

How to Get Married in Connecticut

November 2008

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 4:30 pm at:

800.455.GLAD (4523) or 617.426.1350

Contents

■ INTRODUCTION	1
■ THE BASICS	3
■ CIVIL UNIONS IN CONNECTICUT IN THE AGE OF MARRIAGE	9
■ SAME-SEX COUPLES WHO ARE ALREADY MARRIED OR HAVE A CIVIL UNION OR DOMESTIC PARTNERSHIP	11
■ WHAT ARE SOME THINGS WE SHOULD CONSIDER BEFORE ENTERING INTO A MARRIAGE OR CIVIL UNION?	14
■ WHAT PROTECTIONS DO WE GAIN FROM A MARRIAGE OR CIVIL UNION IN CONNECTICUT?	16
■ RESPECT FOR YOUR CONNECTICUT MARRIAGE	18
■ HOW WILL A MARRIAGE OR CIVIL UNION AFFECT MY CHILDREN?	19
■ WILL I BE ABLE TO GET HEALTH INSURANCE FROM MY EMPLOYER FOR MY CONNECTICUT SAME-SEX SPOUSE?	21
■ CAN A MARRIED OR CIVIL UNION SAME-SEX COUPLE IN CONNECTICUT FILE A JOINT TAX RETURN?	23
■ HOW DO I GET OUT OF A MARRIAGE OR CIVIL UNION IN CONNECTICUT?	24
■ WHAT LEGAL PROTECTIONS CAN SAME-SEX COUPLES ACQUIRE IN CONNECTICUT WITHOUT ENTERING INTO A MARRIAGE OR CIVIL UNION?	25

Introduction

On October 10, 2008, Connecticut's Supreme Court ruled that the state can no longer bar gay and lesbian couples from marrying. Connecticut became the third state, after Massachusetts and California, in which same-sex couples can wed. 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. The plaintiff couples, who at that time had been in committed relationships for between 10 and 30 years, many of them raising children, contended that their exclusion from marriage violated the equal protection and due process provisions of the Connecticut Constitution.

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. After both sides filed lengthy legal briefs, the Connecticut Supreme Court heard oral arguments on May 14, 2007.

The Supreme Court ruling came on October 10, 2008 in a 4-3 decision issued on the basis of equal protection and a determination that sexual orientation-based classifications receive intermediate scrutiny. In its decision, the Supreme Court ruled that: "Interpreting our state constitutional provisions in accordance with firmly established equal protection principles leads inevitably to the conclusion that gay persons are entitled to marry the otherwise qualified same sex partner of their choice. To decide otherwise would require us to apply one set of constitutional principles to gay persons and another to all others. The guarantee of equal protection under the law, and our obligation to uphold that command, forbids us from doing so."

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.

The detailed process for getting married in Connecticut, whether you should enter a marriage, and what it all means are questions this publication is meant to address. Inevitably, you will have questions to which there are simply no definitive answers at this time. We will continue to update our publications as new developments occur over time.

This document is intended to provide general information only and cannot provide guidance or legal advice as to one's specific situation. 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 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.

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.”¹ 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.”²

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 law³ 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.

¹ Conn. Gen. Stat. §46b-30(b).

² Conn. Gen. Stat. §46b-30(a).

³ Conn. Gen. Stat. §53a-190.

Not be closely related by blood or marriage to his or her intended spouse.⁴

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.⁵

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.⁶

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),⁷ at either the town hall in Connecticut where one of them lives or where the ceremony will be held⁸ and fill out the application form.

⁴ Conn. Gen. Stat. §46b-29.

⁵ Conn. Gen. Stat. §46b-29(a).

⁶ Conn. Gen. Stat. §46b-24(a).

⁷ Conn. Gen. Stat. §46b-25

⁸ Conn. Gen. Stat. §46b-24(a).

This form requires the following information for each party:⁹

- 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.¹⁰

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.

⁹ Conn. Gen. Stat. §46b-25

¹⁰ Conn. Gen. Stat. §46b-24(b)..

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:

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.

What if a city or town clerk refuses to let us apply?

City and town clerks are government employees whom we assume will carry out the law they are obligated to follow. If you encounter a problem, please contact GLAD.

Who can perform the ceremony?

The officiant for the ceremony can be any of the following:¹¹

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.

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.¹²

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. Regardless of their personal opinions, JPs are state officials whom we assume will carry out the law they are obligated to follow. If you and your partner encounter a JP who refuses to solemnize your marriage because you are a same-sex couple, GLAD recommends moving on to another officiant to perform your ceremony – do not let a discriminatory JP stand in the way of your marriage. Please let GLAD know about the discriminatory JP so we can respond appropriately.

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.

¹¹ Conn. Gen. Stat. §46b-22(a)

¹² Conn. Gen. Stat. §46b-22(b)

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 Social Security Administration and the Connecticut Department of Motor Vehicles.

However, you should be aware that the Passport Agency, citing the federal 1996 Defense of Marriage Act, is refusing to honor a name change by means of the marriage license and is requiring couples to go through Probate Court to have their names changed or to wait 5 years before it will issue a passport that reflects their married name.

Is there anywhere else that we can get married?

Yes, currently Massachusetts and Canada allow same-sex couples to marry and have no residency requirement. For information about Massachusetts see GLAD's publication, *How to Get Married in Massachusetts*, at <http://glad.org/uploads/docs/publications/how-to-get-married-ma.pdf>. For information about Canada, see GLAD's publication, *What Do I Need to Know About Getting Married in Canada?* at: <http://glad.org/uploads/docs/publications/canada-marriage-faq.pdf>.

From June 16, 2008 to November 4, 2008, same-sex couples were able to marry in California, but a ballot initiative which amended the California Constitution has for the moment taken away this fundamental civil right from same-sex couples.

In addition, the Netherlands, Belgium, Spain, South Africa and Norway allow same-sex couples to marry, but most of these countries have requirements that make it difficult for non-citizens to marry.

Civil Unions In Connecticut In The Age Of Marriage

In 2005, Connecticut became the first state to enact a civil union law without any type of court directive. The law, “An Act Concerning Civil Unions,” was signed by the Governor on April 20, 2005 and became effective October 1, 2005. The Civil Union Law provides that “[p]arties to a civil union shall have 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 marriage . . .”¹³ In a provision made ineffective by the Connecticut Supreme Court’s decision in *Kerrigan*, the Civil Union Law limited marriage to one man and one woman.

How does the recent Connecticut Supreme Court ruling affect civil unions?

The recent ruling by the Connecticut Supreme Court, which legalizes marriage for same-sex couples, has no effect whatsoever on Connecticut’s Civil Union Law. Couples who already have a civil union (whether from Connecticut or elsewhere) still have a valid civil union and continue to receive all the legal benefits that the State of Connecticut confers on married couples. It will be up to the legislature to decide whether or how to repeal or change the Civil Union Law.

If we wish to legalize our relationship in Connecticut, do we have a choice between marriage and a Connecticut civil union?

Yes. Although it is possible at some future time that the legislature may decide to amend or repeal the Civil Union Law, at the moment same-sex couples have the right to legalize their relationship in Connecticut through either marriage or a civil union. For information about Connecticut Civil Unions see GLAD’s publication, *Connecticut Civil Unions* at <http://glad.org/uploads/docs/publications/ct-civil-union.pdf>.

¹³ Conn. Gen. Stat. §46b-38nn.

What is the difference between marriage and civil unions?

First, there is a difference. Although civil unions provide state-based legal rights that normally come along with marriage, 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 publicly the nature of their commitment. 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).

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).

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.¹⁴ 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 from Connecticut, Vermont, New Hampshire or New Jersey?

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.¹⁵ Further, even if you were able to

¹⁴ Conn. Gen. Stat. § 53a-190.

¹⁵ 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?*

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

Persons who are registered as domestic partners with the State of California (under A.B. 205) or the State of Oregon (under the Oregon Family Fairness Act) 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 or Oregon Domestic Partnership, your legal status in California or Oregon would not prevent you from marrying in Connecticut. However, if you have a California or Oregon 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 domestic partnership contact Lambda Legal (www.lambdalegal.org) or your circuit court if you are an Oregon resident.

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.

Maine, Washington State, and the District of Columbia have non-comprehensive domestic partnerships, and Hawaii has a reciprocal beneficiaries registry that is similar to a domestic partnership. Many municipalities also provide domestic partnerships.

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.

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

A marriage or civil union is an important commitment and should be considered carefully. Entering into a marriage or civil union 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 your marriage or 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 marriage or 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 marriage or civil union in Connecticut.

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

- Entering into a marriage or civil union 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 or civil union revokes any existing will.
- Being in a marriage or 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." This most likely also applies to an "attempted civil union."
- Under Connecticut law, persons who are married or in a civil union 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.

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

- Under Connecticut law, a spouse of a marriage or civil union 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 or civil union 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?*). Also, other states may or may not allow you to dissolve your marriage or civil union under those states' laws. With dissolution of a marriage or civil union 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 property subject to distribution in a dissolution proceeding unless the parties enter into an otherwise valid pre-nuptial agreement addressing the question.
- An employer-sponsored domestic partnership plan may require you to be “unmarried” in order to qualify.
- Foreign nationals should not marry or enter a civil union without consulting an experienced immigration attorney. Obtaining a marriage or civil union with your partner will not help fix immigration problems. In fact, applying for a change in immigration status based on a marriage or civil union to a same-sex partner could lead to deportation or future denials of visa applications. For additional information consult GLAD's publication, *Warning for Same-Sex Binational Couples*, at http://glad.org/uploads/docs/publications/Binational_Couples_Immigration_Warning.pdf.
- Once you are in a marriage or 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 Marriage Or Civil Union in Connecticut?

A marriage or civil union 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 and civil unions:

- 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.¹⁶

¹⁶ 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.

Although being in a marriage or civil union 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

Because of the 1996 federal Defense of Marriage Act (DOMA), the current federal government does not recognize the marriages or civil unions of same-sex couples and therefore does not extend to same-sex 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, veterans' benefits and many, many more. In addition, federal law interacts with Connecticut state law in many ways that have yet to be catalogued. Some of these will almost certainly treat same-sex married or civil union couples differently than different-sex married couples unless corrective action is taken.

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

First, the good news. Your marriage will be respected as a marriage in Massachusetts, New York (both a New York appeals court ruling and a pronouncement by New York's Governor indicate that New York will recognize the marriages of same-sex couples although it does not yet allow same-sex couples to marry in New York. For more information contact Lambda Legal's National Headquarters at 212-809-8585) and possibly California (it is not yet clear how California will respect existing marriages). It will be respected as a civil union in New Hampshire and New Jersey.

There is uncertainty as to how other states will treat the marriage of a same-sex couple. Although states have a strong tradition of recognizing marriages that are legal where they were celebrated (unless the state has strong public policy against the recognition of the marriage), unfortunately, many states currently do have laws, constitutional provisions or controlling appellate decisions that can be deemed to create a "strong public policy" against recognizing the marriages of same-sex couples.

Even in states that do not respect the marriages of same-sex couples, there is nothing to prevent private parties – e.g., businesses, employers, public accommodations, insurance companies, etc. – from respecting your marriage.

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

If one party to the marriage or civil union was not a parent before the marriage, the marriage or civil union 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 or civil union.

If two people joined in a marriage or 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 or civil union 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, the marriage or civil union could encounter a lack of respect in some states, so relying on the fact of the marriage or 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 marriage or 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 three trips to the U.S. Supreme Court. Proceedings are ongoing.

In that case, Janet and Lisa had a child 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. While Virginia is currently deferring to Vermont's order of visitation for Janet, legal maneuvering in Virginia continues and threatens to reopen the issues. 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 marriage or 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 Spouse¹⁷?

If you are employed by the State of Connecticut, a Connecticut county or a Connecticut municipality, your same-sex spouse (either joined by marriage or a civil union) 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 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.

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 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. Those insured plans, which are subject to Connecticut insurance law, must cover same-sex spouses on the same terms as they cover different-sex spouses. However, it is generally believed that self-insured plans can choose whether to extend or exclude coverage for same-sex spouses.

¹⁷ Spouse means either a partner in a civil union or marriage.

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 same-sex spouses the same as different-sex 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 same-sex spouses of 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 same-sex married or civil union couples as well.

As to tax consequences, when employers extend coverage to the spouses of different-sex married employees, that benefit comes tax-free to the employee. However, because of DOMA, if an employer extends coverage to the same-sex 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 same-sex 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 marriage and return home and seek spousal health insurance benefits from their non-Connecticut employer.

Can A Same-Sex Married Or Civil Union Couple in Connecticut 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. Although a same-sex married couple will need to file as “single” on the federal income tax return, GLAD recommends that each member of the couple indicate the marriage in some way on his or her federal return. This can be done either by attaching a sheet that explains this or by putting an asterisk after single and indicate that he or she is in a same-sex marriage and provide the date of the marriage. This way no one can later claim that you fraudulently indicated your marital status. This is especially important since income tax returns are often used for other purposes, such as to qualify for a mortgage, etc.

However, a same-sex married or civil union couple will be able to file a Connecticut state income tax return in the same manner as a different-sex married couple (i.e., either jointly or married filing separately). In order to do this, the couple will need to fill out a “dummy” federal income tax return as married (this return will never be filed) and enter the figures from this return on the Connecticut state income tax return.

Contact GLAD’s Legal InfoLine at 800-455-GLAD (4523) if you need further information or want referrals to a tax attorney.

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

Although there is no residency requirement to enter a Connecticut marriage or Connecticut civil union, 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 should also be able to divorce in Massachusetts, New York and possibly California (it is not yet clear how California will respect existing marriages). Civil union couples can also dissolve their relationship in Vermont, New Hampshire and New Jersey. In addition, a state that provides same-sex couples with all the state-based rights of different-sex married couples is more likely to be willing to dissolve same-sex relationships, even ones that are different from their form of recognition. There have also been a small number of dissolutions in states which don't provide any comprehensive form of legal recognition for same-sex couples.

This is an area of the law that is still evolving and frequently changing. If you need to dissolve a marriage or civil union, and you reside in New England, contact GLAD's Legal InfoLine at 800-455-GLAD (4523) for the latest information and attorney referrals. If you reside outside New England, contact Lambda Legal at their National Headquarters (212-809-8585) or the National Center for Lesbian Rights (NCLR) at 800-528-6257.

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

Here are a number of steps a Connecticut couple can take to safeguard their relationship *without entering into a marriage or civil union*:

- 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. §§19-575a, 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).
- 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 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.

To make a tax-deductible contribution, log on to www.glad.org, or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

Thank You!



Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Tel 617.426.1350
1.800.455.GLAD (4523)
Fax 617.426.3594

www.glad.org