** N.Y. SOC. SERV. § 383 (2007) After having cared for a child for twelve months, a person who has acted as a foster parent may intervene in a proceeding concerning custody of that child and may apply to adopt that child with a spouse, as a separated married person, or as an unmarried person.

**612** N.Y. SOC. SERV. §§ 383-C & 384 (2007) For purposes of guardianship and proceedings regarding custody of children in foster care, a spouse is obliged, and the parent executing a surrender instrument (a document committing guardianship and custody of a child to an authorized state agency) must, disclose the name of the individual to whom the parent was married at time of conception or birth of the child.

**613** N.Y. SOC. SERV. § 384-B (2007) In proceedings concerning the commitment of guardianship or custody of the child to an agency or foster parents, a spouse is not entitled to the marital confidential communications privilege and must reveal statements made by the other spouse.

**614** N.Y. SOC. SERV. § 384-C (2007) A spouse married to a child’s mother within six months after the birth of the child is entitled to notice of guardianship and custody proceedings pursuant to §§ 358-a, 384 and 384-b, involving a child born out of wedlock.

#### **Article 6-A. Domestic Violence Prevention Act**

**615** N.Y. SOC. SERV. § 459-A (2007) Spouses, former spouses, persons related by consanguinity or affinity, and persons who have a child in common are entitled to the rights, services, protections, and benefits of the Domestic Violence Prevention Act.

**Article 7. Residential Care Programs for Adults and Children**

- 616** N.Y. SOC. SERV. § 461-B (2007) No certification can be granted for a long-term adult residential care home where the operator and resident are spouses.
- 617** N.Y. SOC. SERV. § 461-E (2007) Spouses are among immediate family members who may have to report and disclose financial information pertaining to the operation or ownership of a residential facility for adults.

## State Finance Law

**Article II. State Purchasing**

- 618** N.Y. STATE FIN. § 167 (2007) Spouses and surviving spouses have certain rights to purchase property from the state, including: the Secretary of the Senate may sell to the surviving spouse of a senator the chair last occupied by the member; the Clerk of Assembly may sell to the surviving spouse of an assembly member the chair last occupied by the member; and a Commissioner may at the Governor's request sell to a surviving spouse of an official selected articles of furniture that the official used.

## State Technology Law

**Article III. Electronic Signatures and Records Act**

- 619** N.Y. STATE TECHNOLOGY LAW § 308 (2007) Under State Technology Law, marital status is protected personal information.

## Surrogate's Court Procedure Act

**Article 4. Appearance; Protection of Persons Under Disability; Counsel for Indigent Adults in Surrogate's Court Proceedings**

- 620** N.Y. SURR. CT. PROC. ACT § 403 (2007) A spouse or surviving spouse may have a right to obviate the need for a guardian *ad litem* for a person under disability including when the decedent is survived by a spouse.

**Article 9. Temporary Administration — Absentees and Internees**

- 621** N.Y. SURR. CT. PROC. ACT § 907 (2007) An internee's (e.g. prisoner's) or absentee's spouse may be entitled to a distribution from the internee's or absentee's estate for the spouse's benefit.

**Article 10. Intestate Administration**

- 622** N.Y. SURR. CT. PROC. ACT § 1001 (2007) With respect to the granting of letters of administration, a surviving spouse has the first right of priority.

**Article 11. Public Administrators of the Counties Within the City of New York**

- 623** N.Y. SURR. CT. PROC. ACT § 1113 (2007) An undertaker is to file a report after receiving a burial order for a decedent with no known distributees or who is survived only by cousins or relatives by marriage.

**Article 12. Public Administrators in the Counties of Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester and County Treasurers Appointed Administrators**

- 624** N.Y. SURR. CT. PROC. ACT § 1209 (2007) An undertaker is to file a report after receiving a burial order for a decedent with no known distributees or who is survived only by cousins or relatives by marriage.

**Article 13. Settlement of Small Estates Without Court Administration**

- 625** N.Y. SURR. CT. PROC. ACT § 1303 (2007) An adult surviving spouse has the first right to be administrator of a decedent's estate.
- 626** N.Y. SURR. CT. PROC. ACT § 1310 (2007) The surviving spouse of a creditor has the first right for payment by debtor upon death of a creditor.

**Article 17. Guardians and Custodians**

- 627** N.Y. SURR. CT. PROC. ACT § 1704 (2007) If an infant is a non-domiciliary married person and a petition for appointment of a guardian for the infant relates to personal property only, the petition must show that the property is not subject to the control or disposition of the person's spouse by the law of his or her domicile.
- 628** N.Y. SURR. CT. PROC. ACT § 1705 (2007) If an infant is married, his or her spouse shall receive service of process of a petition for appointment of a guardian.
- 629** N.Y. SURR. CT. PROC. ACT § 1707 (2007) The guardianship of an infant terminates upon the infant's marriage.
- 630** N.Y. SURR. CT. PROC. ACT § 1715 (2007) An infant's spouse is entitled to service of process of a petition filed by a guardian to transfer the infant's property.

**Article 17a. Guardians of Mentally Retarded and Developmentally Disabled Persons**

- 631** N.Y. SURR. CT. PROC. ACT § 1752 (2007) The spouse of a mentally retarded or developmentally disabled person has a right to be named on a petition for appointment of a guardian for his or her spouse.
- 632** N.Y. SURR. CT. PROC. ACT § 1753 (2007) The spouse of a mentally retarded or developmentally disabled person has a right to service of process of a petition for appointment of a guardian for his or her spouse.
- 633** N.Y. SURR. CT. PROC. ACT § 1759 (2007) Marriage does not automatically terminate the guardianship of a mentally retarded or developmentally disabled person, but such guardianship may be terminated upon order of a court.



**Article 19. Disposition of Real Property**

- 634** N.Y. SURR. CT. PROC. ACT § 1901 (2007) The Surrogate's Court may transfer real property to a spouse in satisfaction of an interest or share of the decedent's estate.
- 635** N.Y. SURR. CT. PROC. ACT § 1909 (2007) In the event of an ordered sale of real property that directs a transfer to a spouse, a court may first determine the rights of parties.
- 636** N.Y. SURR. CT. PROC. ACT § 1915 (2007) A spouse purchasing any of a decedent's real property may have the court allow the purchase as a credit towards his or her share of the estate.
- 637** N.Y. SURR. CT. PROC. ACT § 1917 (2007) A spouse is entitled to have title of a decedent spouse's property held in trust if it is subject to dower or curtesy of the spouse.

**Article 21. Miscellaneous Proceedings**

- 638** N.Y. SURR. CT. PROC. ACT § 2102 (2007) Proceedings may be initiated against a fiduciary to turn over, or recover the value of, property to which a spouse is entitled.

**Article 22. Accounting**

- 639** N.Y. SURR. CT. PROC. ACT § 2215 (2007) Courts are empowered to grant special relief due under a § 2102 petition for property to be awarded to a surviving spouse.

## Tax Law

**Article 8. Department of Taxation and Finance;  
Commissioner of Taxation and Finance**

- 640** N.Y. TAX § 170 (2007) A spouse may appear on behalf of his or her spouse in a tax conciliation conference.
- 641** N.Y. TAX § 171 (2007) Spouses filing jointly or separately have certain powers, duties, liabilities, and filing requirements with respect to tax filings. Separation and divorce also have various consequences with respect to tax filings.
- 642** N.Y. TAX § 171-A (2007) The Commissioner of Taxation and the Comptroller are authorized, and in some cases obligated, to collect against overpayment on behalf of a spouse monies due a non-obligated spouse.
- 643** N.Y. TAX § 171-C (2007) The state, on behalf of a spouse or ex-spouse, may collect and reimburse tax overpayments to a spouse or ex-spouse for past due support.
- 644** N.Y. TAX § 171-D (2007) A spouse is not liable for his or her spouse's default on a guaranteed student loan and can be reimbursed for collected overpayment.
- 645** N.Y. TAX § 171-E (2007) A spouse may be reimbursed if not liable for outstanding debts of the other spouse owed to

National Defense/National Direct, Health Professions, or nursing student loan programs by the other spouse.

- 646** N.Y. TAX § 171-F (2007) A spouse may be reimbursed if not liable for outstanding debts of the other spouse owed to a state agency.
- 647** N.Y. TAX § 171-L (2007) A spouse may be reimbursed if not liable for outstanding tax debts of the other spouse owed to the City of New York.

**Article 9-A. Franchise Tax on Business Corporations**

- 648** N.Y. TAX § 210 (2007) For purposes of tax computation and calculation, a spouse is a "related person."

**Article 11. Tax on Mortgages**

- 649** N.Y. TAX § 253-A (2007) For purposes of collecting and recording tax by a city of one million inhabitants or more, a spouse is defined as a "related person," so that all mortgages offered for recording within twelve months having the same or related mortgagors are presumed to be related transactions.
- 650** N.Y. TAX § 253-B (2007) A spouse is exempt from taxes otherwise imposed upon credit line mortgages outstanding after a sale or transfer.

**Article 12. Tax on Gasoline and Similar Motor Fuel**

- 651** N.Y. TAX § 283 (2007) In some circumstances, a spouse may be exempt from immediate cancellation of gasoline or motor fuel distributor registration upon transfer made by bequest to a spouse or a spouse's descendants.

**Article 22. Personal Income Tax****Part I. General**

- 652** N.Y. TAX § 601 (2007) Taxes shall be imposed on taxable income for resident married individuals filing joint returns and resident surviving spouses.
- 653** N.Y. TAX § 605 (2007) A person's continued residence in New York (unless legally separated) may, despite his or her spouse's temporary residence outside the state, continue to qualify his or her spouse as a "resident individual."
- 654** N.Y. TAX § 606 (2007) Regarding the many credits allowable to the taxpayer against a tax imposed, a spouse has a general inclusion and may take or share in such credits in some cases, even if the spouse is filing a separate return.
- 655** N.Y. TAX § 607 (2007) An individual's marital status for New York tax purposes is defined as the same as the marital status for purposes of federal income tax rates.

**Part II. Residents**

- 656** N.Y. TAX § 611 (2007) A spouse may file a tax return separately or jointly; however, if a joint federal return is filed, New York taxable income will also be determined jointly.



- 657** N.Y. TAX § 612 (2007) In determining the New York adjusted gross income of a resident individual, spouses are entitled to file jointly and to take exclusions allowable as if they filed jointly if they filed joint federal returns, even if they are otherwise required to determine their New York income taxes separately.
- 658** N.Y. TAX § 614 (2007) Spouses filing jointly, or a surviving spouse, may take a standard deduction from their gross income, and married individuals filing separately may each take a standard deduction from their gross income.
- 659** N.Y. TAX § 615 (2007) Spouses are entitled to take itemized deductions if they both elect to do so.
- 660** N.Y. TAX § 616 (2007) Spouses filing a joint federal tax return may still each take an exemption if they are required to file separate New York returns.
- 661** N.Y. TAX § 622 (2007) In calculating their minimum taxable income, spouses filing jointly may make a specific deduction of \$5,000 for married persons filing jointly.

#### Part III. Nonresidents and Part-Year Residents

- 662** N.Y. TAX § 631 (2007) In determining New York source income of a nonresident individual, spouses filing joint federal returns but otherwise required to file separate New York returns shall determine New York income separately as if federal income was determined separately.
- 663** N.Y. TAX § 636 (2007) In determining the New York minimum taxable income of nonresidents or part-year residents, specific deductions are characterized as payable by married individuals filing separately.

#### Part IV. Returns and Payment of Tax

- 664** N.Y. TAX § 651 (2007) Spouses are entitled to file jointly if they have filed a joint federal return, and, except as otherwise provided, their liabilities shall be joint and several. Spouses choosing to file separately will have their tax liabilities determined separately.

#### Part VI. Procedure and Administration

- 665** N.Y. TAX § 681 (2007) If spouses have filed jointly, only one notice of deficiency need be provided unless the Tax Commissioner has been notified that separate residences have been established.
- 666** N.Y. TAX § 685 (2007) Penalties imposed on spouses who file as married individuals filing separately are subject to limitations set forth in this provision.
- 667** N.Y. TAX § 686 (2007) A surviving spouse is entitled to the refund of certain overpayments made by a decedent spouse.
- 668** N.Y. TAX § 696 (2007) Spouses of members of the Armed Forces, astronauts, and victims of certain terrorist attacks may be entitled to extensions of time for filing,

payment credits, and other benefits in relation to their tax returns.

- 669** N.Y. TAX § 697 (2007) A spouse who filed jointly but is no longer married or living with his or her joint filer may inquire whether the Commissioner has attempted to collect deficient taxes from the other individual, the nature of the collection activities, and the amount collected.

#### Article 26. Estate Tax

##### Part II. Returns and Payment of Tax

- 670** N.Y. TAX § 975 (2007) Surviving spouses have limited tax liability imposed on proceeds of the estate for life insurance, property, and the like, including limitations related to the marital deduction of the Internal Revenue Code. While under certain circumstances a spouse may be liable for taxes imposed on but not paid by his or her spouse, no lien may attach to any interest in property held by the decedent and the surviving spouse as tenants in the entirety.

##### Article 26-B. Generation-Skipping Transfer Tax

- 671** N.Y. TAX § 1025 (2007) For tax purposes, a spouse of a transferor is treated as if he or she has the same generation assignment, and is presumed to make one half the gift made by the spouse.
- 672** N.Y. TAX § 1115 (2007) Certain transactions between spouses are exempt from sales tax, including the sale of motor vehicles.
- 673** N.Y. TAX § 1116 (2007) Armed services organizations that contain a certain percentage of members who are in the service, and their spouses, widows, or widowers are exempt from collecting sales tax.

##### Article 30. City Personal Income Tax

- 674** N.Y. TAX § 1304 (2007) Specific tax rates apply to spouses filing jointly and to surviving spouses.
- 675** N.Y. TAX § 1304-A (2007) Specific tax surcharges apply to qualifying spouses filing jointly and to surviving spouses.
- 676** N.Y. TAX § 1304-D (2007) Specific taxes apply to spouses filing jointly and to surviving spouses.
- 677** N.Y. TAX § 1305 (2007) A spouse is not exempt from liability of city taxes and cannot claim non-residence if such spouse maintains a permanent residence in such city and his or her spouse continues to reside there for a certain period.
- 678** N.Y. TAX § 1306 (2007) Spouses may file joint tax returns and their tax liability will be joint and several.
- 679** N.Y. TAX § 1310 (2007) Spouses filing jointly are entitled to certain tax credits.
- 680** N.Y. TAX § 1313 (2007) The Commissioner is authorized to pay to the State Department of Social Services

overpayments of taxes to be credited against past-due spousal and child support.

#### Article 30-A. City Income Tax Surcharge

- 681** N.Y. TAX § 1325 (2007) A spouse is not exempt from liability for city tax surcharges and cannot claim non-residence if such spouse maintains a permanent residence in such city and his or her spouse continues to reside there for a certain period.
- 682** N.Y. TAX § 1326 (2007) Spouses may file joint returns and their tax liability will be joint and several.
- 683** N.Y. TAX § 1333 (2007) The Commissioner is authorized to pay over-payments of taxes against past-due spousal and child support.

#### Article 34. New York State Lottery for Education

- 684** N.Y. TAX § 1610 (2007) A spouse residing in the same household of a member, officer, or employee of the lottery division may not buy a lottery ticket nor win a lottery prize.
- 685** N.Y. TAX § 1613 (2007) Spouses who are co-owners of a lottery prize are assigned the prize jointly.
- 686** N.Y. TAX § 1613-A (2007) Lottery prizes must be credited against past-due spousal and child support.

#### Article 40. Division of Tax Appeals

- 687** N.Y. TAX § 2014 (2007) A petitioner's spouse is authorized to appear on behalf of and represent his or her spouse in a tax hearing or tax appeal.
- 688** N.Y. TAX § 3030 (2007) Cases before a tax tribunal involving married persons filing jointly will be treated as one proceeding, unless the court, in its discretion, treats the proceeding as a joint or consolidated proceeding.

## Town Law

#### Article 6. Town Elections

- 689** N.Y. TOWN § 84-A (2007) A person may vote for special town elections by absentee ballot if his or her spouse is otherwise qualified to do so.

#### Article 11. Fire, Fire Alarm, and Fire Protection Districts

- 690** N.Y. TOWN § 175-B (2007) A person may vote for fire district elections by absentee ballot if his or her spouse is otherwise qualified to do so.
- 691** N.Y. TOWN § 176-B (2007) Regarding volunteer members of fire district fire companies, there is a prohibition against discrimination based on marital status.

#### Article 13. Improvement District Commissioners

- 692** N.Y. TOWN § 213-B (2007) A person may vote for improvement district elections by absentee ballot if his or her spouse is otherwise qualified to do so.

## Transportation Law

#### Article 4. Provisions Relating to Common Carriers

- 693** N.Y. TRANSP. § 103 (2007) The reduced rate applicable to "families" shall cover the families of those persons named in this provision and also the families of persons killed, and the unremarried widow or widower and minor children during minority of persons killed while in the service of such common carrier.

#### Article 17. Implementation of the Rebuild New York Through Transportation Infrastructure Renewal Bond Act of 1983

- 694** N.Y. TRANSP. § 427 (2007) No contractor will discriminate against employees or applicants for employment because of, among other things, marital status.

## Uniform Commercial Code

#### Article 9. Secured Transactions

##### Part 1. General Provisions

##### Subpart 1. Short Title, Definitions, and General Concepts

- 695** N.Y. U.C.C. § 9-102 (2007) For purposes of the Uniform Commercial Code and all its entitlements and obligations, the definition of "person related to" includes a spouse and relatives by marriage.

## Vehicle and Traffic Law

#### Title 2. Department of Motor Vehicles; Commissioner

##### Article 3. Exemption of Non-Resident Owners and Operators

- 696** N.Y. VEH. & TRAF. § 251 (2007) Spouses of qualifying members of the Armed Forces are entitled to an extension of time to register motor vehicles.

##### Title 3. Safety Responsibility; Financial Security; Equipment; Inspection; Size and Weight; and Other Provisions

##### Article 7. Motor Vehicle Safety Responsibility Act

- 697** N.Y. VEH. & TRAF. § 345 (2007) The liability insurance policy required for all motor vehicles registered in the state is not required to insure separately for bodily injury or death of the spouse of the insured, or for injury to property of the spouse of the insured.

##### Article 11. Civil Liability

- 698** N.Y. VEH. & TRAF. § 388 (2007) With respect to a liability insurance policy insuring for bodily injury or death of the spouse of the insured or for injury to property of the spouse of the insured, the injured spouse shall not be required to prove the culpable conduct of the insured spouse in order to be eligible for recovery.

#### Title 4. Registration of Vehicles

##### Article 14. Registration of Motor Vehicles

- 699** N.Y. VEH. & TR. § 404-B (2007) Any member of a volunteer fire department or his or her spouse—but not both—may be issued a distinctive license plate bearing a Maltese cross and the letters “V.F.”
- 700** N.Y. VEH. & TR. § 404-C (2007) A former prisoner of war or his or her spouse (if married at the time of service) who resides in the state may be issued a distinctive license plate bearing the phrase “Former Prisoner of War” for all vehicles registered to the veteran or his or her spouse.
- 701** N.Y. VEH. & TR. § 404-D (2007) Any member of the N.Y. State Militia or a Reserve Unit of the Armed Forces or his or her spouse—but not both—may be issued a distinctive license plate bearing the image of a militiaman and the name of the appropriate organization.
- 702** N.Y. VEH. & TR. § 404-E (2007) Any Purple Heart recipient or his or her spouse who resides in the state may be issued a distinctive license plate bearing the phrase “combat wounded” with a purple heart medal imprint for all vehicles registered to the veteran or his or her spouse.
- 703** N.Y. VEH. & TR. § 404-F (2007) Any member of a volunteer ambulance service or his or her spouse—but not both—may be issued a distinctive license plate bearing the letters “V.A.S.”
- 704** N.Y. VEH. & TR. § 404-I (2007) Any gold star mother or her spouse who resides in the state may be issued a distinctive license plate bearing the phrase “gold star mother” for all vehicles registered to her or her spouse.
- 705** N.Y. VEH. & TR. § 404-J (2007) Veterans who survived the attack on Pearl Harbor, or their spouses—but not both—will be assigned a special license plate bearing the words “Pearl Harbor Survivor.”
- 706** N.Y. VEH. & TR. § 404-W (2007) Any veteran of the war in the Persian Gulf or his or her spouse who resides in the state may be issued a distinctive license plate for all vehicles registered to the veteran or his or her spouse.

##### Article 16. Registration of Dealers and Transporters

- 707** N.Y. VEH. & TR. § 415 (2007) Spouses of registered automobile dealers who acquire the assets of a dealership may continue to conduct the business of the dealership without restriction, unlike non-family transferees.

##### Article 17. Other Provisions Relating to Registration and Possession

- 708** N.Y. VEH. & TR. § 420 (2007) When an owner of a registered vehicle dies and the vehicle is transferred to his or her spouse as exempt property under the Est. Powers & Trusts Law, the surviving spouse shall receive

a credit on his or her new registration fee equal to the amount of the fee remaining for the registration issued to the deceased.

##### Article 17A. Franchised Motor Vehicle Dealer Act

- 709** N.Y. VEH. & TR. § 463 (2007) It is unlawful for any franchisor to deny the surviving spouse of a franchisee motor vehicle dealer the right to succeed the decedent as franchisee unless the parties have explicitly agreed to the contrary.

##### Article 20. Suspension and Revocation

- 710** N.Y. VEH. & TR. § 510 (2007) [Will be repealed June 30, 2007] A person’s driving privileges may be suspended for failure to make combined child and spousal support payments.

##### Article 46. Uniform Vehicle Certificate of Title Act

- 711** N.Y. VEH. & TR. § 2102 (2007) If a vehicle of a decedent is transferred as exempt property to a surviving spouse under the Est. Powers & Trusts Law, the surviving spouse need not obtain a certificate of title until he or she registers the vehicle or transfers it.
- 712** N.Y. VEH. & TR. § 2105-A (2007) A security interest may be placed on a motor vehicle registered with the state for the owner’s failure to make combined child and spousal support payments.

## Village Law

##### Article 10. Fire Department

- 713** N.Y. VILLAGE § 10-1006 (2007) For volunteer members of village fire companies, there is a prohibition on discrimination based on marital status.

## Volunteer Ambulance Workers’ Benefit Law

##### Article II. Coverage and Benefits

- 714** N.Y. VOL. AMBUL. WORKERS’ BEN. § 7 (2007) A surviving spouse is entitled to death benefits upon the death of the surviving spouse.
- 715** N.Y. VOL. AMBUL. WORKERS’ BEN. § 10 (2007) Additional benefits and provisions, including permanent partial disability benefits, may be made for surviving spouses under certain circumstances.
- 716** N.Y. VOL. AMBUL. WORKERS’ BEN. § 17 (2007) Dependents of a volunteer ambulance worker who resides in a foreign country, including the worker’s surviving spouse, are entitled to death benefits.
- 717** N.Y. VOL. AMBUL. WORKERS’ BEN. § 18 (2007) A volunteer ambulance worker’s accrued benefits are payable to his or her surviving spouse upon the worker’s death.

- 718** N.Y. VOL. AMBUL. WORKERS' BEN. § 19 (2007) The surviving spouse of a volunteer ambulance worker who is entitled to receive benefits is bound by this section as the survivor's exclusive remedy.

#### Article V. Saving Clauses

- 719** N.Y. VOL. AMBUL. WORKERS' BEN. § 90 (2007) For purposes of this statute and references to Workers' Compensation Law, the definition of "dependent husband" is the surviving spouse of a female volunteer ambulance worker.

### Volunteer Firefighters' Benefit Law

#### Article I. Short Title; Purpose; Definitions; Miscellaneous

- 720** N.Y. VOL. FIRE. BEN. § 3 (2007) A surviving spouse who has not abandoned the decedent volunteer firefighter is entitled to receive and be eligible for volunteer firefighters' benefits.

#### Article II. Coverage and Benefits

- 721** N.Y. VOL. FIRE. BEN. § 7 (2007) A surviving spouse is entitled to an additional lump sum death benefit and reasonable funeral expenses as well as other benefits available under the Lt. Michael E. Neuner/Timothy Goff Memorial Death Benefit Program.
- 722** N.Y. VOL. FIRE. BEN. § 10 (2007) Surviving spouses of volunteer firefighters are entitled to permanent partial disability benefits.
- 723** N.Y. VOL. FIRE. BEN. § 17 (2007) Dependents of volunteer firefighters who reside in foreign countries, including the firefighter's surviving spouse, are entitled to volunteer firefighters' benefits.
- 724** N.Y. VOL. FIRE. BEN. § 18 (2007) Accrued benefits are payable to the surviving spouse of a volunteer firefighter.
- 725** N.Y. VOL. FIRE. BEN. § 19 (2007) The surviving spouse of a volunteer firefighter who is entitled to receive benefits is bound by this section as the survivor's exclusive remedy.

#### Article V. Savings Clauses; Effective Date

- 726** N.Y. VOL. FIRE. BEN. § 70 (2007) For purposes of this statute, including references to Workers' Compensation Law, a "surviving spouse" entitled to benefits is the legal wife of a deceased male volunteer ambulance worker or the legal husband of a deceased female volunteer ambulance worker, but does not include a spouse who has abandoned the deceased.

### Workers' Compensation Law

- 727** N.Y. WORKERS' COMP. § 2 (2007) A surviving spouse is entitled to his or her spouse's Workers' Compensation benefits.

- 728** N.Y. WORKERS' COMP. § 11 (2007) Workers' Compensation benefits available, including to a spouse, are exclusive and in place of any other liability due to the spouse whatsoever.

- 729** N.Y. WORKERS' COMP. § 15 (2007) In the case of disability, surviving spouses are entitled to compensation and associated benefits.

- 730** N.Y. WORKERS' COMP. § 16 (2007) An employee's surviving spouse is entitled to a death benefit and associated benefits under the Workers' Compensation Law.

- 731** N.Y. WORKERS' COMP. § 17 (2007) Dependent surviving spouses and children of alien or nonresident employees are entitled to compensation under the Workers' Compensation Law.

- 732** N.Y. WORKERS' COMP. § 25-A (2007) Surviving spouses who received Workers' Compensation awards under an earlier statute are entitled to supplemental benefits.

- 733** N.Y. WORKERS' COMP. § 26-A (2007) The surviving spouse of an officer of a corporation charged with the obligation of obtaining Workers' Compensation who has failed to do so will be prohibited from obtaining such payments and the uninsured employer's fund will not be liable for them.

- 734** N.Y. WORKERS' COMP. § 27 (2007) [In effect until July 10, 2007] Spouses and eligible dependents may have the obligation to choose a remedy under the Workers' Compensation Law within a certain time period or unclaimed monies may be deposited into an aggregate trust fund.

- 735** N.Y. WORKERS' COMP. § 33 (2007) An employee's surviving spouse has rights to compensation and benefits which cannot be assigned and which are exempt and not subject to the claims of creditors, except as to income execution or an orders for child and spousal support enforcement.

- 736** N.Y. WORKERS' COMP. § 56 (2007) A contractor who subcontracts hazardous employment which results in injury or death to an employee is liable for and must pay compensation to the employee's spouse or dependent entitled to compensation.

- 737** N.Y. WORKERS' COMP. § 121-A (2007) Spouses and eligible dependents claiming entitlement to benefits and residing in foreign countries must show proof of the facts of their existence, relationship to, and dependency on the injured or killed employee.

- 738** N.Y. WORKERS' COMP. § 212 (2007) An employer is not required to provide disability benefits but may choose to do so, and a spouse will be presumed and deemed a beneficiary, unless the employer, on notice to the carrier, elects to exclude spouses.

- 739** N.Y. WORKERS' COMP. § 236 (2007) An employee's surviving spouse may receive benefits due to the employee that are unpaid at the time of death.



- 740** N.Y. WORKERS' COMP. § 305 (2007) Surviving spouses of civil defense volunteers are entitled to Workers' Compensation benefits.
- 741** N.Y. WORKERS' COMP. § 310 (2007) If any benefits due to a civil defense volunteer under this article are unpaid at the time of his or her death, such benefits shall be payable to the estate of the claimant or, at the option of the chairman, to the surviving spouse, child, or children of the deceased employee.
- 742** N.Y. WORKERS' COMP. § 312 (2007) The compensation provided to an employee's surviving spouse and other dependents is the exclusive remedy available for all purposes.

## Court of Claims Act

### Article 2. Jurisdiction

- 743** N.Y. CT. CL. ACT § 10 (2007) A surviving spouse's notice of intent to file a claim of damages, if made by an executor or administrator, must be filed within ninety days of the executor's or administrator's appointment.

### Article 16. Marshals

- 744** N.Y. CT. CL. ACT § 1601-A (2007) The spouse of a city marshal is an immediate family member prohibited from maintaining a financial interest in any towing, storage, process serving, or like business.

## Family Court Act

### Article 4. Support Proceedings

- 745** N.Y. FAM. CT. ACT § 115 (2007) The Family Court has jurisdiction over spousal support (domestic and international) and, by referral from the Supreme Court, support, maintenance, distribution of marital property, conciliation proceedings, and enforcement proceedings.

### Part 4. Family Court Judges

- 746** N.Y. FAM. CT. ACT § 412 (2007) A spouse has a duty to support and a right to be supported.
- 747** N.Y. FAM. CT. ACT § 413 (2007) Maintenance or alimony actually paid by a non-party spouse pursuant to a court order or agreement shall be deducted from income. A spouse will not be held responsible for the support of an adopted child if the spouses are living separate and apart pursuant to a court order or agreement and that child was adopted after the date of the agreement or order. Such liability shall not be imposed as long as the parties remain separate and apart.
- 748** N.Y. FAM. CT. ACT § 415 (2007) The spouse, parent, or step-parent of a recipient of public assistance or care, of

a person liable to become in need thereof, or of a patient in an institution in the Department of Mental Hygiene may be responsible for the support of such person or patient if of sufficient ability to provide such support.

- 749** N.Y. FAM. CT. ACT § 416 (2007) In addition to support for shelter, food, clothing, medical, educational, funeral, healthcare, and other proper and reasonable expenses, elements of support for a spouse or in wed-lock child may also include additional provisions for accident and life insurance benefits.
- 750** N.Y. FAM. CT. ACT § 417 (2007) A child born of parents who at any time prior or subsequent to the birth of said child shall have entered into a ceremonial marriage shall be deemed the legitimate child of both parents regardless of the validity of the marriage.
- 751** N.Y. FAM. CT. ACT § 418 (2007) No genetic marker or DNA tests to prove paternity of a child will be ordered if the court finds that such tests are not in the child's best interests based on the presumed legitimacy of the child due to the mother's marriage to another person.
- 752** N.Y. FAM. CT. ACT § 422 (2007) A spouse, child of a spouse, or relative in need of public assistance may bring a proceeding to compel a person chargeable with support to support the petitioner.
- 753** N.Y. FAM. CT. ACT § 424-A (2007) The person chargeable with support must submit to compulsory financial disclosure.
- 754** N.Y. FAM. CT. ACT § 429 (2007) A spouse not within the state, or who is otherwise concealing himself or herself, may be subject to: sequestration of property; having the other spouse receive income from such property to use for maintenance and support, occupy such property, and be appointed receiver of such property; and having the court order a mortgage and sale of such property.
- 755** N.Y. FAM. CT. ACT § 434-A (2007) The court may make an order for temporary spousal support pending a final determination, notwithstanding that information with respect to income and assets of the respondent may be unavailable.
- 756** N.Y. FAM. CT. ACT § 436 (2007) Spouses are competent witnesses against each other in a child support hearing and may testify to non-access in such a hearing.
- 757** N.Y. FAM. CT. ACT § 437 (2007) A spouse or legal parent is presumed to have sufficient means to support his or her spouse and children under the age of twenty-one years.
- 758** N.Y. FAM. CT. ACT § 438 (2007) A spouse or legal parent may be liable and the court may allow for the payment of legal fees at any stage of support proceeding.
- 759** N.Y. FAM. CT. ACT § 440 (2007) An order of support in favor of a spouse or legal parent may be made directing payments and other support, retroactive payments, subjected to income executions, and other remedies in



the event of default, including commitment to jail in the event of willful failure to obey a court order.

- 760** N.Y. FAM. CT. ACT §§ 442, 453 & 454 (2007) A spouse may be ordered to pay a fair and reasonable amount of support at regular fixed periods and the court may require the payor spouse to report all changes of residence; upon violation of such order, the payor spouse may be held in contempt and jailed and be subject to all available enforcement mechanisms including income deductions and suspension of a driver's license, professional business license, recreational license, etc.
- 761** N.Y. FAM. CT. ACT § 443 (2007) A legal parent, including the husband of a woman who gives birth during their marriage, may be ordered by the court to pay direct weekly or periodic payments of support.
- 762** N.Y. FAM. CT. ACT § 446 (2007) A spouse or former spouse may be granted a temporary or final order of protection.
- 763** N.Y. FAM. CT. ACT § 449 (2007) A spouse is entitled to an order of support from the date of the filing of the petition and to retroactive amounts in a lump sum or paid in periodic sums.
- 764** N.Y. FAM. CT. ACT § 455 (2007) A payment of spousal support is inoperable for purposes of contempt during the period in which the defaulting spouse is imprisoned for contempt.
- 765** N.Y. FAM. CT. ACT § 460 (2007) Upon default of a court order, a spouse may be entitled to a money judgment, counsel fees, and other remedies.
- 766** N.Y. FAM. CT. ACT § 461 (2007) A spouse has a duty to support a child after the signing of a separation agreement, a legal separation, or upon the termination of the marriage.
- 767** N.Y. FAM. CT. ACT § 462 (2007) A spouse's Family Court order of support is terminated upon a Supreme court order for child support in a matrimonial action unless the Matrimonial Court continues the Family Court order.
- 768** N.Y. FAM. CT. ACT § 463 - 465 (2007) A separation agreement will not preclude a petition on behalf of a spouse who is likely to be in need of public assistance or whose circumstances have changed since the separation agreement or order.
- 769** N.Y. FAM. CT. ACT § 466 (2007) Upon an action for divorce, separation, or annulment, the Supreme Court may retain the power to enforce or modify orders or direct that modifications and enforcement be made in the Family Court.
- 770** N.Y. FAM. CT. ACT § 467 (2007) The Supreme Court may refer to the Family Court applications concerning

custody in actions for divorce, separation, or annulment.

## **Article 5. Paternity Proceedings**

### **Part 3. Hearings**

- 771** N.Y. FAM. CT. ACT § 531 (2007) In a paternity proceeding, a spouse may testify concerning non-access to the other spouse.
- 772** N.Y. FAM. CT. ACT § 532 (2007) A spouse may be entitled to prevent a genetic marker or DNA test determining the biological parentage of the child based on the presumption of legitimacy of a child born to a married couple.

### **Part 4. Orders**

- 773** N.Y. FAM. CT. ACT § 550 (2007) A former spouse may be granted a temporary or final order of protection.
- 774** N.Y. FAM. CT. ACT § 551 (2007) A court may make an order of protection and set forth reasonable conditions of behavior against a former spouse.

## **Article 5-B. Uniform Interstate Family Support Act**

- 775** N.Y. FAM. CT. ACT § 580-101 (2007) A spouse or former spouse is entitled to various enforcement mechanisms in furtherance of a spousal support order.

### **Part 2. Jurisdiction**

#### **Subpart 2.B. Proceedings Involving Two Or More States**

- 776** N.Y. FAM. CT. ACT § 580-205 (2007) A spousal support order is subject to jurisdictional provisions.
- 777** N.Y. FAM. CT. ACT § 580-206 (2007) A spousal support order is subject to enforcement and modification procedures.

### **Part 3. Civil Provisions of General Application**

- 778** N.Y. FAM. CT. ACT § 580-301 (2007) A spousal support order may be established with specific rights and types of proceedings including enforcement, registration of orders, and jurisdiction over non-residents.
- 779** N.Y. FAM. CT. ACT § 580-316 (2007) The physical presence of the petitioning spouse or former spouse is not required for certain proceedings related to support orders: special rules of evidence and procedures governing such proceedings are set forth in this article.

## **Article 6. Permanent Termination of Parental Rights, Adoption, Guardianship, and Custody**

### **Part 3. Custody**

- 780** N.Y. FAM. CT. ACT § 652 (2007) Though a spouse or former spouse is entitled to have the aspects of his or her marriage resolved in the Supreme Court, the Supreme Court may refer and the Family Court may hear certain applications to fix, enforce, or modify custody in the matrimonial action.

**781** N.Y. FAM. CT. ACT § 655 (2007) A former spouse may be granted a temporary or final order of protection.

**782** N.Y. FAM. CT. ACT § 656 (2007) A court may make an order of protection which sets forth reasonable constraints on the behavior of a former spouse.

#### Part 4. Guardianship

**783** N.Y. FAM. CT. ACT § 664 (2007) A court shall not conduct an *in camera* interview of an infant in any action or proceeding to fix temporary or permanent custody or to modify judgments and orders of custody concerning marital separation, divorce, annulment of marriage, and dissolution of marriage unless a stenographic record of such interview is made.

#### Article 8. Family Offenses Proceedings

**784** N.Y. FAM. CT. ACT § 812 (2007) Members of the same family or household who may seek an order of protection from the Family Court include spouses and former spouses with or without a child in common and persons related by consanguinity or affinity.

**785** N.Y. FAM. CT. ACT § 821 (2007) A spouse or former spouse may commence a proceeding and obtain relief on behalf of himself or herself, his or her children, and his or her property. Such proceedings are subject to specific procedures and rights to representation, including appointment of free counsel.

**786** N.Y. FAM. CT. ACT § 822 (2007) Persons authorized to file a petition for an order of protection include any person related to the respondent of the spouse, former spouse, parent, child, or member of the same family or household.

**787** N.Y. FAM. CT. ACT § 841 (2007) A spouse or former spouse may be subject to a dispositional order including probation, participation in a batterer's program, payment of restitution, and an order of protection.

**788** N.Y. FAM. CT. ACT § 842 (2007) A spouse or former spouse is entitled, through the grant of an order of protection, to the protections and conditions of safety set forth in this statute.

#### Article 9. Conciliation Proceedings

##### Part 1. Purpose and Jurisdiction

**789** N.Y. FAM. CT. ACT § 911 (2007) Spouses experiencing marital difficulties are entitled to the services of the court for informal conciliation procedures.

**799** N.Y. FAM. CT. ACT § 914 (2007) Spouses are not entitled to and the Family Court in a proceeding under this article may not issue any order affecting the marital status of the petitioner or the petitioner's spouse or an order relieving either of any marital obligation.

**791** N.Y. FAM. CT. ACT § 921 (2007) A spouse may file a conciliation proceeding stating that his or her marriage

is in difficulty and that he or she requires the services of the Family Court.

##### Part 2. Procedure

**792** N.Y. FAM. CT. ACT § 922 (2007) Spouses are entitled to the services of the Probation Department and the Department is authorized to set up conferences and to file a petition on a spouse's behalf.

**793** N.Y. FAM. CT. ACT § 923 (2007) Spouses are entitled to have the probation service recommend to the petitioner and to the petitioner's spouse that they consult with interested voluntary social or religious agencies in the community.

**794** N.Y. FAM. CT. ACT § 925 (2007) If both spouses appear at a conciliation conference, a court may determine if another conference should occur, or may refer the parties to a voluntary social or religious agency.

**795** N.Y. FAM. CT. ACT § 926 (2007) Unless both spouses consent to the continuation of a conciliation proceeding, it terminates ninety days after the filing of the petition.

#### Article 10. Child Protective Proceedings

##### Part 4. Hearings

**796** N.Y. FAM. CT. ACT § 1046 (2007) For purposes of child protective proceedings, spouses are not entitled to the privilege of confidential communication.

**797** N.Y. FAM. CT. ACT § 1056 (2007) A court may make an order of protection and set forth reasonable constraints on the behavior of a spouse or former spouse.

## Unconsolidated Laws

#### Domestic Relations

##### Chapter 83. Dependents Primary Beneficiaries of Court Awards

**798** N.Y. UNCONSOL. LAW CH. 83 § 1 (LEXIS 2007) A spouse, child, parent or grandparent, among others, for whom any sum of money is directed to be paid for their respective support or maintenance will be declared to be the primary beneficiary or beneficiaries thereof.

##### Chapter 87. Validation of Defective Marriages

**799** N.Y. UNCONSOL. LAW CH. 87 § 1 (LEXIS 2007) Any marriage solemnized by any judge, justice, recorder, or magistrate mentioned in subdivisions two or three of section eleven of the Domestic Relations Law, outside of the territorial jurisdiction in which he was elected or appointed, but pursuant to a marriage license lawfully issued as provided by the Domestic Relations Law, is legalized and confirmed and made effectual and valid.

## Public Authorities

### Chapter 149. Buffalo and Fort Erie Public Bridge Authority

- 800** N.Y. UNCONSOL. LAW CH. 149 § 9-A (LEXIS 2007) Contractors for the Buffalo and Fort Erie Public Bridge Authority shall not discriminate based on marital status.

## Public Corporations

### Chapter 196. Roosevelt Island Operating Corporation

- 801** N.Y. UNCONSOL. LAW CH. 196 § 7 (LEXIS 2007) Contractors for the Roosevelt Island Operating Authority shall not discriminate based on marital status.

## Public Health

### Chapter 214. Facilities Development Corporation Act

- 802** N.Y. UNCONSOL. LAW CH. 214 § 9-A (LEXIS 2007) For the purposes of the Facilities Development Corporation Act, discrimination based on marital status is prohibited.

### Chapter 214-B. New York State Medical Care Facilities Finance Agency Act

- 803** N.Y. UNCONSOL. LAW CH. 214-B § 16-A (LEXIS 2007) For the purposes of the New York State Medical Care Facilities Finance Agency Act, discrimination based on marital status is prohibited.

## Real Property

### Chapter 249. Emergency Housing Rent Control Law

- 804** N.Y. UNCONSOL. LAW CH. 249 § 2 (LEXIS 2007) Spouses are considered as one tenant for purposes of certain protections granted pursuant to rent control law.

### Chapter 249-B. Emergency Tenant Protection Act of 1974

- 805** N.Y. UNCONSOL. LAW CH. 249-B § 5 (LEXIS 2007) Spouses are considered as one tenant for purposes of certain protections granted pursuant to the Tenant Protection Act of 1974.

## Villages

### Chapter 306. Special Provisions for Village Police Departments Law

- 806** N.Y. UNCONSOL. LAW CH. 306 § 6 (LEXIS 2007) Surviving spouses of village police officers are entitled to pensions and other benefits.
- 807** N.Y. UNCONSOL. LAW CH. 306 § 8 (LEXIS 2007) A pension to the surviving spouse of a village police officer shall immediately terminate if the spouse remarries, and pensions to the officer's children shall terminate whenever the children shall respectively marry or reach the age of eighteen years.
- 808** N.Y. UNCONSOL. LAW CH. 306 § 18 (LEXIS 2007) Surviving spouses of village police officers are entitled to certain sums upon an officer's death.

# New York State Regulations Protecting Married Couples

The following is a catalog of the New York State regulations that confer a benefit or responsibility through marriage:

## TITLE 2. Department of Audit and Control

**Chapter I.** Audit of Revenues and Accounts Payable from State Funds and Funds Under Its Control

**Part 13.** Acquisition of Real Estate

**809** 2 N.Y. COMP. CODES R. & REGS. § 13.2 (2007) When real estate is conveyed between spouses and payment is to be made to the husband only, the wife must file a consent.

**Chapter VI.** New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System

**Part 341.** Filing Retirement Applications and Option Election Forms; Withdrawing and Changing the Effective Date of Service Retirement

**810** 2 N.Y. COMP. CODES R. & REGS. § 341.5 (2007) A written request to withdraw a service retirement application may be made by a spouse if the member spouse is incompetent or if the spouse is a conservatee.

**Part 356.** New Rollover and Withholding Rules Pursuant to the Unemployment Compensations Amendments of 1992

**811** 2 N.Y. COMP. CODES R. & REGS. § 356.3 (2007) A surviving spouse's exercise of an "eligible rollover distribution" results in an individual retirement account or annuity.

## TITLE 3. Banking Department

**Chapter I.** General Regulations of the Banking Board

**Part 11.** Insider Transactions

**812** 3 N.Y. COMP. CODES R. & REGS. § 11.1 (2007) A spouse, step-parent, step-child, or relative of a spouse is considered a person related to an insider, and is therefore prohibited from certain transactions.

**Chapter III.** Superintendent's Regulations

**Subchapter A.** Banking Organizations

**Part 340.** Extension of Credit On A Non-Discriminatory Basis

**813** 3 N.Y. COMP. CODES R. & REGS. § 340.1 (2007) With respect to inquiries by banking organizations concerning marital history, status, and number of dependents, it shall not constitute discrimination on the basis of sex or marital status for a creditor to require an applicant to disclose the names by which the applicant has previously been known, so long as the information is used only to prove the applicant's identity and credit history. When an application is for a mortgage, the creditor must obtain the signature of a spouse in order to pass clear title in the event of default.

**814** 3 N.Y. COMP. CODES R. & REGS. § 408.1 (2007) With respect to inquiries by non-banking organizations concerning marital history, status, and number of dependents, it shall not constitute discrimination on the basis of marital status for a creditor to require an applicant to disclose the names by which the applicant has previously been known, so long as the information is used only to prove the applicant's identity and credit history. When an application is for a mortgage, the creditor must obtain the signature of a spouse in order to pass clear title in the event of default.

**Legal Interpretations**

**815** 3 N.Y. COMP. CODES R. & REGS. § LI 6.3 (2007) A licensed lender is prohibited from inducing or permitting spouses to enter into multiple loan agreements if the purpose or result is to obtain a rate of interest higher than would be permissible if only one loan agreement were made.

**CB 117.** Application for Companies Seeking to Acquire Or Exercise Control of A Banking Institution Under Banking Law, Section 143-B

**816** 3 N.Y. COMP. CODES R. & REGS. SP CB § 117.5 (2007) The information required in applications filed by individuals must include the name of one's spouse.

## TITLE 4. Department of Civil Service

### Chapter V. Regulations of the Department of Civil Service (President's Regulations)

#### Part 73. State Health Insurance Plan

- 817** 4 N.Y. COMP. CODES R. & REGS. § 73.1 (2007) An employee's spouse and step-children are considered dependents for pension and other purposes.
- 818** 4 N.Y. COMP. CODES R. & REGS. § 73.2 (2007) An employee is eligible for coverage under the State Health Insurance Plan for himself or herself and his or her dependents (including a spouse) subject to certain conditions. The Plan provides for coordination of benefits if both spouses elect coverage under the Plan.
- 819** 4 N.Y. COMP. CODES R. & REGS. § 73.3 (2007) With respect to the continuing charges for health coverage of state employees, the employer shall pay the entire charge for coverage of dependents (including a spouse) of deceased employees under the provisions of § 73.2(b)(1). Under certain conditions, the unremarried spouse and/or other dependents of a deceased employee who elect to continue coverage in the plan shall pay the entire charge, including the employee's and employer's contributions.

#### Part 74. State Dental Insurance Plan

- 820** 4 N.Y. COMP. CODES R. & REGS. § 74.1 (2007) A spouse is considered a dependent of a covered employee entitled to state dental benefits on this basis.
- 821** 4 N.Y. COMP. CODES R. & REGS. § 74.2 (2007) Both a husband and wife may elect participation in the State Dental Insurance Plan, and their benefits will be a coordinated. In the event of an employee's death, a surviving spouse may elect to continue coverage until remarriage.

#### Part 75. Managerial/Confidential Group Term Life Insurance Plan

- 822** 4 N.Y. COMP. CODES R. & REGS. § 75.1 (2007) An employee's spouse and step-children are considered dependents of the employee for pension and other purposes.
- 823** 4 N.Y. COMP. CODES R. & REGS. § 75.2 (2007) In the event that both a husband and wife are covered under the Managerial/Confidential Group Term Life Insurance Plan as employees or retirees or both, they both shall be eligible for coverage as dependents.

#### Part 83. Confidentiality of HIV and AIDS Related Information

- 824** 4 N.Y. COMP. CODES R. & REGS. § 83.2 (2007) Within the Department of Civil Service, a spouse is considered a "contact" to which confidentiality provisions apply with respect to HIV and AIDS related information.

### Chapter IV. Economic Development Skills Training Program

#### Part 30. Application, Evaluation, and Administration

- 825** 5 N.Y. COMP. CODES R. & REGS. § 30.2 (2007) A displaced homemaker eligible for a skills training program may be a person supported by spousal support.

## TITLE 5. Department of Economic Development

### Chapter XIV. Division of Minority and Women's Business Development

#### Part 142. Requirements and Procedures Regarding Equal Employment Opportunities for Minority Group Members and Women On State Contracts

- 826** 5 N.Y. COMP. CODES R. & REGS. § 142.1 (2007) A contractor or subcontractor awarded a contract by a state agency may not discriminate based on marital status.

## TITLE 6. Department of Environmental Conservation

### Chapter I. Fish and Wildlife

#### Subchapter A. Hunting

##### Part 1. Single Species Deer

- 827** 6 N.Y. COMP. CODES R. & REGS. § 1.20 (2007) 50% of the permits issued by the Wildlife Management Unit shall be first made available to persons or spouses of persons owning fifty acres in one or more parcels which share a common boundary in the same wildlife management unit; the owner or spouse of the owner must show proof of ownership when applying for a deer management permit.

### Chapter V. Resource Management Services

- 828** 6 N.Y. COMP. CODES R. & REGS. § 590.7 (2007) In calculating moving expenses for displaced business or farm occupants, the Department of Environmental Conservation will consider an applicant's earnings, including those associated with stock holdings. The stock held by a husband and his immediate family (including his wife) shall be treated as one unit.

### Chapter IX. Independent Agencies Within the Department

#### Subchapter A. Lake George Park Commission

##### Part 645. Procedural Regulations

##### Subpart 645-4. Uniform Enforcement Procedures

- 829** 6 N.Y. COMP. CODES R. & REGS. § 645-4.9 (2007) A person may not serve as a hearing officer in a civil enforcement proceeding brought by the Lake George Park



Commission if he or she is related by blood or marriage to any party.

#### **Part 646.** Substantive Regulations

##### **Subpart 646-7.** Signs

**830** 6 N.Y. COMP. CODES R. & REGS. § 646-7.6 (2007) In issuing permits for business advertising signs, where more than one business is operated on a single parcel of land, the Lake George Park Commission shall treat each business owned by an individual as a separate business, unless the owners of the different businesses are spouses or otherwise related.

#### **Chapter X.** Division of Water Resources

##### **Subchapter A.** General

##### **Article 1.** Miscellaneous Rules

##### **Part 658.** Hearing Procedures — Water Pollution Control

**831** 6 N.Y. COMP. CODES R. & REGS. § 658.5 (2007) A person may not serve as a hearing officer in a civil enforcement proceeding involving water pollution control where that person is related by blood or marriage to any party in the proceeding.

## **TITLE 7. Department of Correctional Services**

#### **Chapter I.** General Provisions

##### **Part 7.** AIDS Confidentiality

**832** 7 N.Y. COMP. CODES R. & REGS. § 7.2 (2007) For purposes of regulations governing AIDS confidentiality in correctional services, “contact” means an identified spouse or sex partner of the protected individual.

#### **Chapter IV.** Visitation

##### **Part 200.** Visitation

**833** 7 N.Y. COMP. CODES R. & REGS. § 200.2 (2007) Unmarried minors must obtain parental permission to visit an inmate who is not a relative. Married persons under eighteen years of age do not need parental permission but must furnish proof of marriage.

**834** 7 N.Y. COMP. CODES R. & REGS. § 200.3 (2007) The spouse of a visitor to a correctional facility must possess documentation of a valid marriage license or a declaratory judgment stating the validity of an out-of-state common-law marriage in order to qualify for spousal participation in the family reunion program.

##### **Part 220.** Family Reunion Program

**835** 7 N.Y. COMP. CODES R. & REGS. § 220.3 (2007) Persons who are eligible for the family reunion program include legal spouses, who must furnish proof of marriage.

**836** 7 N.Y. COMP. CODES R. & REGS. § 220.4 (2007) Procedures are employed when processing applications to the

family reunion program for those persons who have not successfully participated in the program and for prior participants who have been transferred. If an inmate is HIV-positive, the facility health services director must notify the inmate’s spouse. Spouses visiting inmates must bring their marriage certificates.

#### **Chapter VII.** Real Property Acquisition

##### **Part 400.** Payments to An Owner Or Tenant of Residential Property Or Commercial Property Upon Their Application for Allowance of Moving Expenses in Vacating Property Acquired by the Commissioner of Correctional Services for Supplemental Relocation Payments, for Loss of Favorable Mortgage Financing, and for Closing Costs

**837** 7 N.Y. COMP. CODES R. & REGS. § 400.7 (2007) Certain persons may be paid for their actual, reasonable, and necessary moving expenses when their property is acquired by the Commissioner of Correctional Facilities. In determining expenses to be paid, the Department will consider an applicant’s earnings, including stock held by an applicant who owns a majority interest in a corporation. The stock held by a husband and his immediate family (including his spouse) shall be considered one unit.

#### **Chapter VIII.** Institutional Programs

##### **Part 711.** Marriages During Confinement

**838** 7 N.Y. COMP. CODES R. & REGS. § 711.1 (2007) Recognizing that marriage can assist in creating personal stability, Correctional Services will assist an inmate who wishes to marry.

**839** 7 N.Y. COMP. CODES R. & REGS. § 711.2 (2007) Legal and administrative impediments to an inmate’s marriage include age, competency, prior marriages, inmate status, disciplinary status, and safety and security.

**840** 7 N.Y. COMP. CODES R. & REGS. § 711.3 (2007) Before an inmate may marry, notice must be provided to the superintendent, interviews must be made by counselors and chaplains, an application for a marriage license must be submitted, and the marriage must be solemnized.

##### **Part 720.** Inmate Correspondence Program

**841** 7 N.Y. COMP. CODES R. & REGS. § 720.6 (2007) Inmate-to-inmate correspondence is restricted to correspondence between inmates who are either immediate family members, including spouses, or codefendants in active cases.

##### **Part 723.** Inmate Telephone Calls

**842** 7 N.Y. COMP. CODES R. & REGS. § 723.3 (2007) Inmates may not place calls to jurors, judges, or correctional employees unless the individual is an immediate family member of the inmate, including a spouse.

**Chapter XII.** Temporary Release, Residential Treatment Facility Day Reporting Center, and Comprehensive Alcohol and Substance Abuse Treatment Center

**Subchapter A.** Temporary Release Program

**Part 1900.** Temporary Release Program Rules and Regulations

**843** 7 N.Y. COMP. CODES R. & REGS. § 1900.3 (2007) An inmate may obtain a leave of absence to visit his or her spouse during the spouse's last illness, if death is imminent, and to attend the funeral of such individual.

**844** 7 N.Y. COMP. CODES R. & REGS. § 1900.4 (2007) A conviction for homicide or assault will not be a bar to a temporary release if the victim was the inmate's spouse, the inmate was subjected to abuse by the victim, and the abuse was a substantial factor in causing the inmate to commit the homicide or assault.

**Part 1901.** Short-Term Temporary Release Programs

**845** 7 N.Y. COMP. CODES R. & REGS. § 1901.1 (2007) An inmate may be released temporarily to visit his or her spouse's deathbed or to attend the spouse's funeral.

## TITLE 8. Education Department

**Chapter I.** Rules of the Board of Regents

**Part 3.** University of the State of New York; State Education Department Incorporation

**846** 8 N.Y. COMP. CODES R. & REGS. § 3.27 (2007) Certain museums and historical societies must have a board of trustees, of which no more than one-third of the members may be related by blood, marriage, or domicile.

**847** 8 N.Y. COMP. CODES R. & REGS. § 3.30 (2007) Certain historical societies and cultural agencies must have a board of trustees, of which no more than one-third of the members may be related by blood, marriage, or domicile.

**Part 27.** Higher Education Opportunity Programs

**Subpart 27-1.** Nonpublic Institutions

**848** 8 N.Y. COMP. CODES R. & REGS. § 27-1.1 (2007) For purposes of eligibility for Higher Education Opportunity Programs, an "independent student" includes one who is married.

**Subchapter J.** Buildings and Transportation

**Part 156.** Transportation

**849** 8 N.Y. COMP. CODES R. & REGS. § 156.3 (2007) A school bus driver applicant must supply at least three statements from persons not related by blood or marriage pertaining to his or her moral character and reliability.

**Subchapter L.** Finance

**Part 170.** Financial Accounting in School Districts

**850** 8 N.Y. COMP. CODES R. & REGS. § 170.12 (2007) Regarding the application procedure and requirements for training of school district and Board of Cooperative Educational Services ("BOCES") board members, "immediate family member" includes a spouse or spouse equivalent. Immediate family members of persons responsible for the business of school districts or BOCES may not serve as Office of Claims auditors or Audit Committee members.

**Subchapter N.** Public Records and Department Publications

**Subchapter P.** Handicapped Children

**Part 200.** Children with Handicapping Conditions

**851** 8 N.Y. COMP. CODES R. & REGS. § 200.9 (2007) Regarding tuition rates for education programs for disabled students from ages three to twenty-one, "less-than-arm's-length transaction" is one between the program or related entity and anyone who serves as part of the management or as a volunteer or employee of the program or related entity, or any of the following relations of such persons: spouse, former spouse, child or descendent, parent or ancestor, sibling, or spouse of descendent, ancestor, or sibling.

**Subchapter Q.** Relocation Payments

**Part 210.** Relocation Payments for Acquisition of Real Property by the Commissioner of Education

**852** 8 N.Y. COMP. CODES R. & REGS. § 210.6 (2007) For purposes of determining the eligibility of the corporate owner of a business or farm operation for relocation payments from the Commissioner of Education, the applicant's earnings shall include compensation received by a spouse or dependent of the owner of the majority interest. Stock held by a husband, his wife, and their dependent children shall be treated as one unit for purposes of determining of majority ownership.

**Subchapter V.** Office of Vocational Rehabilitation

**Part 247.** Client Services

**853** 8 N.Y. COMP. CODES R. & REGS. § 247.1 (2007) "Relative of eligible individual" for purposes of vocational rehabilitation client services and eligibility determinations means a spouse, mother, father, stepparent, or legal guardian.

**854** 8 N.Y. COMP. CODES R. & REGS. § 247.7 (2007) The Education Department shall provide vocational rehabilitation services to eligible individuals in a priority order in the event that the department is unable to address everyone's needs, and individuals will be assigned to priority categories regardless of marital status.

**855** 8 N.Y. COMP. CODES R. & REGS. § 247.12 (2007) A person who receives vocational rehabilitation services from the Education Department shall be required to report at least annually on the income and assets of his or her spouse.

#### Chapter V. State University of New York

##### Subchapter A. Regulations of the Board of Trustees

###### Part 302. Tuition, Fees and Charges

**856** 8 N.Y. COMP. CODES R. & REGS. § 302.1 (2007) Members of the U.S. Armed Forces on full-time active duty stationed in New York and their spouses and dependents, whether or not residents of New York, are to be charged resident student rate tuition and fees at state-operated units of the State University.

##### Subchapter B. Policies of the Board of Trustees

###### Part 341. Student Assembly

**857** 8 N.Y. COMP. CODES R. & REGS. § 341.6 (2007) A student group that has a policy or practice of restricting membership on the basis of marital status is not to be designated as an organized student group.

##### Subchapter C. Administration and Operation of State Operated Institutions of State University of New York

###### Article 3. Vehicular and Pedestrian Traffic and Parking

###### Part 563. State University College at Brockport

**858** 8 N.Y. COMP. CODES R. & REGS. § 563.4 (2007) A student of Brockport College who is a spouse, son, or daughter of a faculty or staff member must register his or her motor vehicle in accordance with student registration regulation.

###### Part 581. State University College at Old Westbury

**859** 8 N.Y. COMP. CODES R. & REGS. § 581.2 (2007) At the College at Old Westbury, a person may register more than one vehicle, the first for his or her specific use and the second to bear his or her name or the name of a spouse or parent.

###### Part 585. State University College at Cortland

**860** 8 N.Y. COMP. CODES R. & REGS. § 585.7 (2007) At Cortland College, automobiles may only be registered by the owner of the vehicle or his or her spouse, son, or daughter.

#### Chapter XX. Higher Education Services Corporation

##### Subchapter A. Administration

###### Part 2007. Recovery of Refunds and Overpayments

**861** 8 N.Y. COMP. CODES R. & REGS. § 2007.3 (2007) A student shall refund the state if he or she receives a payment because of an administrative error, false or erroneous statement on an application or financial form, or any

omission on the part of the student or the student's spouse or parents.

##### Subchapter C. General Awards, Academic Performance Awards, Fellowships and Other Awards

###### Part 2200. General Purposes and Definitions

**862** 8 N.Y. COMP. CODES R. & REGS. § 2200.2 (2007) With respect to allowance for room and board for a student who has dependents, a spouse is considered a dependent.

###### Part 2201. General Eligibility Criteria

**863** 8 N.Y. COMP. CODES R. & REGS. § 2201.8 (2007) For purposes of the New York State Licensed Social Worker Loan Forgiveness Program, an applicant's status as "economically disadvantaged" is determined based on his or her net taxable income and that of his or her spouse.

###### Part 2202. Tuition Assistance Program Awards

**864** 8 N.Y. COMP. CODES R. & REGS. § 2202.3 (2007) For purposes of determining an applicant's eligibility for Tuition Assistance Program Awards, an adjustment may be made to the applicant's reported income and that of his or her spouse based on the full-time matriculated attendance by such spouse, or by a dependent child of the applicant, in a post-secondary study program approved for receipt of federal or state student loans.

**865** 8 N.Y. COMP. CODES R. & REGS. § 2202.4 (2007) An applicant will be deemed financially independent if, among other things, the applicant was married by December 31 of the year preceding the academic year for which his or her application for an award is made.

**866** 8 N.Y. COMP. CODES R. & REGS. § 2202.5 (2007) In determining an applicant's eligibility for Tuition Assistance Program Awards, the income of the applicant's spouse or parent shall be excluded if: (a) the spouse was deceased; (b) the applicant and spouse are divorced or separated; or (c) the parents of the applicant are divorced or separated.

**867** 8 N.Y. COMP. CODES R. & REGS. § 2202.7 (2007) Undergraduate students attending degree or non-degree granting institutions who are financially independent and married are eligible for Tuition Assistance Program Awards which shall be determined based on factors prescribed in this provision.

###### Part 2203. Academic Performance Awards and Fellowships

**868** 8 N.Y. COMP. CODES R. & REGS. § 2203.4 (2007) In certain circumstances, the income of an applicant's spouse shall be relevant to an applicant's academic performance award.

###### Part 2207. Awards for Part-Time Students

**869** 8 N.Y. COMP. CODES R. & REGS. § 2207.1 (2007) The income of a part-time student's spouse shall be taken

into account in determining the student's eligibility for awards.

## TITLE 9. Executive Department

### Subtitle A. Governor's Office

#### Chapter I. Executive Orders

##### Part 3. Executive Orders (Hugh L. Carey)

- 870** 9 N.Y. COMP. CODES R. & REGS. § 3.10 (2007) Governor's Exec. Order directs that a financial statement be completed by certain officers and employees within the Executive Department and their spouses, which statement requires disclosure of occupation, trade, business engaged in, liabilities, assets, stocks, bonds, and other activities and interests.
- 871** 9 N.Y. COMP. CODES R. & REGS. § 3.45 (2007) Governor's Exec. Order establishes the Office of State Contract Compliance to ensure equal opportunity in state employment, without discrimination based on, among other things, marital status.
- 872** 9 N.Y. COMP. CODES R. & REGS. § 3.90 (2007) Governor's Exec. Order establishes a task force on domestic violence, to include at least one provider of community services to battered spouses.

##### Part 4. Executive Orders (Mario M. Cuomo)

- 873** 9 N.Y. COMP. CODES R. & REGS. § 4.17 (2007) Governor's Exec. Order establishes a state policy which bars state officials and employees from sponsoring, organizing, attending, or participating in any meeting or activity related to state business in any private establishment which does not afford full membership rights and privileges to any person on the basis of, among other things, marital status.
- 874** 9 N.Y. COMP. CODES R. & REGS. § 4.34 (2007) Governor's Exec. Order establishes a Human Rights Advisory Council to effectuate the goal of eliminating discrimination on the basis of, among other things, marital status, through vigorous enforcement of the Human Rights Law.
- 875** 9 N.Y. COMP. CODES R. & REGS. § 4.53 (2007) Governor's Exec. Order establishes a Commission on Child Support charged with, among other things, examining, investigating, and studying the operation of the state's child and spousal support system, including existing laws, judicial proceedings, and enforcement mechanisms, to determine their effectiveness.

##### Part 5. Executive Orders (George E. Pataki)

- 876** 9 N.Y. COMP. CODES R. & REGS. § 5.113.21 (2007) Governor's Exec. Order establishes scholarship programs in the State University of New York and City University of New York for "innocent victims, and the spouses and children

of the innocent victims, who have died or have become severely disabled as a result of the September 11, 2001 terrorist attack."

- 877** 9 N.Y. COMP. CODES R. & REGS. § 5.113.24 (2007) Governor's Exec. Order temporarily (i) waived filing fees for probate proceedings in Surrogate's Court for "next of kin," including spouses, of persons missing or deceased as a result of 9/11 attacks; (ii) waived the requirement that next of kin, including spouses, file such proceedings in the county of the decedent's domicile; (iii) authorized 9/11 victims' spouses to withdraw up to \$15,000 from the victims' bank accounts and money market mutual funds; (iv) authorized banks to pay items presented to them which they would otherwise lack the authority to pay as a result of the death of their customer as a result of the 9/11 attacks, provided that the victim's spouse submitted an affidavit ordering the bank to make the payment in question; and (v) authorized spouses of 9/11 victims to redeem victims' money market mutual fund shares.
- 878** 9 N.Y. COMP. CODES R. & REGS. § 5.113.25 (2007) Governor's Exec. Order granted to 9/11 victims' spouses a one-year extension of the deadline for payment of real property taxes.
- 879** 9 N.Y. COMP. CODES R. & REGS. § 5.113.25-A (2007) Governor's Exec. Order expanded the categories of real property taxes as to which deadlines would be extended for individuals covered by Exec. Order 5.113.25, and extended by approximately four months the extended deadline provided for in that earlier Order.
- 880** 9 N.Y. COMP. CODES R. & REGS. § 5.113.31 (2007) Governor's Exec. Order temporarily suspended limits on the amount of lost earnings or support that could be awarded by the Crime Victim Compensation Board to an "eligible person" who was a victim of the 9/11 attacks, including the victim's spouse.
- 881** 9 N.Y. COMP. CODES R. & REGS. § 5.127 (2007) Governor's Exec. Order requires individuals who contact state government regarding contract procurement and real estate transactions with the state to disclose financial interests in the relevant procurement or transaction, and defines "individuals" subject to the disclosure requirement as including the contractor's spouse.

### Subtitle B. Division of Alcoholic Beverage Control

#### Chapter I. Rules of the State Liquor Authority

##### Subchapter B. Licenses

##### Part 49. Bottle Clubs

- 882** 9 N.Y. COMP. CODES R. & REGS. § 49.13 (2007) A "licensee" of a liquor license is defined as including the individual licensee, each member of a partnership licensee, each officer, director, and substantial stockholder of a corporate licensee, and the spouses of any of the foregoing.



**Subtitle E. Division for Youth****Part 164. AIDS Testing and Confidentiality of HIV-Related Information: Requirements Regarding Testing, Confidentiality and Precautions Concerning the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome**

**883** 9 N.Y. COMP. CODES R. & REGS. § 164.4 (2007) For purposes of HIV testing and confidentiality provisions, “contact” is defined as “an identified spouse or sex partner of the protected individual or a person identified as having shared hypodermic needles or syringes with the protected individual.”

**Part 179. Standards for Resident Behavior****Subpart 179-3. Temporary Release Programs**

**884** 9 N.Y. COMP. CODES R. & REGS. § 179-3.4 (2007) A leave of absence is authorized for juvenile detention residents to visit their spouse during the spouse’s last illness if death appears to be imminent.

**885** 9 N.Y. COMP. CODES R. & REGS. § 179-3.10 (2007) A one-day or extended family-tie furlough must be with a blood relative, guardian, spouse, or common-law spouse where the relationship existed for more than one year before imposition of the resident’s sentence.

**Part 180. Juvenile Detention Facilities Regulations**

**886** 9 N.Y. COMP. CODES R. & REGS. § 180.5 (2007) For purposes of HIV testing and confidentiality provisions applicable in juvenile detention facilities, a “contact” of a juvenile detention resident is defined as “an identified spouse or sex partner of the protected individual or a person identified as having shared hypodermic needles or syringes with the protected individual.”

**887** 9 N.Y. COMP. CODES R. & REGS. § 180.10 (2007) If the children in an agency-operated boarding care detention facility are cared for by a married couple, the husband may work outside of the detention program operation.

**Part 182. Runaway and Homeless Youth Regulations**

**888** 9 N.Y. COMP. CODES R. & REGS. § 182-1.11 (2007) With respect to applications to provide interim family services, married individuals living in the same household may file one joint application.

**Subtitle G. Office of General Services****Chapter II. Division of Land Utilization****Part 277. Criteria for Payment of Moving Expenses**

**889** 9 N.Y. COMP. CODES R. & REGS. § 277.4 (2007) For purposes of calculating the amount of a business or farm that may be subject to reimbursement for moving expenses if displaced by the state’s Division of Land Utilization, the business’s or farm’s net earnings shall include any compensation obtained by the business or farm

operation by its owner, the owner’s spouse, and the owner’s dependents.

**Subtitle H. Division of Probation and Correctional Alternatives****Chapter I. Administration of Probation****Part 349. Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles**

**890** 9 N.Y. COMP. CODES R. & REGS. § 349.4 (2007) Before a transfer of a person convicted or adjudicated of an offense between spouses, and where a probationer is not a resident of the receiving jurisdiction at the time of sentencing or disposition, the sending Probation Department must afford the receiving Probation Department the opportunity to investigate the prospective transfer and verify actual residence prior to his or her movement and transfer of supervision to a receiving jurisdiction.

**Part 354. Intake**

**891** 9 N.Y. COMP. CODES R. & REGS. § 354.3 (2007) “Marital conciliation” matters are among the proceedings in connection with which intake services are provided by Probation Departments in Family Court.

**892** 9 N.Y. COMP. CODES R. & REGS. § 354.5 (2007) Probation cases will be considered “adjusted” where the spouses in a matter arising under article 9 of the Family Court Act have agreed to consult with a community agency or have agreed that further court intervention, or counseling, is not necessary to alleviate their marital difficulties.

**Chapter IV. General****Part 367. AIDS Confidentiality and Access to HIV Related Information, Confidentiality of HIV Related Information**

**893** 9 N.Y. COMP. CODES R. & REGS. § 367.1 (2007) For purposes of probation/correctional facilities policy governing confidentiality of HIV-related information, “contact” is defined as “an identified spouse or sex partner of the protected individual or a person identified as having shared hypodermic needles or syringes with the protected individual.”

**Subtitle I. Office of Parks, Recreation and Historic Preservation****Chapter I. Parks, Recreation and Historic Preservation****Subchapter H. Palisades Interstate Park Commission—New York Rules and Regulations**

**Part 414. Payments to an Owner or Tenant of Residential or Commercial Property Upon their Application for Allowance of Moving Expenses in Vacating Property Acquired by the Palisades Interstate Park Commission, for Supplemental Relocation Payments, for Loss of Favorable Mortgage Financing and for Closing Costs**



**894** 9 N.Y. COMP. CODES R. & REGS. § 414.7 (2007) For purposes of calculating the amount that a business or farm operation may be paid in lieu of moving expenses if displaced by the state—which amount is linked to the operation’s average annual net earnings—a corporation’s earnings shall include any compensation it paid to the owner of a majority interest in the corporation; for the purpose of determining majority ownership, stock held by a husband and his immediate family (including his or her spouse) shall be treated as one unit.

#### Chapter IV. Environmental Assistance Programs

##### Subchapter B. Environmental Quality Bond Act of 1986

###### Part 435. General Provisions

**895** 9 N.Y. COMP. CODES R. & REGS. § 435.5 (2007) Recipients of grants under the Environmental Quality Bond Act of 1986 may not discriminate against employees or applicants for employment on the basis of, among other things, marital status.

#### Chapter VI. Miscellaneous

##### Subchapter A. Administration Procedures

###### Part 463. Payment to an Owner or Tenant of Property Acquired by the Commissioner of Parks, Recreation and Historic Preservation

**896** 9 N.Y. COMP. CODES R. & REGS. § 463.7 (2007) In lieu of necessary moving expenses, a business or farm operation acquired by the Commissioner of Parks, Recreation, and Historic Preservation is eligible for a payment equal to the average annual net earnings of the displaced business or farm. For purposes of this regulation, a corporation’s earnings shall include any compensation paid by the corporation to the owner of a majority interest in the corporation; for purposes of determining majority ownership, stock held by a husband and his immediate family (including his or her spouse) shall be treated as one unit.

##### Subtitle K. New York State Police

###### Part 475. Appointment to Position of Trooper

**897** 9 N.Y. COMP. CODES R. & REGS. § 475.1 (2007) The child or spouse of a trooper in the New York State Police killed in the line of duty shall have a preferred right to appointment to the State Police Academy.

##### Subtitle L. Division of Military and Naval Affairs

#### Chapter IV. Military Justice

##### Part 516. Rules for Courts-Martial

**898** 9 N.Y. COMP. CODES R. & REGS. § 516.9 (2007) A military judge must disqualify himself or herself when he or she, his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person: (a) is a party to the proceedings; (b) is known by the military judge to have an interest that

could be substantially affected by the outcome of the proceedings; or (c) is to the military judge’s knowledge likely to be a material witness in the proceeding.

**899** 9 N.Y. COMP. CODES R. & REGS. § 516.10 (2007) In sentencing, the prosecution in a court martial may present evidence of the accused’s marital status.

##### Part 517. Military Rules of Evidence

**900** 9 N.Y. COMP. CODES R. & REGS. § 517.5 (2007) A person has the privilege to refuse to testify against his or her spouse, and a person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were husband and wife and not legally separated.

##### Subtitle M. Crime Victims Board

###### Part 525. Practice and Procedure before the Board

**901** 9 N.Y. COMP. CODES R. & REGS. § 525.2 (2007) A claim for compensation may be filed by a victim of a crime or a surviving spouse of a victim of a crime who died as a direct result of such crime.

**902** 9 N.Y. COMP. CODES R. & REGS. § 525.12 (2007) Spouses, parents, or children of homicide victims may receive an award to cover psychological counseling as a result of the death of such victim.

**903** 9 N.Y. COMP. CODES R. & REGS. § 525.30 (2007) As a means of ensuring that eligible battered spouses and children receive necessary shelter and services, and to provide an objective, fair, and reasonable equitable reimbursement rate for battered spouses and shelter providers who service these claimants, the Crime Victims Board provides a guideline schedule of maximum charges for the cost of residing in or utilizing the services of shelters for eligible battered spouses and children payable under sections 626 and 631(2) of the Exec. Law.

##### Subtitle Q. Adirondack Park Agency

#### Chapter I. Introduction and Definitions

##### Part 570. Introduction; Definitions Used in These Regulations

**904** 9 N.Y. COMP. CODES R. & REGS. § 570.3 (2007) “Immediate family” is defined as including spouses. Agricultural use structures and single family dwellings occupied by a farmer, his employees, and the members of their respective immediate families constitute one principal building for purposes of determining the number of principal buildings to occupy private land use areas of the Adirondack Park.

#### Chapter II. Regulation of Land Use and Development

##### Part 580. Hearing Procedures

**905** 9 N.Y. COMP. CODES R. & REGS. § 580.14 (2007) A person may not serve as a hearing officer in a Land Use and

Development hearing if he or she is related by blood or marriage to any party in the proceeding.

**Subtitle S. Division of Housing and Community Renewal**

**Chapter III. Low Rent Housing**

**Subchapter C. Management Manual for Housing Authorities**

**Part 1627. Occupancy**

**Subpart 1627-3. Factors, Other Than Income, in Selection of Tenants**

**906** 9 N.Y. COMP. CODES R. & REGS. § 1627-3.1 (2007) Family factors, *e.g.*, the lack of adequate housing causing families to be separated, or satisfaction of family composition requirements stated in the master management resolution adopted by the Housing Authority, must be satisfied in order for a tenant to be eligible for low-rent housing. For these purposes, “family relationships” are deemed established by marriage or a birth certificate.

**Subpart 1627-4. Leasing; Rules and Regulations of Tenancy**

**907** 9 N.Y. COMP. CODES R. & REGS. § 1627-4.1 (2007) A lease assigned to an eligible family or person must be signed by both a husband and wife, although possession may be granted on one signature. In such cases, the second signature should be obtained as soon as possible.

**Subpart 1727-1. Tenant Selection Procedure**

**908** 9 N.Y. COMP. CODES R. & REGS. § 1727-1.1 (2007) Priority in low-rent housing assignments is granted to Vietnam veterans and their widows.

**909** 9 N.Y. COMP. CODES R. & REGS. § 1727-1.4 (2007) The regulation permitting the Department to discontinue accepting new housing applications when a waiting period is three or more years shall not apply to Vietnam veterans and their surviving spouses.

**Subpart 1727-2. Determination of Eligibility for Admission or Continued Occupancy**

**910** 9 N.Y. COMP. CODES R. & REGS. § 1727-2.8 (2007) Occupancy of a bedroom by fewer than two persons may be permitted where it is desirable to provide separate sleeping accommodations for children of the opposite sex and for adults of the opposite sex, except for husband and wife.

**Subpart 1727-3. Leasing; Rules and Regulations of Tenancy**

**911** 9 N.Y. COMP. CODES R. & REGS. § 1727-3.1 (2007) A lease assigned to an eligible family or person under this low-income housing program must be signed by both a husband and wife, although possession may be granted on one signature. In such cases, the second signature should be obtained as soon as possible.

**Subpart 1727-8. Succession Regulations**

**912** 9 N.Y. COMP. CODES R. & REGS. § 1727-8.2 (2007) For low-income housing succession purposes, “family member” is defined as including a spouse.

**Chapter V. Urban Renewal**

**Subchapter A. Urban Renewal Assistance Program**

**Part 1800. General Provisions**

**913** 9 N.Y. COMP. CODES R. & REGS. § 1800.3 (2007) For purposes of Urban Renewal Assistance Program regulations, “family” is defined as two or more persons related by blood, marriage, or adoption living together in a single unit.

**Part 1900. General Provisions**

**Article 1. Housing Trust Fund Program**

**914** 9 N.Y. COMP. CODES R. & REGS. § 1900.3 (2007) For purposes of Housing Trust Fund Program Regulations, “immediate family” is defined as an individual’s parents, stepparents, spouse, brothers, stepbrothers, sisters, stepsisters, sons, stepsons, daughters, and stepdaughters, and the spouses of each.

**Chapter VII. Emergency Housing Rent Control**

**Subchapter B. Rent and Eviction Regulations**

**Part 2100. Scope**

**915** 9 N.Y. COMP. CODES R. & REGS. § 2100.9 (2007) For the purpose of determining applicability of emergency rent control regulations to a given housing accommodation, a husband and wife are treated as one tenant.

**916** 9 N.Y. COMP. CODES R. & REGS. § 2104.5 (2007) A landlord is authorized to evict a tenant, provided the landlord does so in good faith to recover possession because of an immediate and compelling necessity for his own personal use and occupancy, or for the use and occupancy of his immediate family, which is defined as only a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the landlord. The foregoing eviction authority shall not arise where a tenant or the tenant’s spouse is sixty-two years of age or older, or has an impairment which results from anatomical, physiological, or psychological conditions which are, *inter alia*, expected to be permanent, and which prevent such person from engaging in substantial gainful employment.

**917** 9 N.Y. COMP. CODES R. & REGS. § 2104.6 (2007) A landlord may evict a tenant at the termination of the lease term where the tenant no longer occupies the premises, except that a family member, including a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather,

grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant shall not be evicted.

#### Subchapter C. Decontrol Orders

- 918** 9 N.Y. COMP. CODES R. & REGS. § 2150.1 (2007) For the proof of age required for certain classes of Larchmont housing based on age, an individual may submit, among other things, a marriage certificate.

#### Subchapter D. Rent and Eviction Regulations — New York City

##### Part 2200. Scope

- 919** 9 N.Y. COMP. CODES R. & REGS. § 2200.2 (2007) Rent control regulations shall not apply to certain housing accommodations if no more than two tenants (with a husband and wife considered as one tenant) for whom rent is paid live in the dwelling unit and the remaining portion of the dwelling is occupied by the landlord and his immediate family. Certain rent control limitations restrict the term “related persons” to the tenant and a parent, grandparent, child, stepchild, grandchild, brother, or sister of the tenant or of the tenant’s spouse, or the spouse of any of the foregoing.

##### Part 2202. Adjustments; Determination of Rents and Services

- 920** 9 N.Y. COMP. CODES R. & REGS. § 2202.20 (2007) A tenant shall be eligible for a rent increase exemption if, among other things, the head of household or spouse was at least 62 on or before the application for the exemption. Head of household means the person who customarily pays rent, or his spouse (if older).

##### Part 2204. Evictions

- 921** 9 N.Y. COMP. CODES R. & REGS. § 2204.5 (2007) A landlord may recover possession of accommodations needed for his use or the use of his immediate family, which includes only a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the landlord.
- 922** 9 N.Y. COMP. CODES R. & REGS. § 2204.6 (2007) A tenant’s family members, including a husband or wife, may not be evicted due to the expiration of the tenant’s lease if the family member has resided in the rent-controlled housing for a minimum period.

#### Chapter VIII. Rent Stabilization Regulations

##### Subchapter A. Emergency Tenant Protection Regulations

##### Part 2500. Scope

- 923** 9 N.Y. COMP. CODES R. & REGS. § 2500.2 (2007) For purposes of the Emergency Tenant Protection Regulations, “immediate family” is defined to include, among others, a husband or wife.

- 924** 9 N.Y. COMP. CODES R. & REGS. § 2500.9 (2007) The Emergency Tenant Protection Regulations do not apply to, among other things, nonhousekeeping furnished housing accommodations located within a single dwelling if no more than two tenants (with a husband and wife being considered together as one tenant) for whom rent is paid live in the dwelling unit and the remaining portion of the dwelling is occupied by the landlord and his immediate family.

##### Subchapter B. Rent Stabilization Code

##### Part 2520. Scope

- 925** 9 N.Y. COMP. CODES R. & REGS. § 2520.6 (2007) For purposes of the Rent Stabilization Code, “immediate family” is defined to include, among others, a husband or wife.
- 926** 9 N.Y. COMP. CODES R. & REGS. § 2520.11 (2007) The Rent Stabilization Code does not apply to, among other things, nonhousekeeping, furnished housing accommodations located within a single dwelling if no more than two tenants (with a husband and wife being considered together as one tenant) for whom rent is paid live in the dwelling unit and the remaining portion of the dwelling is occupied by the landlord and his immediate family.

##### Part 2522. Rent Adjustments

- 927** 9 N.Y. COMP. CODES R. & REGS. § 2522.5 (2007) A tenant has the right to add his spouse to the lease or any renewal thereof as an additional tenant.

##### Part 2524. Evictions

- 928** 9 N.Y. COMP. CODES R. & REGS. § 2524.4 (2007) A landlord is not required to offer a renewal lease if the tenant seeks to use the premises for his use or the use of his immediate family, unless the tenant or the spouse of the tenant is a senior citizen or disabled person, in which case the landlord must offer equivalent or superior housing accommodations.

##### Part 2525. Prohibitions

- 929** 9 N.Y. COMP. CODES R. & REGS. § 2525.7 (2007) In determining how much a tenant may charge an occupant, the occupant’s share is determined by dividing the amount of rent by the number of tenants and the number of occupants. The total number of tenants does not include the tenant’s spouse.

#### Chapter X. Neighborhood Preservation Companies Rules and Regulations

##### Part 2600. General Provisions

- 930** 9 N.Y. COMP. CODES R. & REGS. § 2600.2 (2007) For purposes of the Neighborhood Preservations Companies Rules and Regulations, “immediate family” means a person’s parents, stepparents, spouse, brothers, stepbrothers, sisters, stepsisters, sons, stepsons, daughters, and stepdaughters, and the spouses of each.

**Part 2620. Urban Initiatives Program**

**931** 9 N.Y. COMP. CODES R. & REGS. § 2620.1 (2007) For purposes of the Urban Initiatives Program, “immediate family” means a person’s parents, stepparents, spouse, brothers, stepbrothers, sisters, stepsisters, sons, stepsons, daughters, and stepdaughters, and the spouses of each.

**Chapter XII. Housing and Community Preservation in Rural Areas****Subchapter B. Rural Preservation Companies Program****Part 2810. General Provisions**

**932** 9 N.Y. COMP. CODES R. & REGS. § 2810.2 (2007) For purposes of the Rural Preservation Companies Program, “immediate family” means a person’s parents, stepparents, spouse, brothers, stepbrothers, sisters, stepsisters, sons, stepsons, daughters and stepdaughters, and the spouses of each.

**Subtitle T. New York Racing and Wagering Board****Chapter I. Racing****Subchapter A. State Racing Commission****Article I. Administration****Part 4002. Occupational Licenses**

**933** 9 N.Y. COMP. CODES R. & REGS. § 4002.14 (2007) The disqualification of a husband or wife from the State Racing Commission applies to both unless the non-disqualified spouse demonstrates that his or her ownership and racing of horses are independent of the disqualified spouse.

**Part 4025. Entries, Subscriptions, Declarations and Acceptances for Races**

**934** 9 N.Y. COMP. CODES R. & REGS. § 4025.10 (2007) Horses trained or ridden by the spouse of a jockey shall be coupled for betting purposes with any horse ridden by that jockey.

**Part 4040. Restrictions on Jockeys and Stable Employees**

**935** 9 N.Y. COMP. CODES R. & REGS. § 4040.2 (2007) Neither a jockey nor his spouse may own any race horse.

**Subchapter B. State Harness Racing Commission****Part 4101. Licenses**

**936** 9 N.Y. COMP. CODES R. & REGS. § 4101.24 (2007) The State Harness Racing Commission may suspend, revoke, exclude, or refuse to license a participant whose spouse would fail to qualify for a harness license.

**Part 4102. Violations**

**937** 9 N.Y. COMP. CODES R. & REGS. § 4102.3 (2007) Where an individual violates the rules of the State Harness Racing Commission, the suspension of that individual applies to his or her spouse as well.

**Part 4107. Racing, Farm or Stable Names**

**938** 9 N.Y. COMP. CODES R. & REGS. § 4107.2 (2007) The number of individuals who may own a horse is limited, and the spouse of an individual shall be considered with that individual to be one shareholder.

**Part 4116. Drivers**

**939** 9 N.Y. COMP. CODES R. & REGS. § 4116.3 (2007) An officer, director, or executive of a track, or the spouse of such individual, may not drive or enter a horse except in non-betting matches.

**Subchapter C. State Quarter Horse Racing Commission****Part 4205. Occupational Licenses**

**940** 9 N.Y. COMP. CODES R. & REGS. § 4205.1 (2007) An occupational license shall not be issued to the lessee of any entity unless that entity observes the rules limiting ownership of horses to thirty-five persons, with a husband and wife being regarded as a single stockholder.

**941** 9 N.Y. COMP. CODES R. & REGS. § 4205.6 (2007) Under the regulations of the State Quarter Horse Racing Commission, the disqualification of a husband or wife from having a license applies to both.

**Chapter II. Wagering Systems****Subchapter A. State Lottery****Part 5000. Lottery Drawings**

**942** 9 N.Y. COMP. CODES R. & REGS. § 5000.5 (2007) A lottery ticket may not be sold to the spouse of an officer or employee of the Department of Taxation and Finance or a member of the State Lottery Commission.

**Chapter V. Bingo****Subchapter B. Registration and Licensing****Part 5814. Commercial Lessor: Application and Licensing**

**943** 9 N.Y. COMP. CODES R. & REGS. § 5814.17 (2007) A person is ineligible to receive a bingo hall license if he is married to someone having an interest in another commercial bingo hall.

**Subchapter C. Conduct of Games****Part 5822. Conduct of Bingo in Leased Premises**

**944** 9 N.Y. COMP. CODES R. & REGS. § 5822.11 (2007) An agreement for the rental of a bingo hall must prohibit the lessor and any person married to the lessor from participating in the conduct of bingo.

**Subtitle W. New York State Council On the Arts****Part 6403. General Regulations Governing the New York State Council On the Arts’ Operations and Procedures**

**945** 9 N.Y. COMP. CODES R. & REGS. § 6403.7 (2007) All cultural services contracts require compliance with the New York State Finance Law and the New York State Labor Law, and shall prohibit discrimination by recipients of



Council funds based on, among other things, marital status.

#### **Subtitle Y.** New York State Office for the Aging

#### **Chapter II.** Older Americans, Community Services, and Expanded In-Home Services for the Elderly Programs

##### **Part 6653.** Area Plans

**946** 9 N.Y. COMP. CODES R. & REGS. § 6653.3 (2007) An area plan for Elderly Programs must maximize the number of elderly people and their spouses with the opportunity to participate in certain nutrition services.

##### **Part 6654.** Services

**947** 9 N.Y. COMP. CODES R. & REGS. § 6654.6 (2007) Adjusted monthly income for purposes of Expanded In-Home Services for the Elderly Programs includes income of the client's spouse if the client is living with him or her.

**948** 9 N.Y. COMP. CODES R. & REGS. § 6654.10 (2007) Some elderly persons and their spouses will be eligible for certain meal programs, including home delivery.

**949** 9 N.Y. COMP. CODES R. & REGS. § 6654.12 (2007) For the purpose of providing legal assistance to the elderly, filing of conservatorships is prohibited except in the case of, among other things, an involuntary petition filed against a spouse.

**950** 9 N.Y. COMP. CODES R. & REGS. § 6654.16 (2007) Each client or authorized representative shall be entitled to receive Expanded In-Home Services for the Elderly Program services without regard to, among other things, marital status.

#### **Chapter III.** Recreation Program for the Elderly

##### **Part 6659.** Recreation Program for the Elderly

**951** 9 N.Y. COMP. CODES R. & REGS. § 6659.4 (2007) The spouse of an elderly person may participate in a recreation program for the elderly irrespective of the spouse's age, if his or her participation would not exclude the participant of an elderly person resident in the municipality.

#### **Subtitle AA.** State Commission of Correction

#### **Chapter I.** Minimum Standards and Regulations for Management of County Jails and Penitentiaries

##### **Subchapter A.** Minimum Standards and Regulations

##### **Part 7051.** Funeral and Deathbed Visits

**952** 9 N.Y. COMP. CODES R. & REGS. § 7051.4 (2007) A prison inmate may attend the funeral or deathbed of his or her spouse.

##### **Part 7064.** Human Immunodeficiency Virus and AIDS Related Information — Confidentiality

**953** 9 N.Y. COMP. CODES R. & REGS. § 7064.2 (2007) For purposes of penitentiary regulations relating to HIV

and AIDS confidentiality, "contact" means an identified spouse or sex partner of the individual.

#### **Subtitle CC.** Division of Parole

##### **Part 8011.** Confidentiality of HIV- and AIDS-related Information

**954** 9 N.Y. COMP. CODES R. & REGS. § 8011.2 (2007) For purposes of parole regulations relating to HIV and AIDS confidentiality, "contact" means an identified spouse or sex partner of the parolee.

##### **Subtitle KK.** Program for Elderly Pharmaceutical Insurance Coverage

##### **Part 9600.** General

**955** 9 N.Y. COMP. CODES R. & REGS. § 9600.2 (2007) In determining an applicant's eligibility for Elderly Pharmaceutical Insurance Coverage ("EPIC") benefits, "income" means household gross income of the applicant and his or her spouse.

##### **Part 9610.** Application and Determination of Eligibility

**956** 9 N.Y. COMP. CODES R. & REGS. § 9610.2 (2007) In the determination of an applicant's eligibility for EPIC benefits, a form must be completed by both the applicant and his or her spouse, which application must include the applicant's marital status and his or her spouse's full name.

**957** 9 N.Y. COMP. CODES R. & REGS. § 9610.3 (2007) In applying for EPIC benefits, an applicant must provide the name and date of birth of his or her spouse.

##### **Subtitle LL.** Temporary State Commission on Local Government Ethics

##### **Part 9977.** Adjudicatory Proceedings and Appeals Procedure

**958** 9 N.Y. COMP. CODES R. & REGS. § 9977.19 (2007) A person may appeal a decision of the public advisory council denying such person's request for exemption from reporting information pertaining to that person's spouse has been denied.

## **TITLE 10. Department of Health**

#### **Chapter II.** Administrative Rules and Regulations

##### **Subchapter H.** Family Health

**Part 69.** Testing for Phenylketonura and Other Diseases and Conditions / Early Intervention Program / Newborn Hearing Screening / Standard Infant Autopsy Procedures

##### **Subpart 69-4.** Early Intervention Program

**959** 10 N.Y. COMP. CODES R. & REGS. § 69-4.17 (2007) An agency may presume that a parent has the authority to inspect and review his or her child's records unless the



agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

#### **Subchapter J. Funeral Directing, Undertaking and Embalming**

##### **Part 77. Practice of Funeral Directing**

- 960** 10 N.Y. COMP. CODES R. & REGS. § 77.2 (2007) If a candidate for a funeral director license has changed his or her name, he or she must submit supporting documentation, such as a marriage certificate.

#### **Subchapter L. Hospitals and Related Facilities**

##### **Part 82. Health Systems Agencies**

###### **Subpart 82-1. Organization and Functions of Health Systems Agencies**

- 961** 10 N.Y. COMP. CODES R. & REGS. § 82-1.1 (2007) A majority of the membership of the board of directors of a health systems agency shall be composed of consumers of health care, a term defined to exclude providers of health care. A provider of health care includes, among other things, the spouse of a health care provider.
- 962** 10 N.Y. COMP. CODES R. & REGS. § 82-1.5 (2007) Each member of a health care system's governing body must submit an annual statement identifying all health facilities in which the individual and his or her family has an interest. "Family" is defined to include, at a minimum, a member's spouse and dependent children.

##### **Part 86. Reporting and Rate Certifications for Facilities**

###### **Subpart 86-1. Medical Facilities**

- 963** 10 N.Y. COMP. CODES R. & REGS. § 86-1.28 (2007) A related organization of a medical facility includes any entity which is controlled directly or indirectly by the immediate family of the operator of such medical facility. For purposes of this regulation, "immediate family" includes the operator's parents, children, spouse, brothers, sisters, first cousins, aunts, or uncles, whether by birth, marriage, or adoption.

###### **Subpart 86-2. Residential Health Care Facilities**

- 964** 10 N.Y. COMP. CODES R. & REGS. § 86-2.10 (2007) For purposes of regulations governing residential health care facilities, "new operator" and "receiver" do not include an operator or receiver approved to operate a residential health care facility where a principal stockholder, officer, or director of an approved operator is the spouse or child of the principal stockholder, officer, or director of the prior operator or receiver of the facility.
- 965** 10 N.Y. COMP. CODES R. & REGS. § 86-2.26 (2007) For purposes of regulations governing residential health care facilities, a related organization includes any entity owned by the immediate family of the operator. "Immediate family" includes each parent, child, spouse,

brother, sister, first cousin, aunt, or uncle of the operator, whether related by birth, marriage, or adoption.

###### **Subpart 86-4. Free-standing Ambulatory Care Facilities**

- 966** 10 N.Y. COMP. CODES R. & REGS. § 86-4.4 (2007) An accountant is not independent for purposes of free-standing ambulatory care facilities regulations where any family relationship, including one by marriage, exists between any accountant and the owner, operator, or administrator of the facility.
- 967** 10 N.Y. COMP. CODES R. & REGS. § 86-4.28 (2007) For purposes of the regulations governing free-standing ambulatory care facilities, a "related organization" includes any entity owned by the immediate family of the operator. "Immediate family" includes each parent, child, spouse, brother, sister, first cousin, aunt, or uncle of the operator, whether related by birth, marriage, or adoption.

###### **Subpart 86-5. Long-term Home Health Care Programs**

- 968** 10 N.Y. COMP. CODES R. & REGS. § 86-5.1 (2007) For purposes of regulations governing long-term home health care programs, a "related organization" includes any entity owned by the immediate family of the operator. "Immediate family" includes each parent, child, spouse, brother, sister, first cousin, aunt, or uncle of the operator, whether related by birth, marriage, or adoption.
- 969** 10 N.Y. COMP. CODES R. & REGS. § 86-5.28 (2007) For purposes of regulations governing long-term home health care programs, a "related organization" includes any entity owned by the immediate family of the operator. "Immediate family" includes each parent, child, spouse, brother, sister, first cousin, aunt, or uncle of the operator, whether related by birth, marriage, or adoption.

#### **Subchapter R. Health Maintenance Organizations**

##### **Subpart 98-2. External Appeals of Adverse Determinations**

- 970** 10 N.Y. COMP. CODES R. & REGS. § 98-2.2 (2007) For purposes of HMO regulations governing external appeals of adverse determinations, "material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, spouse's child, child's parent, child's spouse, or sibling's spouse.

#### **Chapter V. Medical Facilities**

##### **Subchapter A. Medical Facilities—Minimum Standards**

###### **Article 1. General**

###### **Part 400. All Facilities—General Requirements**

- 971** 10 N.Y. COMP. CODES R. & REGS. § 400.21 (2007) An adult may designate another adult to make medical treatment decisions on his or her behalf if the adult becomes incapacitated and is unable to do so. In the absence of a Health Care Proxy, adults who express their wishes

orally or in writing concerning life-sustaining treatment in a clear and convincing manner are entitled to have those wishes recognized. Medical facilities must ensure that all adult patients are informed of their rights and are supported and protected as they exercise their right to formulate instructions regarding their health care in the event they become incapacitated. For purposes of this provision, “adult” means any person who is eighteen years old or older, is the parent of a child, or has married.

## Article 2. Hospitals

### Part 405. Hospitals—Minimum Standards

- 972** 10 N.Y. COMP. CODES R. & REGS. § 405.25 (2007) “Designated Requestor” for the purpose of organ and tissue donation is a person selected by the hospital to discharge the responsibilities of requesting the spouse, next of kin, or guardian of a decedent to consent to an anatomical gift. When a patient is a suitable candidate for tissue donation but has not executed an organ donor card, the requestor shall make a request, in order of priority for organ donation, starting with the spouse, then the adult children, parents, siblings, etc.
- 973** 10 N.Y. COMP. CODES R. & REGS. § 405.43 (2007) Hospitals must implement a policy regarding orders to not resuscitate where consent to such an order has been obtained. One person from the following list shall be chosen, in order of priority, to make decisions regarding orders not to resuscitate: spouse of the patient, adult child of the patient, or parent, adult sibling, or close friend of the patient. For purposes of this regulation, “adult” includes any person eighteen years of age or older, or anyone who has married.

## Article 3. Residential Care Facilities

### Part 415. Nursing Homes—Minimum Standards

- 974** 10 N.Y. COMP. CODES R. & REGS. § 415.2 (2007) For purposes of regulations governing nursing homes, a nursing home is a facility which provides lodging for three or more residents who are not related to the operator by marriage or blood.
- 975** 10 N.Y. COMP. CODES R. & REGS. § 415.3 (2007) Each nursing home resident has the right to share a room with his or her spouse when these residents live in the same facility and both consent to the arrangement.

## Subchapter B. Hospital Establishment

### Part 610. Special Requirements for Nonprofit Corporations

- 976** 10 N.Y. COMP. CODES R. & REGS. § 610.4 (2007) For purposes of regulations governing nonprofit corporations operating hospitals, a director or officer shall be deemed to have a substantial financial interest in any corporation in which such person’s parents and spouse, and all descendants of either such person’s

parents or spouse, have a total beneficial interest of 10% or more.

## Subchapter C. State Hospital Code

### Article 1. General Provisions

#### Part 700. General

- 977** 10 N.Y. COMP. CODES R. & REGS. § 700.2 (2007) A hospice program shall treat a terminally ill patient and his or her family as a unit. For purposes of the hospice regulations, bereavement services include supportive services provided to the family to assist them in coping with the death of the patient. For purposes of the State Hospital Code, a hospice patient’s “family” means his or her immediate relations, including a spouse, brother, sister, child, or parent. Other relations and individuals with significant ties to the patient may be designated as family by agreement of the patient, the individual, and the hospice.
- 978** 10 N.Y. COMP. CODES R. & REGS. § 700.5 (2007) An adult may designate another adult, such as a trusted friend or loved one who knows the person’s wishes to make complex medical treatment decisions if the adult becomes incapacitated and is unable to make such decisions. “Adult” includes any person eighteen years of age or older, or anyone who has married.

### Article 6. Treatment Center and Diagnostic Center Operation

#### Part 751. Organization and Administration

- 979** 10 N.Y. COMP. CODES R. & REGS. § 751.5 (2007) The operator of a treatment center and diagnostic center operation must ensure the provision of services without regard to marital status.
- 980** 10 N.Y. COMP. CODES R. & REGS. § 751.9 (2007) The operator of a treatment center or diagnostic center shall post a statement of patients’ rights, including a patient’s right to receive services without regard to his or her marital status.

## Chapter VII. Life Care Communities

### Part 900. Certificate of Authority

- 981** 10 N.Y. COMP. CODES R. & REGS. § 900.1 (2007) For purposes of the regulations governing life care communities, a nursing home is a facility providing lodging to three or more persons not related to the operator by marriage or blood.

### Part 901. Organization and Administration

- 982** 10 N.Y. COMP. CODES R. & REGS. § 901.2 (2007) A life care contract shall include the life care community’s policies and procedures regarding the requirements for the entry of the resident’s spouse into the facility.

## TITLE 11. Insurance Department

### Chapter III. Policy and Certificate Provisions

#### Subchapter A. Life, Accident and Health Insurance

##### Part 41. Accelerated Payment of the Death Benefit under a Life Insurance Policy

**983** 11 N.Y. COMP. CODES R. & REGS. § 41.4 (2007) Where an accelerated payment of life insurance death benefits is made, the application to accelerate payments should clearly indicate that receipt of such benefits may affect the eligibility of the recipient and/or the recipient's spouse and dependents for public assistance.

##### Part 52. (Regulation 62) Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

**984** 11 N.Y. COMP. CODES R. & REGS. § 52.17 (2007) No reduction of benefits for individual insurance shall be made applicable solely on the basis of the sex or marital status of the insured.

**985** 11 N.Y. COMP. CODES R. & REGS. § 52.22 (2007) No policy or certificate shall provide for termination of coverage of an insured's spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of a premium.

**986** 11 N.Y. COMP. CODES R. & REGS. § 52.23 (2007) Where an insurance contract includes coordination of benefits, and two or more plans cover a dependent child of divorced parents, benefits are prioritized in the following order: (1) the plan of the parent with custody of the child; (2) the plan of the spouse of the parent with custody; and (3) the plan of the non-custodial parent.

**987** 11 N.Y. COMP. CODES R. & REGS. § 52.25 (2007) Every policy for long-term care, nursing home care, and home care insurance which provides for coverage of dependents (including the spouse) of the named insured shall entitle those dependents to a conversion policy upon the event of, among other things, his or her divorce from the insured.

**988** 11 N.Y. COMP. CODES R. & REGS. § 52.40 (2007) Filing rates shall not unfairly discriminate between cases of the same class. Rates may recognize age, sex, occupation, location, industry, marital status, family composition, and other factors affecting utilization.

#### Subchapter B. Property and Casualty Insurance

##### Part 60. Minimum Provisions for Automobile Liability Insurance Policies and Supplementary Uninsured Motorists Insurance

###### Subpart 60-1. (Regulation 35-A) Minimum Provisions for Automobile Liability Insurance Policies

**989** 11 N.Y. COMP. CODES R. & REGS. § 60-1.1 (2007) With respect to minimum auto liability policies, the spouse,

husband, or wife of the insured is treated, with regard to liability and consent, as the insured.

**990** 11 N.Y. COMP. CODES R. & REGS. 60-1.5 (2007) For purposes of rental vehicle insurance coverage, "relative" means a spouse, child, or other person related to the named insured by blood, marriage, or adoption. "Private passenger motor vehicle" is a vehicle owned by an individual or a husband and wife.

**991** 11 N.Y. COMP. CODES R. & REGS. § 60-1.6 (2007) Supplemental automobile spousal liability insurance is coverage against liability of an insured because of the death of or injuries to his or her spouse up to the liability insurance limits provided under the policy even where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse. Insurers are required to provide notice to named insureds about supplemental spousal liability insurance.

###### Subpart 60-2. (Regulation 35-D) Supplementary Uninsured Motorists Insurance

**992** 11 N.Y. COMP. CODES R. & REGS. § 60-2.3 (2007) For purposes of Supplemental Uninsured Motorist Insurance Endorsements, "insured" means the insured and, while residents of the same household, that person's spouse, and relatives of the insured and insured's spouse. The spouse of an insured operating a motor vehicle is also included. The spouse of the insured is covered by the policy as the insured's survivor.

##### Part 64. (Regulation 35-B, 35-C) Liability Insurance Covering Snowmobiles and All-Terrain Vehicles

###### Subpart 64.2 (Regulation 35-C) Liability Insurance Covering All-Terrain Vehicles

**993** 11 N.Y. COMP. CODES R. & REGS. § 64-2.1 (2007) For purposes of minimum benefit insurance policies for All-Terrain Vehicles, the spouse of an insured is covered if he or she is a resident of the same household. "Family member" means a person related to the insured by blood or marriage. A surviving spouse is covered if he or she is a resident of the same household at the time of death of the insured, and the surviving spouse is treated under the policy as if named by the insured in the declarations section of the policy.

##### Part 65. Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act

###### Subpart 65-1. (Regulation 68-A) Prescribed Policy Endorsements

**994** 11 N.Y. COMP. CODES R. & REGS. § 65-1.1 (2007) For purposes of minimum benefit insurance policies for personal injuries, a "relative" means a spouse, child, or person related to the named insured by blood, marriage, or adoption. Status as a relative is relevant to exclusions from coverage for personal injuries sustained by the insured or the insured's relatives.

**Subpart 65-2.** (Regulation 68-B) Rights and Liabilities of Self-Insurers

**995** 11 N.Y. COMP. CODES R. & REGS. § 65-2.1 (2007) In determining the rights and liabilities of motor vehicle self-insureds, “relative” means a spouse, child, or other person related to the self-insured by blood, marriage, or adoption who resides regularly in the self-insured’s household. Status as a relative is relevant to exclusions from coverage for personal injuries sustained by the self-insured or the self-insured’s relatives.

**Subpart 65-3.** (Regulation 86-C) Claims for Personal Injury Protection Benefits

**996** 11 N.Y. COMP. CODES R. & REGS. § 65-3.19 (2007) When notified by the Social Security Administration of any no-fault disability benefits, an insurer shall reduce the amount of benefits paid to the applicant, inclusive of benefits paid to the spouse and dependents on account of an injury.

**Chapter V.** Rates and Rating Organizations

**Subchapter B.** Commercial and Industrial Risk

**Part 153.** (Regulation 135) Property/Casualty Insurance Group and Quasi-Group Standards

**997** 11 N.Y. COMP. CODES R. & REGS. § 153.1 (2007) For purposes of regulations governing property/casualty insurance, “family member” means a person related to the insured by blood, marriage, or adoption. When an insurer issues a single policy with a first named insured and additional insureds, it shall not be considered a group policy with respect to family members.

**Subchapter D.** Rate Regulation and Promotion of Competition Act

**Part 163** (Regulation 153) Flexible Rating for Nonbusiness Automobile Insurance Policies

**998** 11 N.Y. COMP. CODES R. & REGS. § 163.1 (2007) For purposes of regulations governing flexible rating for non-business automobile insurance policies, “rating factors” means elements, including marital status of the insured, applied to base rates to determine automobile insurance policy premiums.

**Chapter VII.** Credit and Creditor Insurance

**Part 185.** (Regulation 27-A) Credit Life Insurance and Credit Accident and Health Insurance

**999** 11 N.Y. COMP. CODES R. & REGS. § 185.5 (2007) In the case of married joint debtors, the insurer may allow one of the debtors to request joint coverage instead of requiring each person to request coverage in writing.

**1000** 11 N.Y. COMP. CODES R. & REGS. § 185.14 (2007) For purposes of credit insurance on transactions secured by real estate mortgages, coverage shall terminate prior to the earliest of transfer of, among other occurrences, title by the debtor to someone other than his or her

spouse. Rates for joint life coverage shall be computed in accordance with one of the prescribed methods, including but not limited to the use of husband and wife in lieu of the older and younger insured, and the use of the younger insured as the principal insured.

**Chapter IX.** Unfair Trade Practices

**Part 221.** Limitations upon and Requirements for the Use of Credit Information for Personal Lines Insurance

**1001** 11 N.Y. COMP. CODES R. & REGS. § 221.3 (2007) An insurer may not use marital status as a factor in rating risks for personal lines insurance.

**Chapter XIV.** Individual and Small Group Health Insurance

**Part 360.** (Regulation 145) Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance

**1002** 11 N.Y. COMP. CODES R. & REGS. § 360.3 (2007) Regarding eligibility for individual and small group health insurance policies, where an eligible employee or dependent or spouse of such employee or member rejects enrollment in a group policy, rules may be established limiting future enrollment to specified time periods; however, such rules shall not apply to such employee, member, dependent, or spouse if certain conditions are met, among them the existence of a court order directing that coverage be provided for a spouse or minor child.

**1003** 11 N.Y. COMP. CODES R. & REGS. § 360.7 (2007) An insurer is required to give notice to an insured and his or her spouse of the need to notify the insurer within a specified time period of the spouse’s desire to continue a policy in the event of death of the insured, divorce of the insured and his or her spouse, or any of the other conditions covered in the Insurance Law.

**1004** 11 N.Y. COMP. CODES R. & REGS. § 360.8 (2007) For purposes of regulations governing group health insurance policies issued to association groups, a policy must cover at least 10,000 persons, including spouses and dependents, and must include members for unrelated industries, unless the association group insures 20,000 or more persons, including spouses and dependents.

**1005** 11 N.Y. COMP. CODES R. & REGS. § 360.10 (2007) In filing for approval of community health insurance rates, a commercial insurer should eliminate rating and discount factors related to marital status.

**Part 361.** (Regulation 146) Establishment and Operation of Market Stabilization Mechanisms for Individual and Small Group Health Insurance and Medicare Supplement Insurance

**1006** 11 N.Y. COMP. CODES R. & REGS. § 361.5 (2007) For purposes of regulations governing pooling of variations in costs based on specified medical conditions, the term “individual” includes a spouse. Where the insurance



carrier does not maintain records of the number of spouses, children, and other persons covered by family contracts, the carrier shall assume there are 2.3 persons covered in addition to the covered person.

**Part 362.** (Regulation 171) The Healthy New York Program and the Direct Payment Stop Loss Relief Program

**Subpart 362-4.** Rules Relating to Working Uninsured Individuals and Individual Proprietor Participation

**1007** 11 N.Y. COMP. CODES R. & REGS. § 362-4.2 (2007) Applicants for qualifying individual health insurance contracts may meet employment requirements by demonstrating that their spouse (residing in their household) is an employed person.

**1008** 11 N.Y. COMP. CODES R. & REGS. § 362-4.3 (2007) For purposes of determining household income in order to qualify for coverage under the Healthy New York Program, household members shall include the applicant and the applicant's legal spouse, with a spouse's income being included in total household income.

#### Chapter XV. Viatical Settlements

**Part 380.** (Regulation 148) Viatical Settlements

**1009** 11 N.Y. COMP. CODES R. & REGS. § 380.6 (2007) The pricing memorandum for a viatical settlement agreement shall include what, if any, provision for supplemental insurance has been made for spouse or dependent coverage. The application for a viatical settlement agreement shall disclose that the receipt of a payment pursuant to a viatical settlement may affect the eligibility of the recipient and/or his or her spouse and dependents for public assistance.

**1010** 11 N.Y. COMP. CODES R. & REGS. § 380.8 (2007) A viatical settlement company must disclose, among other things, whether supplemental benefits including children or spouse coverage will be continued.

#### Chapter XVIII. External Appeals of Adverse Determinations of Health Care Plans

**Part 410.** (Regulation 166) External Appeals of Adverse Determinations of Health Care Plans

**1011** 11 N.Y. COMP. CODES R. & REGS. § 410.2 (2007) For purposes of regulations governing external appeals of adverse determinations of health care plans, "material familial affiliations" means any relationship as a spouse, child, parent, sibling, spouse's parent, spouse's child, child's parent, child's spouse, or sibling's spouse. An external appeal agent shall not have a material familial affiliation with any owner, officer, director, or manager of such plan or any health care provider, physician's medical group, independent practice association, or provider of pharmaceutical products or services.

## TITLE 12. Department of Labor

### Chapter II. Division of Labor Standards

#### Subchapter B. Minimum Wage Orders

##### Part 138. Hotel Industry

**Subpart 138-5.** Standards for Lodging of Employees in the Hotel Industry for the Purpose of Permitting and Allowance for Lodging

**1012** 12 N.Y. COMP. CODES R. & REGS. § 138-5.3 (2007) Minimum requirements for on-site sleeping quarters hotel industry minimum wage workers require that married couples be permitted to room together.

#### Subchapter C. Industrial Homework

##### Part 160. Restrictions of Homework in All Industries

**1013** 12 N.Y. COMP. CODES R. & REGS. § 160.3 (2007) No employer shall be issued a permit to distribute industrial homework unless the employer maintains an industrial establishment which employs at least one person, other than the spouse or child of the employer.

#### Subchapter F. Minimum Wage Order for Farm Workers

##### Part 190. Minimum Wage Order for Farm Workers

###### Subpart 190-1. Coverage

**1014** 12 N.Y. COMP. CODES R. & REGS. § 190-1.3 (2007) For purposes of the minimum wage order for farm workers, an employee does not include the parent, spouse, child, or other member of the employer's immediate family. Excluded persons are not subject to regulations governing minimum wage.

### Chapter V. Workers' Compensation

#### Subchapter H. Disability Benefits

##### Article 1. Regulations under Disability Benefits Law

###### Part 355. Definitions

**1015** 12 N.Y. COMP. CODES R. & REGS. § 355.2 (2007) For purposes of Workers' Compensation, the definition of "employee" excludes the spouse or minor child of the employee.

#### Subchapter I. Actuarial Procedure

##### Part 390. Lump-Sum Payments

**1016** 12 N.Y. COMP. CODES R. & REGS. § 390.3 (2007) In applying actuarial guidelines for computing Workers' Compensation survivor payments for a widow who receives a lump-sum payment for all future payments due, an actuary must take into account the probability of the widow receiving two years' remarriage payments.

##### Part 391. Third-Party Recovery

**1017** 12 N.Y. COMP. CODES R. & REGS. § 391.1 (2007) Actuarial guidelines for computing Workers' Compensation



benefits paid to a surviving spouse and children presume that one-third of the total benefit will be paid to a surviving wife or dependent husband and two-thirds to the children. If there is no surviving spouse, the benefit is to be shared by the children.

**Part 393.** Aggregate Trust Funds

- 1018** 12 N.Y. COMP. CODES R. & REGS. § 393.3 (2007) If the widow of an employee covered by Workers' Compensation remarries, or his or her dependents die between the date of an award and six weeks after, a carrier shall not be required to pay a commuted benefit into a trust fund.

**Chapter VII.** Division of Unemployment Insurance

**Subchapter B.** Unemployment Insurance

**Article 1.** Regulations of the Industrial Commissioner

**Part 472.** Contributions to State Unemployment Insurance Fund

- 1019** 12 N.Y. COMP. CODES R. & REGS. § 472.5 (2007) An employer shall direct its employees to apply to the Social Security Board when an employee's name changes due to marriage.

**Chapter IX.** Manpower Services Division

**Subchapter A.** The Industrial Code Apprenticeship Training

**Part 600.** Equal Employment Opportunity in Apprenticeship Training

- 1020** 12 N.Y. COMP. CODES R. & REGS. § 600.1 (2007) The purpose of the Equal Employment Opportunity in Apprenticeship Training regulation is to promote equal opportunity by prohibiting discrimination based on marital status.
- 1021** 12 N.Y. COMP. CODES R. & REGS. § 600.4 (2007) Each sponsor of an apprenticeship program shall recruit, select, employ, and train apprentices without regard to, among other things, marital status.
- 1022** 12 N.Y. COMP. CODES R. & REGS. § 600.5 (2007) In the context of apprenticeship training, an affirmative action plan shall ensure appropriate action to ensure recruitment without regard to, among other things, marital status.
- 1023** 12 N.Y. COMP. CODES R. & REGS. § 600.12 (2007) An apprentice who believes he or she has been discriminated against based on, among other things, marital status may file a complaint according to procedures detailed in this part.
- 1024** 12 N.Y. COMP. CODES R. & REGS. § 600.17 (2007) A sponsor's affirmative action plan may not be used to discriminate on the basis of, among other things, marital status.

**Chapter XII.** Division of Employment and Training

**Part 920.** Dislocated Worker Demonstration Projects

- 1025** 12 N.Y. COMP. CODES R. & REGS. § 920.2 (2007) Dislocated workers eligible for unemployment compensation include full-time homemakers who for a substantial number of years derived a substantial share of their support from a spouse and no longer receive such support due to death, divorce, or separation from the spouse.

**TITLE 13. Department of Law**

**Chapter II.** Securities Transactions and Personnel

**Subchapter B.** Real Estate Syndicates

**Part 16.** Real Estate Syndication Offerings

- 1026** 13 N.Y. COMP. CODES R. & REGS. § 16.10 (2007) The sponsor of plans to convert residential premises to cooperative or condominium ownership shall submit an affidavit with a schedule of the names of tenants related to the sponsor or any of its principals by blood or marriage.

**Part 17.** Cooperative Apartment Offerings

- 1027** 13 N.Y. COMP. CODES R. & REGS. § 17.2 (2007) The contents of a cooperative apartment offering plan shall include the identity of any tenants related to the sponsor by blood, marriage, or adoption.

- 1028** 13 N.Y. COMP. CODES R. & REGS. § 17.6 (2007) The sponsors of offering plans to convert residential premises to cooperative or condominium ownership shall submit an affidavit with a schedule of the names of tenants related to the sponsor or any of its principals by blood or marriage.

**Part 18.** Occupied Cooperatives

- 1029** 13 N.Y. COMP. CODES R. & REGS. § 18.1 (2007) An offering plan for occupied cooperatives shall contain information regarding any tenant related to the sponsor by blood, marriage, or adoption.
- 1030** 13 N.Y. COMP. CODES R. & REGS. § 18.3 (2007) For purpose of regulations protecting senior citizens in cooperatives, an "eligible senior citizen" is a nonpurchasing tenant, sixty-two years of age or older on the date a plan is declared effective, and the spouse of any such tenant. Any housing plan submitted must state that it will not be declared effective based on subscription agreements with a subscriber who is the sponsor or selling agent, or related to the sponsor or his agent by blood, marriage or adoption. A "purchaser for investment or resale" is a purchaser who purchases shares allocated to three or more apartments which are not for occupancy by such purchaser or a person related by blood, marriage, or adoption to such purchaser.

**1031** 13 N.Y. COMP. CODES R. & REGS. § 18.5 (2007) Amendments to a cooperative offering plan shall include an affidavit from the sponsor, selling agent, or any person related to the sponsor by blood, marriage, or adoption, stating, among other things, the nature of the relationship. The affidavit shall also include a representation that no subscriber is related to the sponsor or selling agent by blood, adoption, or marriage.

#### Part 19. Condominium Offerings

**1032** 13 N.Y. COMP. CODES R. & REGS. § 19.2 (2007) A cooperative offering plan shall contain a certification listing the identity of any tenants who are related by blood, marriage, or adoption to the sponsor or selling agent.

#### Part 20. Newly Constructed, Vacant or Non-residential Condominiums

**1033** 13 N.Y. COMP. CODES R. & REGS. § 20.3 (2007) A condominium offering plan shall include a statement that the plan will not be declared effective based on purchase agreements with any purchaser who is related to the sponsor or selling agent by blood, marriage, or adoption. The plan must also state that board managers and sponsors will not discriminate based on marital status.

**1034** 13 N.Y. COMP. CODES R. & REGS. § 20.5 (2007) Amendments to a condominium offering plan must include information concerning any purchaser who is related to the sponsor or selling agent by blood, marriage, or adoption, as well as a representation that no purchaser counted for purposes of declaring the plan effective is related to the sponsor or selling agent by blood, marriage, or adoption.

#### Part 21. Newly Constructed and Vacant Cooperatives

**1035** 13 N.Y. COMP. CODES R. & REGS. § 21.3 (2007) The format and content of a newly constructed cooperative plan must represent that the sponsor will not discriminate based on marital status.

#### Part 22. Newly Constructed, Vacant Homeowners Associations or Non-residential Property Owners Associations

**1036** 13 N.Y. COMP. CODES R. & REGS. § 22.3 (2007) A homeowners or property owners association offering a plan must include a statement that the sponsor and its agents will not discriminate based on marital status.

#### Part 23. Occupied Condominiums

**1037** 13 N.Y. COMP. CODES R. & REGS. § 23.1 (2007) An occupied condominium offering plan shall disclose certain information concerning any tenant who is related by blood, marriage, or adoption to the sponsor, selling agent, or managing agent.

**1038** 13 N.Y. COMP. CODES R. & REGS. § 23.3 (2007) Regarding rights for senior citizens in occupied condominiums, an

eligible senior citizen is a nonpurchasing tenant who is sixty-two years old or older and the spouse of any such tenant. A housing plan must state that it will not be declared effective based on subscription agreements with a subscriber who is the sponsor or selling agent or related to the sponsor or his agent by blood, marriage, or adoption. The board of managers may not discriminate against any person on the basis of marital status.

Disclosure of material terms of a condominium lease is required, including disclosure by the selling managing agent of whether he or she is related to the owner by blood or through marriage, adoption, or business association.

**1039** 13 N.Y. COMP. CODES R. & REGS. § 23.5 (2007) Amendments to an occupied condominium offering plan shall disclose certain information concerning any purchaser who is related by blood, marriage, or adoption to the sponsor, selling agent, or managing agent. The amendment must also contain a representation that no person counted as a purchaser is related to the sponsor, selling agent, or managing agent by blood, marriage, or adoption, and that persons counted for purposes of declaring the plan effective do not include such persons.

#### Part 25. Newly Constructed or Vacant Senior Residential Communities

**1040** 13 N.Y. COMP. CODES R. & REGS. § 25.3 (2007) In Senior Citizen Residential Communities, residents' rights include the right to disclosure of policies such as whether a spouse or relative may co-occupy a unit with the resident.

**1041** 13 N.Y. COMP. CODES R. & REGS. § 25.5 (2007) Amendments to a senior residential community offering plan shall disclose certain information concerning any purchaser who is related by blood, marriage, or adoption to the sponsor, selling agent, or managing agent. The amendment must also contain a representation that no person counted as a purchaser for purposes of declaring the plan effective is related to the sponsor, selling agent, or managing agent by blood, marriage, or adoption.

### Chapter III. Theatrical Syndication Financing

#### Part 51. Theatrical Accounting

**1042** 13 N.Y. COMP. CODES R. & REGS. § 51.5 (2007) For purposes of regulations governing theatrical accounting, the asset section of any financial report shall include amounts due from any of the principals or producers and/or their spouses, relatives, or related entities.

### Chapter IV. Intrastate Financing

#### Part 80. Intrastate Financing

**1043** 13 N.Y. COMP. CODES R. & REGS. § 80.7 (2007) For purposes of regulations governing intrastate financing, an issuer promoting an offering to a promoter group or the

spouses or children of the promoters may apply for an exemption from prospectus requirements.

## TITLE 14. Department of Mental Hygiene

### Chapter II. All Facilities

#### Subchapter A. Admission and Transfer of Patients

##### Part 17. Transfer of Patients

**1044** 14 N.Y. COMP. CODES R. & REGS. § 17.3 (2007) With the participation of the patient, facilities shall determine who may accompany a woman patient who is being transported to or from a facility. In permitting a woman or the patient's father, husband, brother, or son to accompany her, the team must ascertain that there are no contraindications to granting such permission.

**1045** 14 N.Y. COMP. CODES R. & REGS. § 17.7 (2007) In consultation with a female patient, the treatment team shall determine who may accompany a woman patient who is being transported to or from a facility. In permitting a woman or the patient's father, husband, brother, or son to accompany her, the team must ascertain that there are no contraindications to granting such permission.

#### Subchapter B. Institutional Care and Treatment

##### Part 27. Quality of Care and Treatment

**1046** 14 N.Y. COMP. CODES R. & REGS. § 27.6 (2007) A patient who is sixteen years of age or older, or who is the parent of a child, or who has married, has the right to receive, upon his or her request, drugs or devices designated to regulate conception.

**1047** 14 N.Y. COMP. CODES R. & REGS. § 27.9 (2007) If an adult patient does not have sufficient mental capacity to give consent for a surgery, treatment, or other procedure while in institutional care, consent must be obtained from a spouse, parent, adult child, or a court of competent jurisdiction.

### Chapter X. Alcoholism

#### Part 305. Preventative Counseling Services for Children of Alcoholics or Alcohol Abusers

**1048** 14 N.Y. COMP. CODES R. & REGS. § 305.3 (2007) For purposes of regulations governing and the availability of preventive counseling services for children of alcoholics, a child is a person under eighteen years of age who is not married and is not a parent.

#### Part 309. Responsibilities of Facilities for Alcoholism in Regards to AIDS, HIV Illness and HIV-Related Information

**1049** 14 N.Y. COMP. CODES R. & REGS. § 309.2 (2007) For purposes of regulations governing facilities for

alcoholism in regard to HIV and AIDS, "contact" is defined as the spouse or sex partner of the protected individual. A physician may disclose the protected person's HIV status to a contact without the protected person's consent where there is a reasonable belief that a significant risk of infection exists, the physician believes the protected person will not inform the contact. The identity of the protected person is not to be disclosed, and the physician's association with an alcohol treatment facility is not to be disclosed.

#### Part 321. Financial Assistance for Capital Acquisition and Construction

**1050** 14 N.Y. COMP. CODES R. & REGS. § 321.11 (2007) No person shall be discriminated against by the Facilities Development Corporation based on marital status.

#### Part 342. The Project for Employee Assistance Program Consortia

**1051** 14 N.Y. COMP. CODES R. & REGS. § 342.1 (2007) Employee Assistance Programs are designed to address marital problems that affect job performance.

**1052** 14 N.Y. COMP. CODES R. & REGS. § 342.3 (2007) An Employee Assistance Program is a program serving employee units for the purpose of the identification and referral of employees for whom problems, including marital problems, render them unable to perform their job functions properly.

#### Part 374. Operation of Alcoholism Facilities

**1053** 14 N.Y. COMP. CODES R. & REGS. § 374.17 (2007) In treatment facilities, male and female patients, except married couples, shall not share any bedroom in an alcoholism treatment facility.

#### Part 380. Outpatient Programs and Services

**1054** 14 N.Y. COMP. CODES R. & REGS. § 380.2 (2007) An individual treatment plan for a person admitted to an alcoholism outpatient clinic program shall include long-term and short-term goals in areas including marital/family issues.

**1055** 14 N.Y. COMP. CODES R. & REGS. § 380.8 (2007) An individual treatment plan for a person admitted to an alcoholism outpatient rehabilitation services module shall include long-term and short-term goals in areas including marital/family issues.

### Appendix 1. New York Codes, Rules and Regulations

**1056** 14 N.Y. COMP. CODES R. & REGS. APPX. 1 (2007) Forms used in a proceeding for civil commitment of a patient due to dangerous mental health conditions shall be served upon either the wife, husband, father, mother, or other nearest relative, if there be any in the state.

### Chapter XIII. Office of Mental Health

#### Part 505. Requirements Regarding Testing, Confidentiality and Precautions Concerning the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)

**1057** 14 N.Y. COMP. CODES R. & REGS. § 505.4 (2007) For purposes of contact tracing for HIV/AIDS, “contact” is defined as including an identified spouse or sex partner of the protected individual.

#### Part 512. Personalized Recovery Oriented Services

**1058** 14 N.Y. COMP. CODES R. & REGS. § 512.5 (2007) Resumption of roles as a spouse or significant other is included among the goals of intensive rehabilitation goal acquisition services in mental health programs authorized by the state medical assistance program.

**1059** 14 N.Y. COMP. CODES R. & REGS. § 512.8 (2007) Contractors are required to promulgate written personnel policies prohibiting discrimination on the basis of, among other things, marital status.

#### Part 517. Transfer for Regerral of Patient for Admission to a Psychiatric Hospital

**1060** 14 N.Y. COMP. CODES R. & REGS. § 517.9 (2007) A female patient who is transported must be accompanied by another female or the patient’s father, brother, husband, or son.

#### Part 521. Financial Assistance for Capital Acquisition and Construction

**1061** 14 N.Y. COMP. CODES R. & REGS. § 521.1 (2007) Office of Mental Health grantee facilities must provide services without discrimination on the basis of, among other things, marital status, and discrimination against professionals qualified for employment in such facilities is prohibited on the same grounds.

**1062** 14 N.Y. COMP. CODES R. & REGS. § 521.12 (2007) Persons with certain financial interests may not receive funds granted by the state, including firms, partnerships, corporations, or organizations in which the spouses, children, or parents of such persons have a financial interest.

#### Part 527. Rights of Patients

**1063** 14 N.Y. COMP. CODES R. & REGS. § 527.6 (2007) A competent adult has the right to appoint a health care agent to make health care decisions if he or she loses decision-making capacity. For purposes of the statute governing health care agents and proxies, “adult” is defined as “any person who is eighteen years of age or older, or is the parent of a child, or has married.”

**1064** 14 N.Y. COMP. CODES R. & REGS. § 527.7 (2007) Facilities participating in Medicare or medical assistance programs must furnish adults with information regarding their rights to make health care decisions. For

purposes of the statute governing advance directives, “adult” is defined as “any person who is eighteen years of age or older, or is the parent of a child, or has married.”

**1065** 14 N.Y. COMP. CODES R. & REGS. § 527.8 (2007) A facility may withhold all or part of the explanation of any proposed medical procedure or course of treatment from any patient under the age of eighteen years of age who is not married or the parent of a child.

#### Part 575. Community Support Services for the Mentally Ill

**1066** 14 N.Y. COMP. CODES R. & REGS. § 575.6 (2007) Community support services shall be made available to all eligible individuals without discrimination because of marital status.

#### Part 578. Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

**1067** 14 N.Y. COMP. CODES R. & REGS. § 578.23 (2007) For purposes of calculating reimbursable costs to facilities providing residential treatment for children and youth, “related organizations” include facilities owned or run by spouses of service providers.

#### Part 580. Operation of Psychiatric Inpatient Units of General Hospitals

**1068** 14 N.Y. COMP. CODES R. & REGS. § 580.5 (2007) Inpatient psychiatric facilities at general hospitals must develop personnel policies prohibiting discrimination on the basis of marital status.

#### Part 582. Operation of Hospitals for the Mentally Ill

**1069** 14 N.Y. COMP. CODES R. & REGS. § 582.5 (2007) Hospitals for the mentally ill must develop personnel policies prohibiting discrimination on the basis of marital status.

#### Part 584. Operation of Residential Treatment Facilities for Children and Youth

**1070** 14 N.Y. COMP. CODES R. & REGS. § 584.6 (2007) Residential treatment facilities for children and youth must develop personnel policies prohibiting discrimination on the basis of marital status.

#### Part 587. Operation of Outpatient Programs

**1071** 14 N.Y. COMP. CODES R. & REGS. § 587.6 (2007) Outpatient programs for children and youth must develop non-discrimination policies prohibiting discrimination on the basis of marital status.

#### Part 589. Operation of Crisis Residence

**1072** 14 N.Y. COMP. CODES R. & REGS. § 589.6 (2007) Crisis Residence Programs must develop non-discrimination policies prohibiting discrimination on the basis of marital status.

**1073** 14 N.Y. COMP. CODES R. & REGS. § 589-1.2 (2007) Admission and discharge policies in situational crisis residences shall prohibit discrimination on the basis of marital status.



**1074** 14 N.Y. COMP. CODES R. & REGS. § 589-2.2 (2007) Admission and discharge policies in acute psychiatric crisis residences shall prohibit discrimination on the basis of marital status.

**Part 590. Operation of Comprehensive Psychiatric Emergency Programs**

**1075** 14 N.Y. COMP. CODES R. & REGS. § 590.6 (2007) Comprehensive psychiatric emergency programs shall develop personnel policies prohibiting discrimination on the basis of marital status.

**Part 594. Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional Disturbances**

**1076** 14 N.Y. COMP. CODES R. & REGS. § 594.6 (2007) Licensed housing programs for emotionally disturbed children and adolescents shall develop personnel policies prohibiting discrimination on the basis of marital status.

**Part 595. Operation of Residential Programs for Adults**

**1077** 14 N.Y. COMP. CODES R. & REGS. § 595.6 (2007) Residential programs for adults shall develop personnel policies prohibiting discrimination on the basis of marital status.

**Part 596. Suburban/Rural Comprehensive Psychiatric Emergency Programs**

**1078** 14 N.Y. COMP. CODES R. & REGS. § 596.6 (2007) Comprehensive suburban/rural psychiatric emergency programs shall develop personnel policies prohibiting discrimination on the basis of marital status.

**Chapter XIV. Office of Mental Retardation and Developmental Disabilities**

**Part 624. Reportable Incidents, Serious Reportable Incidents, and Abuse in Facilities Operated or Certified by Office of Mental Retardation and Developmental Disabilities**

**1079** 14 N.Y. COMP. CODES R. & REGS. § 624.4 (2007) Sexual contact, except for contact between married persons, constitutes a reportable event of abuse occurring within facilities operated by the Office of Mental Retardation and Developmental Disabilities (“OMRDD”).

**1080** 14 N.Y. COMP. CODES R. & REGS. § 624.5 (2007) A spouse or immediate family member of the subject of an OMRDD abuse report may not participate in the investigation of such a report.

**1081** 14 N.Y. COMP. CODES R. & REGS. § 624.7 (2007) A spouse or immediate family member of the subject of an OMRDD abuse report may not participate in the standing committee reviewing the investigation of such a report.

**Part 633. Protection of Individuals Receiving Services in Facilities Operated and/or Certified by OMRDD**

**1082** 14 N.Y. COMP. CODES R. & REGS. § 633.11 (2007) An actively involved spouse may give consent to medical treatment for mental health matters by the OMRDD.

**1083** 14 N.Y. COMP. CODES R. & REGS. § 633.13 (2007) For research which involves more than minimal risk, informed consent may be obtained from an OMRDD resident’s court-appointed guardian who is legally empowered to give consent to research, or from the resident’s actively involved spouse.

**1084** 14 N.Y. COMP. CODES R. & REGS. § 633.18 (2007) An OMRDD resident’s spouse has the senior right to make decisions regarding resuscitation, including “do not resuscitate” orders.

**1085** 14 N.Y. COMP. CODES R. & REGS. § 633.20 (2007) An OMRDD resident may not appoint as a healthcare agent anyone who is an officer of the institution, or an employee or physician of the facility or related facilities, unless that person is related to the resident by blood or adoption or is the resident’s spouse. No one who is appointed health care agent for ten or more people may be appointed health care agent for another principal unless the agent is a spouse or other family member of the principal or the issue of, or married to the spouse, child, parent, brother, sister, or grandparent of the principal.

**1086** 14 N.Y. COMP. CODES R. & REGS. § 633.99 (2007) For purposes of OMRDD regulations, an “adult” is anyone who is eighteen years of age or older, is the parent of a child, or has married; a “family member” is any party related to the OMRDD resident by blood, marriage, or legal adoption; a “qualified party” is a person, including a spouse, who is authorized to request medical information because he or she has consented to care on behalf of a minor or incapacitated person.

**Part 635. General Quality Control and Administrative Requirements Applicable to Programs, Services or Facilities Funded or Certified by OMRDD**

**1087** 14 N.Y. COMP. CODES R. & REGS. § 635-11.3 (2007) An actively involved spouse, parent, adult child, sibling, or an adult family member or friend may enroll a patient of OMRDD in a Medicare prescription drug plan.

**1088** 14 N.Y. COMP. CODES R. & REGS. § 635-99.1 For purposes of administrative requirements applicable to programs, services, and facilities of OMRDD, “immediate family” is defined to include a brother, sister, grandparent, grandchild, first cousin, aunt, uncle, spouse, parent, or child of an individual, whether such relationship arises by reason of birth, marriage, or adoption.

**Part 676. Diagnostic and Research Clinics**

**1089** 14 N.Y. COMP. CODES R. & REGS. § 676.11 (2007) For purposes of fee setting and financial reporting in diagnostic and research clinic facilities, a group visit is defined as assessment, treatment, or counseling of a group of persons none or not all of whom are related by blood or marriage.

**Part 679. Clinic Treatment Facilities**

**1090** 14 N.Y. COMP. CODES R. & REGS. § 679.5 (2007) For purposes of establishing units of service in clinic treatment facilities, a “group visit” is defined as assessment, treatment, or counseling of a group of persons none or not all of whom are related by blood or marriage.

**Part 681. Intermediate Care Facilities for Persons who are Developmentally Disabled**

**1091** 14 N.Y. COMP. CODES R. & REGS. § 681.13 (2007) In obtaining informed consent for service plans that constitute an untoward risk to a developmentally disabled individual’s protection and rights, if the individual is a minor, consent shall be sought in order from the person’s court appointed guardian, a married individual with the ability to give consent, an individual’s actively involved adult spouse, a parent, or adult family members. When a married person has been determined to lack the ability to consent, but the first available party disagrees and the facility believes treatment to be in the best interest of the patient, then implementation will only occur upon application to a court and notice will be given to the disagreeing party.

**1092** 14 N.Y. COMP. CODES R. & REGS. § 681.99 (2007) For purposes of regulations governing intermediate care facilities for persons who are developmentally disabled, a minor is defined as anyone under eighteen years old, unless married, in which case such married person can give consent to service plans that constitute an untoward risk to a patient’s protection and rights.

**Part 686. Operation of Community Residences**

**1093** 14 N.Y. COMP. CODES R. & REGS. § 686.99 (2007) “Status, nonclient” is a designation given to those persons, such as a client’s spouse, children, or other family members of developmentally disabled individuals who are residing at a certified supportive community residence but who have not been admitted to the supportive community residence.

**Chapter XX. Commission on Quality of Care for the Mentally Disabled****Part 710. Procedures of the Surrogate Decisionmaking Committees of the New York State Commission on Quality of Care for the Mentally Disabled**

**1094** 14 N.Y. COMP. CODES R. & REGS. § 710.1 (2007) Surrogate decisionmaking committees are charged with establishing a procedure to authorize the provision of nonemergency major medical treatment for mentally disabled persons living in residential Department of Mental Hygiene programs who do not have a spouse, adult child, or other authorized surrogate willing and available to do so.

**1095** 14 N.Y. COMP. CODES R. & REGS. § 710.2 (2007) Surrogate decisionmaking committee panels shall include members from a group consisting of former patients or parents, spouses, adult children, siblings, or advocates of mentally disabled persons.

**1096** 14 N.Y. COMP. CODES R. & REGS. § 710.3 (2007) A declarant may file a declaration on behalf of any patient residing within the geographic area served by the committee who is believed to be in need of major medical treatment, to lack the capacity to consent to or refuse major medical treatment, and to have no available and willing parent, spouse, adult child, legal guardian, committee of the person, or conservator who is legally authorized to provide consent.

**1097** 14 N.Y. COMP. CODES R. & REGS. § 710.4 (2007) A mentally disabled person’s spouse is entitled to notice and the opportunity to be heard in connection with decisionmaking by surrogate decisionmaking committees.

**1098** 14 N.Y. COMP. CODES R. & REGS. § 710.5 (2007) The patient, a declarant, a parent, or the patient’s spouse may apply to the Supreme Court for review of whether a determination by a surrogate decisionmaking panel is supported by substantial evidence.

**Chapter XXI. Office of Alcoholism and Substance Abuse Services****Part 820. Residential Chemical Dependency Programs for Youth**

**1099** 14 N.Y. COMP. CODES R. & REGS. § 820.2 (2007) For purposes of residential chemical dependency programs for youth, “minor” is defined as a youth who is not the parent of a child and is not married. A minor presented for admission may only be admitted with the written informed consent of the minor’s parent or guardian, unless certain procedures are satisfied.

**1100** 14 N.Y. COMP. CODES R. & REGS. § 820.11 (2007) Residential chemical dependency programs for youth are required to keep records that include residents’ marital status.

**Part 823. Outpatient Chemical Dependency Services for Youth Programs and Services**

**1101** 14 N.Y. COMP. CODES R. & REGS. § 823.4 (2007) For purposes of outpatient chemical dependency programs for youth, “minor” is defined as a person who is under eighteen years of age but does not include a person who is the parent of a child or has married or is emancipated. The consent and involvement of the minor’s parent or guardian is required unless the physician believes parental involvement would have a detrimental effect on the treatment.

- 1102** 14 N.Y. COMP. CODES R. & REGS. § 823.7 (2007) In provision of outpatient chemical dependency programs for youth, discrimination based on, among other things, marital status is prohibited.
- 1103** 14 N.Y. COMP. CODES R. & REGS. § 823.11 (2007) The written treatment plan required for outpatient alcohol and substance abuse treatment for youth includes goals in the area of marital and family relations.
- 1104** 14 N.Y. COMP. CODES R. & REGS. § 823.14 (2007) Outpatient chemical dependency programs for youth are required to keep records which include the patient's marital status.

**Part 840. Rates of Reimbursement—Alcoholism Facilities**

- 1105** 14 N.Y. COMP. CODES R. & REGS. § 840.10 (2007) For purposes of establishing Medicaid reimbursement rates for costs incurred by party-facilities whose management or ownership have certain relationships, “related parties” is defined to include a husband and wife.

**Part 841. Medical Assistance for Chemical Dependence Services**

- 1106** 14 N.Y. COMP. CODES R. & REGS. § 841.15 (2007) For purposes of establishing Medicaid reimbursement rates for costs incurred by party-facilities whose management or ownership have certain relationships, “related parties” is defined to include husband and wife.

**Part 853. Credentialing of Alcoholism and Substance Abuse Counselors**

- 1107** 14 N.Y. COMP. CODES R. & REGS. § 853.4 (2007) For purposes of regulations governing treatment by the Office of Mental Health for alcohol and substance abuse, “significant other” is defined as a spouse, relative, close friend, or associate of a person suffering from chemical abuse or dependence who has suffered adverse effects on his or her physical or mental health resulting from such relationship.

**Chapter XXV. Division of Substance Abuse Services**

**Part 1030. Requirements for the Operation of Drug-Free Substance Abuse Programs**

- 1108** 14 N.Y. COMP. CODES R. & REGS. § 1030.1 (2007) Residential drug-free substance abuse programs are required to maintain patient records which include the patient's marital status.
- 1109** 14 N.Y. COMP. CODES R. & REGS. § 1030.2 (2007) Ambulatory drug-free substance abuse programs are required to maintain patient records which include the patient's marital status.

**Part 1035. Requirements for the Operation of Medically Supervised Ambulatory Substance Abuse Programs**

- 1110** 14 N.Y. COMP. CODES R. & REGS. § 1035.1 (2007) For purposes of reimbursement of ambulatory substance abuse programs, a “group visit” is defined as a period of treatment or counseling of a group of clients not all of whom are related by blood or marriage.

**Part 1072. HIV Testing and HIV-related Information**

- 1111** 14 N.Y. COMP. CODES R. & REGS. § 1072.1 (2007) Under regulations governing information relating to HIV/AIDS within the division of substance abuse services, a “contact” for contact tracing purposes is defined to include a spouse.

## TITLE 15. Department of Motor Vehicles

**Chapter I. Regulations of the Commissioner**

**Subchapter C. Insurance**

**Part 32. Insurance Identification Cards**

- 1112** 15 N.Y. COMP. CODES R. & REGS. § 32.5 (2007) An ID card shall be rejected on all registration and insurance transactions, as required by this Part, if, *inter alia*, a vehicle registration remains in the name of a deceased motorist, is transferred to a surviving spouse, or is registered in the name of the executor, executrix, or administrator, possibly in care of the estate.

## TITLE 16. Department of Public Service

- 1113** 16 N.Y. COMP. CODES R. & REGS. APPX. 15A (2007) Guidelines for deposit requests from applicants for electric service include, among positive answers, the employment of the applicant's spouse, as well as the applicant's employment for less than two years if the applicant was recently widowed, separated, or divorced.
- 1114** 16 N.Y. COMP. CODES R. & REGS. APPX. 15B (2007) Guidelines for deposit requests from applicants for gas service include, among positive answers, the employment of the applicant's spouse, as well as the applicant's employment for less than two years if the applicant was recently widowed, separated, or divorced.
- 1115** 16 N.Y. COMP. CODES R. & REGS. APPX. 15C (2007) Guidelines for deposit requests from applicants for telephone service include, among positive answers, the employment of the applicant's spouse, as well as the applicant's employment for less than two years if the applicant was recently widowed, separated, or divorced.

## Title 17. Department of Transportation

### Chapter IV. Highways

#### Subchapter A. Property Acquisition

**Part 101.** Payments to an Owner or Tenant of Residential Property or Commercial Property Upon Their Application for Allowance of Moving Expenses in Vacating Property Acquired by the Commissioner of Transportation, for Supplemental Relocation Payments, for Loss of Favorable Mortgage Financing and for Closing Costs

- 1116** 17 N.Y. COMP. CODES R. & REGS. § 101.3 (2007) If determination of the ineligibility of a displaced person would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, the Department of Transportation ("D.O.T.") shall provide relocation payments and other assistance to the displaced person
- 1117** 17 N.Y. COMP. CODES R. & REGS. § 101.4 (2007) Rates for D.O.T. reimbursement of property seized by the Highway Commission should take into account business or farm operation net earnings lost by its owner, the owner's spouse, and the owner's dependents.

## TITLE 18. Department of Social Services

### Chapter II. Regulations of the Department of Social Services

#### Subchapter A. General Welfare

##### Article 1. Program and Organization

#### Part 300. Local Welfare Administration

- 1118** 18 N.Y. COMP. CODES R. & REGS. § 300.10 LOCAL DEPARTMENT OF SOCIAL SERVICES ("D.S.S.") (2007) Commissioners may obtain legal assistance to obtain support from spouses and parents, recovering costs of public assistance and care granted, and establishing paternity.

##### Article 5. Miscellaneous

**Part 344.** Income Withholding for Persons not Served by the Title IV-D Child Support Enforcement Program

- 1119** 18 N.Y. COMP. CODES R. & REGS. § 344.2 (2007) D.S.S. personnel are required to transmit payments for child and spousal support to recipients of services.

**Part 345.** Tax Refund Offset for Persons not Served by the State Child Support Enforcement Program

- 1120** 18 N.Y. COMP. CODES R. & REGS. § 345.2 (2007) For purposes of State Child Support Enforcement Program: "Applicant" means an individual to whom past-due spousal support or spousal and child support is owed, and who applies for services; "Certification" means the annual request by the Department to the New York

State Department of Taxation and Finance for the offset of tax refunds otherwise due to delinquent payors of child and/or spousal support; "Money judgment" means a certified copy of a court order for a sum certain for arrears accrued under an order of support directing the entry of a money judgment; "Order of support" means any temporary or final order, judgment, or decree in a matrimonial action or family court proceeding, or any foreign support order, judgment, or decree which directs the payment of alimony, maintenance, spousal support, or child support; and "Respondent" means an individual, estate, or trust who is alleged to owe past-due court ordered child and/or spousal support.

#### Part 346. Support Collection

- 1121** 18 N.Y. COMP. CODES R. & REGS. § 346.1 (2007) Local social service districts are required to establish local child and spousal support collection units.
- 1122** 18 N.Y. COMP. CODES R. & REGS. § 346.2 (2007) Applications for child/spousal support enforcement services may be initiated through procedures set forth in this part.
- 1123** 18 N.Y. COMP. CODES R. & REGS. § 346.11 (2007) Mechanisms for child/spousal support enforcement include, among other things, levies upon an obligor's assets.
- 1124** 18 N.Y. COMP. CODES R. & REGS. § 346.12 (2007) Child/spousal support obligations may be enforced through the suspension of the defaulting party's driving privileges.

#### Part 347. Establishment of Paternity and Enforcement of Child Support

- 1125** 18 N.Y. COMP. CODES R. & REGS. § 347.2 (2007) For purposes of the establishment of paternity and enforcement of child support, a legally responsible relative is any person who is legally obligated to furnish support for a spouse and/or child.
- 1126** 18 N.Y. COMP. CODES R. & REGS. § 347.9 (2007) Deductions from an obligated spouse's income to satisfy his or her spousal support obligations are subject to certain limits set forth here.
- 1127** 18 N.Y. COMP. CODES R. & REGS. § 347.10 (2007) In the child support enforcement context, if a parent in default filed or will file a federal tax return as a married person filing jointly, the gross income of such person is his or her gross income individually, and deductions may be taken to satisfy alimony or maintenance obligations to spouses.
- 1128** 18 N.Y. COMP. CODES R. & REGS. § 347.13 (2007) The distribution to the family with which a child resides of the intercepted federal income tax refund of a parent who has defaulted on his or her child support obligation may be delayed until the state has been notified that the defaulting parent's unobligated spouse's proper share of the refund in question has been paid or for a period not to exceed six months, whichever occurs earlier.



## Subchapter B. Public Assistance

### Article 1. Determination of Eligibility — General

#### Part 349. General Provisions

**1129** 18 N.Y. COMP. CODES R. & REGS. § 349.3 (2007) A battered spouse and his or her dependents are qualified aliens for public assistance eligibility purposes.

**1130** 18 N.Y. COMP. CODES R. & REGS. § 349.6 (2007) Applicants for public assistance who become eligible for health insurance benefits through the employment of himself or herself or of a spouse shall be required to utilize those benefits.

#### Part 350. Application

**1131** 18 N.Y. COMP. CODES R. & REGS. § 350.4 (2007) Both a husband and wife must sign application forms for public benefits, and in situations where the man in the family is not married to the mother, both the mother and the man, if he is to be included in the grant, shall sign the application form.

#### Part 351. Investigation and Eligibility

**1132** 18 N.Y. COMP. CODES R. & REGS. § 351.2 (2007) Applicants for public assistance must disclose marital status in an application form. Applicants for public assistance who are not married, have no high school diploma, and who have a child over twelve weeks old must participate in education or approved work-study programs. For purposes of determining public benefits eligibility, “household member” is defined as including persons related by blood or marriage; persons legally married to one another; persons formerly married to one another, regardless of whether they still reside in the same household; and persons who have a child in common, regardless of whether such persons are married or have lived together at any time.

#### Part 352. Standards of Assistance

**1133** 18 N.Y. COMP. CODES R. & REGS. § 352.4 (2007) Surviving spouses are exempted from provisions permitting Department of Social Service agents to seize property of beneficiaries of assistance pursuant to liens executed during their lifetime.

**1134** 18 N.Y. COMP. CODES R. & REGS. § 352.5 (2007) For purposes of determining an applicant’s eligibility for energy and heat assistance, a “tenant of record” is defined to include spouses and former spouses of deceased tenants.

**1135** 18 N.Y. COMP. CODES R. & REGS. § 352.12 (2007) Old Age Survivors & Disability Insurance benefits shall be deemed an available resource that must be utilized as a condition of eligibility for public assistance, including benefits available for retired workers and the wives of retired workers at age sixty-two and for widows at age sixty.

**1136** 18 N.Y. COMP. CODES R. & REGS. § 352.14 (2007) The ability of the spouse of a public assistance applicant to support the applicant must be determined. If the spouse or parent of an applicant resides in a public assistance household, then the income of the spouse or parent must be considered in determining the applicant’s eligibility. If an applicant is pregnant with or the mother of an out-of-wedlock minor child, paternity must be established. If there are no minor children, but the applicant’s spouse resides outside the household, the applicant must petition a court for spousal support.

**1137** 18 N.Y. COMP. CODES R. & REGS. § 352.15 (2007) A portion of support payments collected by the state Child/Spousal Support Collection Unit toward the support obligation for a household receiving public assistance must be passed through as a special payment to the household.

**1138** 18 N.Y. COMP. CODES R. & REGS. § 352.21 (2007) The term “qualified first-time home buyer” means a taxpayer and, if married, the taxpayer’s spouse, who have had no present ownership interest in a principal residence during the three-year period ending on the date of acquisition of a principal residence. An account holder and his or her legal spouse are prohibited from establishing any other individual development account other than for the purposes authorized by law, such as postsecondary education expenses or a first home purchase.

**1139** 18 N.Y. COMP. CODES R. & REGS. § 352.27 (2007) After the death of a recipient of public assistance, no claim for assistance granted to him shall be enforced against any real property while it is occupied by the surviving spouse.

**1140** 18 N.Y. COMP. CODES R. & REGS. § 352.30 (2007) The income of spouses of applicants for public assistance, and spouses of other dependent household members, must be taken into account in determining an applicant’s household income, whether or not the applicant’s spouse also applies for public assistance.

**1141** 18 N.Y. COMP. CODES R. & REGS. § 352.31 (2007) Child and spousal public assistance support is determined based on an estimate of all items of need as prescribed by this provision.

**1142** 18 N.Y. COMP. CODES R. & REGS. § 352.33 (2007) Income and resources of a sponsor of alien applicants, and those of the sponsor’s spouse, shall be considered in determining an alien’s eligibility for assistance.

#### Part 355. Information Pamphlets; Notification of Decisions

**1143** 18 N.Y. COMP. CODES R. & REGS. § 355.1 (2007) Local social service districts must notify applicants for public assistance or care of the prohibition against discrimination based on marital status.

**Part 358. Fair Hearings: Family Assistance, Safety Net Assistance, Medical Assistance, Emergency Assistance to Aged, Blind or Disabled Persons, Emergency Assistance to Needy Families with Children, Food Stamps, Food Assistance, Home Energy Assistance, and Services Funded through the Department of Family Assistance**

- 1144** 18 N.Y. COMP. CODES R. & REGS. § 358-3.1 (2007) An institutionalized spouse or community spouse has the right to a fair hearing to challenge the amount of the community spouse monthly income allowance.
- 1145** 18 N.Y. COMP. CODES R. & REGS. § 358-3.2 (2007) Unmarried applicants for assistance who are under the age of eighteen and have a dependent child or are pregnant may request priority status for the scheduling of a hearing and determination as to eligibility for public assistance, and may appeal a denial of their application.

**Article 2. Determination of Eligibility – Categorical**

**Part 360. Medical Assistance**

- 1146** 18 N.Y. COMP. CODES R. & REGS. § 360-1.4 (2007) For purposes of applications for Medical Assistance/Medicaid, an applicant's spouse is among the persons legally responsible for the applicant's welfare, care, and support.
- 1147** 18 N.Y. COMP. CODES R. & REGS. § 360-2.2 (2007) Spouses who live together must jointly sign applications for Medicaid.
- 1148** 18 N.Y. COMP. CODES R. & REGS. § 360-3.2 (2007) For Medicaid purposes, any person who is married and who is capable of stating his or her intent is a state resident, and any institutionalized person who is neither married nor emancipated is a state resident.
- 1149** 18 N.Y. COMP. CODES R. & REGS. § 360-3.3 (2007) The spouse of a cash assistance recipient who is living with a recipient and who is essential to the recipient's welfare is eligible for Medical Assistance.
- 1150** 18 N.Y. COMP. CODES R. & REGS. § 360-4.2 (2007) For adults who are aged, certified blind, or disabled, a Medical Assistance household is the aged, blind, or disabled person and a spouse who lives with him or her.
- 1151** 18 N.Y. COMP. CODES R. & REGS. § 360-4.3 (2007) In determining the income of a person on medical assistance, the ability of a community spouse to contribute income to the institutionalized spouse's cost of care will be considered along with the institutionalized spouse's resources.
- 1152** 18 N.Y. COMP. CODES R. & REGS. § 360-4.4 (2007) Any person applying for institutional care will be ineligible for a period of time if within thirty months prior to applying he or she transferred resources for less than fair market value, unless he or she transferred a homestead or community property to a spouse.
- 1153** 18 N.Y. COMP. CODES R. & REGS. § 360-4.5 (2007) The income from certain trusts created by an applicant's spouse must be taken into account in determining eligibility for Medicaid.
- 1154** 18 N.Y. COMP. CODES R. & REGS. § 360-4.6 (2007) Certain types and amounts of income and resources are not counted in determining an applicant's eligibility for medical assistance. Among those not counted are: the first \$50 of any child or spousal support payments received in a month. For people sixty-five years of age or older, the blind or disabled, and spouses of such people, a burial fund of up to \$1,500 will be disregarded if the funds are separate and monitored as a burial fund.
- 1155** 18 N.Y. COMP. CODES R. & REGS. § 360-4.7 (2007) "Homesteads" are exempt from the determination of medical needs for certain Medicaid applicants so long as the applicant or a spouse or dependent child of the applicant is still living there.
- 1156** 18 N.Y. COMP. CODES R. & REGS. § 360-4.9 (2007) For an institutionalized person without a spouse, a personal needs allowance will be allotted before any income is required to be applied to the person's cost of chronic care. Income equal to the amount of a reduced pension for a veteran's surviving spouse who receives such a pension will count toward the personal needs allowance.
- 1157** 18 N.Y. COMP. CODES R. & REGS. § 360-4.10 (2007) For purposes of calculating financial eligibility of institutionalized persons for state-funded medical assistance, a detailed set of rules governs how the state shall take the financial resources of the person's family into account. In connection with this calculation, a "community spouse" is defined as the spouse of an institutionalized person who is residing in the community. A community spouse's monthly income allowance is defined as the amount of his or her minimum monthly maintenance needs. "Family member" is defined as a minor child, dependent child, dependent parent, or dependent sibling of an institutionalized spouse or of a community spouse who resides with the community spouse.
- 1158** 18 N.Y. COMP. CODES R. & REGS. § 360-7.3 (2007) Health insurance available to medical assistance applicants through an absent parent or spouse must be utilized for payment for services.
- 1159** 18 N.Y. COMP. CODES R. & REGS. § 360-7.5 (2007) Payment or part-payment of the premium for personal health insurance covering care and other medical benefits authorized under the Medical Assistance program may be made to an insurance carrier or to another appropriate third party on behalf of medical assistance households eligible for various forms of welfare assistance, for cost-effective, employer-sponsored group health insurance benefits. Such premiums shall be paid

for the benefit of the recipient's spouse and dependent children.

**1160** 18 N.Y. COMP. CODES R. & REGS. § 360-7.7 (2007) Medicare eligibility for certain qualified disabled and working individuals depends in part on the total maximum resources that a couple, in the case of a married individual, may have.

**1161** 18 N.Y. COMP. CODES R. & REGS. § 360-7.11 (2007) It is prohibited to impose liens on real property for purposes of medical assistance collection where certain relatives of the recipient, including spouses, who have an equity interest in the property are residing there. Adjustments or recoveries during the life of a surviving spouse are prohibited. Actions to recover amounts received in trust by an applicant's spouse are permitted.

#### **Part 369. Family Assistance**

**1162** 18 N.Y. COMP. CODES R. & REGS. § 369.1 (2007) In order to receive family assistance, a family must include a minor child who resides with a custodial parent or other adult caretaker relative of the child by blood, marriage, or adoption, or a pregnant individual. The term "custodial parent or other adult caretaker relative" includes, among others, the child's father, mother, brother, sister, grandfather, great-grandfather, great-great-grandfather, grandmother, great-grandmother, great-great-grandmother, uncle, great-uncle, aunt, great aunt, great-great-aunt, of whole or half-blood, and the spouse of any of these persons, even though the marriage may have been terminated by death, divorce, or annulment.

**1163** 18 N.Y. COMP. CODES R. & REGS. § 369.2 (2007) Family assistance grants may be made to a nonlegally responsible relative who is self-maintaining or is supported by a spouse or other person who is not a legally responsible relative.

**1164** 18 N.Y. COMP. CODES R. & REGS. § 369.3 (2007) Spouses of non-parent relatives of children are excluded from family assistance grants or recipient counts. Where two or more dependent children live with two persons who are not married to each other: (a) If one person is the parent of all the dependent children, that person may be the grantee for all the children; and (b) If neither person is the parent of all the children, and each is an eligible relative of some of the children, a separate family assistance grant shall be issued to each grantee.

**1165** 18 N.Y. COMP. CODES R. & REGS. § 369.4 (2007) In determining whether the sixty-month cap on family assistance benefits has been met, individuals under the age of nineteen who are heads of household or spouses of heads of household are excluded.

#### **Part 371. Public Institutional Care**

**1166** 18 N.Y. COMP. CODES R. & REGS. § 371.3 (2007) In determining eligibility for public institutional care, the state may consider a person's financial resources in

accordance with departmental regulations. However, where the individual has a dependent spouse who is aged or has short life expectancy and with whom he has lived prior to his admission, a \$250 burial reserve may be permitted for the spouse, in addition to a reserve for the applicant himself.

#### **Part 372. Emergency Assistance to Needy Families with Children**

**1167** 18 N.Y. COMP. CODES R. & REGS. § 372.2 (2007) Emergency assistance must be provided immediately by a social services district to or on behalf of a needy child, provided that the child is living with an adult related by blood, marriage, or adoption.

#### **Article 3. Authorization and Payment**

##### **Part 385. Food Stamps Program**

**1168** 18 N.Y. COMP. CODES R. & REGS. § 385.8 (2007) A recipient of food stamps who is married or is a head of household and under twenty years old is deemed to be engaged in work for a month if he maintains attendance at a secondary school or completes at least twenty hours per week of education directly related to employment.

#### **Article 4. Services to Individuals**

##### **Part 387. Food Stamps Program**

**1169** 18 N.Y. COMP. CODES R. & REGS. § 387.1 (2007) For food stamp application purposes, an "authorized representative" is an individual who is chosen through written designation by the head of the household, his or her spouse, or another responsible household member to represent the household.

**1170** 18 N.Y. COMP. CODES R. & REGS. § 387.5 (2007) The spouse of a head of household may designate a non-household member as an authorized representative for the food stamp application process.

**1171** 18 N.Y. COMP. CODES R. & REGS. § 387.7 (2007) The spouse of a head of household may participate in the required interview for food stamps on behalf of the head of household.

**1172** 18 N.Y. COMP. CODES R. & REGS. § 387.9 (2007) A permanent resident alien is eligible for food stamps if the alien is lawfully admitted to the U.S. and has worked forty quarters of coverage, including all quarters of coverage worked by the alien, worked by the parent of such alien while the alien was a child, and worked by the spouse of the alien during their marriage, and the alien remained married to the spouse or such spouse is deceased.

**1173** 18 N.Y. COMP. CODES R. & REGS. § 387.10 (2007) Income of spouses of sponsors of aliens who live in a household shall be considered in determining an alien's eligibility for food stamps.

**1174** 18 N.Y. COMP. CODES R. & REGS. § 387.12 (2007) For purposes of determining an applicant's eligibility for

food stamps, the income of spouses or other persons receiving benefits as a dependent of supplemental security income shall not be deductible from the applicant's household income.

- 1175** 18 N.Y. COMP. CODES R. & REGS. § 387.16 (2007) Eligible household members and their spouses who are sixty years or older, or who are recipients of supplemental security income and their spouses, may use all or any part of their monthly allotment of food stamps to purchase meals at a communal dining facility or a restaurant which is authorized by the USDA to accept food stamps. Delivered meals, such as Meals-on-Wheels, may be purchased from a nonprofit meal delivery service which is authorized by USDA to accept food stamps by eligible household members and their spouses who are sixty years of age or older.

**Part 393. Home Energy Assistance Program**

- 1176** 18 N.Y. COMP. CODES R. & REGS. § 393.3 (2007) The spouse of a head of household who is living in the household or who is the surviving spouse of a deceased spouse who was the head of household may be deemed a head of household, and may therefore apply for benefits under the Home Energy Assistance Program ("H.E.A.P.).
- 1177** 18 N.Y. COMP. CODES R. & REGS. § 393.4 (2007) For purposes of the annual H.E.A.P., a "household" is defined as any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent and such individual or group of individuals occupy a housing unit. Any individual residing in a housing unit who is related by blood, marriage, or adoption to any other household member shall be presumed a household member in determining H.E.A.P. eligibility unless he or she supplies reasonable evidence to rebut this presumption. A H.E.A.P. emergency benefit may be granted to an individual who is not a tenant and/or a customer of record where such individual is a spouse of a tenant and/or customer of record who is living in the household of such tenant and/or customer of record or who is the surviving spouse of a deceased spouse who was the tenant and/or customer of record.

**Article 5. Miscellaneous**

**Part 395. Military Service Benefits**

- 1178** 18 N.Y. COMP. CODES R. & REGS. § 395.3 (2007) Social services shall be provided to dependents of persons in the Armed Forces, including their spouses and children.

**Part 397. Emergency Assistance for Adults**

- 1179** 18 N.Y. COMP. CODES R. & REGS. § 397.4 (2007) An applicant, including, if a couple, the eligible spouse, shall in order to be eligible for Emergency Assistance for Adults: reside in New York State; be eligible for supplemental security income ("SSI") benefits or

additional state payments; and have emergency needs that cannot be met by the regular monthly SSI benefit and additional state payments, or by specified federal assistance program benefits.

**Subchapter C. Social Services**

**Article 1. Provision of Social Services—General**

**Part 404. Determination and Redetermination of Eligibility for Social Services**

- 1180** 18 N.Y. COMP. CODES R. & REGS. § 404.8 (2007) For purposes of provision of social services, "family" is defined generally as one or more adults and children, if any, related by blood or law, and residing in the same household. Where adults other than spouses reside together, each shall be considered a separate family.

**Part 408. Standards for Establishing Per Diem Rates and Social Services District Payment Responsibility for Residential Programs for Victims of Domestic Violence**

- 1181** 18 N.Y. COMP. CODES R. & REGS. § 408.2 (2007) For purposes of setting rates for residential services for domestic violence victims, "domestic violence" is defined as violence committed by a family or household member, and "family or household member" is defined as including: persons related by blood or marriage; persons legally married to one another; persons formerly married to one another regardless of whether they still reside in the same household; and persons who have a child in common regardless of whether such persons are married or have lived together at any time.

**Part 413. Child Day Care Definitions, Enforcement and Hearings**

- 1182** 18 N.Y. COMP. CODES R. & REGS. § 413.2 (2007) For purposes of defining facilities regulated as day-care facilities, certain relatives and their spouses are excluded from recognition as child day-care providers.

**Article 2. Family and Children's Services**

**Part 422. Parental Support of Children Receiving Foster Care**

- 1183** 18 N.Y. COMP. CODES R. & REGS. § 421.11 (2007) Married persons can adopt only as a couple, with each partner participating, and a married person who is living separate and apart from his or her spouse pursuant to a legally recognizable separation agreement or decree of separation, or who has been living separate and apart from his or her spouse for a period of three years or more prior to the commencement of the adoption proceedings, may also adopt a child.

- 1184** 18 N.Y. COMP. CODES R. & REGS. § 421.16 (2007) Agencies shall not consider marital status in their acceptance or rejection of applicants. However, one married partner may not adopt without the other unless one partner is living separate and apart from his or her



spouse pursuant to a legally recognizable separation agreement or decree of separation, or one partner has been or will be living separate and apart from his or her spouse for a period of three years or more prior to the commencement of the adoption proceeding. Agencies must not establish policies which place single or divorced applicants, applicants who are separated from their spouses pursuant to a legally recognizable separation agreement or decree of separation, applicants who have been or will be living separate and apart from their spouses for a period of three or more years, or widowed applicants at a disadvantage.

#### **Part 423. Preventive Services Regulations**

##### **Part 428. Standards for Uniform Case Records and Family and Child Assessments and Service Plans**

**1185** 18 N.Y. COMP. CODES R. & REGS. § 428.4 (2007) Each uniform Family and Children’s Services case record must contain a “face sheet” prepared at the time of the application for services which states, among other things, the marital status of each family member and their relationships with each other.

#### **Part 431. Care and Protection of Children**

##### **Article 3. Child-Care Agencies**

##### **Part 443. Certification, Approval and Supervision of Foster Family Boarding Homes**

**1186** 18 N.Y. COMP. CODES R. & REGS. § 443.2 (2007) The marital status of an applicant to become a foster parent may be a factor in determining whether or not a certification or approval will be granted only as it affects the ability to provide adequate care to foster children. Changes in the marital status of certificate and letter of approval holders must be reported to the authorized agency, and existing certificates or letters of approval may be revoked and new certificates or letters of approval issued consistent with the best interests of the child.

**1187** 18 N.Y. COMP. CODES R. & REGS. § 443.8 (2007) Certificates must be denied to or revoked from foster parents when a criminal background check reveals a conviction for, among other things, spousal abuse, defined as an offense defined in section 120.05 or 120.10 of the Penal Law, where the victim of such offense was the defendant’s spouse.

**1188** 18 N.Y. COMP. CODES R. & REGS. § 443.9 (2007) In evaluating an applicant for certification as both a foster parent and an adoptive parent, a child-care agency must apply, among other things, the “marital standards” referenced in section 421.16(d).

**1189** 18 N.Y. COMP. CODES R. & REGS. § 443.10 (2007) Agency practice and procedure when an adult spouse of a foster parent comes into the home and applies for certification or approval include: (1) completion of a new application for certification or approval, including clearance

through the Statewide Central Register of Child Abuse and Maltreatment and, if the adult spouse resided in another state at any time during the five years preceding the new application, a request for child abuse and maltreatment information maintained in the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence; (2) completion of a criminal history record check; (3) completion of a medical exam for the applicant; and (4) an update of the home study.

##### **Article 4. Residential Programs for Victims of Domestic Violence**

##### **Part 452. General Provisions**

**1190** 18 N.Y. COMP. CODES R. & REGS. § 452.2 (2007) For purposes of residential services of domestic violence victims, “domestic violence” is defined as certain acts committed by a family or household member, and “family or household member” is defined to include: persons related by blood or marriage; persons legally married to one another; persons formerly married to one another regardless of whether they still reside in the same household; and persons who have a child in common, regardless of whether such persons are married or have lived together at any time.

##### **Part 453. Standards for Domestic Violence Shelters and Domestic Violence Programs**

**1191** 18 N.Y. COMP. CODES R. & REGS. § 453.2 (2007) For purposes of domestic violence shelters and programs, “domestic violence” is defined as certain acts committed by a family or household member, and “family or household member” is defined to include: persons related by blood or marriage; persons legally married to one another; persons formerly married to one another regardless of whether they still reside in the same household; and persons who have a child in common, regardless of whether such persons are married or have lived together at any time.

**1192** 18 N.Y. COMP. CODES R. & REGS. § 453.4 (2007) Domestic violence shelters and programs must provide information and referrals to battering spouses as well as to victims.

##### **Part 454. Standards for Safe Home Networks and Safe Homes**

**1193** 18 N.Y. COMP. CODES R. & REGS. § 454.2 (2007) For purposes of “safe home networks” and “safe homes” which provide temporary shelter to victims of domestic violence, “domestic violence” is defined as certain acts committed by a family or household member, and “family or household member” is defined to include: persons related by blood or marriage; persons legally married to one another; persons formerly married to one another regardless of whether they still reside in the same household; and persons who have a child in

common, regardless of whether such persons are married or have lived together at any time.

- 1194** 18 N.Y. COMP. CODES R. & REGS. § 454.7 (2007) Safe homes and safe home networks must provide information and referrals to battering spouses as well as to victims.

**Part 455. Standards for Domestic Violence Sponsoring Agencies and Safe Dwellings**

- 1195** 18 N.Y. COMP. CODES R. & REGS. § 455.2 (2007) For purposes of domestic violence sponsoring agencies and safe dwellings, “domestic violence” is defined as certain acts committed by a family or household member, and “family or household member” is defined to include: persons related by blood or marriage; persons legally married to one another; persons formerly married to one another regardless of whether they still reside in the same household; and persons who have a child in common, regardless of whether such persons are married or have lived together at any time.

- 1196** 18 N.Y. COMP. CODES R. & REGS. § 455.6 (2007) Domestic violence sponsoring agencies and safe dwellings must provide information and referrals to any battering spouse requesting such services.

**Article 5. Adult and Family Services**

**Part 459. Community Senior Citizens Centers**

- 1197** 18 N.Y. COMP. CODES R. & REGS. § 459.2 (2007) For purposes of community senior citizens centers, “senior citizen” also shall include the spouse of a person sixty years of age or over who resides in the community, regardless of the spouse’s age. Under other sections of this part, such spouses of senior citizens may participate in community senior service centers, even if under sixty years of age.
- 1198** 18 N.Y. COMP. CODES R. & REGS. § 459.5 (2007) The age of each senior citizen seeking to utilize the services of a senior citizen center shall be verified by the center, and in the case of spouses under sixty years of age, the age of the other spouse and the couple’s marital status shall also be verified.
- 1199** 18 N.Y. COMP. CODES R. & REGS. § 459.6 (2007) Each provider of services through community senior citizens centers shall obtain and maintain a record of the name of the spouse of an individual applying for or receiving services.
- 1200** 18 N.Y. COMP. CODES R. & REGS. § 459.9 (2007) Before an individual may be admitted to a senior center on a given day, the center must verify that he or she is at least sixty years of age or the spouse of a person at least sixty years of age.
- 1201** 18 N.Y. COMP. CODES R. & REGS. § 459.10 (2007) The validation unit of each local district shall verify that

all participants in community senior service centers are at least sixty years of age or married to a person at least sixty years of age.

**Part 461. Home-Delivered Meals**

- 1202** 18 N.Y. COMP. CODES R. & REGS. § 461.5 (2007) Except for recipients of SSI, persons aged sixty years or older and their spouses are eligible to purchase and use food stamps for home-delivered meals under the conditions outlined in Department regulations.

**Part 462. Nonresidential Services for Victims of Domestic Violence**

- 1203** 18 N.Y. COMP. CODES R. & REGS. § 462.2 (2007) Family planning services and information shall be made available to domestic violence victims who receive nonresidential services, without regard to the recipient’s marital status, age, or parenthood.

**Part 485. General Provisions**

- 1204** 18 N.Y. COMP. CODES R. & REGS. § 485.2 (2007) The spouse of an operator of an adult day-care facility may apply for permission to continue operation of the facility following the operator’s death.
- 1205** 18 N.Y. COMP. CODES R. & REGS. § 485.5 (2007) In the event of the death of the operator of a private proprietary adult care facility, the department may give approval to a plan submitted by the remaining partners, the operator’s spouse, or the executor for the continued operation of the facility, on a temporary basis, under the outstanding operating certificate.

**Part 489. Adult Care Facilities Standards for Family-Type Homes**

- 1206** 18 N.Y. COMP. CODES R. & REGS. §§ 489.2 & 489.3 (2007) An individual may, but is not required to, seek certification as an operator of a family-type home for adults to care for persons related to her or him, provided that the relationship is not that of a spouse, parent or parent-in-law, child, or step-child.

**Subchapter E. Medical Care**

**Article 2. Program Administration**

**Part 502. Disclosure of Information by Medical Care Providers and Fiscal Agents**

- 1207** 18 N.Y. COMP. CODES R. & REGS. § 502.4 (2007) Medical care providers and fiscal agents of the Department of Social Services must disclose whether any person with an ownership or control interest in a disclosing entity or in any subcontractor in which the disclosing entity has direct or indirect ownership of 5% or more or who is a managing employee in the disclosing entity is related to another as a spouse.

**Article 3. Policies and Standards Governing Provision of Medical and Dental Care**

**Part 505. Medical Care**

**1208** 18 N.Y. COMP. CODES R. & REGS. § 505.14 (2007) Payment for personal care services shall not be made to a patient's spouse. Allowable costs for personal care services include reasonable compensation for owners or operators, their employees, and their relatives, including a spouse.

**1209** 18 N.Y. COMP. CODES R. & REGS. § 505.34 (2007) A person is eligible to enroll in a chronic care program if he or she is eligible for medical assistance payments pursuant to the rules for the treatment of income and resources of institutionalized spouses specified in 18 N.Y. Comp. Codes R. & Regs. § 360-1.4 et. seq.

**Subchapter F. Finance; Claims for Reimbursement by Social Services Districts**

**Article 3. Maintenance Assistance Reimbursement Claiming**

**Part 626. Federally Reimbursed Aid to Dependent Children Reimbursement Claiming**

**1210** 18 N.Y. COMP. CODES R. & REGS. § 626.1 (2007) Expenditures made by social services districts for federally reimbursed aid to dependent children ("A.F.D.C.") are subject to reimbursement by the state, provided that amounts claimed as federal participation are claimed at the rate authorized by the state and federal governments for amounts expended for the purpose of enforcing child support obligations owed by absent parents to their children and the spouse or former spouse with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available to all children for whom federally reimbursed A.F.D.C. may be requested.

**Part 627. Child Support Enforcement Reimbursement Claiming**

**1211** 18 N.Y. COMP. CODES R. & REGS. § 627.1 (2007) Reimbursement for expenditures made in obtaining child and spousal support must be in accordance with the regulations of the Department of Social Services.

**Subchapter G. Statistics**

**Part 651. Public Assistance Reports**

**1212** 18 N.Y. COMP. CODES R. & REGS. § 651.1 (2007) Social services districts must report monthly information on each family receiving Federal Temporary Assistance to Needy Families ("T.A.N.F.") benefits to the New York State Department of Labor, including: the marital status of the members of the family; whether these adults have never married, are widowed, or are

divorced; and, for closed cases, whether the family left the program due to marriage.

**Subchapter J. Commission for the Visually Handicapped**

**Part 729. Commission for the Blind and Visually Handicapped Business Enterprise Program**

**1213** 18 N.Y. COMP. CODES R. & REGS. § 729.13 (2007) Leaves of absence may be granted to a licensee under the Business Enterprise Program of the Commission for the Blind and Visually Handicapped to allow the licensee to care for a spouse with a serious health condition.

**Subchapter L. Homeless Housing and Assistance Program**

**Part 900. Shelter for Families**

**1214** 18 N.Y. COMP. CODES R. & REGS. § 900.7 (2007) In no event may a family be kept in a tier I shelter facility for more than twenty-one days unless the family consists of a childless couple which is either legally married or is a couple who were residing together as household prior to and at the time they became homeless.

## TITLE 19. Department of State

**Chapter VI. Division of Cemeteries**

**Part 201. Cemetery Operations**

**1215** 19 N.Y. COMP. CODES R. & REGS. § 201.2 (2007) Resale of lots or graves purchased prior to September 1, 1949 shall be made only for immediate use and not in advance of need, except for the sale of a reserve grave for a spouse if purchased at the same time as the grave purchased for immediate use.

**Chapter X. Division for Servicemen's Voting**

**Subchapter A. The General Election**

**Part 331. Applications for Military Ballot**

**1216** 19 N.Y. COMP. CODES R. & REGS. § 331.1 (2007) The spouse of a serviceman may request and sign the serviceman's application for a military ballot.

**1217** 19 N.Y. COMP. CODES R. & REGS. § 331.5 (2007) A serviceman's spouse has the right to vote by military ballot.

**Part 335. The Ballot Envelope**

**1218** 19 N.Y. COMP. CODES R. & REGS. § 335.1 (2007) The spouse of a voter in the military service of New York or of the U.S. must sign his or her military ballot envelope and indicate whether he or she is a spouse of such voter.

**Chapter XX. State Ethics**

**Part 941. Adjudicatory Proceedings and Appeals Procedure**

**1219** 19 N.Y. COMP. CODES R. & REGS. § 941.19 (2007) Any person required to file a financial disclosure statement

whose written request to the public advisory council for exemption from any requirement to report one or more items of information which pertain to such person's spouse has been denied in writing by the public advisory council may file a written appeal of the denial within fifteen days of receipt of such denial.

#### Chapter XXXI. Board of Real Estate Appraisal

##### Part 1103. Qualifying Course Regulations

**1220** 19 N.Y. COMP. CODES R. & REGS. § 1103.9 (2007) Real estate appraiser certification requires the completion of courses which cover Fair Housing and Fair Lending provisions setting forth marital status as a protected class.

## TITLE 20. Department of Taxation and Finance

#### Chapter I. Franchise and Certain Business Taxes

##### Subchapter A. Business Corporation Franchise Tax

##### Part 5. Credits Against Tax

##### Subpart 5-9. Empire Zone Wage Tax Credit

**1221** 20 N.Y. COMP. CODES R. & REGS. § 5-9.3 (2007) In order to satisfy the requirements for being a "targeted employee" within the meaning of the Empire Zone Wage Tax Credit statute, the term "family" is defined as a group of two or more persons (one of whom is the householder) related by birth, marriage, or adoption and residing together.

##### Part 6. Reports

##### Subpart 6-3. Form of Reports

**1222** 20 N.Y. COMP. CODES R. & REGS. § 6-3.1 (2007) A Business Corporation Franchise Tax taxpayer must report certain interest payments made to immediate family members, including the spouse of an individual shareholder.

##### Subchapter I. Cigarette Tax, Cigarette Marketing Standards and Tobacco Products Tax

##### Article I. Cigarette Tax

##### Part 71. Agents License

**1223** 20 N.Y. COMP. CODES R. & REGS. § 71.1 (2007) The assignment of a license of a cigarette tax agent results in an immediate cancellation of such license, except where the assignment occurs by bequest or inheritance from a decedent directly to the spouse of a decedent, to a lineal descendent of the decedent or the decedent's spouse, or to the spouse of such lineal descendent, which shall cause cancellation of the license ninety days after the death of the decedent.

##### Part 72. Cigarette Wholesale Dealer's License

**1224** 20 N.Y. COMP. CODES R. & REGS. § 72.1 (2007) The assignment of a license of a wholesale dealer of cigarettes results in an immediate cancellation of such license, except where the assignment occurs by bequest or inheritance from a decedent directly to the spouse of a decedent, to a lineal descendent of the decedent or the decedent's spouse, or to the spouse of such lineal descendent, which shall cause cancellation of the license 90 days after the death of the decedent.

#### Chapter II. Income Taxes and Estate Taxes

##### Subchapter A. New York State Personal Income Tax Under Article 22 of the Tax Law

##### Article 1. General

##### Part 105. Accounting Periods and Methods and Resident Defined

**1225** 20 N.Y. COMP. CODES R. & REGS. § 105.20 (2007) Any person domiciled in New York State is a resident for personal income tax purposes for a specific taxable year, unless, among other things, for that year such person satisfies all three of the following requirements: (i) within any period of 548 consecutive days such person is present in a foreign country or countries for at least 450 days; (ii) during such period the person is not present in New York State for more than ninety days and does not maintain a permanent place of abode in New York State at which such person's spouse (unless such spouse is legally separated) or minor children are present for more than ninety days; and (iii) during the nonresident portion of the taxable year with or within which such period of 548 consecutive days begins and the nonresident portion of the taxable year with or within which such period of 548 consecutive days ends, such person is present in New York State for a number of days which does not exceed an amount which bears the same ratio to 90 as the number of days contained in such portion of the taxable year bears to 548. Generally, the domicile of a husband and wife are the same. However, if they are separated in fact, they may each, under some circumstances, acquire their own separate domiciles even though there is no judgment or decree of separation. Where there is a judgment or decree of separation, a husband and wife may acquire their own separate domicile. "Permanent place of abode" means a dwelling place permanently maintained by the taxpayer, whether or not owned by such taxpayer, and will generally include a dwelling place owned or leased by such taxpayer's spouse.

##### Part 106. Credits Against New York State Personal Income Tax

**1226** 20 N.Y. COMP. CODES R. & REGS. § 106.2 (2007) When a husband and wife are required to file separate tax returns, one spouse cannot claim the other's unused household credit.



**1227** 20 N.Y. COMP. CODES R. & REGS. § 106.4 (2007) For purposes of the Tax Law, where two or more members of a household are able to meet the qualifications for a qualified taxpayer, including a husband and wife who file separate New York State resident personal income tax returns, the one real property tax circuit breaker credit allowable for the taxable year must be divided between or among such individuals on separate claim forms filed by each of such individuals. Where a husband and wife file a joint New York State resident personal income tax return, and at least one of the spouses is a qualified taxpayer, the real property tax circuit breaker credit allowable to the husband and wife is not required to be divided. The husband and wife may claim the real property tax circuit breaker credit, or portion thereof, to which they are entitled by filing one claim form.

#### Part 107. Meaning of Terms

**1228** 20 N.Y. COMP. CODES R. & REGS. § 107.2 (2007) For purposes of New York income tax law, a taxpayer's marital or other status is the same as the taxpayer's marital or surviving spouse status for applicable federal income tax rates.

#### Article 2. Residents

##### Part 111. New York Taxable Income of A Resident Individual

**1229** 20 N.Y. COMP. CODES R. & REGS. § 111.2 (2007) Where both a husband and wife are residents and they determine their federal taxable incomes separately on separate federal income tax returns, they must also determine their New York taxable incomes separately on separate New York State personal income tax returns. Where both a husband and wife are residents and they determine their federal taxable income on a joint federal income tax return, they must also determine their New York taxable income jointly on a joint New York State personal income tax return. If neither the husband nor wife, both of whom are residents, files a federal income tax return, they may determine their New York taxable income jointly on a joint New York State personal income tax return, or, if both so elect, they may determine their New York taxable incomes separately on separate New York State personal income tax returns. In certain instances, if either the husband or the wife is a resident of New York State for the entire taxable year and the other is a nonresident or part-year resident during such taxable year, they must each determine their New York taxable income on separate New York State personal income tax returns.

##### Part 112. New York Adjusted Gross Income of A Resident Individual

**1230** 20 N.Y. COMP. CODES R. & REGS. § 112.3 (2007) Where a husband and wife each receives a pension or annuity and each qualifies for a pension and annuity income modification, then each spouse shall compute his or

her own pension and annuity income modification as if separate federal income tax returns were filed. The combined pension and annuity income modification may not exceed \$20,000 for each spouse. Each spouse may not claim any unused portion of the other spouse's modification. Various rules and limitations are applicable to disability income modification, and more generally to married taxpayers.

**1231** 20 N.Y. COMP. CODES R. & REGS. § 112.6 (2007) For the purpose of determining New York adjusted gross income of a husband and wife, where a husband and wife determine their federal income tax for a particular taxable year on a joint federal income tax return but are required to determine their New York State personal income taxes separately, they are then required to compute their New York adjusted gross incomes separately. Regarding the election to expense certain depreciable business assets, where a husband and wife are required to file separate New York State personal income tax returns, provisions of the Internal Revenue Code shall be applicable in determining such husband's and wife's separate New York adjusted gross incomes. Regarding an Individual Retirement Arrangement ("IRA") Deduction, where a husband and wife file a joint federal income tax return, but are required to file separate New York State personal income tax returns, the individual retirement arrangement deduction allowable on the separate New York State personal income tax return of each spouse is the amount of such deduction which would be allowable if a separate federal income tax return had been filed by each spouse for the taxable year involved. Regarding net operating loss carryover, where a husband and wife are required to file separate New York State personal income tax returns, the benefit of the net operating loss carryback or carryover may be claimed only by the spouse who sustained the loss. Regarding income from jointly owned property, a husband and wife who file a joint federal income tax return and who are required to file separate New York State personal income tax returns must each report his or her share of income from jointly owned real estate, stocks, bonds, bank accounts and other property in the same manner as if their federal adjusted gross incomes had been determined separately. Regarding capital loss carryover, where a husband and wife file a joint federal income tax return but are required to file separate New York State personal income tax returns, the capital loss carryover allowable on the separate New York State personal income tax return of each spouse is the amount of capital loss carryover that would be allowable if a separate federal income tax return had been filed by each spouse for the taxable year involved. The New York State capital loss carryover of either spouse is determined solely by the amount that would be allowable for federal income tax purposes if separate federal income tax returns had been filed.

**Part 114. New York Standard Deduction of A Resident Individual**

**1232** 20 N.Y. COMP. CODES R. & REGS. § 114.1 (2007) A husband and wife filing separately must both use the standard New York deduction unless both take itemized deductions.

**Part 115. New York Itemized Deduction of A Resident Individual**

**1233** 20 N.Y. COMP. CODES R. & REGS. § 115.1 (2007) A husband or wife may claim the New York itemized deduction only if both claimed itemized deductions on their federal income tax returns for the same year, and both elect to use the New York itemized deduction. If either spouse is required to use, or elects to use, the New York standard deduction, the other spouse must also use it. Where a husband and wife file separate federal income tax returns for any year, they must also file separate New York State personal income tax returns, and in this case the New York itemized deduction for each spouse is based upon the itemized deductions claimed on his or her separate federal income tax return. Where a husband and wife file a joint federal income tax return using itemized deductions, but are required to file separate New York State personal income tax returns, they each may claim only the itemized deductions they would be allowed if their federal taxable incomes had been determined separately.

**1234** 20 N.Y. COMP. CODES R. & REGS. § 115.5 (2007) The New York itemized deduction allowable under the Tax Law shall be reduced by: for an unmarried individual other than a head of household or a surviving spouse, or a married individual filing a separate New York State personal income tax return, the excess of such individual's New York adjusted gross income over \$100,000; or, for a married individual filing a joint New York State personal income tax return or a surviving spouse, the excess of such individual's New York adjusted gross income over \$200,000.

**Part 116. New York Itemized Deduction of A Resident Individual**

**1235** 20 N.Y. COMP. CODES R. & REGS. § 116.1 (2007) Where a husband and wife file a joint federal income tax return and also a joint New York State personal income tax return, they are allowed the same number of dependent exemptions on their joint New York State personal income tax return as they are allowed under the Internal Revenue Code on their joint federal income tax return. Likewise, where a husband and wife file separate federal income tax returns, the same number of dependent exemptions is allowed on each separate New York State personal income tax return as are allowed under the Internal Revenue Code on their respective separate federal income tax returns. However, where a husband and wife file a joint federal

income tax return but are required to file separate New York State personal income tax returns, each spouse is entitled to one New York dependent exemption for each federal exemption he or she would have been entitled to under the Internal Revenue Code if they had filed separate federal income tax returns.

**Part 122. New York State Minimum Taxable Income of Residents**

**1236** 20 N.Y. COMP. CODES R. & REGS. § 122.7 (2007) The specific deduction of a resident individual, or married individuals filing a joint return, is \$5,000. In the case of married individuals filing separate returns, regardless of whether on separate forms or on one form, the specific deduction is \$2,500 for each spouse.

**Part 124. Computation of Separate Tax On the Ordinary Income Portion of Lump Sum Distributions Received by Resident Individuals, Estates and Trusts**

**1237** 20 N.Y. COMP. CODES R. & REGS. § 124.1 (2007) Married individuals who file separate New York State personal income tax returns, whether on one form or on separate forms, must compute their New York State separate tax on the ordinary income portion of lump sum distributions on a separate form. The New York State separate tax on the ordinary income portion of lump sum distributions must be computed using the tax rates applicable for the taxable year provided in the Tax Law.

**Part 141. New York State Minimum Taxable Income of Nonresidents**

**1238** 20 N.Y. COMP. CODES R. & REGS. § 141.2 (2007) The specific deduction of a nonresident individual, or married individuals filing a joint return, is an amount which bears the same ratio to \$5,000 (or \$2,500, in the case of a married individual filing a separate return) as the New York items of tax preference bear to the total New York items of tax preference, computed as if such nonresident taxpayer were a resident. The amount of the specific deduction allowable under this paragraph may not exceed \$5,000 in the case of nonresident individuals, or married individuals filing a joint return, or \$2,500 in the case of a married individual filing a separate return.

**Article 4. New York State Income Tax Returns and Payment of Income Tax**

**Part 151. New York State Income Tax Returns and Liabilities**

**1239** 20 N.Y. COMP. CODES R. & REGS. § 151.2 (2007) A resident and nonresident husband and wife or surviving spouse are not required to file New York State personal income tax if they are not required to pay an ordinary tax.

**1240** 20 N.Y. COMP. CODES R. & REGS. § 151.10 (2007) If a husband and wife file separate federal income tax returns, they must also file separate New York State personal income tax returns on separate forms. For this purpose, their tax liabilities shall be separate. The

federal rules for determining whether a husband and wife qualify for filing a joint federal income tax return also apply for New York State personal income tax purposes. However, where a change of residence occurs during the taxable year, if a husband and wife file a joint federal income tax return, or if neither spouse files a federal income tax return, they may either: (i) file a joint New York State personal income tax return, even though one spouse has no income, in which event their income tax liabilities will be joint and several and each will be liable for the entire income tax on such joint return; or (ii) elect to file separate New York State personal income tax returns, provided they do so on a single form and comply with the requirements of the Tax Commission relative to the determination of their separate income taxes on such single form. In this event, their income tax liabilities will be separate. A husband and wife are not permitted to determine their New York State personal income tax on either joint or separate New York State personal income tax returns on the basis of splitting their combined income. If either the husband or wife is a resident and the other is a nonresident of New York State, they must file separate New York State personal income tax returns on separate forms, regardless of whether they file a joint or separate federal income tax return, unless both elect to file a joint New York State resident personal income tax return in which their joint New York taxable income is determined as if both were residents. If they file such a joint New York State resident personal income tax return, their income tax liabilities will be joint and several. If they file separate New York State personal income tax returns, their income tax liabilities will be separate. If, for federal income tax purposes, a joint federal income tax return cannot be made because either the husband or wife, at any time during the taxable year, was a nonresident alien, it follows that a joint New York State personal income tax return cannot be filed in such a case. If a husband and wife file separate New York State personal income tax returns on a single form, any excess payment by either spouse may be applied against any balance of income tax due from the other spouse, and refund of any excess not so applied may be made payable to both spouses or, if either is deceased, to the executor or administrator for the estate of the decedent or to the surviving spouse. However, the provisions of this subdivision will not apply if such return of either spouse includes a demand that any overpayment made by him or her be applied only on account of his or her separate liability. If a joint New York State personal income tax return has been filed, and on such return there is a substantial understatement of New York State personal income tax attributable to grossly erroneous items of one spouse, the other spouse will be relieved of liability for New York State personal income tax (including interest, penalties and other amounts) for such taxable year

to the extent that such liability is attributable to such substantial understatement of New York State personal income tax attributable to grossly erroneous items if: the other spouse establishes that, in signing such return, he or she did not know, and had no reason to know, that there was such substantial understatement; and, taking into account all the facts and circumstances, including whether or not the other spouse benefited directly or indirectly from the grossly erroneous items, it is inequitable to hold the other spouse liable for the deficiency in New York State personal income tax for such taxable year attributable to such substantial understatement. A spouse may make an application for relief by filing with the Tax Commission a sworn statement stating all the facts and circumstances in support of such application.

- 1241** 20 N.Y. COMP. CODES R. & REGS. § 151.11 (2007) Where one or both spouses die during the year and would have been entitled to file a joint New York State personal income tax return had they lived, a joint New York State personal income tax return may be made if: (i) a joint federal income tax return was made for the taxable year; (ii) the taxable year of both decedents, or of the decedent and the surviving spouse, began on the same day and ended on different days only because of the death of either or both; (iii) neither taxpayer was reporting for a part of a year as a result of a change in accounting period; and (iv) the surviving spouse did not remarry before the end of the taxable year. Generally, the executor or administrator and the surviving spouse must unite in making a joint New York State personal income tax return. However, where the surviving spouse, alone, is authorized by the Internal Revenue Code and the federal regulations to make a joint federal income tax return for himself and the deceased spouse, he may also make a joint New York State personal income tax return for both.
- 1242** 20 N.Y. COMP. CODES R. & REGS. § 151.17 (2007) For purposes of filing a group nonresident personal income tax return for nonresident partners, an individual is not a qualified nonresident partner if he or she and his or her spouse had New York source income, and thus is ineligible to file on a group return.
- 1243** 20 N.Y. COMP. CODES R. & REGS. § 151.18 (2007) In no event shall a member of a professional athletic team or a member's spouse be allowed to file on a group tax return for the same taxable year in which a New York State individual income tax return is filed for such member or member's spouse. In order to file on a group return, the member and member's spouse must, among other things, have no income derived from or connected with New York State sources for the entire taxable year, other than compensation received for services rendered as a member of a professional athletic team.

**Part 152. Time and Place for Filing New York State Income Tax Returns**

**1244** 20 N.Y. COMP. CODES R. & REGS. § 152.7 (2007) Where a surviving husband or wife files a joint New York State personal income tax return with the deceased spouse, the due date for the joint return is the fifteenth day of the fourth month following the close of the taxable year for the surviving spouse.

**Part 153. Signing of New York State Income Tax Returns, Statements and Other Documents**

**1245** 20 N.Y. COMP. CODES R. & REGS. § 153.3 (2007) A New York State personal income tax return or other document where a signature is required of a husband and wife must be signed by both spouses. If signed by one spouse, individually and as agent for the other, authorization for such action must accompany the New York State personal income tax return or other document. The spouse acting as agent for the other must, with such other spouse, assume responsibility for making the New York State personal income tax return and incur liability for the penalties provided for erroneous, false, or fraudulent New York State personal income tax returns. However, if the signature or authorization of either the husband or the wife cannot be obtained because of absence or illness, and no power of attorney or written authorization is available for the same reason, a New York State personal income tax return or other document signed by one spouse and offered to the Tax Commission for filing as a joint New York State personal income tax return or other document may be accepted as such if all the evidence indicates that the taxpayers intended to file it as a joint New York State personal income tax return or other document. In the case of death of one or both spouses during the year for which a joint New York State personal income tax return is made, the signatures and evidence of authorization required under the Internal Revenue Code and applicable regulations for such purpose will apply for New York State personal income tax purposes.

**Part 154. Change of Resident Status During Year—Return**

**1246** 20 N.Y. COMP. CODES R. & REGS. § 154.2 (2007) If a husband or wife changes his or her resident status during the taxable year, while the other spouse maintains his or her status as a resident or nonresident during the entire taxable year, the spouse who changes residence during the taxable year must file two New York State personal income tax returns for that year. One New York State personal income tax return must be filed for the portion of the year during which such spouse was a resident, and the other New York State personal income tax return must be filed for the portion of the year during which such spouse was a nonresident. The spouse who did not change his or her residence during the taxable year must file a separate New York State personal income tax

return without regard to the change made by the other spouse.

**Part 159. Report of Change in Federal Taxable Income, Items of Tax Preference, Total Taxable Amount Or Ordinary Income Portion of A Lump Sum Distribution, Income Tax Withholding, Disallowance of Refund Claim Or Credit for Employment-Related Expenses**

**1247** 20 N.Y. COMP. CODES R. & REGS. § 159.2 (2007) A husband and wife who file a joint federal income tax return but file separate New York State personal income tax returns on one form must file separate forms to report federal adjustments affecting their separate New York State personal income tax returns. Each report must show the changes made on the federal income tax return attributable to the reporting spouse. These separate reports must be filed together. If the federal changes are attributable solely to one spouse, that spouse must file the prescribed form used to report the federal changes. However, such form must include the name and social security number of the other spouse and contain a statement that the federal changes do not affect the separate New York State personal income tax return of the other spouse.

**Part 161. Change of Election**

**1248** 20 N.Y. COMP. CODES R. & REGS. § 161.2 (2007) A federal election made by a husband and wife filing separate federal returns is binding for New York personal income tax purposes.

**1249** 20 N.Y. COMP. CODES R. & REGS. § 161.3 (2007) Examples of New York State elections upon which federal elections are not binding include those relating to the allocation or division of the New York itemized deduction between a husband and wife who determine their federal taxable income jointly and determine their New York taxable incomes separately on one form. Where a husband and wife claim itemized deductions and determine their federal taxable incomes separately, no such allocation or division of the New York itemized deduction is permitted.

**1250** 20 N.Y. COMP. CODES R. & REGS. § 161.4 (2007) Where a proposed change of election involves a joint New York State personal income tax return of a husband and wife or separate New York State personal income tax returns of the spouses on one form and the sum of the payments by both spouses on the original New York State personal income tax return or returns exceeds the New York State personal income taxes dues after giving effect to the change of election, refund of the excess may be made payable to both spouses.

**Article 6. Procedure and Administration**

**Part 185. Additions to Tax and Civil Penalties**

**1251** 20 N.Y. COMP. CODES R. & REGS. § 185.3 (2007) A husband and wife may make the required estimated



annual tax payment as if they were one taxpayer. If joint installments of estimated tax are made by such husband and wife, the liability under this section is joint and several. While joint installments may be made by a husband and wife, even though they are not living together, no such installments may be made if such husband and wife are separated under a decree of divorce or separate maintenance, or if they have different taxable years. If joint installments are made, the tax must be estimated as if a joint New York State personal income tax return will be filed for the taxable year. The fact that joint installments of estimated tax are made by a husband and wife will not preclude them from filing separate New York State personal income tax returns. Where joint installments of estimated tax are made but joint New York State personal income tax returns are not filed for the same taxable year, the estimated tax installments for such year may be treated as installments on account of the tax liability of either the husband or wife for the taxable year, or may be divided between them in such manner as they may agree. In the event the husband and wife fail to agree to a division, the portion of such installments allocated to a spouse will be that portion of the aggregate of all such installments of estimated tax made, as the amount of tax shown on the separate New York State personal income tax return of the taxpayer bears to the sum of the taxes shown on the separate New York State personal income tax returns of the taxpayer and such taxpayer's spouse. If joint installments of estimated tax are made by a husband and wife and thereafter one spouse dies, no further installments of estimated tax are required from the estate of the decedent. The surviving spouse, however, may either continue to make joint installments of estimated tax or such spouse may make separate installments of estimated tax. If a surviving spouse elects to make separate installments of estimated tax and in the event a joint New York State personal income tax return is not filed, the joint installments previously made may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree. In the absence of such agreement, if separate New York State personal income tax returns are filed by or on behalf of both the decedent and surviving spouse, the joint installments of estimated tax made up to the date of death will be allocated to each New York State personal income tax return in the proportion that the amount of the tax shown on the separate New York State personal income tax return bears to the tax shown on such separate New York State personal income tax returns of the surviving spouse and of the decedent. If such separate New York State personal income tax returns are filed by or on behalf of each spouse and both New York State personal income tax returns disclose no tax liability, or if a separate New York State personal income tax return is not filed by or

on behalf of either spouse, the aggregate amount of such installments will be equally divided.

#### **Subchapter D. City of Yonkers Earnings Tax On Nonresidents**

##### **Part 264. Separate Returns of Nonresident Husband and Wife On A Single Form and Overpayment and Refund Shown Thereon**

**1252** 20 N.Y. COMP. CODES R. & REGS. § 264.1 (2007) If a husband and wife file separate New York State personal income tax returns on a single form, the State Tax Commission may require the filing of the return on a single form if both such husband and wife were nonresidents of the City of Yonkers for the entire taxable period covered by such returns. In addition, the State Tax Commission may require that such forms and schedules as it deems necessary be attached to or accompany such returns on a single form of such husband and wife in order to properly determine the City of Yonkers earnings taxes due.

**1253** 20 N.Y. COMP. CODES R. & REGS. § 264.2 (2007) If a husband and wife are required by the State Tax Commission to file on a single form and if the sum of the payments by either spouse exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the State Tax Commission to the credit of the other spouse if the sum of the payments by such other spouse is less than the amount of the tax for which such other spouse is separately liable.

**1254** 20 N.Y. COMP. CODES R. & REGS. § 264.3 (2007) If a husband and wife are required by the State Tax Commission to file on a single form and if the sum of the payments made by both spouses with respect to the taxes for which they are separately liable exceeds the total of the taxes due, refund of the overpayment may be made payable to both spouses or, if either is deceased, to the survivor.

**1255** 20 N.Y. COMP. CODES R. & REGS. § 264.4 (2007) Any excess payment and interest thereon by either spouse may be applied against any past-due support or against any amount of a default in repayment of a guaranteed student, state university, or city university loan attributable to the other spouse. Provisions with respect to application of a spouse's overpayment of tax, and with respect to making a refund of tax to spouses, shall not apply if the return of either spouse includes a demand that any overpayment of tax made by him or her be applied only on account of his or her separate liability.

#### **Subchapter F. New York City Earnings Tax On Nonresidents**

##### **Part 297. Combined Returns, Single Payments and Returns and Payments of Tax**

**1256** 20 N.Y. COMP. CODES R. & REGS. § 297.4 (2007) The Commissioner may require nonresident earnings tax returns to be filed with the joint New York personal income tax return of a husband and wife.

## Subchapter G. Estate Tax

### Part 360. Tax Waivers and Certain Other Notice Requirements

- 1257** 20 N.Y. COMP. CODES R. & REGS. § 360.1 (2007) Cash or stock belonging to a decedent and spouse may in some instances be transferred or delivered to the surviving spouse without notice to or the consent of the Department of Taxation and Finance.
- 1258** 20 N.Y. COMP. CODES R. & REGS. § 360.5 (2007) Death benefits under an employee pension or profit sharing plan may be paid to a surviving spouse without notice to or the consent of the Department of Taxation and Finance.
- 1259** 20 N.Y. COMP. CODES R. & REGS. § 360.6 (2007) Life insurance proceeds may be paid to a surviving spouse without notice to or the consent of the Department of Taxation and Finance.
- 1260** 20 N.Y. COMP. CODES R. & REGS. § 360.7 (2007) Annuity and other plan benefits may under specific circumstances be paid to a surviving spouse without notice to or the consent of the Department of Taxation and Finance.

## Chapter III. Fuel and Carrier Taxes

### Subchapter A. Motor Fuel and Diesel Motor Fuel Tax

#### Article 1. Motor Fuel Tax

##### Part 411. Distributors

- 1261** 20 N.Y. COMP. CODES R. & REGS. § 411.8 (2007) Exceptions are made to the requirement of prior approval for the transfer of a registration as motor fuel or diesel fuel distributor when the transfer is made by bequest or inheritance to the spouse of a decedent.

##### Part 417. Transportation of Motor Fuel

- 1262** 20 N.Y. COMP. CODES R. & REGS. § 417.7 (2007) Exceptions are made to the requirement of prior approval for the transfer of a license as an importing transporter of motor fuel when the transfer is made by bequest or inheritance to the spouse of a decedent.

##### Part 418. Storage of Motor Fuel

- 1263** 20 N.Y. COMP. CODES R. & REGS. § 418.6 (2007) Exceptions are made to the requirement of prior approval for the transfer of a terminal operator license when the transfer is made by bequest or inheritance to the spouse of decedent.

### Subchapter C. Truck Mileage and Fuel Use Taxes

#### Article 3. Fuel Use Tax

##### Part 491. Fuel Use Tax Licenses and Decals

- 1264** 20 N.Y. COMP. CODES R. & REGS. § 491.8 (2007) The transfer by bequest or inheritance of a New York State fuel use tax license and decal or an IFTA license and decals from a deceased carrier directly to the spouse of a decedent to a lineal descendent of the decedent or the decedent's

spouse, or to the spouse of such lineal descendent, shall cause revocation of the license and decals 90 days after the death of the carrier, rather than immediate revocation of such license and decals.

## Appendix 10

### Chapter IV. Sales and Use and Other Miscellaneous Taxes

#### Subchapter A. Sales and Use Taxes

##### Part 528. Exemptions

- 1265** 20 N.Y. COMP. CODES R. & REGS. § 528.15 (2007) The sale of a motor vehicle to a spouse is exempt from sales or use tax.
- 1266** 20 N.Y. COMP. CODES R. & REGS. § 528.27 (2007) Food purchased at a restaurant with food stamps by elderly and Supplemental Security Income ("S.S.I.") recipients and their spouses is exempt from sales tax.

##### Part 529. Exempt Organizations

- 1267** 20 N.Y. COMP. CODES R. & REGS. § 529.8 (2007) Spouses, widows, and widowers of members of the Armed Forces are eligible for membership in organizations of members of Armed Forces.

##### Part 538. Special Rules for Vendors Making Sales of the Services of Parking, Garaging Or Storing for Motor Vehicles in New York County (Manhattan)

- 1268** 20 N.Y. COMP. CODES R. & REGS. § 538.2 (2007) A parking facility operator's eligibility for relief from special tax record-keeping requirements is contingent in part on whether the costs of meeting these requirements would create an undue hardship for a parking facility operator where the operator is a member of an "affiliated group of persons." A parking facility operator is a member of an affiliated group of persons where the operator is, among other things, an individual whose sibling, parent, spouse, child, or grandchild is either a parking facility operator or has at least a 50% or more capital or profits interest in a parking facility, or owns at least 50% in value of the outstanding stock of any corporation which is a parking facility operator; or a corporation where: at least 50% in value of the outstanding stock thereof is owned solely by an individual or by an individual and the individual's sibling, parent, spouse, child, or grandchild; and (2) the individual or the individual's sibling, parent, spouse, child, or grandchild has at least a 50% or more capital or profits interest in a parking facility operator, or owns at least 50% in value of the outstanding stock of any corporation which is a parking facility operator.

#### Subchapter B. Real Estate Transfer Tax

##### Part 575. General Provisions

- 1269** 20 N.Y. COMP. CODES R. & REGS. § 575.11 (2007) Conveyance from one spouse to another pursuant to divorce or separation is subject to real estate transfer tax.

## Subchapter D. Mortgage Recording Taxes

### Part 642. Imposition of Taxes

- 1270** 20 N.Y. COMP. CODES R. & REGS. § 642.4 (2007) Spouses are deemed “related” for purposes of the rule that all mortgages offered for recording within a period of twelve consecutive months having the same or related mortgagors are part of a related transaction, and shall be treated as a single mortgage for the purpose of determining the applicable rate of tax.

### Part 647. Imposition of Taxes

- 1271** 20 N.Y. COMP. CODES R. & REGS. § 647.5 (2007) Where transfer is of a fee simple interest to a person related by marriage, no tax shall be imposed upon the recording of an instrument for real property subject to the lien of a credit line mortgage.

## Chapter VI. Communications of the Division of Taxation of the Department of Taxation and Finance

### Part 2376. Advisory Opinions of the Commissioner of Taxation and Finance

- 1272** 20 N.Y. COMP. CODES R. & REGS. § 2376.2 (2007) The spouse of a minor may petition the Commissioner of Taxation and Finance for an advisory opinion on behalf of the minor.

## Chapter VII. Wage Reporting System

### Part 2380. Wage Reporting System

- 1273** 20 N.Y. COMP. CODES R. & REGS. § 2380.3 (2007) The term “employment” does not include: (i) certain agricultural services performed for an employer by his or her spouse; or (ii) services rendered for an educational institution by a student who is enrolled and in regular attendance at such institution, or by the student’s spouse employed by such institution if the spouse is advised at the time of hire that the employment is provided under a program of financial assistance to the student.

## Chapter XI. Tax Appeals Tribunal

### Part 3000. Tax Appeals Tribunal Rules of Practice and Procedure

- 1274** 20 N.Y. COMP. CODES R. & REGS. § 3000.2 (2007) Appearances in tax appeal proceedings may be made by a petitioner or by the petitioner’s spouse. If the taxpayer is a minor, the adult spouse may file a petition and appear on the taxpayer’s behalf.

## Chapter XII. Bureau of Conciliation and Mediation Services

### Part 4000. Procedural Rules

- 1275** 20 N.Y. COMP. CODES R. & REGS. § 4000.2 (2007) Appearances in a conciliation conference may be made by a requester or the requester’s spouse. If the taxpayer is a minor, the adult spouse may request a conciliation conference and appear on the taxpayer’s behalf.

## TITLE 21. Miscellaneous

### Chapter XLIV. New York State Division of the Lottery

#### Part 2804. Lottery Drawings

- 1276** 21 N.Y. COMP. CODES R. & REGS. § 2804.10 (2007) The sale, purchase, or award of lottery monies to spouses of, among other persons, any contractor or consultant involved in the production of lottery tickets, the operation of lottery games, or the processing of lottery prize claims and payments, or any officer or employee of the Lottery Division is prohibited.

#### Part 2806. Mega Millions Lottery Game

- 1277** 21 N.Y. COMP. CODES R. & REGS. § 2806.5 (2007) The sale, purchase, or award of Mega Millions lottery monies to spouses of, among other persons, any contractor or consultant involved in the production of lottery tickets, the operation of lottery games, or the processing of lottery prize claims and payments, or any officer or employee of New York Lotto is prohibited.

#### Part 2836. Video Lottery Gaming

##### Subpart 2836-3. General Provisions Regarding Licenses

- 1278** 21 N.Y. COMP. CODES R. & REGS. § 2836-3.2 (2007) A person may request that the New York State Division of the Lottery change the name designated on his or her video lottery gaming application or license by producing a certificate of marriage.

##### Subpart 2836-6. Video Lottery Gaming Key Employee and Employee Licensing

- 1279** 21 N.Y. COMP. CODES R. & REGS. § 2836-6.4 (2007) The New York State Division of the Lottery may deny a video gaming key employee license based upon an applicant’s failure to demonstrate financial stability or failure to pay alimony, maintenance, spousal support, or child support pursuant to a final order, decree, or judgment in a matrimonial action.

##### Subpart 2836-20. Conduct and Operation of Video Lottery Gaming

- 1280** 21 N.Y. COMP. CODES R. & REGS. § 2836-20.1 (2007) The sale, purchase, or award of lottery monies to the spouse of certain individuals is subject to certain limitations set forth in this provision.

### Chapter LVIII. New York State Teachers’ Retirement System

#### Part 5014. Options

- 1281** 21 N.Y. COMP. CODES R. & REGS. § 5014.6 (2007) With respect to New York State Teachers’ Retirement System, no option shall be permitted whereby a member would receive in retirement less than 50% of the actuarial equivalent of the member’s retirement allowance without optional modification during the member’s life expectancy, provided, however, that the foregoing

shall not apply if the surviving beneficiary is the retiree's spouse. In cases where the sole beneficiary of the option designated at retirement is the member's spouse, a member will not be permitted to elect an option which provides for a guaranteed payment for a period of years that exceeds the greater of: (i) the joint and last survivor life expectancy of the member and the member's spouse; or (ii) the distribution period for required minimum distributions permitted under regulations of the United States Department of Treasury. In cases where the sole beneficiary of the option designated at retirement is not the member's spouse, a member will not be permitted to elect an option which provides for a guaranteed payment for a period of years that exceeds the distribution period for required minimum distributions permitted under regulations of the United States Department of Treasury.

**Part 5022. Direct Rollover of Eligible Rollover Distributions**

**1282** 21 N.Y. COMP. CODES R. & REGS. § 5022.3 (2007) In the case of an eligible rollover distribution to a surviving spouse, an eligible retirement plan is an individual retirement account or an individual retirement annuity. In the case of distributions made after December 31, 2001, the definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving spouse or former spouse who is the alternate payee under a qualified domestic relations order. A distributee includes a teacher or former teacher. In addition, the teacher's or former teacher's surviving spouse and the teacher's or former teacher's spouse or former spouse who is the alternate payee under a qualified domestic relations order are distributees with regard to the interest of the spouse or former spouse.

## TITLE 22. Judiciary

**Subtitle A. Judicial Administration**

**Chapter I. Standards and Administrative Policies**

**Subchapter A. Rules of the Chief Judge**

**Part 8. Appointment of Relatives of Judges**

**1283** 22 N.Y. COMP. CODES R. & REGS. § 8.1 (2007) The spouse of a judge or certain relatives of a judge is prohibited from being appointed to positions in court.

**Part 17. Judicial Education and Training**

**Part 24. Time and Leave**

**1284** 22 N.Y. COMP. CODES R. & REGS. § 24.4 (2007) An employee shall be allowed to charge a maximum of fifteen days of sick leave in any one calendar year for absences from work to care for a close family member during a time of illness, including the employee's:

spouse; natural, foster, or step-child; or natural, foster, or step-parent.

**1285** 22 N.Y. COMP. CODES R. & REGS. § 24.6 (2007) Leave of up to four consecutive workdays shall be allowed immediately following the death of an employee's: spouse; natural, foster, or step-parent or child; brother or sister; father-in-law or mother-in-law; or grandparent or grandchild. Leave of up to two consecutive workdays shall be allowed immediately following the death of an employee's son-in-law or daughter-in-law. Prior notice and authorization is not required for this leave.

**Part 25. Career Service**

**1286** 22 N.Y. COMP. CODES R. & REGS. § 25.30 (2007) The spouse of a veteran may receive preferential treatment for seniority when the need for abolition of positions or demotions arises.

**Part 28. Alternative Method of Dispute Resolution by Arbitration**

**1287** 22 N.Y. COMP. CODES R. & REGS. § 28.4 (2007) In the selection of panels for arbitrators, an arbitrator who is married to a party or counsel shall be dismissed for cause.

**Part 36. Appointment of Guardians, Guardians Ad Litem, Court Evaluators, Attorneys for Incapacitated Persons, Receivers, Persons Designated to Perform Services for A Receiver, and Referees**

**1288** 22 N.Y. COMP. CODES R. & REGS. § 36.2 (2007) No person who is the spouse, sibling, parent, or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or by any court in the state. No person who is the chair or executive director of a state or county political party, or the spouse, sibling, parent, or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel, and employees of any law firms or entities while the official is associated with that firm or entity. No person who has served as a campaign chair, coordinator, manager, treasurer, or finance chair for a candidate for judicial office, or the spouse, sibling, parent, or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that service was performed for a period of two years following the judicial election. No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent, or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served.



**Part 40. Financial Disclosure by Judges and Nonjudicial Employees; Establishment of Ethics Commission**

**1289** 22 N.Y. COMP. CODES R. & REGS. § 40.1 (2007) The Ethics Commission shall permit, under certain conditions, any person required to file a financial disclosure statement to request an exemption from any requirement to report one or more items of information which pertain to such person's spouse.

**Part 50. Rules Governing Conduct of Nonjudicial Court Employees**

**1290** 22 N.Y. COMP. CODES R. & REGS. § 50.1 (2007) Nonjudicial employees of the Unified Court System shall not discriminate or manifest by words or conduct bias or prejudice on the basis of marital status.

**Subchapter C. Rules of the Chief Administrator of the Courts**

**Part 100. Judicial Conduct**

**1291** 22 N.Y. COMP. CODES R. & REGS. § 100.0 (2007) For purposes of the rules relating to judicial conduct, a judge's "family" is linked to his or her spousal relationships.

**1292** 22 N.Y. COMP. CODES R. & REGS. § 100.2 (2007) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of marital status.

**1293** 22 N.Y. COMP. CODES R. & REGS. § 100.3 (2007) A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge's spouse, or the spouse of such person, for appointment or employment to another judge serving in the same court. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other interest that could be substantially affected by the proceeding; (b) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person: is a party to the proceeding; is an officer, director or trustee of a party; or has an interest that could be substantially affected by the proceeding; (c) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding. If a

judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse, or a minor child residing in his or her household, has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification. A judge shall keep informed about the judge's personal and fiduciary economic interests, and shall make a reasonable effort to keep informed about the personal economic interests of his or her spouse and minor children residing in the judge's household.

**1294** 22 N.Y. COMP. CODES R. & REGS. § 100.4 (2007) A judge shall not accept a gift, bequest, favor, or loan from anyone, except for an invitation to the judge and the judge's spouse to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice, or a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse, provided that the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties. Expense reimbursement for extra-judicial activities is limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse.

**Part 104. Retention and Disposition of Court Records**

**1295** 22 N.Y. COMP. CODES R. & REGS. § 104.2 (2007) Judgment rolls and other court records, books, and papers that affect marital rights or status shall be retained permanently.

**Part 134. Reporting of Family Offenses by Courts Exercising Criminal Jurisdiction**

**1296** 22 N.Y. COMP. CODES R. & REGS. § 134.1 (2007) One definition of "family offense" is a crime by a defendant against a plaintiff to whom the defendant is married.

**Part 144. New York State Parent Education and Awareness Program**

**1297** 22 N.Y. COMP. CODES R. & REGS. § 144.2 (2007) The Parent Education and Awareness Program certified by the Office of Court Administration defines "court" as including a matrimonial referee.

**1298** 22 N.Y. COMP. CODES R. & REGS. § 144.3 (2007) The Parent Education and Awareness Program may apply in an action or proceeding to annul a marriage, or in an action for separation or for divorce.

**Chapter II. Uniform Rules for the New York State Trial Courts**

**Part 202. Uniform Civil Rules for the Supreme Court and the County Court**

**1299** 22 N.Y. COMP. CODES R. & REGS. § 202.6 (2007) The filing of a request for judicial intervention and payment of

the fee required for said filing shall not be required in an uncontested action for a judgment for annulment, divorce, or separation.

- 1300** 22 N.Y. COMP. CODES R. & REGS. § 202.12 (2007) Certain provisions regarding preliminary conferences are applicable to matrimonial actions and actions based upon a separation agreement.
- 1301** 22 N.Y. COMP. CODES R. & REGS. § 202.16 (2007) The papers exchanged no later than ten days prior to a preliminary conference in a matrimonial action include the statements immediately preceding and following the date of commencement of the matrimonial action pertaining to any life insurance policies having a cash or dividend surrender value, as well as any deferred compensation plans. Each party shall exchange a statement setting forth, among other things, the assets claimed to be marital property and an allocation of debts or liabilities to specific marital or separate assets, among other things.
- 1302** 22 N.Y. COMP. CODES R. & REGS. § 202.21 (2007) A note of issue and certificate of readiness shall indicate whether a matrimonial action is contested or uncontested. Uncontested matrimonial actions, proceedings for dissolution of marriages, and applications for declaratory judgments shall be assigned to judges or special parts of the court as the Chief Administrator shall authorize. The official forms for use in uncontested matrimonial actions are contained in the Uniform Court System Uncontested Divorce Packet available in the Office of the Clerk of the Supreme Court in each county.
- 1303** 22 N.Y. COMP. CODES R. & REGS. § 202.44 (2007) This provision relating to motions to confirm or reject a judicial hearing officer's or referee's report shall not apply to a reference in an uncontested matrimonial action.
- 1304** 22 N.Y. COMP. CODES R. & REGS. § 202.50 (2007) Proposed judgments in matrimonial actions must contain findings of fact and conclusions of law in a paper separate from the judgment. Approved forms set forth by statute shall be used in contested actions, and parties in uncontested matrimonial actions shall use the forms in the Unified Court System Uncontested Divorce Packet.

#### **Part 205. Uniform Civil Rules for the Family Court**

- 1305** 22 N.Y. COMP. CODES R. & REGS. § 205.9 (2007) All proceedings for which a procedure has not been prescribed by provisions of the Family Court Act, the Domestic Relations Law, or the Social Services Law, including proceedings involving consent to marry, shall be commenced by the filing of a petition and shall require the entry of a written order.
- 1306** 22 N.Y. COMP. CODES R. & REGS. § 205.53 (2007) Papers required in an adoption proceeding in Family Court include: a certified marriage certificate, where the adoptive parents are husband and wife or where an individual adoptive parent is the spouse of the natural

parent; a certified copy of a decree or judgment, where an adoptive parent's marriage has been terminated by decree or judgment; and a certified death certificate, where an adoptive or natural parent's marriage has been terminated by death, or where it is alleged that consent or notice is not required because of death.

#### **Part 207. Uniform Civil Rules for the Surrogate's Court**

- 1307** 22 N.Y. COMP. CODES R. & REGS. § 207.16 (2007) Petitions for probate and administration must indicate whether any distributee is a non-marital child. If only one distributee survived the decedent, proof may not be given by the spouse or children of the distributee, unless otherwise allowed by the court. A distributee who is the spouse or only child of the decedent is not required to submit proof that includes as an exhibit a family tree, table, or diagram.
- 1308** 22 N.Y. COMP. CODES R. & REGS. § 207.49 (2007) A petition for the appointment of a successor custodian shall show, among other things, whether the donor custodian and petitioner were husband and wife, whether they were living together, and whether the infant resided with them.
- 1309** 22 N.Y. COMP. CODES R. & REGS. § 207.55 (2007) Papers required in an adoption proceeding in Surrogate's Court include: a certified marriage certificate, where the adoptive parents are husband and wife or where an individual adoptive parent is the spouse of the natural parent; a certified copy of a decree or judgment, where an adoptive parent's marriage has been terminated by decree or judgment; and a certified death certificate, where an adoptive or natural parent's marriage has been terminated by death, or where it is alleged that consent or notice is not required because of death.

#### **Subtitle B. Courts**

##### **Chapter I. Court of Appeals**

##### **Subchapter B. Rules for Admission of Attorneys and Counselors at Law**

##### **Part 521. Rules of the Court of Appeals for the Licensing of Legal Consultants**

- 1310** 22 N.Y. COMP. CODES R. & REGS. § 521.3 (2007) A person licensed to practice as a legal consultant may render legal services in New York, except that the legal consultant shall not prepare any instrument concerning marital or parental relations, among other things.

##### **Chapter IV. Supreme Court**

##### **Subchapter A. First Judicial Department**

##### **Article 1. Appellate Division**

##### **Subarticle A. Rules of Practice**

##### **Part 603. Conduct of Attorneys**

- 1311** 22 N.Y. COMP. CODES R. & REGS. § 603.14 (2007) A petition for reinstatement of a suspended attorney must indicate any name change, and if the change of name was made

by court order, including marriage, the petitioner must attach a certified copy of such order to the petition, pursuant to the rules of practice of the Appellate Division, First Department.

#### Subchapter B. Second Judicial Department

##### Article 1. Appellate Division

##### Subarticle A. Rules of Practice

##### Part 670. Procedures in the Appellate Division

**1312** 22 N.Y. COMP. CODES R. & REGS. § 670.10.3 (2007) An appellant's brief submitted to the Appellate Division, Second Department, must state, among other things, whether the appeal is from an order involving *pendente lite* relief in a matrimonial action, whether issue has been joined and, if so, the date of joinder of issue, and whether the case has been noticed for trial.

**1313** 22 N.Y. COMP. CODES R. & REGS. § 670.20 (2007) Oral argument before the Appellate Division, Second Department is generally not permitted on issues involving maintenance and spousal support.

#### Subchapter E. All Departments

##### Part 1200. Disciplinary Rules of the Code of Professional Responsibility

**1314** 22 N.Y. COMP. CODES R. & REGS. § 1200.1 (2007) "Domestic relations matters" is defined as representation of a client in a claim, action, or proceeding, or preliminary to the filing of a claim, action, or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support, or alimony, or to enforce or modify a judgment or order in connection with any such claims, actions, or proceedings.

**1315** 22 N.Y. COMP. CODES R. & REGS. § 1200.11 (2007) A lawyer shall not enter into an arrangement for, charge, or collect any fee in a domestic relations matter: (1) the payment or amount of which is contingent upon the securing of a divorce or in any way determined by reference to the amount of maintenance, support, equitable distribution, or property settlement; or (2) based upon a security interest, confession of judgment, or other lien, without prior notice to the client in a signed retainer agreement and approval from a tribunal after notice to the adversary. A lawyer shall not foreclose on a mortgage placed on a marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's primary residence.

**1316** 22 N.Y. COMP. CODES R. & REGS. § 1200.29-A (2007) Restrictions on sexual relations between lawyer and client do not apply to sexual relationships between lawyers and their spouses.

**1317** 22 N.Y. COMP. CODES R. & REGS. § 1200.45 (2007) A lawyer related to another lawyer as spouse shall not represent in any matter a client whose interests differ from those

of another party to the matter who the lawyer knows is represented by the other lawyer, unless the client consents to the representation after full disclosure and the lawyer can adequately represent the interests of the client.

##### Part 1400. Procedure for Attorneys in Domestic Relations Matters

**1318** 22 N.Y. COMP. CODES R. & REGS. § 1400.1 (2007) The procedure for attorneys in domestic relations matters applies to all attorneys representing a client in an action or proceeding for divorce and other domestic relations matters.

**1319** 22 N.Y. COMP. CODES R. & REGS. § 1400.2 (2007) An attorney may not seek a fee contingent on securing a divorce or on the amount obtained in such proceedings. An attorney's interest in a marital residence cannot be foreclosed against a client.

**1320** 22 N.Y. COMP. CODES R. & REGS. § 1400.5 (2007) An attorney may obtain a confession of judgment or promissory note, take a lien on real property, or otherwise obtain a security interest to secure his or her fee only where, among other things, notice of an application for a security interest has been given to the other spouse. A lawyer shall not foreclose on a mortgage placed on a marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's primary residence.

##### Part 1851. Richmond County

**1321** 22 N.Y. COMP. CODES R. & REGS. § 1851.11 (2007) In Surrogate's Court, Richmond County, all applicants requesting withdrawal from guardianship accounts must submit the federal and state income tax returns of the guardian and/or the guardian's spouse for the last three years.

#### Chapter IX. Ethics Commission for the Unified Court System

##### Part 7400. Procedures

**1322** 22 N.Y. COMP. CODES R. & REGS. § 7400.3 (2007) For purposes of requesting an exemption from reporting one or more items of information which pertain to an employee's spouse or unemancipated children, "spouse" shall mean the husband or wife of the employee filing a financial disclosure statement unless the husband or wife has been living separate and apart from such employee during the entire reporting year: (i) pursuant to a judicial order, decree, or judgment, or a legally binding separation agreement; or (ii) with the intention of terminating the marriage or remaining permanently separated. "Unemancipated child" shall mean any son, daughter, stepson, or stepdaughter of the employee filing a financial disclosure statement who is under the age of eighteen and unmarried. An employee may request an exemption from any requirement to report one or more items of information that pertain to his or her spouse or

unemancipated children by filing a written request with the commission on or before April first of the year in which such exemption is requested. If the commission determines that additional information would be useful, it may request such information from the employee requesting the exemption, including a meeting with the employee, or his or her spouse, to discuss the exemption request. Unless the commission decides by a majority of the total members of the commission without vacancy that the employee or his or her spouse objects to providing the information necessary to make disclosure, and that the information that would otherwise be required to be reported will have no material bearing on the discharge of the employee's official duties, the commission shall deny the request for exemption. If an employee requests a spousal exemption on the grounds that he or she has no knowledge of his or her spouse's assets or income, and that his or her spouse refuses to supply this information to him or her, the employee must so state specifically in the form of an affidavit. The employee must, at a minimum, convince the commission that his or her spouse refuses to provide the information, that he or she has no other source regarding this information, and that he or she has made a bona fide attempt to obtain, and cannot obtain, the information. Other potentially relevant, but not necessarily controlling, matters include the circumstances of and reasons for a spouse's refusal to provide the employee with the relevant information, the duration and consistency over time of his or her spouse's refusal to disclose such information to the employee, and whether the employee and his or her spouse file or have filed joint federal, state, or local tax returns. If the employee and his or her spouse have filed a joint tax return, the employee must at a minimum report such information as is available from that return. If the husband or wife of the employee filing a financial disclosure statement is not a spouse, the employee shall file with his or her financial disclosure statement a statement signed by the employee indicating that he or she has been living separate and apart from his or her husband or wife for the entire reporting year pursuant to a judicial order, decree, judgment, or legally binding separation agreement, or with the intention of terminating the marriage or remaining permanently separated. This statement shall set forth the date of the separation and the current address of the employee's husband or wife.

- 1323** 22 N.Y. COMP. CODES R. & REGS. § 7400.4 (2007) In determining whether or not to delete one or more items of information from the copy of a financial disclosure statement made available to the public, the Ethics Commission of the Unified Court System shall weigh whether the case is a spousal exemption request or a deletion request.
- 1324** 22 N.Y. COMP. CODES R. & REGS. § 7400.6 (2007) An employee's request for an exemption from reporting information pertaining to his or her spouse may be investigated by the Ethics Commission for the Unified Court System.



## METHODOLOGY AND DISCLAIMER

The preparation of this compendium of rights and responsibilities began with a comprehensive search of a number of electronic databases that compile New York's statutes and regulations, using multiple forms and combinations of the following search terms: spouse, husband, wife, marry, marriage, matrimonial, marital, divorce, and widow. Each statute and regulation found to contain a form of these words was then evaluated to determine whether it conferred a legal protection or duty. If it did, it was included in this volume. Otherwise, except in a few instances, it was omitted.

Although this report is intended to be comprehensive, it is possible that not every statutory and regulatory right and responsibility of marriage in New York have been captured here. The provisions most likely to have been inadvertently omitted are those which did not contain any of the search terms listed above. For example, while the search methodology almost certainly captured all of the laws that contain the search terms, the report may not in every instance summarize the associated laws in which the search terms are *applied*. By way of illustration, a regulation providing that an administrative agency must consider the income of all members of an applicant's "household" in determining the applicant's eligibility for a form of public assistance might not be included, even though a separate law defines "household" as including the applicant's spouse. An attempt was made to identify and summarize all such inter-related marriage provisions, but it is possible that some were overlooked.

It should also be noted that because the search methodology employed here did not take judicial decisions into account, any of the common law rights or responsibilities of marriage that have not been codified are not included here.

This report was created for the express and sole purpose of describing the legal protections created by civil marriage in New York State, and is current as of June 8, 2007. The summary descriptions in this report do not constitute legal advice, nor should they be relied upon as a comprehensive representation of New York's marriage-related law. Of necessity, many of the entries in these pages are very abbreviated, and they may omit certain qualifying language, references to related laws, and/or references to individuals other than spouses who may be associated with a certain right or responsibility (such as a child, parent, or sibling). The inclusion of a right or responsibility of marriage in this report does not necessarily mean that the law in question applies only to married couples. As noted in the Introduction, in a few instances, the same or similar protections may also apply to "domestic partners," including same-sex partners.

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or distributee of the decedent may institute an action to perfect title to the property. • If a surviving spouse has apparent title to community property, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or a testamentary beneficiary or distributee of the decedent. If a personal representative or a testamentary beneficiary or distributee of the decedent has apparent title to community property, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse. • The beneficiary of an express trust may transfer the trust income property to his or her spouse. • In order to qualify for an inter vivos supplemental needs trust established for persons with severe and chronic or persistent disabilities, the creator of the trust must be a person or entity other than the beneficiary or the beneficiary's spouse. • Trustees may establish certain separate trusts for spouses and surviving spouses. • Provisions in certain trusts that redirect principal/income if the creator's spouse should apply for medical assistance, etc. are void against public policy. • Bank accounts in trust form do not affect the rights of the surviving spouse of the depositor. • A person who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant, or if no guardian is available, to an adult member of the minor's family, including a spouse. • If no custodian exists for the property or liquidated debt to a minor, a minor fourteen years of age or older may designate an adult member of the minor's family, including the spouse, to be the custodian. An adult family member, including a spouse, may petition the court to appoint a custodian of a minor under the age of fourteen without a guardian. • A minor who has attained the age of fourteen years or an adult member of the minor's family, including a spouse, may petition the court for an accounting by the custodian or the custodian's legal representative. • The creator of a charitable trust may designate him/her self or his or her spouse to perform duties associated with the trust. • If an estate would otherwise be invalid because of the reference to a "spouse" without any further identification, the reference is presumed to be the "surviving spouse" as of the effective date of the instrument. • A fiduciary may join with a decedent's spouse in a joint tax return in certain circumstances. • Dispositions to surviving spouses are eligible for an estate tax marital deduction. • Trustees have the power to amend a trust for certain tax purposes including to meet the needs of qualified domestic trust for a surviving spouse who is not a U.S. citizen. • A trustee may not make an adjustment that would reduce the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction is claimed. • When the decedent dies or when an income interest in a trust ends, the fiduciary is authorized to pay certain administrative expenses and taxes out of income passing to a trust for which he or she claims a marital tax deduction. • For deferred compensation, annuities, and similar payments, if, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment for services rendered or property transferred in exchange for future payments to income than is provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction. • A beneficiary spouse may direct the trustee to make changes to certain trusts if the trust is not producing income. • A surviving spouse to whom a disposition has been made which qualifies for the estate tax marital deduction is last on the list as liable against creditors. • Any disposition to a surviving spouse which qualifies for the estate tax marital deduction is last on the list as chargeable against estate obligations. • A person required to file a financial disclosure statement to the state ethics commission may request an exemption from identifying information of spouse. • The Attorney General has the authority to prosecute actions for violations by charitable organizations and their representatives, including law enforcement support organizations that represent that funds collected will be used to benefit the widows of slain police officers when the organization offers no such benefit. • Surviving spouse of a state police officer killed in the line of duty shall, if otherwise qualified, have a prior and preferred right over other applicants to appointment to a state police training school or academy. • The widow of a member of the state police whose death has been caused by injury or disease contracted in the performance of duty may receive certain death benefits until she or he is married again. • The opportunity to obtain employment without discrimination because of marital status is recognized as and declared to be a civil right. The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space not discriminated because of marital status is recognized as and declared to be a civil right. • Spouses employed in the domestic service of any person are not considered an employee of that person for civil rights protection purposes. • The Human Rights Division has the authority to create advisory councils to research the problem of discrimination because of marital status, and may also create state programs to minimize discrimination because of marital status. • Regarding unlawful discriminatory practices, the provisions of this section do not pertain to certain individuals who provide housing to older individuals and their spouses. • No provision of this section regarding unlawful discriminatory practices which provides spouses the right to separately apply for credit, borrow money, or have separate credit histories maintained shall limit or foreclose the right of creditors, under any other provision of law, to hold one spouse legally liable for debts incurred by the other. • An aggrieved individual may force a discriminating entity to take various affirmative steps to reduce discrimination based upon marital status. • For all state contracts and documents soliciting business, the contractor may not discriminate on the basis of marital status. • The Division of Veterans' Affairs shall provide seminars three times per year at locations throughout the state to advise veterans and their surviving spouses, who are sixty-two years of age or older, of veterans' benefits for which they may be eligible from the state and federal governments, and the means of obtaining such benefits. The Division shall have the authority to process all information received from nursing homes and residential health care facilities indicating veteran or veteran spouse status. • Surviving spouses of deceased military personnel who were killed in combat or duty are eligible to hostile fire or imminent danger are first in priority to be eligible recipients of the New York State supplemental burial allowance. • Certain payments are provided to the widows/widowers of blind veterans. • Where any veteran is disqualified for the annuity for any period solely because the veteran is incarcerated, the director of veterans' affairs shall pay to his wife, if any, the annuity which such veteran would receive for that period. In case a widow of a deceased annuitant is being furnished hospital treatment, institutional or domiciliary care by the United States or the state, the annuity payable under this article to such a widow may be discontinued after the first day of the seventh calendar month following the month of admission for treatment or care. Payment of such annuity shall be resumed when the widow is discharged from the hospital, institution or home, or if his or her treatment or care therein is otherwise terminated. • An individual married to a person who falls under certain categories is eligible to receive a license to conduct bingo games. • The batterers project which seeks to reduce and prevent abusive behaviors collects data of the project's participants including their marital status. • A surviving spouse of an individual who died as a direct result of a crime is eligible for Crime Victims benefits, as is a surviving spouse of a crime victim who died from causes not directly related to the crime when such victim died prior to filing a claim with the board or subsequent to filing a claim but prior to the rendering of a decision by the board. Such award shall be limited to out-of-pocket loss incurred as a direct result of the crime, and to compensation for a spouse of a victim of a crime who has sustained personal physical injury as a direct result of a crime. • Costs to be reimbursed include the counseling services of homicide victims and crime victims who have sustained personal physical injuries, as well as costs associated with residing at shelters for battered spouses. • Where a police officer or firefighter, both paid and volunteer, dies from injuries received in the line of duty as a direct result of a crime, the board or the board member, may, without regard to the financial difficulty of the claimant, make an award for the unreimbursed counseling expenses of family members including the eligible spouse of such victim. • Surviving spouses of veterans of the U.S. Armed Forces may receive licenses to sell