

endorsement in the passport. For general guidance see 7 FAM 1370 appendix C on "known as" names.

## **7 FAM 1358 APPENDIX C Common Law Marriage**

(CT:CON-281; 02-04-2009)

- a. An applicant may claim a change of surname as a result of a "common-law marriage." In most cases, adjudicators should handle a case of this type as a change of surname without a court order.
- b. An applicant who has not been using the surname for at least five years may establish the change as a result of a common-law marriage if acceptable identification in the requested surname is provided, **and**
  - (1) The applicant lives in, and the marriage has taken place in, **a state which recognizes common-law marriages**; or
  - (2) The applicant lives in a state that does not recognize common-law marriages entered into in that state, but does recognize such marriages that took place in states in which they are valid.
- c. Most states require a specific period of time of entering into the relationship before the relationship is considered to be a "common law marriage."
- d. **Questions:** For further information about which states recognize common-law marriage:
  - (1) Domestic passport agencies and centers should contact CA/PPT/L/LA at CA-PPT-ADJQ@state.gov.
  - (2) U.S. embassies and consulates abroad should contact CA/OCS/PRI for guidance at ASKPRI@state.gov.

## **7 FAM 1359 APPENDIX C Change of Name by Operation of Law, Including Same Sex Marriage and CIVIL UNION, AND NAME CHANGE FOR USE IN U.S. PASSPORTS**

(CT:CON-301; 05-27-2009)

- a. *22 CFR 51.25(a) states that "A passport shall be issued in the full name of the applicant, generally the name recorded in the evidence of nationality and identity." 22 CFR 51.25(c) states that "A name change will be recognized for purposes of issuing a passport if the name change occurs in one of the following ways. .... (4) Operation of state law. An applicant must present operative government-issued legal documentation declaring the name change or issued in the new name."*

- b. *Name change is as a matter of law in the United States and its territories governed by state and local law -- that is, the laws of the several (fifty) states and the District of Columbia. Accordingly, a passport may be issued in a new name based on the operation or the provisions of state law that recognize a new name, in accordance with section 22 CFR 51.25(c)(4). When a state recognizes a legal name change, and the state issues documentation declaring the new name or issued in the new name, the Department may similarly issue a passport in the new name recognized under state law, in accordance with 22 CFR 51.25(c)(4). This approach of recognizing a legal name change under state law serves the important function of allowing the applicant to have all of his or her identity evidence in the same name.*
- c. *When a passport applicant assumes a new surname (whether a totally new surname, the applicant's original "maiden name", or a new hyphenated name) under the provisions of state law, the applicant may have the passport issued in the applicant's new surname.*
- (1) *For a Form DS-11, Application for a U.S. Passport, the applicant must provide:*
    - (a) *Acceptable identification showing use of the new surname issued by the U.S. state (see 7 FAM 1320) and a photocopy of evidence (such as the operative provision of state law) that the state law recognizes the new name as a matter of state law, AND/OR*
    - (b) *An original or certified copy of the relevant state law documentation evidencing the legal basis for the name change under state law.*

*There is no time limitation from the date of the recognition of the new name under operation of state law to the date of the passport application.*

- (2) *For a Form DS-82, Application for a U.S. Passport by Mail, the applicant must provide an original or certified copy of the documentation noted above.*
- (3) *This documentation that the Department may accept to prove a legal name change includes but is not limited to original or certified copies of:*
  - (a) *Marriage document; or*
  - (b) *Divorce decree; or*
  - (c) *Court decree for a name change.*
- (4) *If the document provided as evidence of a legal name change does*

*not provide enough information to identify an individual, additional documentation may be requested. For example, applicants may also be asked to provide document(s) confirming identity, such as a valid state-issued driver's license with a photograph, or a state-issued non-driver identification card with a photograph.*

- (5) *The most recent previously issued passport should also be submitted.*

**Note:**

*The Department may recognize a legal name change based upon a marriage certificate as provided under state law. The Department is not recognizing the marriage certificate for purposes of upholding or determining the validity or the status of the marriage. With respect to passport issuance the Department does not address the matter of marriage validity but is addressing only a state-recognized legal name change.*

**NOTE: CHANGES EFFECTED BY 2008 REGULATIONS:**

*The new passport regulations at 22 CFR Part 51, effective February 1, 2008, expressly recognize that a marriage certificate may serve as a basis for a change of name (22 CFR 51.25(c)(3)) or that the provisions of state law may serve as a basis for a change of name (22 CFR 51.25(c)(4)). Our practice prior to the new regulations was to accept a marriage certificate as equivalent to a court decree, and the new regulations codify this practice.*

- d. *An applicant who has assumed a hyphenated surname through operation of state law may be issued a passport in the hyphenated surname. Write the surnames in a passport joined by the hyphen in the order in which the applicant uses them. As discussed above, the applicant must provide an original or certified copy of documentation evidencing the change of name by operation of state law.*

**For example:**

*Jane Smith-Jones*

*Mary Jones-Smith*

*John Smith-Jones*

*David Jones-Smith*

- e. *For a listing of states that recognize a name change by operation of law in the event of a marriage certificate or civil union certificate, including, for example, Massachusetts, consular officers and posts should contact*

CA/OCS/PRI (ASKPRI@state.gov). Domestic passport agencies and centers should contact CA/PPT/L/LA (CA-PPT-AdjQ@state.gov). If the applicant provides information or evidence regarding the provisions or operation of state law, such information or evidence should be forwarded to CA for review.

- f. Applicants seeking to establish a name change based on a certificate of civil union or certificate of domestic relationship may not do so absent additional documentation, unless state law recognizes the name change by operation of law. The Department does not recognize name changes based solely on the certificate of civil union or domestic partnership, in the absence of legal name change under state law. This is true regardless of the state or the country where the certificate was issued – whether foreign or domestic -- unless the name change is lawfully recognized by operation of state law. If the state recognizes a legal name change based upon the certificate of civil union, please refer to sections b through d above.
- (1) The applicant may submit an original or certified copy of a court ordered name change decree or proper documentation of usage for change of name based on customary usage. For general guidance see 7 FAM 1320 Appendix C and 7 FAM 1330 Appendix C about name changes by court orders and customary usage.
  - (2) A certificate of civil union or certificates of a domestic relationship can be accepted as one of the public documents submitted in support of a customary name change. Name changes by customary usage must be supported by documentary evidence of use of the new name for a period of five years, that is, three original or certified copies of public records that show the applicant's name, date and place of birth and use of the assumed name for five years. Original or certified copies of certificates of civil union or certificates of domestic relationship cannot be accepted as the only documentary evidence of a customary name change but may be one document evidencing customary usage.
- g. The Department recognizes that there will be instances where individuals will assume a new name on the basis of a civil union or domestic relationship (in the absence of legal name change) and may have all their identity evidence in their new names, but have not demonstrated a sufficient period of time using the new name to get a passport issued in the same name (see 7 FAM 1370 Appendix C Change of Name Without Court Order (Customary Name Change)). In those cases only, the applicant should be given the option of being issued a passport issued with the "known as" designation. (See 7 FAM 1370 Appendix C for general guidance on "known as" names.) When disapproving a case for this type of problem, overseas posts and domestic passport agencies and

*centers must notify the applicant with a denial letter. See example of a denial letter below in paragraph i.*

*For example:*

Although the applicant's evidence of identity is in the new name, there is no legal name change under state law and the applicant has not used the new name exclusively for five years.

*h. Questions: Overseas posts should forward questions regarding specific same sex marriage or civil union name changes to CA/OCS/PRI (ASKPRI@state.gov). Domestic passport agencies and centers should forward questions regarding these types of cases to CA/PPT/L/LA (CA-PPT-AdjQ@state.gov).*

***i Sample Denial***

*SAMPLE DENIAL LETTER– Name Change based on foreign same sex marriage certificate or foreign or domestic certificate of civil union or domestic partnership when there is no legal name change under state law.*

*Dear:*

*I refer to your recent application for a passport in which you request a new passport to reflect a name change based on a foreign marriage certificate or foreign or domestic certificate of civil union or registered partnership.*

*Unless your new name is recognized legally as your new lawful name in accordance with the provisions of law of one of the fifty states of the United States or the District of Columbia, we are unable to comply with your request at this time. However, we suggest below some alternate courses for you to consider.*

*Section 51.25 of Title 22 of the Code of Federal Regulations provides that a valid passport may be issued to reflect a new name in the following circumstances:*

*If your name has been legally changed by court order, you must submit an original or certified copy of the court order; or*

*If your name has not been legally changed and you wish your passport to be written in your assumed name, you must submit original or certified copies of three public records that show your name, date and place of birth and show use of your assumed name for five years. Public records include such documents as school records, military records, employment records, tax records, financial records, insurance records, etc. Two notarized affidavits completed by two people who have personal knowledge of your name change may be substituted in place of one public record. The original or certified copy of the foreign marriage certificate or the foreign or domestic certificate of civil union you submitted is acceptable as one of the public*

documents.

*If you are unable to meet these requirements, you may request instead that your passport be issued in a "known as" name.*

*We will hold your application for ninety (90) days. If we do not receive a copy of a court order or decree providing for name change or documentary evidence of use of the new name for the past five years, or a request to issue the passport in a "known as" name, your application will be considered denied. Any special return postage will be returned or refunded.*

*Signed*

*Passport Specialist (at a U.S. passport agency or center)*

*or*

*Consular Officer (at a U.S. embassy or consulate abroad)*

## **7 FAM 1360 APPENDIX C CHANGE OF NAME FOR A MINOR**

### **7 FAM 1361 APPENDIX C Change of Minor's Surname adoption**

#### **7 FAM 1361.1 Appendix C Change of Minor's Surname Pending Adoption**

*(CT:CON-281; 02-04-2009)*

- a. An adopted person usually acquires a new name through adoption and is evidenced by a court order. However, if the adoption of a child born in the United States has not been finalized, a child may be issued a limited one-year passport in the adoptive name, using Endorsement Code 46. (See 7 FAM 1300 Appendix B.) If child who acquired U.S. citizenship at birth was adopted abroad, and the adoption was not yet final, the post abroad would issue a limited validity passport using endorsement code 109.

#### **Endorsement Code 46**

**THIS PASSPORT EXPIRES ON (mon day, year). IT CANNOT BE REPLACED WITHOUT THE EXPRESS AUTHORIZATION OF THE DEPARTMENT OF STATE.**

#### **Endorsement Code 109**

**THIS PASSPORT EXPIRES ON (MON DAY, YEAR). IT CANNOT BE**