



How to Get Married in Connecticut

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Introduction

On October 10, 2008, Connecticut's Supreme Court ruled that the state can no longer bar gay and lesbian couples from marrying. This decision was the result of a lawsuit, *Kerrigan & Mock v. Connecticut Dept. of Public Health*, which GLAD filed on August 25, 2004 in New Haven Superior Court on behalf of eight gay and lesbian Connecticut couples who were denied marriage licenses.

In April 2005, while the *Kerrigan* lawsuit was still ongoing, the Civil Union Law was signed by the Governor granting same-sex couples the state-based legal rights and benefits of marriage. GLAD argued in *Kerrigan* that a separate institution for gay and lesbian couples also violates the Connecticut Constitution.

On June 12, 2006, the trial court ruled for the state, claiming that there was no difference between a marriage and a civil union. GLAD appealed this decision to the Connecticut Supreme Court.

The Supreme Court ruling came on October 10, 2008 in a 4-3 decision issued on the basis of equal protection. Importantly, the Supreme Court found that because of the history of systemic discrimination against gay and lesbian people, laws that discriminate on the basis of sexual orientation must receive a higher level of review or scrutiny than ordinary legislation. This heightened scrutiny means the state must have particularly strong and substantial reasons if it chooses to deny rights to gay and lesbian citizens. The state, according to the Supreme Court, had no sufficient justification for denying marriage to same-sex couples.

The process for getting married in Connecticut basically requires the following basic steps:

1. an eligible couple submits an application for a license in either the town or city in Connecticut where the wedding will take place or where either of the parties lives;
2. the couple must pay the applicable fee and receive a marriage license from the clerk

3. the couple must have the marriage solemnized (i.e., have a ceremony) within 65 days of filing the application;
4. once the ceremony has been performed, the person who performed it will state the time and place of the wedding on the license, sign it, and send it back to the city or town where the couple married; and
5. the clerk will then register the marriage and the couple can receive an official certificate of their marriage.

Anyone can marry in Connecticut. You don't need to be a resident of Connecticut or a citizen of the United States. However, if you are not a resident of the United States, you should contact the clerk in the town or city where you intend to marry to make sure that you bring the appropriate identification documents.

Until June 26, 2013, the 1996 federal Defense of Marriage Act (DOMA) prevented same-sex married couples from accessing the 1,138 federal laws that pertain to marriage. On that date, the United States Supreme Court, in *Windsor v. United States*, ruled that DOMA was unconstitutional. That case was filed by the American Civil Liberties Union, but GLAD filed the first challenge to DOMA in 2009, *Gill v. OPM*, and the legal framework developed in that case was used in subsequent cases, including the *Windsor* case.

Exactly two years later, on June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that it was unconstitutional to prevent same-sex couples from marrying,¹ and so now every state must allow same-sex couples to marry and must respect the marriages of same-sex couples, regardless of where the couple married.

The detailed process for getting married in Connecticut, whether you should enter a marriage, and what it all means are questions this publication will address.

¹ The case was argued by GLAD attorney, Mary Bonauto. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

The Basics

Who can marry?

To be eligible to marry in Connecticut, both parties must:

Be 18 years of age or older (or meet the requirements below)

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.”² 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.”³

Not be married or in a civil union to a *different person* (any dissolution or divorce must be final at the time of application)

If you are married or are in a civil union to a different person, you cannot marry your partner until you have dissolved the other relationship. Entering into another marriage before you have legally ended the first is considered a class D felony under Connecticut’s bigamy law⁴ and is punishable by up to five years in prison, or a fine of up to \$5,000 or both. The municipal clerks may ask for proof of dissolution. If you have such proof, you should take it with you. If you do not, at a minimum, you should know the date of the court judgment and the court that issued the dissolution. (Note: If you are already in a civil union and wish to marry the *same person*, you do not have to dissolve the civil union before marrying). For more information, see the section below, *Same-Sex Couples Who Are Already Married Or Have A Civil Union Or Domestic Partnership*, for information about getting married in Connecticut if your relationship is already legally recognized in some way.

² Conn. Gen. Stat. §46b-30(b)

³ Conn. Gen. Stat. §46b-30(a)

⁴ Conn. Gen. Stat. §53a-190.

Not be closely related by blood or marriage to his or her intended spouse.⁵

A person may not marry his or her:

parent or stepparent

parent's sibling

grandparent

child or stepchild

grandchild

sibling or sibling's child.

Not be under conservatorship or, if under conservatorship, have the acknowledged, written consent of the conservator.⁶

Do We Have To Be Connecticut Residents?

No, there is no residency requirement for marriage in Connecticut. Therefore, non-residents should be able to readily obtain a marriage license in Connecticut provided they are otherwise eligible. For non-resident couples, the marriage must be celebrated in the town where the marriage license is issued.⁷ Non-U.S. residents should check with the clerk in the city or town where they intend to marry to find out what identification documents are needed.

How do we get a marriage license?

Step one: Both people who are marrying must appear in person, but not necessarily together (if the two of you don't appear at the same time, the earlier date will be the date of application),⁸ at either the town hall in Connecticut where one of them lives or where the ceremony will be held⁹ and fill out the application form.

⁵ Conn. Gen. Stat. §46b-29

⁶ Conn. Gen. Stat. §46b-29(a)

⁷ Conn. Gen. Stat. §46b-24(a)

⁸ Conn. Gen. Stat. §46b-25

⁹ Conn. Gen. Stat. §46b-24(a)

This form requires the following information for each party:¹⁰

- Name
- Date of birth and birthplace
- Address of residence
- Number of previous marriages and how the last marriage ended (death, divorce or annulment)
- Whether you are under the supervision of a guardian or conservator
- Social Security number
- Race
- You may also be asked the name and birthplace of your parents, your gender and the number of years of education completed

Step two: Go back to the town hall where you filed your application and receive the license (although this can occur the same day that you fill out the application, it may take a day for the registrar to prepare your marriage license). The license is valid for 65 days starting from the day after you filed the application.¹¹

Step three: Have a wedding ceremony in Connecticut. The marriage must be solemnized by some official who is authorized by the state to perform marriages (see the question below “*Who can perform the ceremony?*”). He or she will then send the license back to the clerk of the town **where the ceremony was held**, and your marriage will be officially registered by the state. (Note: Since the marriage license will be sent back to the town where the ceremony is held, it may be easier to do the application there as well).

Note: Connecticut has no blood test requirements. Prior law, repealed in 2003, required testing for STDs and rubella prior to the issuance of a marriage license.

What do we need to bring with us when we apply?

In order to receive a marriage license, both members of the couple must bring:

¹⁰ Conn. Gen. Stat. §46b-25

¹¹ Conn. Gen. Stat. §46b-24(b)

Photo Identification

A driver's license or passport.

Proof of age

Some towns require applicants to demonstrate their ages (such as by showing a certified birth record or passport), particularly if an applicant is not much older than 18, before they will issue the licenses. Even if the town does not require this proof, if a clerk does not believe you are over 18, he or she may not issue the license without proof, requiring you to return and start the application process over.

Money

The city and town clerks charge a fee for processing the application and issuing the license. This fee is around \$30. Contact the clerk in the city or town where you intend to apply for the exact charge.

In addition, there is an extra fee if the couple wants a certified copy of the marriage certificate after the marriage has been solemnized and registered.

Who can perform the ceremony?

The officiant for the ceremony can be any of the following:¹²

1. all Connecticut judges and retired judges; and federal judges and judges of other states, if they are allowed to legally join persons in marriage in their jurisdictions
2. all Justices of the Peace (JPs), family support magistrates and state referees
3. all ordained or licensed clergymen from any state as long as they continue in the work of the ministry.

¹² Conn. Gen. Stat. §46b-22(a)

The official issuing the license to a couple cannot officiate at the wedding, and this prohibition includes any assistant or deputy to the issuing official.¹³

JPs can be found through www.findajp.com/findconn.htm, and many town clerks have lists of JPs. We do not know and cannot vouch for how friendly these folks will be. By searching the internet for “ct gay friendly justices of the peace” you can find JPs who are LGBT friendly.

Do we need witnesses for the ceremony?

Connecticut law does not require that witnesses be present for a marriage. If a member of the clergy is marrying you, however, you might want to ask whether your religious doctrine, if any, requires witnesses.

How do I change my surname?

Although the marriage application form does not have a place for requesting a change in your last name, a certified copy of your marriage certificate will allow you to change your surname with the Connecticut Department of Motor Vehicles and on your social security card and passport.

What exemptions does Connecticut law provide to religious organizations, associations and societies around the solemnization and celebration of a marriage?

First, no clergy are required to solemnize any marriage that is contrary to their religious teachings and practices.

Second, a “religious organization, association, or society” does not have to make its facilities available for “the solemnization or celebration of a marriage” if to do so would violate its religious beliefs. So, for example, even if a church rents its hall to the general public for weddings, it would not have to do so for a same-sex couple. In addition, this provision also applies to a narrow class of nonprofit institutions that can prove that they are “operated, supervised or controlled by or in conjunction with a religious organization, association, or society.” At the same time, individuals and secular businesses

¹³ Conn. Gen. Stat. §46b-22(b)

who are open to the general public --e.g., inns, photographers-- are subject to Connecticut's non-discrimination laws.¹⁴

Is there anywhere else that we can get married?

Yes. On June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that it is unconstitutional to deny same-sex couples the right to marry,¹⁵ and so now same-sex couples can marry anywhere in the United States and every state and the federal government must recognize the marriages of same-sex couples.

There is information about getting married in Massachusetts, Vermont, Connecticut, New Hampshire, Maine, Rhode Island and Canada (same-sex couples can marry in Canada and there is no residency requirement) on GLAD's website at: www.glad.org/rights/publications/c/marriage/.

For information about getting married outside New England, contact Lambda Legal (www.lambdalegal.org).

Some people may be able to wed outside the United States (see https://en.wikipedia.org/wiki/Same-sex_marriage for a list of countries), but some of these locales have residency and other requirements that make it difficult for non-citizens to marry.

¹⁴ Conn. Gen. Stat. § 46b-35a

¹⁵ GLAD Attorney, Mary Bonauto, argued this case. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

Same-Sex Couples Who Are Already Married Or Have a Civil Union Or Domestic Partnership

Can I get married in Connecticut if I am already legally married?

Regardless of where you legally married, your marriage will be respected in Connecticut. Remarrying the same person will most likely have no legal significance.

Although there is no explicit provision in Connecticut law that prohibits a person from remarrying the **same person**, as a practical matter, clerks may not process your application since the forms you must fill out to apply for a marriage license require you to state if you have previously been married, and if so, how that marriage ended.

However, if you have a marriage or civil union with one person and wish to marry a **different person**, you must first dissolve your existing relationship, since otherwise you would have a legally recognized relationship with two different people which would violate Connecticut's bigamy law.¹⁶ When you complete the marriage application, the clerk will ask you if you have been previously married and if so whether it ended by death, divorce or annulment. For information about dissolving a marriage or civil union in Connecticut, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Connecticut?*

Can I get married if I have a civil union?

Yes, so long as you intend to marry the **same person** with whom you already have a civil union.

However, if you have a civil union with one person and wish to marry a **different person**, you must dissolve your civil union first, since otherwise you would have a legally recognized relationship with two different people which would violate Connecticut's bigamy law.¹⁷ Further, even if you were able to

¹⁶ Conn. Gen. Stat. § 53a-190

¹⁷ Conn. Gen. Stat. § 53a-190

obtain a marriage license with a new partner, you would then be in the position of having two legal spouses, which would be a nightmare for the administration of marital protections, which assume the existence of only one legal spouse. Therefore, if you have previously joined in a civil union with a former partner, you must have a dissolution proceeding before you get married to your new partner. For information about how to dissolve a civil union in Connecticut, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Connecticut?*

NOTE: It is no longer possible to get a civil union in Connecticut, but if you previously had a Connecticut civil union and have not dissolved it, that Connecticut civil union was legally converted into a marriage by the state of Connecticut on October 1, 2010.

Can I get married if I have a comprehensive Domestic Partnership from California, Oregon, Washington or Nevada?

Persons who are registered as domestic partners with the State of California (under A.B. 205), the State of Oregon (under the Oregon Family Fairness Act) or the State of Washington (under the Act Relating to Further Expanding the Rights and Responsibilities of State Registered Domestic Partners) or the State of Nevada (under an Act Relating to Domestic Relations. . .) are arguably subject to the principles discussed above for civil unions.

Thus, if you intend to marry the ***same person*** with whom you are registered in a California, Oregon, Washington or Nevada domestic partnership, your legal status in California, Oregon, Washington or Nevada would not prevent you from marrying in Connecticut. However, if you have a comprehensive domestic partnership with one person and wish to marry a ***different person***, you must dissolve your domestic partnership first, even if a Connecticut clerk may allow you to marry.

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) or the National Center for Lesbian Rights (www.nclrights.org 800-528-6257).

Can I get married if I have a non-comprehensive Domestic Partnership?

The term “domestic partnership” has no universal definition. The exact meaning of the term and the rights and responsibilities accorded to persons in a domestic partnership vary, sometimes dramatically, from jurisdiction to jurisdiction.

If you have a municipal or non-comprehensive state domestic partnership and intend to marry a ***different person*** from the person with whom you presently have the domestic partnership, GLAD recommends that you consult an attorney about whether you need to dissolve the domestic partnership first.

Further, if you marry the person with whom you have registered as domestic partners, your marriage may impact your domestic partnership status, so it is important to look into the law of the state or municipality where you previously registered.

NOTE: Couples who have a civil union or domestic partnership will not be able to receive most FEDERAL benefits, since, with the exception of Social Security, those benefits are only available to MARRIED couples.

What Are Some Things We Should Consider Before Entering Into A Marriage?

A marriage is an important commitment and should be considered carefully. Entering into a marriage can affect many aspects of your public and private life.

It is important to make an informed choice about whether to enter into a Connecticut marriage 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 marriage in Connecticut.

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

- Entering into a marriage may complicate matters if you are in the process of adopting a child or considering adoption in the future. Most foreign countries welcome single-parent adoptions but do not allow same-sex couples to adopt. This is also true for some states in the United States.
- Entering into a marriage may affect the provisions in a will that was executed before the marriage.¹⁸
- Being in a marriage could disqualify you from certain state government programs because your spouse's income and assets may be included with your own.
- Under Connecticut law, persons who are married 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.¹⁹
- Under Connecticut law, a spouse of a marriage 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.
- Under Connecticut law, a marriage can be dissolved only if certain residency requirements are satisfied (see the section *How Do I Get Out Of A Marriage or Civil Union in Connecticut?*). With dissolution of a marriage in Connecticut, the court will determine property

¹⁸ Conn. Gen. Stat. § 45a-257a.

¹⁹ Conn. Gen. Stat. § 46b-37.

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 property subject to distribution in a dissolution proceeding unless the parties enter into an otherwise valid pre-nuptial agreement addressing the question.

- Foreign nationals should not marry or apply for a spousal benefit without consulting an experienced immigration attorney. Although, now that DOMA has been ruled unconstitutional, in some cases a U.S. citizen can sponsor a foreign national spouse for permanent residency, immigration law is complex and the success of a spousal application depends on a number of factors.
- Once you are in a marriage, you have assumed a legal status that will have to be disclosed on forms and records in a variety of public and private contexts.
- 29 states and the federal government still have no explicit anti-discrimination protections for sexual orientation. This means that in some cases same-sex married couples may still face discrimination (e.g. not being able to obtain spousal health benefits from an employer or being discriminated against in employment, housing, or public accommodations). However, both the federal Equal Employment Opportunity Commission (EEOC), which accepts complaints about employment discrimination, and the federal Department of Housing and Urban Development (HUD), which accepts complaints about housing discrimination, have processed some claims of sexual orientation discrimination using a different protected characteristic, like sex or disability.²⁰ . If you are being discriminated against, please contact GLAD Answers.

²⁰ For more information go to: www.glad.org/uploads/docs/publications/eeoc-clarifies-protections.pdf and http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination.

What Protections Do We Gain From A Marriage in Connecticut?

A marriage gives you automatic inclusion within and under hundreds of Connecticut state laws that apply to spouses, family and next of kin. Here are some categories of Connecticut laws that relate to marriage:

- family law, including marriage, dissolution, 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 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.

Many private parties – e.g., employers, landlords, public accommodations, etc. – are subject to the state law prohibiting discrimination based on marital status, civil union status and sexual orientation.²¹

²¹ In many instances, the non-discrimination law will mean equal treatment for same-sex marriages or civil unions v. different-sex marriages. However, because of federal law, there may be circumstances in which this non-discrimination protection will not be available to same-sex spouses. For examples of where federal law may direct different treatment for same-sex spouses, see employment-related health insurance below.

In addition, now that DOMA has been ruled unconstitutional, same-sex married couples in Connecticut have access to the 1,138 federal laws that pertain to married couples. These include:

- the right to file federal taxes as married
- spousal retirement and survivor Social Security benefits
- FMLA leave
- spousal COBRA coverage
- right to file jointly in bankruptcy
- spousal military and veteran benefits
- spousal SSI and SSDI benefits
- right to be treated as married under Medicaid, Medicare and Temporary Assistance for Needy Families
- spousal benefits for federal employees
- and many more

Family law attorneys highly recommend that couples consider entering into a prenuptial agreement before joining in a marriage 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.

Although being in a marriage offers many protections for you and your family, GLAD strongly recommends a “belt and suspenders” approach – i.e., also consult with an attorney who can work with you to put in place the legal planning documents that will offer your relationship and family the maximum protection. You should use the services of an attorney to:

- Gain expert advice and use multiple strategies (through wills, trusts, agreements) to ensure your wishes can be met to the largest degree possible no matter what the situation at your death;
- Do tax planning – income tax, gift tax, estate tax – at the state and federal levels; and
- Do Medicaid and long term care planning, concerning issues like assets available to both spouses, asset transfer issues, and liens.

Respect For Your Connecticut Marriage

Respect by the Federal Government

When DOMA was ruled unconstitutional by the United States Supreme Court on June 26, 2013, for the first time, same-sex married couples gained access to the federal laws that pertain to marriage. However, same-sex married couples, living in states that did not recognize their marriages, were still disqualified from certain federal programs, like Social Security and veterans' benefits.

The United States Supreme Court decision in *Obergefell v. Hodges* on June 26, 2015 requires all states to respect the marriages of same-sex couples, and so all married same-sex couples now have their marriages respected by the federal government for all purposes, e.g. taxes, Social Security (including SSDI and SSI), immigration, bankruptcy, FMLA, federal student financial aid, Medicaid, Medicare, veteran's benefits, TANF and many more, ***provided they meet the requirements of the program.***

Some programs (like Social Security) have required that the marriage was respected by the state of residence on the date the application was made, or in the case of spousal survivor benefits, on the date the spouse died. As a result, the federal government may still seek to disqualify some same-sex spouses from receiving certain federal benefits. If you have been denied benefits on this basis, please contact GLAD Answers.

Also, while DOMA was in effect, if an employer granted a spousal benefit to an employee (e.g. allowing the spouse of the employee to be on the company health plan), the employee was taxed on that benefit. Now that DOMA is gone, that is no longer the case.

Unfortunately, one issue that was not resolved by taking down DOMA was whether an employer can be legally required to provide health insurance to a same-sex spouse. If the company has a self-insured health plan, that plan is controlled by a federal law called ERISA, and because the federal anti-discrimination employment law, Title VII, does not explicitly prohibit

discrimination based on “sexual orientation,” some employers are claiming that they are not legally required to provide this benefit to same-sex spouses.

Also, if the health plan is insured and the owner of the plan is situated in a state that doesn’t have explicit “sexual orientation” anti-discrimination protections, some employers are choosing to discriminate against same-sex spouses.

However, for both self-insured and insured health plans, nothing prevents the employer from offering coverage to same-sex spouses. If your employer is discriminating against same-sex spouses, contact GLAD Answers.

Respect for the Marriages of Same-Sex Couples Outside of Connecticut

The United States Supreme Court decision in *Obergefell v. Hodges* on June 26, 2015 guarantees that the marriages of same-sex couples will be respected anywhere in the United States. If your marriage is not respected, please contact GLAD Answers.

How Will A Marriage 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 marriage were parents before the marriage (e.g., through joint or second-parent adoption), both parties remain parents.

If one party to the marriage was not a parent before the marriage, the marriage will not change that. He or she will 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 marriage.

If two people joined in a marriage 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 parties. 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, parentage through the marriage could encounter a lack of respect in some states and foreign countries, so relying on the fact of the marriage 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 marriage.

Beyond these considerations, entering into a marriage will provide your children with every protection and benefit that the Connecticut and federal governments extend to enhance the security and safety of children's lives.

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

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

If you are employed by the federal government, the health plans offered through the Federal Employees Health Benefits Program now cover same-sex spouses of federal employees wherever the employee lives.

If you are self-employed, you should be able to purchase coverage for your same-sex spouse on the same terms as a self-employed different-sex 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 same-sex spouses.

Unfortunately, one issue that was not resolved by taking down DOMA was whether an employer can be legally required to provide health insurance to a same-sex spouse. If the company has a self-insured health plan, that plan is controlled by a federal law called ERISA, and because the federal anti-discrimination employment law, Title VII, does not explicitly prohibit discrimination based on “sexual orientation,” some employers are claiming that they are not legally required to provide this benefit to same-sex spouses.

Also, if the health plan is insured and the owner of the plan is situated in a state that doesn’t have explicit “sexual orientation” anti-discrimination protections, some employers are choosing to discriminate against same-sex spouses.

However, for both self-insured and insured health plans, nothing prevents the employer from offering coverage to same-sex spouses. If your employer is discriminating against same-sex spouses, contact GLAD Answers.

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. Employers are now required to offer COBRA coverage to the same-sex spouses of employees if they are on the employee's health plan. Connecticut also has a "mini-COBRA" state law that applies to employers with less than 20 employees.

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. Employers are now required to apply the same rules for both different-sex and same-sex married couples.

Also, while DOMA was in effect, if an employer granted a spousal benefit to an employee (e.g. allowing the spouse of the employee to be on the company health plan), the employee was taxed on that benefit. Now that DOMA is gone, that is no longer the case.

Can A Same-Sex Married Couple in Connecticut File A Joint Tax Return?

Now that DOMA has been ruled unconstitutional and all states must respect the marriages of same-sex couples, same-sex married couples **MUST** file a married federal and state income tax return (either married filing joint or married filing separately).

The Internal Revenue Service allows you to file an amended return up to three years from the original date the return was due. For example, if the original due date was April 15, 2013, you have until April 15, 2016 to file an amended return. Some same-sex couples who originally filed “single” returns may benefit from filing amended returns as “married” (provided the couple was already married during those tax years).

In addition to changing status from “single” to “married” on those returns, if imputed income was added to the income for a particular tax year because an employer provided spousal benefits, then the amount of imputed income can be deducted on those amended returns. Finally, if the spouse’s portion of a health plan premium was taxed, that amount can also be deducted when filing the amended return.

Contact GLAD Answers at www.GLADAnswers.org or at 800-455-GLAD (4523) if you need further information or want referrals to a tax attorney. Also see <http://www.glad.org/doma/topics/c/federal-taxes-poc-rule> for more detailed information.

How Do I Get Out Of A Marriage or Civil Union In Connecticut?

Although there is no residency requirement to enter a Connecticut marriage, there are residency requirements for obtaining a dissolution of a marriage or civil union in Connecticut, although it can be satisfied in several ways. Specifically, 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 marriage or 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)).

Same-sex married couples will also be able to divorce in any state, provided the couple meets the residency requirement for divorce in that state.

Also, the federal laws that pertain to divorce (such as QDROs or a federal tax deduction for alimony payments) will now apply to the divorce of a same-sex married couple.

For more information on this topic see GLAD's publication, *Separation, Divorce and Marriage Equality*, at:

www.glad.org/uploads/docs/publications/separation-divorce-equality.pdf.

If you need to dissolve a marriage and you reside in New England, contact GLAD Answers at www.GLADAnswers.org or 800-455-GLAD (4523) for the latest information and attorney referrals. If you reside outside New England, contact Lambda Legal at their National Headquarters (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (NCLR) (www.nclrights.org, 800-528-6257).

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

Regardless of whether a couple has a legal relationship (such as a marriage, civil union or domestic partnership), what steps should a Connecticut couple take to safeguard their relationship?

- 1) **Relationship or Pre-Nuptial 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.²² 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 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.²³ 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.

The designation document must be honored in the following circumstances:

²² *Boland v. Catalano*, 202 Conn. 333, 340-41, 521 A.2d 142, 146 (1987)

²³ Conn. Gen. Stat. § 1-56r

- **In the Workplace:** An employer must notify an employee of an emergency phone call concerning the employee's designee.²⁴ **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.²⁵ 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.²⁶ The designee, if wholly or partly dependent on the deceased person's income, may seek compensation from the Office of Victim Services.²⁷
- **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.²⁸ The doctor must record any such communications with a designee in the patient's medical record.²⁹ Before removing life support, the doctor must make reasonable efforts to notify the patient's designee.³⁰ 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.³¹
- **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.³²
- **In Nursing Homes:** The act entitles the designee to:

²⁴ Conn. Gen. Stat. §. 31-51jj

²⁵ Conn. Gen Stat. § 54-85d

²⁶ Conn. Gen. Stat. §§ 1-1k, 54-91c, 54-126a

²⁷ Conn. Gen. Stat. § 54-201

²⁸ Conn. Gen. Stat. § 19a-571(a)

²⁹ Conn. Gen. Stat. § 19a-578(b)

³⁰ Conn. Gen. Stat. §19a-580

³¹ Conn. Gen. Stat. § 19a-278c(a)

³² Conn. Gen. Stat. § 17a-543(b)

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 meet in the facility with family members of other patients.³³

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 2) above 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.³⁴

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.³⁵

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

³³ Conn. Gen. Stat. § 19a-550

³⁴ Conn. Gen. Stat. § 1-42

³⁵ Conn. Gen. Stat. § 1-43(a)

support. That responsibility lies with a “health care agent” (see below) or a designee under 2) above, 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 Representative:** A person age 18 or over may appoint another person to act as his or her health care representative 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.³⁶ 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.³⁷ It is the “health care representative’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.³⁸

³⁶ Conn. Gen. Stat. §§19a-576, 19a-577

³⁷ Conn. Gen. Stat. §19a-571

³⁸ Conn. Gen. Stat. §45a-645

These documents must be treated with the same formality as wills.³⁹ The appointment of a conservator takes precedence over an attorney-in-fact or health care representative.⁴⁰ A person may also nominate a conservator in accord with the form provided by statute.⁴¹ . 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.⁴² 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. 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:** A car owner may designate, on the car's registration, a beneficiary to assume ownership of the car upon death of the owner.⁴³
- 8) **Funeral Planning Documents:** Upon death, a person's body is given to spouse or their next-of-kin. 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.⁴⁴ (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).

³⁹ Conn. Gen. Stat. § 45a-645(b)

⁴⁰ Conn. Gen. Stat. §45a-650 (g)

⁴¹ Conn. Gen. Stat. §19a-575

⁴² *See generally* Conn. Gen. Stat. §§45a-433–45a-439

⁴³ Conn. Gen. Stat. § 14-16

⁴⁴ Conn. Gen. Stat. §45a-318

- 9) **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 2) above) into a document entitled: “Health Care Instructions, Appointment of Health Care Representative, Appointment of Attorney in Fact for Health Care Decisions, Designation of Conservator for Future Incapacity and Document of Anatomical Gift.”⁴⁵

Does a person need an attorney to get these documents?

GLAD recommends working with an attorney on these documents. Although some forms are available, the form may not be suited to your individual needs and wishes. Moreover, attorneys may be able to help effectuate your goals, for example, by drafting a will in a way which is more likely to deter a will contest by unhappy family members, or drafting a health care proxy with your specific instructions.

If a couple separates, what is the legal status of a Relationship Agreement/Contract?

Upon separation, the terms of a Pre-Nuptial, Relationship or Partnership Agreement/Contract will come into play if the couple has one. Absent an agreement, couples can get involved in costly and protracted litigation about property and financial matters but without the divorce system (available to all married couples) to help them sort through it.

What happens if things change?

If a person has changed his or her mind about who should be his or her attorney-in-fact, or health care agent, or beneficiary or executor under a will, or funeral planner, then those documents should be revoked -- with notice to all persons who were given copies of those documents, and new documents should be prepared which reflect the person's present wishes

⁴⁵ Conn. Gen. Stat. §19a-575a

Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.

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