



How To Get Married In Vermont

June 2010

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

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

800.455-GLAD (4523) or 617.426.1350

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Introduction

On April 7, 2009, Vermont became the fifth state to allow same-sex couples to marry (Massachusetts, Connecticut, Iowa and California are the other four, but the right to marry in California was rescinded by a constitutional ballot initiative on November 4, 2008), and, since Vermont, the District of Columbia, New Hampshire and Maine have passed marriage equality laws, but the Maine law was overturned by a voter referendum on November 3, 2009.

Vermont was the first state to obtain marriage rights for same-sex couples through a legislative process rather than a court case. The bill, S.115 An Act to Protect Religious Freedom and Recognize Equality in Civil Marriage¹ (hereafter referred to as the “Marriage Act”), was passed by the legislature on April 3, 2009, vetoed by the Governor on April 6, 2009 and the veto was overridden by the Senate (23-5) and the House (100-49) on April 7, 2009. After nearly 15 years of relentless work, Vermont Freedom to Marry succeeded in reaching its goal of marriage equality. GLAD congratulates Vermont Freedom to Marry on their ground-breaking victory and was pleased to have been able to provide some assistance and support. **The implementation date of the “Marriage Act” was September 1, 2009.**

Vermont was also the first state to allow same-sex couples to enter into a legal relationship that provided all the state protections, benefits and responsibilities afforded to different-sex married couples, as the result of a case, *Baker v. State*,² brought by GLAD with co-counsels Beth Robinson and Susan Murray of the Vermont law firm Langrock, Sperry and Wool. Civil unions were established by the legislature³ on July 1, 2000, in response to the Vermont Supreme Court’s unanimous decision in December 1999 that same-sex couples are constitutionally entitled to all of the protections and benefits provided through state law to different-sex married couples. Although the “Marriage Act” does not change how civil unions are respected in Vermont, on September 1, 2009, when the provisions of the “Marriage Act” went into

¹ See An Act Relating to Civil Marriage at: <http://www.leg.state.vt.us/docs/2010/bills/Passed/S-115.pdf>.

² *Baker v. State*, 744 A.2d 864 (1999).

³ See Civil Union Act at: <http://www.leg.state.vt.us/docs/2000/acts/act091.htm>.

effect, same-sex couples now no longer have the option of applying for a civil union license in Vermont.

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

1. an eligible couple submits an application for a license in either the town or city in Vermont where one of the parties lives (out-of-state couples can go to any town or city clerk)⁴; the couple must pay the applicable fee and receive a marriage license from the clerk;
2. the couple must have the marriage solemnized (i.e., have a ceremony) within 60 days of filing the application⁵;
3. once the ceremony has been performed, the person who performed it has 10 days to send the license back to the city or town where it was issued; and
4. the clerk will then file the original and the couple can receive an official certificate of their marriage.⁶

Whether you should enter a Vermont marriage and what it all means are questions this publication is meant to address. Inevitably, you will have questions to which there are no definitive answers. 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. Moreover, this is a rapidly evolving area of the law; and, therefore, these questions and answers are based upon the information that is known to us as of this printing and that can change at any time. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. You may call the GLAD Legal InfoLine at (800) 455-GLAD (4523) or check our website www.glad.org for more information and to obtain lawyer referrals.

⁴ 18 V.S.A. § 5131 (a) (1).

⁵ 18 V.S.A. § 5131 (b).

⁶ 18 V.S.A. § 5131 (c).

The Basics

When can we get married?

The “**Marriage Act**” went into effect on **September 1, 2009**. Effective that date same-sex couples can be legally married in Vermont and can no longer apply for a civil union license, although existing civil unions will still be respected by the State of Vermont.

Who can marry?

A couple may enter into a Vermont marriage if they meet the following criteria:

- Neither person may be a party to another civil union or a marriage with a different person⁷;
- Each person must be at least age 18 (someone who is 16 or 17 can marry with permission from a parent or guardian), be competent, and not be under guardianship or have written consent from the guardian⁸; and
- A person cannot marry a parent, grandparent, child, grandchild, sibling, sibling’s child or parent’s sibling.⁹

Do we have to be a Vermont resident?

No. Provided a couple is otherwise eligible to marry, neither member of the couple needs to be a Vermont resident. Non-resident couples can go to any town or city in Vermont to apply for a marriage license.

⁷ 15 V.S.A. § 4.

⁸ 18 V.S.A. § 5142.

⁹ 15 V.S.A. § 1a.

How do we get a marriage license?

APPLICATION FOR A LICENSE

Vermont residents must get a marriage license from the town clerk of the town where either party resides. Non-residents may go to any town clerk in the state to obtain a marriage license. It is not necessary for both parties to be present to obtain the license as only one signature is required on the application form.¹⁰ A fee must be paid to the town clerk. No blood test is required.

SOLEMNIZING THE MARRIAGE

After obtaining the license, the couple must have the marriage solemnized by an official authorized to solemnize a marriage. A Vermont judge, Vermont Justice of the Peace (JP), or a member of the Vermont clergy, or a clergy person from another state who has been granted permission by a Vermont probate judge may solemnize a marriage. Marriages among the Friends or Quakers, the Christadelphian Ecclesia and the Baha'i Faith may be solemnized in the manner used in such societies.¹¹ Clergy or religious societies permitted to solemnize marriages are, however, not required to solemnize any marriage and so may refuse to solemnize the marriage of a same-sex couple.¹²

In addition, any person who is over the age of 18 may register with the Vermont Secretary of State to become a temporary officiant to a marriage. A person who has filled out the registration form and who has paid the registration fee of \$100 will receive a certificate authorizing the person to solemnize a specific Vermont marriage. The individual's authority to solemnize that marriage will expire at the same time as the corresponding marriage license.¹³ For more information on registering to be a temporary officiant, go to <http://www.sec.state.vt.us/municipal/officiant.htm>.

¹⁰ 18 V.S.A. § 5131 (a).

¹¹ 18 V.S.A. § 5144 (a).

¹² 18 V.S.A. § 5144 (b).

¹³ 18 V.S.A. § 5144a

JPs can be found through www.findajp.com/findvt.htm, and many town clerks have lists of JPs. JPs in Vermont are not required to perform marriages, however, if they do perform marriages, then they cannot discriminate against same-sex couples. Vermont Freedom to Marry also has a list of LGBT-friendly officiants at <http://www.vtfreetomarry.org/wedding-resources.html>.

There is no law governing what a marriage ceremony must include. Indeed, the couple is free to discuss with the justice, judge or clergy member their own ideas of what they want in a ceremony. What is important is that the officiant is present for the ceremony and is able to certify that the parties entered into the marriage with mutual consent. The marriage can be solemnized anywhere in the state of Vermont but must occur within sixty days of the issuance of the license by the town clerk. If the certification is delayed for more than sixty days a new license must be obtained.¹⁴

No witnesses are required for the ceremony, but if you are planning on having a religious ceremony check to see if the religion's tenets require witnesses.

CERTIFYING THE MARRIAGE

The official who has solemnized the marriage must fill out and sign a portion of the marriage license, which then becomes known as the marriage certificate. Within ten days of the solemnization, the official who solemnized the marriage must return the marriage certificate to the town clerk who issued it.¹⁵ If the official delays returning the marriage certificate beyond the tenth day, the official may be penalized, but the marriage will still be valid.¹⁶

Once the marriage certificate is returned to the town clerk, the town clerk records the certificate in the permanent records of the town. The clerk must send a copy of the certificate to the Department of Health. A copy of the marriage certificate received from the town clerk, the commissioner of health

¹⁴ 18 V.S.A. § 5131 (b).

¹⁵ 18 V.S.A. § 5131 (c).

¹⁶ 18 V.S.A. § 5146.

or the state archivist shall be presumptive evidence of the fact of such marriage in all courts in Vermont.¹⁷

What will the clerk require in order to process our application?

Besides basic information about yourselves (names, towns of residence, places and dates of birth), you must also provide your parents' names, including your mothers' maiden names, and their places of birth. A certified copy of your birth certificate can supply most of this information.

Vermont law requires that at least one of you sign the license in the presence of the town clerk, certifying that all the information you provided is correct. However, most town clerks prefer to see both of you in person before issuing your license. The law requires that town clerks satisfy themselves that you are both free to marry under Vermont laws. Therefore, they may legally ask to see documented proof of your statements (birth certificates, divorce decrees, death certificates, etc.).

You will also be asked to provide information about your race, the highest grade you completed in school, the number of previous marriages or civil unions, and how they ended (although you can marry your current civil union partner). This information is confidential and does not become part of the marriage certificate. No blood test is required.

Each party will be asked to check one of the following: "bride," "groom" or "spouse."

There is also a fee charged for the process (\$45) and an additional fee if you want a certified copy of your marriage license (\$10).

What if either of us were married or in a civil union before to a different person?

If your husband, wife or civil union partner has died, you are free to marry. The clerk will ask the date your spouse or civil union partner died. If you are

¹⁷ 18 V.S.A. § 5148

divorced, you may remarry after the date on which your previous marriage or civil union was legally dissolved.

How do I change my surname?

The marriage license application form allows you to change your surname. A certified copy of your marriage certificate will allow you to change your surname with the Social Security Administration and the Vermont Department of Motor Vehicles

Prior to May 27, 2009, the Passport Agency, citing the federal 1996 Defense of Marriage Act (DOMA), 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. GLAD's lawsuit, *Gill et al v. OPM et al*, originally included this as one of the harms caused by Section 3 of DOMA.

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.

Based on GLAD's experience with couples who were married in Massachusetts, we would suggest that in addition to a certified copy of your marriage certificate that you also provide a copy of your Vermont drivers' license and/or Social Security card showing that you are in fact using your married 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 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 of it with your application or to bring a copy of it with you if you apply in person. Please contact GLAD if you encounter any problems.

Is there anywhere else that we can get married?

Yes, currently Massachusetts, Connecticut, New Hampshire, Iowa, the District of Columbia and Canada allow same-sex couples to marry and have no residency requirement. There is information about getting married in Massachusetts, Connecticut, New Hampshire and Canada on GLAD's website at: <http://www.glad.org/rights/publications/c/marriage/>. Our sister organization, Lambda Legal (www.lambdalegal.org, 212-809-8585) has information about getting married in Iowa and the District of Columbia.

In addition, the Netherlands, Belgium, Spain, South Africa, Norway, Sweden and Portugal allow same-sex couples to marry, but some of these countries 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.

Civil Unions V. Marriage In Vermont

In 2000 Vermont was the first state to offer civil unions—which allowed same-sex couples to obtain all the state protections, benefits and obligations of marriage, but without extending the word “marriage” to same-sex couples.

How does the “Marriage Act” affect Vermont civil unions?

The passage of the “Marriage Act” does not make any changes to existing Vermont civil unions. Existing civil unions from Vermont or any other state are still valid and will remain valid unless legally dissolved by the parties, and all the benefits, protections and obligations remain unchanged. If you have a comprehensive domestic partnership from California, Oregon, Washington or Nevada, you should ask for a ruling from the Vermont Department of Health about whether your relationship will be recognized as equivalent to a Vermont civil union.

However, on September 1, 2009 when the provisions of the “Marriage Act” went into effect, couples now no longer have the option of applying for a civil union license in Vermont. If you are currently in a civil union and want to be married in Vermont, you will need to go through the marriage process set forth above.

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 federal obligations and protections, and there are 1138 federal laws that distinguish based on marital status.

Without that word, same sex couples in civil unions have no claim to those legal protections. While those protections are presently withheld from married couples of the same-sex because of Section 3 of the 1996 federal Defense of Marriage Act (DOMA), GLAD has filed a federal lawsuit, *Gill et al v. OPM et al*, to challenge this discrimination (see www.glad.org/doma for detailed information). Should GLAD succeed in this lawsuit, 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 states where their marriage is respected. Under current law, these responsibilities and benefits would not be available to civil union couples.

At the state law level, there are certain circumstances in which 16 and 17-year-olds may marry, but you must be 18 to join in a civil union¹⁸.

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).

¹⁸ 18 V.S.A. § 5163 (a) (1).

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

Can I get married in Vermont if I am already married?

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

Although there is no explicit provision in Vermont 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 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 Vermont's bigamy law¹⁹ and the most recent marriage would be "void."²⁰ When you complete the marriage application, the clerk will ask you if you have been previously married or in a civil union and if so whether it ended by death, dissolution or annulment. For information about dissolving a marriage in Vermont, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Vermont?*

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. (Note: Effective October 1, 2010 all existing Connecticut civil unions will automatically be converted into marriages and on January 1, 2011 all existing New Hampshire civil unions will automatically be converted into marriages.)

¹⁹ 13 V.S.A. § 206.

²⁰ 15 V.S.A. § 4.

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 Vermont's bigamy law²¹ and the new marriage would be "void."²² For information about how to dissolve a civil union in Vermont, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Vermont?*

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 Vermont. However, if you have a California, Oregon, Washington or Nevada domestic partnership with one person and wish to marry a ***different person***, you must dissolve your domestic partnership first, even if a Vermont 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/dpreistry/forms/sf-dp_termbrochure.pdf. For information about ending an Oregon, Washington or Nevada domestic partnership contact Lambda Legal (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (NCLR) (www.nclrights.org, 800-528-6257).

²¹ 13 V.S.A. § 206.

²² 15 V.S.A. § 4.

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.

Colorado, Hawaii, Maine, Wisconsin, Maryland and the District of Columbia have non-comprehensive domestic partnerships. 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 Vermont Marriage?

A marriage is an important commitment and should be considered carefully. Entering into that status can affect many aspects of your public and private life. Moreover, because only a few states have any sort of comprehensive relationship recognition for same-sex couples, it is important to plan for the worst, i.e., that entities in other states will not respect your marriage, while hoping for the best.

Moreover, this is a rapidly evolving area of law where some things are unclear or confusing, and where we do not yet have precedents regarding 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 Vermont 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 Vermont.

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

- Entering into a Vermont marriage may complicate matters if you are in the process of adopting a child or considering adoption in the future. Some foreign countries welcome single-parent adoptions but do not allow same-sex couples to adopt. This might also be true for some states in the United States.
- Being in a 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.
- 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."
- Under Vermont law, a spouse generally cannot completely disinherit a spouse by leaving the spouse out of her or his will unless the couple signed a valid prenuptial agreement. As a result, a spouse is entitled to a share of your estate.

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

- Under Vermont law, a marriage can be dissolved in Vermont only if certain residency requirements are satisfied (see “*How Do I Get Out Of A Vermont Marriage Or Civil Union?*”). Your home state – if not Vermont – may or may not allow you to dissolve your marriage under that state’s laws. With divorce in Vermont, the court will determine property division, alimony, child custody and child support if the parties cannot agree on these issues themselves. Under Vermont law, the court can consider any property owned by either or both of the parties as marital property subject to distribution in a dissolution unless the parties enter into an otherwise valid pre-nuptial agreement addressing the question.
- An employer-sponsored domestic partnership plan may require you to be “single” in order to qualify. This could raise questions as to whether an employee in a marriage can participate.
- 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.
- 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.

What Protections Do We Gain From A Vermont Marriage Or Civil Union?

Both marriages and civil unions allow couples to access all the STATE laws that pertain to married couples. Some of the protections include:

- Preferences for guardianship of and medical decision-making for an incapacitated spouse²³;
- Automatic inheritance rights²⁴;
- The right to leave work to care for an ill spouse²⁵;
- Hospital visitation rights²⁶;
- Control of a spouse’s body upon death²⁷;
- The right to be treated as an economic unit for state tax purposes²⁸;
- The duty of support spouses owe one another²⁹;
- The right to sue for the wrongful death or injury to a spouse and the right to victim’s compensation³⁰;
- Greater access to family health insurance policies³¹;
- Parenting rights³²; and
- The right to divorce and to an ordered method for ascertaining property division as well as child custody and support.³³

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

²³ 15 V.S.A. §§ 1204 (e)(10), (11), (19).

²⁴ 15 V.S.A. §§ 1204 (e)(1), (16).

²⁵ 15 V.S.A. § 1204 (e)(12).

²⁶ 15 V.S.A. § 1204 (e)(10).

²⁷ 15 V.S.A. § 1204 (e)(11).

²⁸ 15 V.S.A. § 1204 (e)(14).

²⁹ 15 V.S.A. § 1204 (c).

³⁰ 15 V.S.A. §§ 1204 (e)(2), (8).

³¹ 15 V.S.A. § 1204 (e)(5).

³² 15 V.S.A. §§ 1204 (e)(3), (4), (f).

³³ 15 V.S.A. §§ 1204 (d), 1206.

relationship and family the maximum protection. You should use the services of an attorney to:

- Complete a second parent adoption of your children, whether you are married, in a civil union, or not.
- 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 Vermont Marriage

Respect by the State of Vermont

Vermont state laws that pertain to marriage apply to ALL married couples in Vermont—both same-sex and different-sex. So you will receive the same benefits and protections and have the same obligations under *Vermont state law* as every other married couple.

Respect by the Federal Government

Because of Section 3 of the 1996 federal Defense of Marriage Act (DOMA), 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 laws (both responsibilities and protections) applicable to spouses in a different-sex marriage. This includes federal income taxation, Social Security, immigration, veterans' benefits and many more. In addition, federal law interacts with Vermont 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 a federal lawsuit, *Gill et al v. OPM et al*, to challenge this discrimination (see www.glad.org/doma for detailed information). Should GLAD succeed in this lawsuit, 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. Under current law, these responsibilities and benefits will not be available to civil union couples.

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

First, the good news. Your Vermont marriage will be respected as a marriage in Massachusetts, Connecticut, New Hampshire. Iowa and the District of Columbia. A Vermont marriage will be respected as a civil union in New Jersey.

On November 19, 2009, the New York Court of Appeals, that state's highest court, unanimously affirmed the rulings of two lower courts that governmental agencies may continue to offer benefits to the same-sex spouses of public employees who legally marry outside the state. Over the objection of three of the seven members of the Court, the majority did not rule on the general issue of whether marriages of same-sex couples, valid where performed, are entitled to full legal recognition under New York's longstanding and expansive marriage recognition rule. Once again, as the New York court did three years ago in its *Hernandez* decision denying marriage equality to same-sex couples, the majority expressed its "hope that the Legislature will address this controversy." For more information about marriage recognition in New York, contact Lambda Legal at 212-809-8585.

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?***

If your marriage is not respected, we encourage you to call GLAD's Legal InfoLine at 800-455-4523 to discuss your options. GLAD has filed a federal lawsuit, *Gill et al v. OPM et al*, to address some of the federal discrimination that same-sex married couples face. We ask individuals to contact GLAD before filing their own lawsuit. Often, there are better options and an unsuccessful lawsuit can set back the progress of LGBT rights. For a further discussion of this see <http://www.glad.org/uploads/docs/publications/make-change-not-lawsuits09.pdf>.

How Does The Vermont Marriage Law Interact With Religion?

As legislatures, as opposed to the courts, have begun to address marriage equality directly by way of legislation, that political process has involved addressing both the gay and lesbian community's request for access to the civil institution of marriage and requests from certain institutions and individuals that they be excused from respecting the marriages of same-sex couples if their religious principles do not allow them to accept our marriages.

In addition to recognizing marriage equality, the Vermont legislature also grappled with various requests for religious exemptions from the law; and the legislature did make some changes in the law.

Distinction Between Civil Marriage and Religious Marriage

First, the new Marriage Act makes it clear that for all couples, whether different-sex or same-sex couples, Vermont law creates a state licensing system for civil marriage, and civil marriage only.³⁴ Every religion can continue to define marriage as it chooses for its own religious purposes.

Clergy Not Required to Solemnize Any Particular Marriage

To that end, the new Marriage Act augments the existing statute governing those persons who are authorized to solemnize a marriage by making explicit that this authorization “does not require a member of the clergy authorized to solemnize a marriage ... nor societies of Friends, Quakers, the Christadelphian Ecclesia, or the Baha'i Faith to solemnize any marriage, and any refusal to do so shall not create any civil claim or cause of action” (emphasis added).³⁵ This did not change the law; it simply restates in forceful terms what the law has always been.

³⁴ 15 V.S.A. §8; 18 V.S.A. §5131(a)(1).

³⁵ 18 V.S.A. §5144(b).

Non-Discrimination Rule in Places of Public Accommodation and the New Exemption

Second, the new Marriage Act did make changes that could raise issues for same-sex couples marrying in Vermont. Current Vermont law protects citizens from discrimination in places of public accommodation. “Place of public accommodation” means “any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.”³⁶ People are protected from discrimination in public accommodations on account of a number of bases, including a person’s sexual orientation and marital status. Therefore, the law’s protection extends to couples who are entering into a civil union or a marriage or are married or in a civil union.³⁷

PUBLIC ACCOMMODATIONS EXEMPTION

The new Marriage Act adds a new, narrow exemption to the public accommodation law to provide that:

- “a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society,
- shall not be required to provide services, accommodations, advantages, facilities, goods or privileges to an individual,
- if the request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage or celebration of a marriage.”³⁸

³⁶ 9 V.S.A. §4501(1)

³⁷ Under existing Vermont law predating the new Marriage Act, the owner or operator of an “inn, hotel, motel, or other establishment which provides lodging to transient guests, and which has five or fewer rooms for rent or hire” may restrict such accommodations “on the basis of sex or marital status.” 9 V.S.A. §4502(d). This existing provision of the law allows such owners or operators of certain small establishments to refuse to serve same-sex married or civil union couples for any reason or no reason and including religious reasons.

³⁸ 9 V.S.A. §4502(1)

The new law goes on to provide that the exempt entities may selectively provide these various services, etc. “to some individuals with respect to the solemnization or celebration of a marriage but not to others.”³⁹

IMPACT

In short, if an organization, association or institution falls within this exemption, even though it generally makes its services, etc. available to the general public, it is free to offer its facilities (and refuse its facilities) to whomever it pleases when it comes to the solemnization or celebration of marriages.

The legislature has, in effect, narrowed the scope of the protection against discrimination in public accommodations when it comes to solemnization and celebration of any marriages, including the marriages of same-sex couples. As a result, you might find that you could receive a negative response to some request for a service in connections with the solemnization or celebration of your marriage.

While it is impossible to know all the circumstances where this could arise, some things are clear:

- No government official or institution would be allowed to deny you a service. So, for example, if your town hall is available for rental to the general public, the town cannot refuse to rent to you on the ground that it objects to your marriage.
- No individual doing business with the public can deny you services with respect to your marriage; and no secular, non-religious business can deny you services.

On the other hand, if a local church has a hall connected to it, the church is permitted under the new Marriage Act to refuse to rent the hall for any particular wedding celebration it chooses.

³⁹ 9 V.S.A. §4502(1)

Issues, nonetheless, could arise when you make a request for services regarding the solemnization or celebration of your marriage when there are questions whether the service provider falls within the specific terms of the law.

Ultimately, GLAD expects that there will not be many encounters of this sort between couples and qualifying institutions and organizations. However, if you encounter a problem, please contact GLAD and tell us what has happened. In the meantime, as you continue with the planning of your wedding celebration, the best advice is probably simply to move on.

Fraternal Benefit Societies – Free Exercise of Religion Protections

The new Marriage Act also adds language to the law governing Vermont fraternal benefit societies, simply making clear what the law already requires: that the civil marriage laws do not: (a) affect the ability of any such society to determine eligibility for admission of its members; or (b) require any such society that is “operated, supervised or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the society’s free exercise of religion” as guaranteed by the United States and Vermont Constitutions.⁴⁰

Again, GLAD anticipates that same-sex married couples will have few encounters with fraternal benefit societies involving questions of discrimination. However, if you do, please contact GLAD and tell us what happened.

Accommodation to Religious Belief in Employment

Current Vermont law accommodates religious beliefs in two other provisions in its non-discrimination laws. First, as to employment, the ban on discrimination on the basis of sexual orientation or gender identity does not:

“prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational

⁴⁰ 8 V.S.A. §4501(b)

purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment which is calculated by the organization to promote the religious principles for which it is established or maintained.”⁴¹

Also, in the housing area, where there is protection against discrimination on the basis of sexual orientation, gender identity and marital status, existing Vermont law provides that the non-discrimination rules do not apply:

“to a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in that religion is restricted on the basis of race, color or national origin. The religious restriction or preference must be stated in written policies and procedures of the religious organization, association or society.”⁴²

For more information about your rights in Vermont vis a vis the non-discrimination laws of Vermont, please see GLAD’s publication, *Vermont Overview of Legal Issues for Gay Men, Lesbians, Bisexuals and Transgender People* at <http://www.glad.org/uploads/docs/publications/vt-lgbt-overview.pdf>.

⁴¹ 21 V.S.A. §495(e)

⁴² 9 V.S.A. §4504(5)

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 Vermont marriage or civil union were parents before the marriage or civil union (e.g., through joint or second-parent adoption), both parties remain parents. GLAD recommends that parents complete second parent adoptions, regardless of their legal status, as it is the best protection for children and both parents.

If one party to the marriage or civil union was not a parent before the union, the marriage or civil union will not change that. He or she will be considered a stepparent, carrying whatever weight that status has in Vermont. 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 Vermont 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 Vermont, 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 Vermont, 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 several trips to the U.S. Supreme Court. Proceedings are ongoing.

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

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

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

Beyond these considerations, entering into a marriage or civil union will provide your children with every protection and benefit that the Vermont 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 Vermont Spouse⁴³?

If you are employed by the State of Vermont, a Vermont county or a Vermont 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. Insured plans, which are subject to Vermont insurance law, must cover same-sex spouses on the same terms as they cover different-sex spouses.

Although the prevailing view is that self-insured plans can choose whether to extend or exclude coverage for same-sex spouses, there is some case law that suggests otherwise. If your employer has a self-insured plan and refuses

⁴³ Spouse means either a partner in a civil union or marriage

to cover your same-sex spouse, you should advocate that your employer do the right thing and treat all married couples equally. Although you can indicate to your employer that not offering the same benefits to all married couples might lead at some point to a lawsuit, GLAD does not recommend filing a lawsuit at this time. Also, with self-insured plans, if the definition of spouse in the plan can be interpreted to include same-sex spouses, then it may be possible to legally force the employer to provide spousal coverage.

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. Vermont law also provides coverage continuation benefits for employees in companies with less than 20 employees, and that law 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 Vermont 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 Vermont 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 the spouse’s 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 Vermont *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.

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

Finally, complicated issues arise if Vermont residents work in Vermont for companies based in other states. The obligation to extend coverage to same-sex spouses may depend on a variety of factors. Similar complicated issues arise for non-residents who obtain a Vermont marriage and return home and seek spousal health insurance benefits from their non-Vermont employer.

How Does A Married Or Civil Union Couple In Vermont File Federal And State Income Tax Returns?

In light of federal marriage discrimination (that is, the so-called “Defense of Marriage Act” or “DOMA”), the federal government does not consider a married same-sex couple as married for purposes of federal laws, including for filing of federal income taxes. **As a result, on *FEDERAL* tax returns, same-sex married or civil union couples are *NOT* allowed to use the married filing jointly or married filing separately status, but each member of the couple *MUST* file as single.**

GLAD recommends, however, that married couples consider designating in some way that the marriage has occurred. Ideas for designating your true marital status without claiming that status are discussed below. Doing so could help to avoid penalties for underpaying taxes and could also prevent others from using the designation of “single” on the tax return to argue or prove that a person is not really married when that issue arises in other legal contexts (i.e. applying for a mortgage or other loan). In order to acknowledge both the discriminatory federal law as well as the truth of your marriage, accountants suggest two options for designating your marital status on a “single” return:

1. Include a cover letter or disclosure form with the tax return. The disclosure form allows a taxpayer to highlight to the IRS issues raised by the tax return. It could include a statement that the taxpayer was married to a person of the same sex as of a certain date (and the marriage certificate could be attached as well), and that the only reason he or she is filing as a single person is because of the federal discriminatory law known as “DOMA.”
2. On the tax return itself, put an asterisk by the “x” in the “single” box, and indicate somewhere on the form (such as the margin) that the taxpayer is married to a person of the same-sex, the date of the marriage, and that this designation as “single” is for federal income tax filing purposes only.

Vermont has “fixed” its *state* tax code which depends on federal law to be read as if federal law respected the marriage or civil union of a same-sex couple.⁴⁴ Accordingly, couples filing *state* returns prepare a “dummy” federal return as though they were filing as married (either married filing jointly or married filing separately) at the federal level and use those numbers in filling out their state income tax return. Then both the “dummy” federal return and the state return are filed with the Vermont Department of Taxes.

⁴⁴ 32 V.S.A. §§ 3802, 5812, 7401.

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

Although there is no residency requirement to enter a Vermont marriage or civil union, there are residency requirements for obtaining a dissolution of a marriage or civil union in Vermont. The same divorce law applies for both marriages and civil unions.⁴⁵ One of the spouses must live in Vermont continuously for at least six months before filing an action for dissolution, and continuously for one year before the dissolution can be granted.⁴⁶

Same-sex married couples should also be able to divorce in Massachusetts, Vermont, Iowa, New Hampshire (until January 1, 2010 it will be dissolved as a civil union and after that date as a marriage) and the District of Columbia.

Civil union couples can also dissolve their relationship in Connecticut, 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.

In addition, it may be possible to dissolve a marriage or civil union in states that don't provide any form of legal recognition for same sex couples. For example, both Massachusetts and Maine lower courts have dissolved several civil unions.

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.

⁴⁵ 15 V.S.A. § 1206.

⁴⁶ 15 V.S.A. § 592.

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

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

1. Relationship Agreement or Contract: Cohabitation agreements regarding property and finances provide a way for couples to sort out their affairs in writing before a separation. As long as the contract is not about sexual services and complies with the requisites for a valid contract, it has a good chance of being upheld as valid. Bear in mind that, 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. (See discussion below concerning parenting agreements).

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.⁴⁷ 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 indicate his or her preference regarding the appointment of a guardian -- a longer-term appointment that applies to all areas of a mentally incapacitated person's personal care and financial affairs (court considers preference of incapacitated person in appointing guardian).⁴⁸ The document indicating this preference should be executed with all of the formalities of a will and should be updated to keep track of all aspects of a person's personal and financial situation.

⁴⁷ 14 V.S.A. §§ 3501-3516.

⁴⁸ 14 V.S.A. § 3072 (consideration of ward's preference in appointing guardian).

3. Durable Power of Attorney for Health Care: Because medical care providers look to a spouse or next-of-kin to make health care decisions for an incapacitated individual, an unmarried person must execute a durable power of attorney for health care if he or she wishes another person to make those decisions instead of the next-of-kin family member. According to Vermont law, a person may appoint a health care agent to make decisions for him or her upon incompetence.⁴⁹ 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 their durable power of attorney to their doctors and sometimes to family members. In addition, instructions regarding anatomical gifts may be included within powers of attorney for health care, as well as in living wills or on a driver's license.⁵⁰

4. Living Will/Terminal Care Documents: A person 18 years or older may execute a document commonly known as a terminal care document. This document is used in the event that he or she is incapable of participating in decisions about his or her care and directs that no extraordinary measures be used to prolong his or her life when in a terminal condition.⁵¹

5. Will: If a person is neither married, nor joined in a civil union, without a will, his or her property passes to: (1) his or her children; (2) his or her family; (3) if next-of-kin cannot be located, to the state.⁵² 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.

⁴⁹ 14 V.S.A. §§ 3451-3467.

⁵⁰ 18 V.S.A. § 5239.

⁵¹ 18 V.S.A. § 5253.

⁵² 14 V.S.A. § 551.

6. Funeral Planning Documents: Absent a marriage or civil union, 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. You can try to avoid confusion and conflict on this issue by leaving explicit written directions giving another person (such as your partner or a friend) control over the funeral and burial arrangements. 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. Additionally, these instructions could be included in a durable power of attorney for health care.

Do I need these documents if I am in a marriage or civil union?

Although marriages and civil unions grant some of these protections automatically under Vermont law, executing these documents can more fully ensure that your interests are protected and your wishes are carried out exactly as you intended. Also, the uncertainty that remains as to how marriages and civil unions will be regarded by other states is a further reason why a couple should execute these documents.

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, an attorney may be able to help you achieve 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 co-habitation agreement will come into play if a couple has one. If a couple has a civil union or marriage,

the divorce laws apply, and any such agreements will be treated the same as agreements between different-sex married couples.⁵³ Absent a marriage, civil union or an agreement, couples can get involved in costly and protracted litigation about property and financial matters, with no divorce system to help them sort through it.

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.

⁵³ 15 V.S.A. § 1205.

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!



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EQUAL JUSTICE UNDER LAW

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