



Connecticut Civil Unions

April 2010

This document is intended to provide general information only and cannot provide guidance or legal advice as to one's specific situation. Moreover, the law is constantly changing and this publication is based upon the information that is known to us as of this printing. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. Check our website, www.glad.org, for more information.

If you have questions about this publication, other legal issues or need lawyer referrals, call GLAD's Legal Infoline weekdays between 1:30 and 4:30pm at:

800.455-GLAD (4523) or 617.426.1350

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Introduction

Connecticut joined Vermont as the second state to allow same-sex couples to enter into a civil union, which provides all the rights, benefits and responsibilities that are granted to a spouse under state law.¹ In Vermont, the status of civil union was created for the very first time by the Vermont legislature in 2001 in response to a ruling by the Vermont Supreme Court that the exclusion of same-sex couples from marriage violated the Vermont state constitution. In Connecticut, without any compulsion from a court, the state legislature passed a law, “An Act Concerning Civil Unions,” that was signed by the Governor on April 20, 2005 and became effective October 1, 2005.

Although GLAD saw this as a constructive first step toward full equality for same-sex couples in Connecticut, GLAD fought to achieve marriage equality in Connecticut through its lawsuit, *Kerrigan & Mock v. Department of Public Health*, filed in New Haven Superior Court in August 2004. GLAD represented eight loving and committed same-sex couples who seek to marry in Connecticut.² In September 2006, the superior court ruled against GLAD’s claims on the grounds that, since civil unions are available, the plaintiffs have suffered no constitutionally recognizable harm. GLAD appealed this ruling, and the case was heard in the Connecticut Supreme Court in May 2007.

On October 10, 2008, in a 4-3 decision, the Connecticut Supreme Court ruled that it was unconstitutional to deny the right to marry to same-sex couples. Beginning November 12, 2008 same-sex couples from any place in the world are able to legally marry in Connecticut if they are otherwise eligible.

Although the *Kerrigan* decision, which made it legal for same-sex couples to marry in Connecticut, did not in any way change the Connecticut Civil Union Law, on April 23, 2009 Public Act 09-13, “An Act Implementing the Guarantee of Equal Protection Under the Constitution of the State for Same Sex Couples,” became law. This act makes Connecticut’s marriage laws consistent with the *Kerrigan*

¹ California provides a registered domestic partnership system which is nearly as comprehensive.

² GLAD’s co-counsel in this matter include New Haven attorney Maureen M. Murphy, attorneys Kenneth Bartschi and Karen Dowd of Horton, Shields & Knox in Hartford and the ACLU of Connecticut.

decision and provides a process for moving from a system in which both civil unions *and* marriage are available to gay and lesbian couples to a system in which only marriage is available. ***Civil unions will be converted into marriages. This transition will be completed on October 1, 2010, and no new civil union applications will be allowed after September 30, 2010.*** For couples currently in civil unions, there is no cause for concern. Your legal rights and responsibilities as a couple under Connecticut law are the same in a civil union and a marriage. What will change are not your legal rights, but the designation of your legal status under Connecticut law.

Given the fact that effective October 1, 2010 all existing Connecticut civil unions that are not in the process of being dissolved will be converted into marriages by operation of law, most same-sex couples who want to legalize their relationship in Connecticut will choose to enter into a marriage rather than a civil union.

However, this publication provides information about Connecticut civil unions both for those couples who are already in such a relationship and those couples who choose to enter into a Connecticut civil union prior to October 1, 2010.

This document is intended to provide general information only and cannot provide guidance or legal advice as to one's specific situation. Moreover, this is a rapidly evolving area of the law; and, therefore, these questions and answers are based upon the information that is known to us as of this printing and that can change at any time. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. You may call the GLAD Legal InfoLine at (800) 455-GLAD (4523) or check our website www.glad.org for more information and to obtain lawyer referrals.

What Is A Civil Union?

A Connecticut civil union is not a marriage. It is a legal status, parallel to civil marriage at the state law level, in which the parties to the civil union “shall have all the same benefits, protections and responsibilities under [Connecticut] law ... as are granted to spouses in a marriage....” (Civil Union Law, Public Act 05-10, §§1(1), 14-15).

What Is The Difference Between Marriage And Civil Unions?

First, there is a difference. Civil unions will provide state-based legal rights that normally come along with marriage, and that is a tremendous advance over where things stood previously in Connecticut.

However, marriage is more than the sum of its legal parts. Because it is a social, cultural and legal institution, access to marriage provides protections to the married family on each of those levels. The word is itself a protection because others understand that when you are married you are a family. For some, being married allows them to express externally the nature of the commitment they feel internally. Marriages receive widespread respect.

Beyond these intangible protections, there are some concrete differences. The word “marriage” is the gateway to the 1138 federal protections afforded married couples. Without that word, same-sex couples in civil unions have no claim for those legal protections. While those protections are presently withheld from married couples of the same-sex, we do not believe that discrimination will stand the test of time.

At the state law level, the Civil Union Law gives public officials the explicit right not to officiate at a civil union while there is no such explicit exemption in the marriage laws. Moreover, there are certain circumstances in which 16 and 17-year-olds may marry, but you must be 18 to join in a civil union (unless you are ruled an emancipated minor by a court). There are also almost certainly important details to be worked out particularly where state law interacts, or works in tandem, with federal law.

Finally, it will be harder to gain respect for one's civil union in other states – in whole or in part – than it would be for a marriage. While marriages of same-sex couples will face discrimination in some places, marriages are advantaged over civil unions because all states have a marriage-system (with rich histories of respect for marriages validly licensed elsewhere).

What Affect Will Public Act 09-13 Have On Civil Unions?

Here are some common questions and answers about the impact of Public Act 09-13 on civil unions:

How much longer will civil unions be available in Connecticut?

Technically, the last day for the issuance of civil union licenses in Connecticut is September 30, 2010. As explained below, however, there is no substantial reason to enter into a civil union between now and September 30, 2010.

I have a civil union. What happens to it if I don't marry my civil union spouse by October 1, 2010?

If you have a civil union entered into in Connecticut and you do not marry your civil union spouse prior to October 1, 2010, you are deemed to be married by the state of Connecticut as of October 1, 2010 and your civil union status will cease as of that date. There is, however, no provision in the law for the clerks to issue you a new marriage certificate when this transition occurs.

There is one exception to the transformation of an existing civil union into a marriage. If you have started a legal proceeding for “dissolution, annulment or legal separation” of your civil union and it is not completed by October 1, 2010, your civil union will not become a marriage. Also, if you have completed a legal dissolution of a civil union before October 1, 2010, no civil union exists that could be converted to a marriage as of that date.

What if I entered into a civil union and then subsequently married my civil union spouse prior to October 1, 2010?

If you have a civil union entered into Connecticut and subsequently marry the same person, your civil union will be “merged” into your marriage as of the date of your marriage. Your civil union status will terminate on the date of your marriage.

What is the legal impact on a couple’s rights and responsibilities when they were in a civil union that becomes a marriage?

The merger of your civil union into a marriage will have no effect on your legal rights and responsibilities under Connecticut law. This is because the civil union law grants to same-sex couples “all the same benefits, protections and responsibilities under law ... as are granted spouses in a marriage.” Public Act 09-13 emphasizes this point by providing that the provisions of the bill do not “impair ... any right or benefit accrued, or responsibility incurred, by a party to a civil union prior to October 1, 2010.” For example, both parties to a civil union are the presumed parents of a child born to one of them during the civil union. That legal presumption will not change when the civil union merges into a marriage. Similarly, the length of a couple’s marriage for legal purposes will start from the date of the civil union that merged into a marriage.

Since civil unions are ending on October 1, 2010, is there any point to getting a civil union now instead of or in addition to a marriage?

Unless you particularly want a civil union for some personal reason, there is no benefit to getting a civil union now with respect to your legal rights under Connecticut law. Some people may want a civil union because they will be traveling to a state, such as California, that will not recognize a marriage, but will recognize a civil union or other status that provides substantially all the legal rights of marriage. However, if this is the case, starting October 1, 2010 your Connecticut civil union will no longer exist as a legal status and you will have to enter into a civil union in another state in order to maintain that status going forward.

I entered into a civil union in another state, not Connecticut, does Public Act 09-13 affect my civil union?

No. The provisions of Public Act 09-13 for a transition from civil unions to marriage apply only to civil unions entered into in Connecticut. It does not terminate a civil union entered into in another state and it will continue to exist on October 1, 2010 and after. There is no bar to a person with an out-of-state civil union also marrying the same person in Connecticut. People with out-of-state civil unions may have both statuses after October 1, 2010.

What does Public Act 09-13 provide regarding Connecticut's recognition of civil unions and equivalent statuses entered into in another state?

If you have a civil union from another state, Public Act 09-13 clarifies that Connecticut will grant you the same rights and benefits, and hold you to the same responsibilities, as a married couple in Connecticut. So, for example, if you have a civil union from Vermont, New Jersey or New Hampshire, or a registered domestic partnership from California, Oregon, Washington or Nevada, Connecticut law will treat you in the same manner as if you were married in Connecticut.

Who Can Get A Connecticut Civil Union?

As of October 1, 2005, a person is eligible to enter into a Connecticut civil union if that person:

1. is not a party to another civil union or a marriage;
2. is of the same sex as the other party to the civil union;
3. is at least 18 years of age (although a minor between ages 16 and 18 will be deemed to be over 18 for the purpose of obtaining a civil union license if the minor has received a court order of emancipation)³;

³ This is different than the Connecticut law governing marriage. A person under 18 can marry in Connecticut if an acknowledged, written consent of a parent or guardian is filed with the registrar of vital statistics. If there is no parent or guardian resident in the United States, "the written consent of the judge of probate for the district in which the minor resides, endorsed on the [marriage] license, shall be sufficient." (Conn. Gen. Stat. §46b-30(b)). A person under 16 can marry in Connecticut if "the judge of probate for the district in which the minor resides endorses his written consent on the license." (Conn. Gen. Stat. §46b-30(a)).

4. is not closely related by blood to the other party to the civil union (matching essentially the same restrictions applicable to marriage in Connecticut); and
 5. is not under conservatorship or guardianship or has the acknowledged, written consent of the conservator or guardian.
- (Civil Union Law, Public Act 05-10, §§2-3, 9-10 and 19-20).

Connecticut civil unions will only be available until September 30, 2010.

Do We Have To Be Connecticut Residents?

No. Although the new law does not speak directly to the question, there is no residency requirement for marriage in Connecticut and, by clear implication, no residency requirement for a Connecticut civil union. Therefore, non-residents should be able to readily obtain a civil union license in Connecticut provided they are otherwise eligible. For non-resident couples, the civil union must be celebrated in the town where the civil union license is issued.

Can We Get A Connecticut Civil Union License If We Are Already Married Or Have A Civil Union Or Have A Comprehensive Domestic Partnership?

The new Connecticut Civil Union Law says a person is eligible to enter a civil union if “such person is: (1) Not a party to another civil union or a marriage.” (Civil Union Law, Public Act 05-10, §2(1)).

In addition, the Connecticut civil union license process requires the applicants to disclose whether they are “single, widowed or divorced.” (Civil Union Law, Public Act 05-10, §8). Presumably, this will require the applicants to indicate that they are currently married or in a civil union from another jurisdiction.

With this background, the question arises as to whether a couple can get a Connecticut civil union license if they are already married or have a civil union or have a comprehensive domestic partnership.

With the Same Person

Prior to the October 10, 2008 Connecticut Supreme Court decision which permits and recognizes the marriages of same-sex couples, the Connecticut Attorney General on September 20, 2005, issued a formal legal opinion paper to the Connecticut Department of Public Health in response to the following question from the Registrar of Vital Statistics:

“Whether after October 1st, a couple that has entered into a civil union, same-sex marriage, or domestic partnership out-of-state may legally enter into a civil union in Connecticut with the same partner”

In summary, the Attorney General responded that:

1. Couples with a Vermont civil union or a California domestic partnership will be treated in Connecticut in the same way as a couple with a Connecticut civil union, but CANNOT also enter into a Connecticut civil union;
2. Same-sex couples with an out-of-state marriage, e.g. from Massachusetts, California or Canada, CAN enter into a Connecticut civil union, but the state of Connecticut will not recognize their marriage as valid (*as a result of the Connecticut Supreme Court's decision this is no longer true*); and
3. Couples with a form of domestic partnership other than from California might or might not be able to enter into a Connecticut civil union depending upon a comparison of the specific provisions of the out-of-state domestic partnership law to Connecticut law.

The Attorney General's opinion also recognizes that the new Connecticut Civil Union Law expressly provides for the recognition of certain civil unions celebrated in a foreign country. Presumably, couples with such a foreign country civil union will also be UNABLE to enter into a Connecticut civil union.

Also, since the Attorney General issued his opinion, both New Jersey and New Hampshire have passed a civil union law, and Oregon, Washington and Nevada have enacted a comprehensive domestic partnership registry. GLAD believes that these couples will be treated in

Connecticut in the same way as a couple with a Connecticut civil union and will be UNABLE to also enter into a Connecticut civil union.

Although it is not completely clear, now that Connecticut allows and recognizes the marriages of same-sex couples, it is unlikely that a same-sex married couple will also be allowed to enter into a Connecticut civil union (although a same-sex couple with a Connecticut civil union will be allowed to enter into marriage).

With a Different Person

It should be clear that a person cannot enter a Connecticut civil union if he or she is currently married or has a civil union or comprehensive domestic partnership to a different person.

The prior existing marriage or civil union or comprehensive domestic partnership must be ended before entering a Connecticut civil union. You should consult an attorney as to where and how this can be accomplished.

Connecticut residents with an existing civil union or marriage to another person will be able to dissolve that union in a Connecticut court. That process takes a period of time.

Termination of a California domestic partnership can take different forms and, in some cases, does not require a court proceeding. You should seek advice and consult California's informative brochure at www.ss.ca.gov/dpregistry/forms/sf-dp_termbrochure.pdf. For information about ending an Oregon, Washington or Nevada domestic partnership contact Lambda Legal (www.lambdalegal.org, 212-809-8585).

Failure to end the prior marriage or civil union or comprehensive domestic partnership before entering into a Connecticut civil union could result in criminal charges of bigamy.

Can We Get A Connecticut Civil Union License If We Already Have A Non-Comprehensive Domestic Partnership?

With the Same Person

It is GLAD's position that any non-comprehensive governmental domestic partnership status you have should probably pose no problem to entering a Connecticut civil union. However, as noted above, the Connecticut Attorney General's opinion indicates that if an out-of-state domestic partnership would be recognized as a civil union in Connecticut, then a couple with such an out-of-state domestic partnership would not be allowed to enter into a Connecticut civil union. In the absence of any specific guidance as to any particular state or municipal domestic partnership, you should seek advice from an attorney.

With a Different Person

If you intend to enter a Connecticut civil union with someone other than the person with whom you have a non-comprehensive state or municipal domestic partnership, GLAD recommends that you consult an attorney to determine whether you should formally terminate the domestic partnership first.

How Do We Get A Connecticut Civil Union?

Except as noted, this entire process is an exact mirror of the process for marriage in Connecticut.

Application for a License

In order to obtain a Connecticut civil union license, both parties must appear and make an application before the registrar of the town in which either: (1) the civil union is to be celebrated; or (2) either person to be joined in the civil union resides. (Civil Union Law, Public Act 05-10, §7). However, it would seem that parties may appear before the registrar separately since the law provides that "if the license is signed and sworn to by the applicants on different dates, the earlier date shall be deemed the date of application." (Civil Union Law, Public Act 05-10, §8).

The Law requires that the “license shall be completed in its entirety, dated, signed and sworn to by each applicant and shall state each applicant’s name, age, race, birthplace, residence, whether single, widowed or divorced and whether under the supervision or control of a conservator or guardian.” The parties’ Social Security numbers must also be recorded even though they will not be made publicly available. (Civil Union Law, Public Act 05-10, §8).

The registrar must also provide the applicants with a copy of the Civil Union Law.

Connecticut has no blood test requirements to obtain a civil union license. Prior law, repealed in 2003, required testing for STD’s and rubella prior to the issuance of a marriage license.

Finally, applicants should check with the appropriate town registrar as to any fee for obtaining a civil union license. **THE LICENSE APPLICATION MUST BE COMPLETED BY SEPTEMBER 30, 2010.**

Celebration of the Civil Union

Measured from the date of application⁴, the couple has 65 days to enter into a civil union (**BUT MUST BE DONE BY SEPTEMBER 30, 2010**). The same individuals authorized to legally join two people in marriage are authorized to join two people in a civil union. They may do so “in any town in the state.” (Civil Union Law, Public Act 05-10, §4). (But note that, for non-resident couples, the civil union must be celebrated in the town where the Civil Union license is issued.)

Authorized officiants include: all judges and retired judges, including judges of other states who can legally marry people, family support magistrates, states referees, justices of the peace and all ordained or licensed members of the clergy from Connecticut or any other state. (Civil Union Law, Public Act 05-10, §4(a)).

⁴ If the parties appear separately before the registrar and therefore the license is signed and sworn to on two separate dates, “the earlier date shall be deemed the date of application.” (Civil Union Law, Public Act 05-10, §8).

The official issuing the license to a couple cannot then officiate at the civil union, and this prohibition includes any assistant or deputy to the issuing official. (Civil Union Law, Public Act 05-10, §4(b)).

A person authorized to officiate at a civil union may refuse to do so without fine or penalty. There is no comparable provision as to marriage in Connecticut. (Civil Union Law, Public Act 05-10, §6).

The Civil Union Certificate

The authorized officiant certifies on the civil union license “the fact, time and place of the civil union” and returns it to the registrar of the issuing town “before or during the first week of the month following the celebration of the civil union (**BUT NO LATER THAN SEPTEMBER 30, 2010**).” If the officiant fails to comply, the civil union couple can file a notarized affidavit attesting to the same facts. Either the filed Civil Union Certificate or the affidavit is then legal evidence of the civil union. (Civil Union Law, Public Act 05-10, §§11-12).

What Are Some Things We Should Consider Before Entering Into A Connecticut Civil Union?

A civil union is an important commitment and should be considered carefully. Since a Connecticut civil union is designed to confer all of the state law-based benefits, protections and responsibilities of marriage, entering into that status can affect many aspects of your public and private life. Moreover, because only a few states have any sort of comprehensive relationship recognition for same-sex couples, it is important to plan for the worst, i.e., that entities in other states will not respect the civil union, while hoping for the best.

Moreover, this is a rapidly evolving area of new law where some things are unclear and others are confusing and where we do not yet have a great deal of guidance as to the application and implementation of the law. Therefore, please remember that the information provided here is tentative and that circumstances may change rapidly. It is important to make an informed choice about whether to enter into a Connecticut civil union based on your

relationship with your partner and the unique circumstances of your life. You should consult an attorney in your home state before entering a civil union.

In preparing to consult with an attorney, here are a few issues to consider:

- Entering into a Connecticut civil union may complicate matters if you are in the process of adopting a child or considering adoption in the future. Some foreign countries welcome single-parent adoptions but do not allow same-sex couples to adopt. This might also be true for some states in the United States.
- Being in a civil union could disqualify you from certain state government programs because your spouse's income and assets may be included with your own.
- The military provides that an "attempted marriage" to a person of the same sex is grounds for discharge under "Don't Ask, Don't Tell." The military may view a Connecticut civil union as the equivalent of a marriage for these purposes.
- Under Connecticut law, married persons are responsible for their spouse's debts such as medical bills, rent and the purchases of items that support the family or benefit the couple. Connecticut civil union spouses would undertake these same responsibilities.
- Under Connecticut law, a spouse generally cannot completely disinherit a spouse by leaving the spouse out of her or his will unless the couple signed a valid prenuptial agreement. As a result, a spouse is entitled to a share of your estate. Connecticut civil union spouses would be subject to these same legal rules.
- Under Connecticut law, a civil union can be dissolved in Connecticut only if certain residency requirements are satisfied (see page 28, "*How Do I Get Out Of A Connecticut Civil Union?*"). Also, other states may or may not allow you to dissolve your civil union under those states' laws. With divorce in Connecticut, the court will determine property division, alimony, child custody and child support if the parties cannot agree on these issues themselves. Under Connecticut law, the court can consider any property owned by either or both of the parties as marital property subject to distribution in a dissolution unless the parties enter into an otherwise valid pre-nuptial

agreement addressing the question. Connecticut civil union spouses will divorce under the same legal system.

- An employer-sponsored domestic partnership plan may require you to be “single” in order to qualify. This could raise questions as to whether an employee in a civil union can participate. (If the plan only requires the employee to be “unmarried,” an employee in a Connecticut civil union can forthrightly state that she or he is not married.)
- Once you are in a civil union, you have assumed a legal status that will have to be disclosed on forms and records in a variety of public and private contexts.

What Protections Do We Gain From A Connecticut Civil Union?

A Connecticut civil union gives you automatic inclusion within and under hundreds of Connecticut state laws that apply to married spouses, family and next of kin.

This is what the law says:

Sec. 14. (NEW) (Effective October 1, 2005) Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage

Sec. 15. (NEW) (Effective October 1, 2005) Wherever in the general statutes the terms “spouse,” “family,” “immediate family,” “dependent,” “next of kin” or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes [with some identified exceptions] the term “marriage” is used or defined, a civil union shall be included in such use or definition.

(Civil Union Law, Public Act 05-10, §§14-15).

Although the Civil Union Law does not spell out any specific benefits and responsibilities under those hundreds of Connecticut laws that will include civil union couples, the State Office of Legislative Research did an analysis of the bill and identified the following categories of laws that will include civil union couples:

- family law, including marriage, divorce, and support;
- title, tenure, descent and distribution, intestate succession, wills, survivorships, or other incidents of the acquisition, ownership or transfer (during life or at death) of real or personal property;
- state and municipal taxation;
- probate courts and procedure;
- group insurance for government (but not private-sector) employees;
- family leave benefits;
- financial disclosure and conflict-of-interest rules;
- protection against discrimination based on marital status;
- emergency and non-emergency medical care and treatment, hospital visitation and notification, and authority to act in matters affecting family members;
- state public assistance benefits;
- workers' compensation;
- crime victims' rights;
- marital privileges in court proceedings; and
- vital records and absentee voting procedures.

(Office of Legislative Research, Bill Analysis, pp. 2-3).

Also, on July 27, 2005, the State of Connecticut Insurance Department advised all property and casualty insurers to: (1) “become familiar with [the new civil union law], particularly sections 14 and 15,” quoted above; and (2) “review their existing practices and ensure that as of ... October 1, 2005, they are in compliance.”

Many private parties – e.g., businesses, employers, public accommodations, insurance companies, etc. – are subject to the state law prohibiting discrimination based on marital status, which as of October 1, 2005 will apply to the status of civil union as well as the status of

marriage.⁵ Of course, the non-discrimination law already prohibits sexual orientation discrimination and that will continue. (Employers with fewer than three employees are exempt from the nondiscrimination law as are private clubs and certain owner-occupied housing properties. Religious organizations are also sometimes exempt from the nondiscrimination law.) (Office of Legislative Research, Bill Analysis, p. 6).

Family law attorneys highly recommend that couples consider entering into a prenuptial agreement before joining in a civil union to clarify what they consider to be the length of their relationship, the ways they wish their property to be divided (in the event that their wishes vary from usual dissolution laws), and other matters of particular concern to them.

Are There Any Limitations On Connecticut Civil Unions?

Yes. Although civil unions in Connecticut have been created to be essentially completely parallel to marriage for purposes of Connecticut state law, a Connecticut civil union is still not the same as a marriage and there are many benefits and rights that are available to married couples in Connecticut that same-sex couples joined in civil union will not be able to access.

The Federal Defense of Marriage Act (DOMA)

First and foremost, because of the so-called federal Defense of Marriage Act (DOMA) and because the federal government has a marriage-based system for benefits, the current federal government almost certainly will take the position that it is not obligated to recognize Connecticut civil unions and therefore is not required to extend to Connecticut civil union spouses the more than 1138 federal benefits, protections and responsibilities applicable to spouses in a different-sex marriage. This includes federal taxes, Social Security, immigration,

⁵ In many instances, the non-discrimination law will mean equal treatment for civil unions and marriages. However, because of federal law, there may be circumstances in which this non-discrimination protection will not be available to civil union spouses. For examples of where federal law may direct different treatment for civil union spouses, see employment-related health insurance below.

veterans' benefits and many, many more.

While married couples will have a claim to end the federal government's discrimination against their marriages, couples in civil unions will not.

Interactions Between Connecticut Law and Federal Law

In addition, federal law interacts with Connecticut state law in many ways that have yet to be catalogued and considered in light of this new Connecticut Civil Union Law. Some of these will almost certainly treat same-sex couples differently than Connecticut married couples until corrective action is taken.

For example, a conflict in Connecticut tax law concerning the filing status on state income taxes has already been addressed by the Connecticut legislature (see page 26, "*Can A Connecticut Civil Union Couple File a Joint Tax Return?*"). Other issues like this can and may be resolved either administratively or legislatively over time. However, for the moment, we anticipate some areas of federal/Connecticut interaction that will create problems and inequality for civil union couples.

Respect for Connecticut Civil Unions Outside Connecticut

There is uncertainty as to how other states will treat a Connecticut civil union – when couples joined in a Connecticut civil union relocate, or simply travel outside of Connecticut, or when non-resident couples enter a Connecticut civil union and then return home.

It is GLAD's position that the legal status of Connecticut civil unions should be respected in all other states just as marriages enjoy a strong presumption of respect, but this will not happen immediately and a civil union is not a marriage.

A Connecticut civil union will be respected in other states with civil unions (Vermont, New Hampshire, New Jersey) and the California Domestic Partnership Law (AB205) expressly provides for the recognition of a legal status such as a Connecticut civil union.

In addition, the number of other states that have some statewide law or system addressing protections and benefits for same-sex couples is growing. Although it is GLAD's position that every state should respect a Connecticut civil union, it is reasonable to assume that respect might be more readily forthcoming in states which also extend a legal status to same-sex couples.

Social Respect

As a longstanding cultural and legal institution, marriage is a unique marker of family and commitment and enjoys a presumption of respect. As a new institution created only for same-sex couples, civil unions will not likely enjoy the same level of respect.

How Will A Connecticut Civil Union Affect My Children?

There is no more important question than establishing legal parenthood. This document can only provide general information. For you and your children, we cannot urge more strongly that you consult an attorney about undertaking co-parent adoption for any current non-legal parents – particularly in light of the information below.

As to legal status as parents, if both parties to the Connecticut civil union were parents before the civil union (e.g., through joint or second-parent adoption), both parties remain parents.

If one party to the civil union was not a parent before the civil union, the civil union will not change that. As a result of the civil union, he or she will likely be considered a stepparent, carrying whatever weight that status has in Connecticut. The sure way to become a legal parent in this situation is for the non-legal parent to adopt the child. Moreover, that adoption decree from the court is a legal judgment. As a result, it should be recognized broadly outside of Connecticut and has legal significance independent of the civil union.

If two people joined in a Connecticut civil union subsequently have a child, both parties may be legally presumed to be the legal parents of a child born to either of them. In Connecticut, a child born into a marriage is presumed to be the child of both the wife and the husband. By virtue of the Civil Union Law, that same presumption should extend to a child born into a civil union. Nonetheless, this is just a presumption and does not have the same effect as a court judgment. It is subject to being challenged and overturned.

In addition, the civil union could encounter a lack of respect in some states, so relying on the fact of the civil union alone to protect your children is not the best approach. Therefore, GLAD strongly recommends that you consult a lawyer and continue the practice of securing a second-parent adoption in order to obtain a decree of legal parenthood that should be recognized broadly outside of Connecticut, independent of the civil union.

- *Miller-Jenkins Sidebar*

Relying on a partner's good will, or even on the fact that a child was born into a marriage or civil union, is not the best way to ensure ongoing parental rights of both parents if a couple later separates. A case in point is *Miller-Jenkins v. Miller-Jenkins*, 912 A.2d 951 (Vt.,2006), cert. denied, 127 S.Ct. 2130 (2007); *Miller-Jenkins v. Miller-Jenkins*, 49 Va.App. 88 (2006), cert. denied, 128 S. Ct. 1127 (2008). This case has been in litigation since 2004, has involved two state Supreme Courts (Vermont and Virginia), and has already made several trips to the U.S. Supreme Court. Proceedings are ongoing.

In that case, Janet and Lisa had a child, Isabella, while they were in a civil union. Janet did not adopt. After the couple separated, Lisa moved to Virginia and used both the lack of an adoption, and Virginia's laws hostile to same-sex relationships to thwart Janet's contact with their daughter.

In November, 2009, the Vermont Family Court issued an order granting Janet responsibility for the day-to-day care of Isabella while granting Lisa liberal visitation rights. The transfer of custody was to have taken place on January 1, 2010. However, Lisa failed

to appear at the appointed time, and an arrest warrant has been issued.

On March 8, 2010, Liberty Counsel filed on Lisa's behalf an appeal of the custody order with the Vermont Supreme Court, and GLAD has filed a response on behalf of Janet. GLAD and local counsel represent Janet in the Vermont proceedings. For more information about the case, go to <http://www.glad.org/work/cases/miller-jenkins-v-miller-jenkins>.

Beyond these considerations, entering into a civil union will provide your children with every protection and benefit that the Connecticut government (not the federal government) extends to enhance the security and safety of children's lives.

Will I Be Able To Get Health Insurance Through My Employer For My Connecticut Civil Union Spouse?

If you are employed by the State of Connecticut, a Connecticut county or a Connecticut municipality, your civil union spouse will be entitled to the same health insurance rights and benefits provided to married employees.

If you are employed by the federal government, the so-called federal Defense of Marriage Act (DOMA) means that health plans offered through the Federal Employees Health Benefits Program do not cover same-sex spouses of federal employees. It seems almost certain that the federal government will not provide spousal health insurance coverage to an employee in a Connecticut civil union.

If you are self-employed, you should be able to purchase coverage for your civil union spouse on the same terms as a self-employed married individual.

If you are a private sector employee, the picture is more complicated and evolving. First, your employer may not be required to offer health insurance and otherwise may not be required to offer spousal or family coverage.

Assuming your employer provides individual, spousal and family coverage, your employer is certainly permitted to extend coverage to civil union spouses if it is available. The issue is whether a private employer can be required to extend such coverage.

Most private employer health plans are covered by a federal law known as ERISA (Employee Retirement Income Security Act). Under ERISA, there are two types of health plans: insured plans and self-insured plans. Insured plans can be regulated by state insurance laws. It is GLAD's position that an insured plan in Connecticut, governed by Connecticut law, will not likely be able to refuse coverage to spouses of civil union employees if coverage is extended to spouses of married employees.

This position is supported by a letter issued on August 4, 2005, by the Connecticut Commissioner of Insurance in which Commissioner Cogswell states, "Health insurance companies providing group or individual coverage, which is subject to regulation by the State of Connecticut will be required to comply with [the new civil union law] effective October 1, 2005."

It is generally believed that self-insured plans can choose whether to extend or exclude coverage for same-sex civil union spouses. GLAD is exploring avenues for challenging employers with self-insured plans that refuse to extend health coverage equally to same-sex spouses whether in civil unions or marriages.

Under a federal law known as COBRA, private employers with 20 or more employees are required to continue group health coverage for departing employees and covered dependents for a set period of time following certain events. As COBRA rights come from federal law, employers can deny COBRA rights to the same-sex spouses of employees. However, employers are free to extend these benefits voluntarily if available in the insurance marketplace. Connecticut law may also provide coverage continuation benefits in certain circumstances and those laws would require treating civil union spouses the same as married spouses.

Another federal law with a major impact on health insurance is HIPAA. HIPAA allows dependents of a covered employee to enroll outside of the normal open enrollment period. Because of DOMA, employers in Connecticut almost certainly will not be required to grant this federal right to the spouses of civil union employees. However, if employers cover same-sex spouses, they may do this voluntarily. In addition, to the extent that Connecticut law extends certain special enrollment rights to married couples, those rights will extend to civil union couples as well.

As to tax consequences, when employers extend coverage to the spouses of married employees, that benefit comes tax-free to the employee. However, because of DOMA, if an employer extends coverage to the civil union spouse of an employee, the “fair market value” of those benefits is treated as income to the employee and added to the employee’s W-2 at the end of the year. However, the value of those benefits should not be treated as income for Connecticut state tax purposes. Contact GLAD or a tax lawyer or accountant if you have concerns about how your employer is calculating the “fair market value” of this benefit.

Finally, complicated issues arise if Connecticut residents work in Connecticut for companies based in other states. The obligation to extend coverage to civil union spouses may depend on a variety of factors and is currently being evaluated by GLAD. Similar complicated issues arise for non-residents who obtain a Connecticut civil union and return home and seek spousal health insurance benefits from their non-Connecticut employer.

Can A Connecticut Civil Union Couple File A Joint Tax Return?

It seems clear that the IRS will not accept a joint federal income tax return filed by a same-sex couple whether they are married or joined in a civil union.

With respect to Connecticut income taxes, although the new Connecticut Civil Union Law, as initially passed, indicated that a civil

union couple would be able to file taxes in the same fashion as a married couple, another Connecticut statute required that a resident's filing status for state income taxes (with a few exceptions not relevant here) must be the same as their federal filing status. Since federal law will require a Connecticut civil union couple to file separately as "single," Connecticut law would require the same, putting the Connecticut income tax law at odds with the Civil Union Law.

This conflict was resolved by the Connecticut General Assembly with the enactment of Public Act 05-03, §58 in July 2005 which states that for tax years commencing on or after January 1, 2006 Connecticut's income tax law would ". . . apply to parties to a civil union recognized under the laws of this state as if federal income tax law . . . recognized such a civil union in the same manner as Connecticut law." In other words, **beginning with the 2006 tax year**, civil union couples have the same options for filing their Connecticut state income tax return as married couples.

Given the newness of the civil union status in Connecticut and other potential undiscovered complexities involved, it is strongly recommended that you consult with a reliable tax advisor in preparing your taxes following a civil union.

If We Get A Connecticut Civil Union Will We Be Able To Get Married Later?

Yes. There should be no impediment to you subsequently marrying the same person with whom you have joined in civil union wherever same-sex couples can legally marry, including Connecticut. Also, Public Act 09-13 will change any existing Connecticut civil unions that are not in the process of being dissolved into marriages by operation of law on October 1, 2010.

The foregoing presumes that you are seeking to enter a particular relationship with the same person. If you enter into a Connecticut civil union with one person and then seek to enter into a marriage with a different person, you should not attempt marriage until the Connecticut civil union is dissolved. Otherwise, you would have two legal spouses

which might subject you to a charge of bigamy and which would certainly create untold complexities in sorting out marital obligations in a legal system that expects to deal with one spouse at a time.

How Do I Get Out Of A Connecticut Civil Union?

The Connecticut Civil Union Law parallels Connecticut marriage law, including the Connecticut law regarding the termination of a legal relationship. Therefore, Connecticut's dissolution and annulment laws should apply to a Connecticut civil union.

Although there is no residency requirement to enter a Connecticut civil union or marriage, there are residency requirements for obtaining a dissolution of a civil union or a marriage in Connecticut. Specifically, in order to dissolve a civil union in a Connecticut court, you must satisfy one of the following requirements:

1. one party must have been a Connecticut resident for the 12 months preceding either the filing of the complaint or the issuance of the decree of dissolution; or
2. one party must have been a Connecticut resident at the time of the civil union and now has returned to Connecticut with an intention, before filing the complaint, of permanently remaining in Connecticut; or
3. the cause for dissolution arose after either party moved into Connecticut.

(Conn. Gen. Stat. §46b-44(c)).

In summary, residency is a requirement for a dissolution in Connecticut although it can be satisfied in several ways. However, if both parties to the Connecticut civil union were non-residents when the civil union was celebrated, at least one party must be a Connecticut resident in order to obtain a dissolution. That residency must be for a year either before or during the dissolution proceeding unless it can be shown that the cause for dissolution came about after residency in Connecticut was established by one party to the civil union.

If you are a resident of states such as Vermont, New Jersey, New Hampshire, California, Oregon, Washington or Nevada which have a

comprehensive system for recognizing same-sex relationships, it may also be possible to dissolve a Connecticut Civil Union there. Also, there have been several cases in the Massachusetts probate courts where a civil union has been dissolved and a couple of instances in Maine courts.

What Legal Protections Can Same-Sex Couples In Connecticut Acquire Without Entering Into A Connecticut Civil Union?

Because the Civil Union Law is new in Connecticut and because the establishment of legal statuses for same-sex couples is new throughout the country and taking different forms, this is a rapidly evolving area of the law where there are ongoing questions and considerable uncertainty as to where the law is heading. As a result, no one has sure answers to many important questions. Protecting your relationship and your family is obviously important and means that you should consult an attorney for advice on your particular situation. With or without a Connecticut civil union, there are a number of steps a Connecticut couple can take to safeguard their relationship:

- 1) **Relationship Agreement or Contract:** In 1987, the Connecticut Supreme Court ruled that an agreement between an unmarried heterosexual couple to share their earnings and the fruits of their labor was an express contract which could be enforced according to the ordinary rules of contract when the couple separated. *Boland v. Catalano*, 202 Conn. 333, 340-41, 521 A.2d 142, 146 (1987). There is every reason to believe that the same result will apply to the contract of a same-sex couple. While the court held that contracts could be oral or in writing, this ruling provides great incentive for couples to sort out their affairs in writing before a separation.
- 2) **Document Designating a Non-Legally Related Adult to Have Certain Rights and Responsibilities:** Connecticut adopted a new set of laws, in effect as of October 1, 2002, (Public Act 02-105), that allows an adult, known as the designator, to name another adult, known as the designee, to make certain decisions on her or

his behalf, or giving the designee certain rights or responsibilities. The protections this law provides fall far short of those associated with marriage, but they may provide some peace of mind for couples under a narrow set of circumstances.

To make this designation, the designator must sign, date and acknowledge a document before a notary public and two witnesses. The designator can revoke the document at any time by destroying the document or by executing a new document. Public Act 02-105, § 3(b). The designation document must be honored in the following circumstances:

- **In the Workplace:** An employer must notify an employee of an emergency phone call concerning the employee's designee. Conn. Gen. Stat. §. 31-51jj.
- **In Court and Administrative Proceedings Involving Crime Victims:** The designee of a homicide victim is granted employment protection for missing work in order to attend court proceedings. Conn. Gen Stat. § 54-85d. The designee is also entitled to request and receive advanced notice of the terms of plea agreements with the perpetrator, to make a statement in court prior to the sentencing of the perpetrator, and to make a statement at parole hearings of the perpetrator. Conn. Gen. Stat. §§ 1-1k, 54-91c, 54-126a. The designee, if wholly or partly dependent on the deceased person's income, may seek compensation from the Office of Victim Services. Conn. Gen. Stat. § 54-201.
- **In Health Care Settings:** With regard to end-of-life decisions, a doctor must attempt to determine the patient's wishes. If the patient's wishes are not written in a living will, the designee is among those with whom the doctor must consult regarding the removal of life support. Conn. Gen. Stat. § 19a-571(a). The doctor must record any such communications with a designee in the patient's medical record. Conn. Gen. Stat. § 19a-578(b). Before removing life support, the doctor must make reasonable efforts to notify the patient's designee. Conn. Gen. Stat. §19a-580. In addition, the designee has priority in making anatomical gifts on behalf of a deceased designator over all representatives or family members with

the exception of a surviving spouse. Conn. Gen. Stat. § 19a-278c(a).

- In Psychiatric Hospitals: The designee is among the list of people who may consent to medical or surgical procedures for involuntarily committed psychiatric patients who are unable to consent themselves. Conn. Gen. Stat. § 17a-543(b).
- In Nursing Homes: The act entitles the designee to:
 1. receive advance notice of involuntary, non-emergency room transfer, including Medicaid patients' transfer into non-private rooms;
 2. participate in any consultations prior to any contested transfer;
 3. private visits with the patient; and
 4. meet in the facility with family members of other patients.Conn. Gen. Stat. § 19a-550.

Other documents, discussed below, allow same-sex partners to share financial, medical, and end-of-life decisions. The rights and responsibilities to which the designee is entitled under Public Act 02-105 overlap with some of those set forth in the documents discussed below. It is unclear how the law will handle these potential conflicts, and therefore any preference for who should carry out specific obligations should be clearly noted in all relevant documents.

- 3) **Power of Attorney:** Any competent person may appoint another person as his or her “attorney-in-fact” for financial matters and health care or personal matters in the event the one becomes incapacitated or disabled. Conn. Gen. Stat. § 1-42.

The law provides a “short form” which allows a person to check off the kinds of transactions he or she would want the “attorney-in-fact” to perform in his or her place. These include (A) real estate matters; (B) chattel and goods transactions; (C) bond, share and commodity transactions; (D) banking transactions; (E) business operating transactions; (F) insurance transactions; (G) estate transactions; (H) claims and litigation; (I) personal relationships and affairs; (J) benefits from military service; (K) records, reports and statements; (L) health care decisions; and (M) all other matters designated by the individual. See Conn. Gen. Stat. § 1-43(a).

Note that the “attorney-in-fact” may make health care decisions and thus serve as a voice for securing medical treatments already determined by the declarant. However, the power of the “attorney-in-fact” does not extend to decisions concerning engagement or withdrawal of life support. That responsibility lies with a “health care agent” (see below) or a designee under Public Act 02-105, unless set forth in a living will.

It is not clear if the “attorney-in-fact” receives priority for visiting a person in the hospital, so it is important to state that you want such preference given in the power of attorney or another document.

The power of attorney can become effective immediately, or upon your disability (called a “springing” power of attorney, because it springs into being upon disability), and it can have a short termination date, long termination date, or no termination date. It should be witnessed by two disinterested individuals and notarized. The notary may also serve as a witness. The power of attorney must stay in possession of the “attorney-in-fact.”

4) **Health Care Agent:** A person age 18 or over may appoint another person to act as his or her health care agent and thereby state his or her wishes regarding termination of life support, preferences for types of medical care, or limits on the agent’s authority for end-of-life issues. Conn. Gen. Stat. §§19a-575a, 578 – 579a. Absent appointment of a health care agent, doctors may determine the patient’s wishes by looking at collateral statements the person has made and by consulting with others to whom the patient had communicated his or her wishes. Conn. Gen. Stat. §19a-571. It is the “health care agent’s” responsibility to ensure those wishes are fulfilled. The designation can be revoked at any time by creating a new document or by a clear expression of revocation. A copy of the appointment of a health care agent must be given to a person’s treating physician.

5) **Appointment of Conservator:** Before an individual adult becomes disabled or incompetent, he or she may also designate in writing one or more persons to act as a conservator of his person or

estate or both for when the adult is found incapable of managing his or her own affairs. Conn. Gen. Stat. §45a-645. These documents must be treated with the same formality as wills. See generally Conn. Gen. Stat. § 45a-645 (b). The appointment of a conservator takes precedence over an attorney-in-fact or health care agent. Conn. Gen. Stat. §45a-650 (g). A person may also nominate a conservator in accord with the form provided by statute. Conn. Gen. Stat. §19a-575. Note that all nominations are subject to the scrutiny of the probate court at the time a person is deemed incapable or incompetent.

- 6) **Will:** Without a will, a deceased unmarried person's property passes to: (1) his or her children; (2) his or her family; (3) if next-of-kin cannot be located, to the state. If the person wishes to provide for others, such as his or her partner, a will is essential. Even if a person has few possessions, he or she can name in the will who will administer his or her estate. See generally Conn. Gen. Stat. §45a-433–45a-439.

In addition, if a person has children, he or she can nominate the future guardian and “trustee for asset management” of the child in the will. That nomination will be evaluated by the Probate Court.

- 7) **Transfer of Car Ownership to Surviving Partner:** Under Public Act 02-105, a car owner may designate, on the car's registration, a beneficiary to assume ownership of the car upon death of the owner. Conn. Gen. stat. § 14-16.
- 8) **Funeral Planning Documents:** Upon death, a person's body is given to spouse or their next-of-kin. Conn. Gen. Stat. §45a-318. This can mean that a person's own partner has no right to remove the body, write an obituary, or make plans for a final resting place. To avoid that problem, you can create a document (witnessed and notarized) which designates the person you want to be able to have custody and control of your remains. Conn. Gen. Stat. §45a-318. (Some people include these instructions as part of a will, but since a will may not be found for days after death, it is preferable to give the instructions to the person you want to take care of matters as well as to family).

Summary: Some attorneys, particularly if a person is naming the same individual as responsible for his or her welfare, have wrapped together all of the above protections (except the relationship contract, will, and the designation under Public Act 02-105) into a document entitled: “Health Care Instructions, Appointment of Health Care Agent, Appointment of Attorney in Fact for Health Care Decisions, Designation of Conservator for Future Incapacity and Document of Anatomical Gift.” It seems unlikely that the designation under Public Act 02-105 may also be incorporated into such a comprehensive document.

Gay & Lesbian Advocates & Defenders (GLAD) is the leading legal rights organization in New England dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Through impact litigation, education and public policy work, GLAD seeks to create a better world that respects and celebrates diversity—a world in which there is equal justice under law for all.

GLAD's Legal Infoline and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

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