



How to Get Married in Massachusetts

October 2011

Funding for this publication provided by:
Reproductive Science Center of New England



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Introduction

The process for getting married in Massachusetts basically requires an eligible couple to submit an application for a license and pay a fee to any city or town clerk in Massachusetts. After a three-day waiting period (unless it has been waived by a court), the couple will receive the license from the clerk, and must then have the marriage solemnized (i.e., have a ceremony in Massachusetts) within 60 days of filing the application. 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 received it. The clerk will then register the marriage and the couple can receive an official certificate of their marriage.

Massachusetts does not have a residency requirement for marriage, but until July 31, 2008 an old law dating back to 1913 was used to deny marriage licenses to same-sex couples from most other states unless they intended to reside in Massachusetts. On July 31, 2008 Governor Patrick signed into law a bill that repealed this so-called “1913 law,” and effective immediately on that date same-sex couples from anywhere in the country or world can legally marry in Massachusetts without having an intent to reside in Massachusetts.

Although this is great news, couples should be aware that whether the marriage will be respected in their home state or country is a complicated issue. In addition, because of the 1996 federal Defense of Marriage Act, the marriages of same-sex couples are not respected by the federal government, and so same-sex couples are not allowed access to the 1,138 federal laws that pertain to marriage. Also, should the couple at some point wish to end the marriage, unless the couple lives in a state or country which does respect the marriage, it may not be possible to dissolve the marriage until one member of the couple moves to a place that does respect the marriage and lives there long enough to meet that state or country’s residency requirement for divorce.

The detailed process for getting married in Massachusetts, 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.

The Basics

Who can marry?

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

Be 18 years of age or older (or else have a judge’s permission to marry younger)

Any person under the age of 18 who wants to marry must obtain a court order from the probate or district court of his or her city or town of residence. The minor’s parents or guardians must go with him or her to court and consent to the marriage.¹

Not be married to anyone else (any divorce must be final at the time of application)

If you are married to another person, you cannot marry your partner until you have divorced the other person.² Entering into another marriage before you have legally ended the first is a crime punishable by up to five years in prison or two and a half years in jail, or by a fine of up to \$500.³ The municipal clerks may ask for proof of divorce. 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 divorce and be prepared to go to another clerk’s office if the first one demands proof you cannot provide. If you encounter this problem, please let GLAD know.

See the sections, “Non-Massachusetts Residents Who Married In Massachusetts Prior to July 31, 2008” and “Same-Sex Couples Who Are Already Married Or Have a Civil Union or Domestic Partnership” for information about getting married in Massachusetts if your relationship is already legally recognized in some way.

¹ G.L. ch. 207, § 25.

² G.L. ch. 207, §§ 4, 6.

³ G.L. ch. 272, § 15.

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

A person may not marry his or her:

parent or stepparent

parent's sibling

grandparent or grandparent's spouse

child

grandchild or grandchild's spouse

sibling or sibling's child

spouse's parent, grandparent, child or grandchild⁴

This prohibition remains even if the marriage that created the familial relationship has ended by death or divorce.⁵

Do we have to be a Massachusetts resident?

No. Until July 31, 2008, an old law that dated back to 1913 restricted out-of state couples from marrying in Massachusetts unless they resided in Rhode Island or New Mexico OR unless they expressed an intent to reside in Massachusetts (NOTE: New York couples were also allowed to marry in Massachusetts prior to July 6, 2006 without needing to express an intent to reside in Massachusetts as were California couples after June 16, 2008). On July 31, 2008, the law that prevented most out-of-state couples from marrying in Massachusetts, unless they expressed an intent to reside here, was repealed, and so effective that date any couple from anywhere in the world, same-sex or different-sex, can marry in Massachusetts if otherwise qualified without needing to express an intent to reside there.

How do we get a marriage license?

Step one: Both people who are marrying must appear in person⁶ at any city or town hall⁷ and fill out the application form called a *Notice of Intention of*

⁴ G.L. ch. 207, §§ 1, 2.

⁵ G.L. ch. 207, § 3.

⁶ Both members of the couple do not have to file this form in person if one of you is in the military, but in that case, there is a whole other set of concerns raised by the military's "Don't ask, Don't tell" policy. Also, only one of you need be present if the other is incarcerated.

Marriage (see <http://www.glad.org/uploads/docs/publications/intention-of-marriage-form.pdf>). (Note: Prior to January 28, 2005, in order to receive the marriage license from the town or city clerk, both parties needed to get a blood test, but this is no longer a part of the marriage licensing process.) This form requires the following information for each party:

- Name
- Date of Birth
- Occupation
- Address of residence
- Number of previous marriages and how the last marriage ended (death or divorce)
- Existence of present or former Civil Union or state-created Domestic Partnership, and dissolution status, if any
- Birthplace
- Full name of parents (including middle and maiden names)
- Gender
- Disclosure of whether applicants are related by blood or marriage

Each applicant must swear before the clerk that all information in the form is true and that no legal impediment exists to the marriage.⁸ Any false statement is punishable by a fine of up to \$100.⁹

Applicants must also complete a supplement to the Notice of Intention that is sent to the state Registry of Vital Records and Statistics. The Registry may make the information in this supplemental form, which includes each applicant's name, residence, and *social security number* (or reason for not having a social security number), available to state and federal agencies for purposes of child support enforcement or other purposes required by law.¹⁰ The city and town clerks charge a fee for processing the notice of intention of marriage and issuing the license. Since this fee varies, you should contact the clerk in the city or town where you plan to apply.

⁷ G.L. ch. 207, § 19.

⁸ G.L. ch. 207, § 20.

⁹ G.L. ch. 207, § 52.

¹⁰ G.L. ch. 207, § 20.

Step two: After a three-day waiting period (see “*What’s the story on the three-day waiting period?*” below), go back to the city or town hall where you filed your application and receive the license. The license is valid for 60 days starting from the day after you filed the notice of intention.¹¹

Step three: Have a wedding ceremony within the state of Massachusetts. The marriage must be solemnized by some official (like a Justice of the Peace or member of the clergy) who is authorized by the state to perform marriages. He or she will then send the license back to the clerk and your marriage will be officially registered by the state.

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:

Proof of age

Some cities and 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.¹² Even if the city 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.¹³ Clerks have been advised to accept the following records as proof of age (stated in order of preference): (1) original or certified copy of birth certificate; (2) original or certified copy of baptismal certificate; (3) passport; (4) life insurance policy; (5) employment certificate; (6) school record; (7) immigration record; (8) naturalization record; or (9) a court record.

Money

The city and town clerks charge a fee for processing the Notice of Intention of Marriage and issuing the license. This fee varies, consequently you should contact the clerk in the city or town where you intend to apply.

¹¹ G.L. ch. 207, § 28.

¹² For example, the city of Boston requires proof of age for all applicants under 24 years of age.

¹³ G.L. ch. 207, § 33A.

Because some clerks and courts take checks and some do not, better to be on the safe side and bring cash.

In addition, there is usually an extra fee if the couple wants a certified copy of the marriage certificate after the marriage has been solemnized and registered, which fee ranges from about \$5 to \$15 per copy.

How do I change my surname?

In addition to being a marriage application form, the Notice of Intention of Marriage form also operates as a legal name change document should you choose to change your last name upon marriage. Questions 3A and 11A on the Notice of Intention ask for the surname you wish to use after marriage. By completing that question, your marriage certificate will identify you by your new last name. The advantage to changing your name at the time of marriage is that it allows you to avoid the \$165 fee for initiating a name change through the usual process at the probate court. The usual process is still available to you if you choose to wait.

A certified copy of the Massachusetts marriage certificate will allow you to change the surname on your Massachusetts driver's license and your social security card.

Prior to May 27, 2009, the Passport Agency, citing the federal 1996 Defense of Marriage Act, refused to honor the marriage certificate of a same-sex couple as a name change document and required couples to go through Probate Court to have their names changed or to wait 5 years before it would issue a passport that reflected their married name.

The U.S. Department of State has now changed its policy and will permit a marriage certificate to be used as proof of a surname change, provided the marriage certificate creates a way to legally change one's surname by operation of state law. Since Massachusetts has a statute that allows the Notice of Intention of Marriage to create a legal surname change,¹⁴

¹⁴ G.L. ch. 46, § 1D.

the Passport Agency will honor a Massachusetts marriage certificate for the purpose of changing the surname on your passport.

The Passport Agency may also request proof that you are using your married name, and so GLAD suggests you submit a photocopy of your driver's license or other identification that shows your changed name. If it is possible to file your passport application in person at a passport office, you may be able to resolve any problems that may arise from a passport official who is not familiar with this new policy. The policy can be found at http://www.glad.org/uploads/docs/publications/passport_manual.pdf, and it may be advisable to mail a copy with your application or bring a copy of it with you if you apply in person. Please contact GLAD if you encounter any problems.

NOTE: If you come to marry in Massachusetts and return to a state that does not recognize your marriage, then most likely you will not be able to use the marriage certificate to change your name on identification documents and instead will need to go to your local court to get a court ordered name change.

What's the story on the three-day waiting period?

Massachusetts law requires couples to file the Notice of Intention of Marriage at least three days before their wedding.¹⁵ The license will not be issued until at least the third day from the filing of the notice.¹⁶ To be clear, in computing the three-day period, you do not count the day that you submitted the notice (i.e., if you submit the notice on Monday, the earliest you can receive your license is Thursday), but you do count Sundays and holidays.¹⁷

Can I get married without waiting the requisite three days?

It is possible to obtain a waiver of the three-day notice period from a Massachusetts District Court (also referred to as a municipal court) or Probate Court. There is no guarantee that this waiver will enable you to marry on the

¹⁵ G.L. ch. 207, § 19.

¹⁶ G.L. ch. 207, § 28.

¹⁷ G.L. ch. 207, § 19.

same day. At some courts, it may take time to find an available judge to grant the waiver, and the actual processing of the requisite marriage documents (including the marriage application, court waiver, and marriage license) may be time intensive.

Obtaining a waiver

Both the District Court and the Probate Court “recommend” that couples follow steps 1-5 below, in order, to obtain a waiver. However, both courts will permit couples to start at step 2, but caution that this shortcut could result in disappointment if the court grants the waiver, but the city or town clerk ultimately refuses to process your Notice of Intention of Marriage. Also, because the city and town clerks will need time to process your Notice of Intention, you can get the ball rolling by starting at the city or town clerk’s office and then proceeding to the courthouse. This “recommended” approach may shorten the time you have to wait when you arrive at the city or town clerk’s office with the court waiver in hand.

1. A couple must file a Notice of Intention of Marriage with a city or town clerk. (Out of an excess of caution, you may want to obtain a copy of your completed Notice of Intention to take to the courthouse in case a court chooses to require proof that the “recommended” procedure has been followed, but you are not expressly required to do so).
2. Both members of the couple must go together to either the Registry in any Probate Court or the Clerk’s Office in any District Court.
3. At court, the couple must request a certificate waiving the notice period¹⁸ (called a “Marriage Without Delay” form), pay a fee – \$65 in Probate Court, \$195 in District Court (in cash, some courts do not take checks). If you started at Step 1, you may wish to present the completed copy of your Notice of Intention of Marriage.
4. The couple will be granted access to a judge who will ask the couple questions concerning their qualifications to marry in Massachusetts.

¹⁸ G.L. ch. 207, §30.

These questions may include: whether each applicant is older than 18 years old; whether either has already been married, and if so, whether any pre-existing divorce is final. Once the judge is satisfied that the couple is eligible to marry, the court, in its discretion, may grant a certificate authorizing the waiver of the three-day notice period. There is no specific reason you need to give in response to a question asking why you want the waiver. It should suffice to say that you intend to get married within the next three days or simply that you do not want to wait any longer to marry.

5. With the newly issued certificate from the court in hand, the couple must return to the same city or town clerk where they filed their Notice of Intention of Marriage and present their certificate from the court. If you started at step 2, you can go to any city or town clerk's office of your choosing. Upon receipt of your court waiver, the city or town clerk should prepare the marriage license for issuance without awaiting the expiration of the three-day notice period.

Though this process may seem relatively straightforward, there are a few details worth considering.

First, if you follow the courts' "recommended" procedures, the entire process will require two trips to the clerk's office and one trip to the courthouse. (If you start at Step 2, this shortcut will allow you to make one trip to the courthouse and one trip to the city or town clerk). Please understand that processing the waiver certificate from the court and the marriage license from the clerk may take longer than you anticipate.

Second, if you or your partner are unsure of whether a clerk will allow you to marry (maybe because you have an existing marriage to the same person), it is advisable to simply wait the three days to avoid the court waiver process which may – depending on the application process – needlessly subject your application to a second level of review, or force you to pay \$65 or \$195 for a waiver that a city or town clerk refuses to process.

Who can perform the ceremony?

There are three options: (1) in-state Justice of the Peace (JP) or clergy; (2) out-of-state clergy, only if special permission granted by the governor; and (3) a specially designated “Justice of the Peace for-a-day,” only if special permission is granted by the governor.

First, any willing in-state justice of the peace, minister, rabbi, priest, imam or other person authorized by a faith community that has filed information about the authorized persons with the state secretary’s office can solemnize a marriage in Massachusetts.¹⁹

Justices of the Peace (JPs) can be found by going to the website <http://www.findajp.com/findmass.htm>. 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.

JPs cannot charge more than \$100 for solemnizing a marriage in his or her home community or \$150 for a ceremony elsewhere in Massachusetts. They cannot require any additional charge for travel, or for providing flowers, music, a photographer, or a location for the ceremony. They may charge more for prenuptial counseling, rehearsals or other special requests, however, so long as the amount of these extras is given to the couple in writing at least 48 hours before the scheduled services. Additionally, if the justice of the peace is a municipal employee and the marriage is taking place at a municipal building during regular business hours, the fee can’t exceed the limits set by the municipality.²⁰ You can ask at the clerk’s office about this information.

¹⁹ G.L. ch. 207, § 38.

²⁰ G.L. ch. 262, § 35.

Second, out-of-state clergy may perform a ceremony in Massachusetts if they receive authorization from the State. The clergy person needs to contact the Secretary of the Commonwealth Public Records Division, One Ashburton Place, Room 1719, Boston, MA 02108, 617-727-2836. This can be done either before or after the wedding takes place, but authorization cannot be obtained earlier than four weeks before the wedding. The clergy person will receive an application and two certificates (a white one and a blue one), all of which must be filled out and returned. The Secretary's office will send the correct certificate to the city or town hall where the license is obtained – the white one if it is returned before the wedding, or the blue one if it is returned after.²¹

Third, it is possible for a layperson (a non-minister or non-justice of the peace, such as a friend or family member) to obtain special one-time permission from the Governor's office to perform a particular marriage on a particular date in a particular city. This process requires the prospective officiant to submit an application to the Governor's office **at least six weeks before the wedding**, along with a registration fee of \$25 payable to the Commonwealth of Massachusetts and a letter of reference written by someone other than the people to be married stating the high standard of character of the proposed officiant. Once these are submitted and approved, the proposed officiant will receive a Certificate of Solemnization from the Secretary of the Commonwealth, which must be turned in with the marriage certificate to the city/town hall that issued the marriage license after the ceremony has been performed. The Governor may revoke the officiant's designation, but only for cause – a.k.a. not for discriminatory reasons. For more information or to get a copy of the application, you can contact the Governor's Appointments Office at (617) 725-4080, ext. 35339, or see http://www.mass.gov/?pageID=gov3modulechunk&L=1&L0=Home&sid=Agov3&b=terminalcontent&f=one_day_marriage_designation_instructions&csid=Agov3. If the wedding date approaches and you have not received permission, you may want to consider the other two options (outlined above) for having a marriage solemnized in Massachusetts.

²¹ G.L. ch. 207, § 39.

Do we need witnesses for the ceremony?

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

Is there anywhere else that we can get married?

Yes, currently Connecticut, Iowa, Vermont, New Hampshire, the District of Columbia, New York and Canada allow same-sex couples to marry and do not have any residency requirements. GLAD has publications with detailed information on how to get married in Connecticut, Vermont, New Hampshire and Canada at <http://www.glad.org/rights/publications/c/marriage/>. For information about getting married in Iowa, the District of Columbia or New York contact Lambda Legal (www.lambdalegal.org).

In addition, the Netherlands, Belgium, Spain, South Africa, Norway, Sweden, Portugal, Iceland and Argentina and Mexico City allow same-sex couples to marry, but some of these locales have requirements that make it difficult for non-citizens to marry. Moreover, you should speak with an attorney about other consequences of marrying outside the country, particularly with regard to potential differences in the treatment and respect of such marriages within the United States.

Non-Massachusetts Residents Who Married In Massachusetts Prior To July 31, 2008

What is the status of our marriage if we were non-Massachusetts residents and married in Massachusetts prior to July 31, 2008?

The answer to this question depends on the home state in which you resided when you married in Massachusetts and whether you expressed an intent to reside in Massachusetts.

If you did **NOT** indicate an intent to reside in Massachusetts, listed a non-Massachusetts residence and yet received a marriage license, the table below indicates the status of your marriage based on your home state when you married in Massachusetts. As the table shows, your marriage will fit one of the following three legal statuses **under the laws of the Commonwealth of Massachusetts**:

- “Valid”—the marriage is fully valid and beyond question
- “Void”—the marriage is invalid and never existed in the eyes of Massachusetts law
- “Voidable”—the marriage has a defect but is presumed valid unless it is challenged in court (usually by one member of the couple)

Home State When Married (Married Prior To July 31, 2008 And You Did <i>NOT</i> Express An Intent To Reside In Massachusetts)	Status Of Your Marriage
<p style="text-align: center;">“Void Home States” <i>AZ, AR, DE, IN, KS, KY, ME, MN, MS, OH, SC, TN, TX, UT</i></p>	“Void”
<p style="text-align: center;">“Silent or Ambiguous Home States” <i>RI, NM, NY prior to July 6, 2006</i></p>	“Valid”
<p style="text-align: center;">“Marriage Home States” <i>CA after June 16, 2008</i></p>	“Valid”²²

²² Couples from California who married in Massachusetts after June 16, 2008 should not have been asked whether they intended to reside in Massachusetts, and, if they were asked, their answer should have no effect on the validity of the marriage.

Home State When Married (Married Prior To July 31, 2008 And You Did <i>NOT</i> Express An Intent To Reside In Massachusetts)	Status Of Your Marriage
<p style="text-align: center;">“Prohibited Home States”</p> <p style="text-align: center;"><i>AL, AK, CO, CT, DC, FL, GA, HI, ID, IL, IA, LA, MD, MI, MO, MT, NE, NV, NH, NJ, NC, ND, OK, OR, PA, SD, VT, VA, WA, WV, WI, WY, NY after July 6, 2006, CA before June 16, 2008</i></p>	<p style="text-align: center;">“Voidable”</p>

If you ***DID*** express an intent to reside in Massachusetts on the Notice of Intention of Marriage, provided that expression was ***truthful***, your marriage is “valid”. Yet, negative consequences may flow from a couple’s inability to prove the truthfulness of their stated intent.²³ If the question were ever called, a couple unable to prove the truthfulness of their intent may be deemed to have married based upon a fraudulent statement of intent. This creates a defect in the marriage because the fraudulent statement was central to the couple’s ability to marry,²⁴ and the marriage is likely to be deemed “voidable.”

If you are from a “Silent or Ambiguous Homes State” (RI, NM or NY prior to July 6, 2006), then you should never have been asked whether you intended to reside in Massachusetts, and so the answer to that question should have no effect on the validity of your marriage. The same is true for couples from California who married in Massachusetts after June 16, 2008.

For those couples who have “voidable” marriages, Massachusetts has created the opportunity for you to remarry in Massachusetts and by doing so “perfect” your marriage—i.e. remove any possible defect in the marriage. For detailed information about this see GLAD’s publication, *Legal Issues For Non-Massachusetts Same-Sex Couples Who Married In Massachusetts Prior To July 31, 2008* at:

<http://www.glad.org/uploads/docs/publications/married-non-ma-couples.pdf>.

²³ At some point in the future, the couple may be asked to prove the truthfulness of their statement of intent to reside in Massachusetts. If the couple has not already relocated to Massachusetts, the couple may want to preserve evidence of the steps the couple may have taken to relocate to Massachusetts (e.g., evidence of a job/house search, transfer of bank accounts, etc.).

²⁴ See *Cote-Whitacre v. Dept. of Pub. Health*, 446 Mass. 350, 361 n. 10 (citing *Reynolds v. Reynolds*, 85 Mass. 605, 609-11 (1862) (“[F]raud that goes to the essence of a marriage contract renders a marriage ‘voidable’.”))

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

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

Regardless of where you legally married, your marriage will be respected in Massachusetts.

Should you desire to marry the *same person* again in Massachusetts, *if you originally married in Massachusetts and have remained married without a divorce or annulment*, Massachusetts has a process for remarrying where a couple files a *Notice of Intention to Remarry*. Contact the city or town clerk where you filed your *Notice of Intention to Marry* for details.

Although this process was primarily created to allow out-of-state couples, who married in Massachusetts while the so-called “1913 law” was in effect, to “perfect” any defects in their marriage (see the section above – *Non-Massachusetts Residents Who Married In Massachusetts Prior To July 31, 2008*), it can be used by any couple who meets the **bold** criteria in the paragraph above.

If you originally married somewhere other than Massachusetts and wish to marry the *same person* again in Massachusetts, nothing in the law expressly prevents you from doing so. As a practical matter, clerks may not process your application. 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. Consequently, the general practice of clerks has been not to allow already-married couples to complete the legal paperwork to renew their vows, regardless of any ceremony a couple might have.

In addition, even if you receive a license and are married again in Massachusetts, it is uncertain what the legal effect of the latter marriage would be. There is no case law on this in Massachusetts, but a 1925 opinion of the Attorney General suggests that, while there is no impediment to the

issuance of a marriage license to two people already married to one another, if the earlier marriage is valid, the subsequent marriage has no legal effect.²⁵ issuance of a marriage license to two people already married to one another, if the earlier marriage is valid, the subsequent marriage has no legal effect.

Conversely, getting married again in Massachusetts could be used as evidence that you believed your original marriage was not valid, and thus could affect how a court or other entity would apply the protections of marriage to your relationship during the time period between the two marriages. For example, if you were to divorce, a judge might question whether property you acquired as a couple after you married the first time in Massachusetts, but before you married in Massachusetts the second time, is actually property of the marriage subject to equitable division.

However, if you have a marriage 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 Massachusetts' bigamy law.²⁶ 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 in Massachusetts, see the section below, *How Do I Get Out Of A Marriage In Massachusetts?*

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 another person, you must dissolve your civil union first, since otherwise you would have a legally recognized relationship with two different people.

²⁵ Op. Att'y Gen., Oct. 16, 1925, p. 729.

²⁶ G.L. ch. 272, § 15.

In Massachusetts, several Probate & Family Courts have granted a civil union dissolution,²⁷ and while this is not a guarantee that other courts will reach the same result, we see no legal impediment to other courts doing so. It is important to note that while these cases are brought in equity and are not strictly divorce cases, it may be that in order to file for dissolution in Massachusetts, one party to a civil union must live here for one year.

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) or 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 Massachusetts. However, if you have a comprehensive domestic partnership with one person and wish to marry a ***different person***, you should dissolve your domestic partnership first, even if a Massachusetts 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).

²⁷ *See, e.g.*, Salucco v. Alldredge, No. 02E0087GC1, Judgment on Complaint for Dissolution of Civil Union (Mass. Prob. & Fam. Ct., Essex County, March 19, 2004) (granting dissolution under court's equity jurisdiction, and applying standards applicable to divorce).

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. The clerks in Massachusetts have been instructed to interpret the term “domestic partnership” to mean only “a relationship that states create to provide certain rights, obligations, and benefits to people who either cannot, or do not want to marry.” At present, the only places that convey such partnerships are Maine and Wisconsin. Hawaii, Colorado and Maryland have beneficiaries programs which are similar.

On the Massachusetts marriage application form (i.e., the “Notice of Intention”), you will be asked whether you have a state-created domestic partnership, and if so, whether it has been dissolved. The Massachusetts clerk will not prevent you from marrying regardless of your answers to these questions, because the questions are being asked for statistical purposes only. However, if you intend to marry someone *other* than the person with whom you presently have a state or municipal domestic partnership, GLAD recommends that you formally 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?

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. 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, 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 Massachusetts 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 Massachusetts.

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 revokes any existing will.²⁸
- Being in a marriage could disqualify you from certain state government programs that are based on financial need because your spouse's income and assets may be included with your own and your collective income and resources may be too high.
- Under Massachusetts law, persons who are married or 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.²⁹

²⁸ G.L. ch. 191, § 9.

²⁹ G.L. ch. 209, § 1.

- Under Massachusetts 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.³⁰
- Under Massachusetts law, a marriage can be dissolved only if certain residency requirements are satisfied (see the section, *How Do I Get Out Of A Marriage in Massachusetts?*). Also, other states may or may not allow you to dissolve your marriage under those states' laws. With dissolution of a marriage in Massachusetts, the court will determine property division, alimony, child custody and child support if the parties cannot agree on these issues themselves. Under Massachusetts 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 without consulting an experienced immigration attorney. Obtaining a marriage with your partner will not help fix immigration problems. In fact, applying for a change in immigration status based on a marriage 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, you have assumed a legal status that will have to be disclosed on forms and records in a variety of public and private contexts.

³⁰ G.L. ch. 191, § 15.

What Protections Do We Gain From A Marriage in Massachusetts?

A marriage gives you automatic inclusion within and under hundreds of Massachusetts state laws that apply to spouses, family and next of kin. Here are some categories of Massachusetts 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 state 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;
- vital records and absentee voting procedures;
- protection from spousal abuse; and
- recognition as married for all MassHealth programs.

Many private parties – e.g., employers, landlords, public accommodations, etc. – are subject to the state law prohibiting discrimination based on marital status and sexual orientation.³¹

³¹ In many instances, the non-discrimination law will mean equal treatment for same-sex marriages 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 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 Massachusetts Marriage

Respect by the Federal Government

Because of the 1996 federal Defense of Marriage Act (DOMA), currently the federal government does not recognize the marriages 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 Massachusetts state law in many ways that have yet to be catalogued. Some of these will almost certainly treat same-sex married couples differently than different-sex married couples unless corrective action is taken.

GLAD has filed two federal lawsuits, *Gill et al. v. OPM et al.* and *Pedersen et al. v. OPM et al.*, to challenge Section 3 of DOMA (see www.glad.org/doma for detailed information). Should GLAD succeed in these lawsuits, or should Congress repeal DOMA Section 3, some or all of the federal laws where marriage is relevant will be applicable to married same-sex couples who live in states where their marriage is respected.

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

First, the good news. Your Massachusetts marriage will be respected as a marriage in Connecticut, Iowa, Vermont, New Hampshire, New York and the District of Columbia and also most likely in Maryland and New Mexico although same-sex couples can not marry in these states.

Your marriage will be respected as a civil union in New Jersey, Illinois and, effective January 1, 2012, Delaware, and it will be respected as a domestic partnership in the state of Washington.

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.

What should we do if our marriage is not respected?

Some types of unfair treatment can be the basis of a lawsuit, and other times the unfairness may not be suitable for a court to address. Even when litigation is an option, it is not the only option. It is always essential to weigh the chances of success or failure because bad results in lawsuits can have effects reaching far beyond your particular situation and affecting other families, too. For a further discussion of this see

<http://www.glad.org/uploads/docs/publications/make-change-not-lawsuits09.pdf>.

If you feel you have been discriminated against, you should contact GLAD or one of the other LGBT legal organizations. We can help you figure out what options you have to enforce your rights.

Many ways exist to advocate in your home state about why your marriage should be respected. You can work with local marriage equality organizations to educate the public, mobilize supporters, and lobby your state legislature. You can write letters to the editor of your local paper about why your family needs the protections due to your marriage. You can participate in efforts to defeat anti-gay constitutional amendments, legislation, and ballot initiatives on both the state and federal levels. You can share your story by participating in public forums. For more information about these kinds of efforts, contact GLAD.

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 Massachusetts. 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 Massachusetts 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 Massachusetts, a child born into a marriage is presumed to be the child of both parties, and both parents' names are listed on the birth certificate. 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 could encounter a lack of respect in some states, 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 Massachusetts, independent of the marriage.

- *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*. This case has been in litigation since 2004, has involved two state Supreme Courts (Vermont and Virginia), and has already made several trips to the U.S. Supreme Court. Proceedings are ongoing.

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

After many attempts to get Lisa to allow Janet visitation rights, in November, 2009, the Vermont Family Court issued an order granting Janet responsibility for the day-to-day care of Isabella while granting Lisa liberal visitation rights. The transfer of custody was to have taken place on January 1, 2010. However, Lisa failed to appear at the appointed time, and an arrest warrant was issued. Lisa and Isabella still have not been found.

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 will provide your children with every protection and benefit that the Massachusetts government (not the federal government) extends to enhance the security and safety of children's lives.

Will I Be Able To Get Health Benefits Through My Employer For My Massachusetts Spouse?

If you are employed by the Commonwealth of Massachusetts, a Massachusetts county or a Massachusetts 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 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 Massachusetts 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.

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. Massachusetts law also provides 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 Massachusetts 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 Massachusetts law extends certain special enrollment rights to married couples, those rights will extend to same-sex married 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 (the one exception to this is if your spouse meets the IRS definition of a dependent). However, the value of those benefits should not be treated as income for Massachusetts *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. For more information on this see <http://www.glad.org/uploads/docs/publications/hla-glad-health-benefits.pdf>.

Finally, complicated issues arise if Massachusetts residents work in Massachusetts for companies based in other states or for non-residents who obtain a Massachusetts marriage and return home and seek spousal health insurance benefits from their non-Massachusetts employer. Contact GLAD’s Legal InfoLine at 800-455-4523 if you have a complicated situation like these.

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

It seems clear that the IRS will not accept a federal income tax return filed with the status of married (either jointly or married filing separately) by a married same-sex couple. 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 couple will be able to file a Massachusetts 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 Massachusetts state income tax return.

For more information on this topic see GLAD’s publication, *Navigating Income Taxes for Married Same-Sex Couples*, at <http://www.glad.org/uploads/docs/publications/navigating-taxes-married-couples.pdf>.

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 In Massachusetts?

Although there is no residency requirement to enter a Massachusetts, there are residency requirements for obtaining a divorce in Massachusetts. Specifically³²:

- if the grounds for divorce occurred in Massachusetts, then one of the spouses must reside in Massachusetts;
- if the grounds for divorce occurred outside Massachusetts, then one spouse must be a resident of Massachusetts for at least one year.

Same-sex married couples will also be able to divorce in Connecticut, Iowa, Vermont, New Hampshire, New York and the District of Columbia (and possibly in Maryland and New Mexico), provided they meet the residency requirement for divorce. In addition, New Jersey, Illinois and, beginning January 1, 2012, Delaware may dissolve the relationship as a civil union. 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.

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

<http://www.glad.org/uploads/docs/publications/separation-divorce-equality.pdf>.

This is an area of the law that is still evolving and frequently changing. If you need to dissolve a marriage 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 (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (NCLR) (www.nclrights.org, 800-528-6257).

³² G. L. ch. 208, §§ 4 & 5.

Other Legal Protections for Same-Sex Couples

Short of entering into a civil marriage, a civil union, a registered domestic partnership or some other sanctioned legal status, what steps can a couple take to safeguard their legal relationship in Massachusetts?

1. Relationship Agreement or Contract: In 1998, the Massachusetts Supreme Judicial Court ruled that written cohabitation agreements by unmarried parties regarding property and finances will be respected and honored according to ordinary rules of contract law.³³ This ruling provides greater incentive for couples to sort out their affairs in writing before a separation. Note that the rules governing cohabitation contracts between married people are based on what is “fair and reasonable,” a more generous standard which is not available to unmarried persons. And as in any state, specific provisions concerning children may not be enforced according to their terms because it is always in the court’s power to determine the best interests of children.

2. Power of Attorney: Any competent person may appoint another person as his or her “attorney-in-fact” for financial matters in the event the one becomes incapacitated or disabled.³⁴ If no such appointment is made, then a “family” member will be empowered to make decisions for the disabled or incapacitated individual.

A person may also nominate his or her guardian or conservator -- a longer term appointment which takes priority over the attorney-in-fact -- in the same document. An individual’s choice can only be rejected by a court for good cause or disqualification. The mere fact that a family member is not appointed is not good cause.

3. Health Care Proxy: Since medical care providers look to next-of-kin to make health care decisions for an incapacitated individual, an unmarried person must appoint a health care proxy if he or she wishes another person to make those decisions instead of the family member. Under Mass. Gen. Laws, chap. 201D, a person may appoint a health care

³³ *Wilcox v. Trautz*, 427 Mass. 316 (1998).

³⁴ Mass. Gen. Laws, chap. 190B, Article V, §§ 5-501—5-507.

agent to make decisions for him or her upon incompetence. This can be revoked at any time by creating a new health care proxy or by a clear expression of revocation. People often give a copy of the health care proxy to their doctors and sometimes to family members.

4. Will:³⁵ 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. If a person has children, he or she can nominate the future guardian of the child in a will. **If you marry, any existing wills are revoked unless they indicate the marriage in some way.**

5. Funeral Planning Documents: Upon death, a person's body is given to their next-of-kin. This can mean that a person's own partner has no right to remove the body or make plans for a final resting place. But if a person leaves explicit written directions giving another person (such as their partner or a friend) control over the funeral and burial arrangements, any confusion can be avoided. 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 members.

6. Living Will: Within a health care proxy, language may be inserted stating what the individual wishes regarding termination of life support, preferences for types of medical care, or limits on the agent's authority.

7. Temporary Agent or Guardianship: Parents, particularly those with serious illnesses, may either appoint a temporary agent³⁶ for a period not exceeding 60 days or appoint a guardian³⁷ whose appointment takes effect when the parent dies or becomes unable to care for the child. Within 30 days after the appointment of a guardian, the guardian must

³⁵ See generally, G.L. ch. 190B, Articles II & III.

³⁶ G.L. ch. 190B, Article V, § 5-103.

³⁷ G.L. ch. 190B, Article V, §§ 5-201—5-212.

petition the Probate and Family Court for confirmation of the appointment. The parent has the right to revoke the powers of the temporary agent or guardian at any point.

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.

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!



GLAD



EQUAL JUSTICE UNDER LAW

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