



How to Get Married in New Hampshire

July 2015

Funding for this publication provided by:



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www.GayIVF.com

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Introduction

On June 3, 2009, the New Hampshire General Court approved and Governor Lynch signed a marriage equality bill (House Bill 436, “An Act Relative to Civil Marriage and Civil Unions”¹) that extended the right to marry to same-sex couples effective January 1, 2010. This legislation also ended the ability of same-sex couples to enter into civil unions in New Hampshire on the same effective date and allowed any couples already in a New Hampshire civil union to enter into marriage.² All still existing New Hampshire civil unions were automatically converted to marriages effective January 1, 2011.

At the insistence of the Governor, the legislature also passed two other bills (HB 73³ and HB 310⁴), which affirm religious freedom protections with regard to marriage.

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

1. an eligible couple submits an application for a license in any town or city in New Hampshire;⁵
2. the couple must pay the applicable fee and receive a marriage license from the clerk;⁶
3. the couple must have the marriage solemnized (i.e., have a ceremony) within 90 days of filing the application;⁷
4. once the ceremony has been performed, the person who performed it has 6 days to send the license back to the city or town where it was issued;⁸

¹ See <http://www.gencourt.state.nh.us/legislation/2009/HB0436.html>.

² Previously, the state legislature passed a law in 2007 allowing same-sex couples in New Hampshire to enter into civil unions. See House Bill 437-FN-LOCAL. Under that law, civil unions provided the same rights, protections and obligations as are granted to a married spouse under state law.

³ See <http://www.gencourt.state.nh.us/legislation/2009/HB0073.html>.

⁴ See <http://www.gencourt.state.nh.us/legislation/2009/HB0310.html>.

⁵ NH RSA 457:22.

⁶ NH RSA 457:29.

⁷ NH RSA 457:26.

⁸ NH RSA 5-C:49 I.

5. the clerk will then file the original, and the couple can receive an official certificate of their marriage.

Although the intent of the marriage equality law was for same-sex married couples to be treated the same as different-sex married couples, some issues remained that were resolved with the passage of Senate Bill 394 in 2014.⁹

- The law assures that all same-sex couples who married in New Hampshire have valid marriages regardless of where they resided at the time of the marriage or when they married in New Hampshire.
- If a couple married outside New Hampshire prior to when same-sex couples could marry in New Hampshire (January 1, 2010), New Hampshire will consider the starting date of the marriage to be the date the marriage was solemnized.
- Prior to the passage of this law, couples who had civil unions from other states were required to dissolve that relationship before they were allowed to marry the *same* person in New Hampshire. That is no longer required.
- This law clarifies that all New Hampshire family, marriage and divorce laws apply equally to same-sex and different-sex couples, regardless of any gendered language that still remains in the law.

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

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

⁹ See <http://www.gencourt.state.nh.us/legislation/2014/SB0394.html>.

Exactly two years later, on June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that it was unconstitutional to prevent same-sex couples from marrying,¹⁰ and so now every state must allow same-sex couples to marry and must respect the marriages of same-sex couples, regardless of where the couple married.

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

¹⁰ The case was argued by GLAD attorney, Mary Bonauto. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

The Basics

Who can marry?

To be eligible to marry in New Hampshire, both parties must:

If a same-sex couple, be 18 years of age or older (for different-sex couples, males under age 18 and at least age 14 and females under age 18 and at least age 13 may receive court permission to marry if at least one of them is a resident of New Hampshire)¹¹

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

If you are married to or are in a civil union or comprehensive domestic partnership with a different person, you cannot marry your partner until you have dissolved the other relationship. Entering into another marriage before you have legally ended the first is considered a class B felony under New Hampshire's bigamy law and is punishable by up to seven years in prison,¹² or a fine of up to \$4,000 or both.¹³ The municipal clerk will ask for proof of the dissolution.¹⁴ For more information about getting married in New Hampshire if your relationship is already legally recognized in some way, see the section below, *What If I Already Have A Marriage, Civil Union Or Domestic Partnership From Another State?*

NOTE: Prior to the passage of Senate Bill 394 in 2014, if you had a civil union from a state other than New Hampshire and you wanted to marry the SAME person, you were required to dissolve that relationship first, which meant that for some period of time you no longer had any legal relationship with that person. The passage of Senate Bill 394 eliminated the need to dissolve a civil union from another state before you marry the same person.¹⁵

¹¹ NH RSA 457:4.

¹² NH RSA 639:1

¹³ NH RSA 651:2.

¹⁴ NH RSA 5-C:42 IX.

¹⁵ See <http://www.gencourt.state.nh.us/legislation/2014/SB0394.html>.

Not be closely related by blood or marriage to his or her intended spouse.¹⁶

A person may not marry his or her:

parent

parent's sibling

child

sibling

sibling's child

grandchild

first cousin.

Do We Have To Be New Hampshire Residents?

No, there is no residency requirement for marriage in New Hampshire. However, prior to the passage of Senate Bill 394¹⁷ in 2014, there was a question about the validity of the marriages of couples who resided in certain states and came to get married in New Hampshire because New Hampshire had what is called a reverse evasion law.

Senate Bill 394 makes it clear that any out-of-state couple who came to New Hampshire in the past to marry has a valid marriage and any out-of-state couple can now come to New Hampshire to marry, regardless of where they live.

Non-U.S. residents should check with the clerk in the city or town where they intend to marry to find out what identification documents are needed.

How do we get a marriage license?

In order to obtain a New Hampshire marriage license, both parties must appear in person¹⁸ and complete an "Intention of Marriage" application with

¹⁶ NH RSA 457: 2.

¹⁷ See <http://www.gencourt.state.nh.us/legislation/2014/SB0394.html>.

¹⁸ NH RSA 5-C:42 (IV). Members of the armed forces are excused from this requirement of personal appearance, NH RSA 5-C:42 IV, and can use an alternative procedure detailed in N.H. Revised Statutes 5-C:42 V.

the clerk of any city or town in New Hampshire.¹⁹ One party may initiate the process of applying for a marriage license; however, the license will not be issued until signatures have been obtained from both parties.²⁰

The applicants must provide the following information on the application worksheet:²¹

1. full name;
2. usual residence;
3. birthplace;
4. date of birth;²²
5. social security number;
6. father's full name and birthplace; and
7. mother's maiden name and birthplace.

The clerk is then required to complete the following “statistical and legal information” on the worksheet for both of the parties:²³

- the number which represents the currently intended marriage;
- if previously married, whether a civil annulment occurred or the marriage ended by death or divorce, as well as the date of civil annulment or when the last marriage ended;
- their race and ancestry;
- their level of education;
- any waivers presented by the groom or the bride, either for time or age pursuant to RSA 457:4 through RSA 457:9²⁴ or RSA 457:26 and RSA 457:27;²⁵

¹⁹NH RSA 457:22; see also NH RSA 5-C:41 I and 5-C:42 II. A marriage license in New Hampshire is “issued for a marriage ceremony to be performed in any city or town in the state of New Hampshire.” NH RSA 4-C:42 II.

²⁰ NH RSA 5-C:42 VI.

²¹ NH RSA 5-C:41 II.

²² You will need to bring proof of age with you to show the clerk. See NH RSA 457:23 I.

²³ NH RSA 5-C:41 III. New Hampshire law provides that each applicant must provide for inspection: (1) “a copy of the final divorce decree, if either or both parties are divorced”; and (2) “a copy of the death record of spouse, if either or both parties are widowed.” NH RSA 457:23 I(b)-(c). Those copies must be certified. (NH RSA 5-C:42 IX). If a former marriage has been civilly annulled, the clerk must review a certified copy of the civil annulment decree before a marriage license can be issued. NH RSA 5-C:42 X.

²⁴ NH RSA 457:4 through 457:9 are addressed to marriages that are allowable, with permission, for parties under 18 years of age. As noted above, same-sex couples can only marry if they are 18 years of age or older.

- whether proof of age of the bride and groom was demonstrated using identification with photograph;²⁶
- if applicable, the divorce decree; and, if applicable, the death record of the former spouse.

In addition, the clerk will be required to inquire about prior civil unions as well.

After the clerk completes the information on the application worksheet as described in the preceding paragraph, the parties are required to add the following to the application worksheet:²⁷

- if known, the date and the city or town where the marriage is intended to take place;
- if known, the name and address of the officiant for the marriage ceremony;
- the groom's mailing address and phone number;
- the bride's mailing address and phone number;
- the groom's signature and date signed;
- the bride's signature and date signed;
- certification that the information provided is correct to the best of his or her knowledge, and belief and that he or she is free to marry under the laws of New Hampshire.

When all of the foregoing information has been obtained, the city or town clerk prepares the marriage license, which is valid for not more than 90 days from the date of filing.²⁸

New Hampshire has no blood tests or other medical requirements to obtain a marriage license.

²⁵ New Hampshire law historically required a 3-day waiting period between the date the marriage application worksheet is filed and the issuance of the marriage license. However, that provision was repealed effective July 4, 2006. 2006 Session Laws, Chapter 86:5. Therefore, under current law, no time waivers are necessary.

²⁶ "An applicant for a marriage license shall provide positive identification consisting of a certified copy of a birth certificate or a driver's license or a passport or other license or identification that contains a photograph of the applicant and the applicant's name and date of birth." NH RSA 5-C:42 VII.

²⁷ NH RSA 5-C:41 IV.

²⁸ NH RSA 457:26.

The fee for obtaining a marriage license is currently \$45, payable to the clerk of the city or town.²⁹

How do we solemnize the marriage?

Measured from the date of application,³⁰ the marriage license is valid for 90 days.³¹

Officiants who are authorized to join two people in marriage include:

- in a civil ceremony, by New Hampshire justices of the peace or by certain federal judges
- in a religious ceremony, by any ordained “minister of the gospel” residing in New Hampshire and in regular standing within the denomination; any New Hampshire non-ordained clergy serving a religious body “after being licensed by the secretary of state”; any non-resident minister with a “pastoral charge wholly or partly” in New Hampshire (but only within his or her parish).³²

In addition, the secretary of state may issue a special license, for a fee of \$25, to out-of-state “ordained or non-ordained ministers” or to out-of-state individuals authorized or licensed to perform marriages in their home state “authorizing him or her in a special case to marry a couple within the state.”³³

Justices of the Peace (JPs) can be found by going to the website <http://directorynh.com/NHPersonalServices/NH-Justices-Of-The-Peace.html>. We do not know and cannot vouch for how friendly these folks will be. By searching the internet for “nh gay friendly justices of the peace” you can find JPs who are LGBT friendly.

What happens after the marriage ceremony?

²⁹ NH RSA 457:29; see also 5-C:42 XIII.

³⁰ If the parties appear separately before the clerk and therefore the marriage application worksheet is signed and sworn to on two separate dates, the earlier date “shall be used by the clerk of the town or city to indicate when the intention of marriage was received and recorded and the date to be used to establish the beginning of the time period during which the license shall be valid.” NH RSA 5-C:42 XIV.

³¹ NH RSA 457:26

³² NH RSA 457:31 & 32.

³³ NH RSA 457:32.

The authorized officiant records the following on the marriage license after the ceremony has taken place:³⁴

1. certification that she or he is duly authorized to solemnize this marriage;
2. the officiant's status;
3. the date of the marriage ceremony;
4. "the city, town or location and county" where the marriage occurred;
5. certification that the marriage conformed to the requirements of the New Hampshire marriage statute, Chapter 457, and that the information noted is correct to the best of his or her knowledge;
6. the officiant's signature, typed or printed name, her or his title and address;
7. "an indication of whether the ceremony was religious or civil."

The officiant is required to return the marriage certificate within 6 days to the clerk of the city or town that issued the license.³⁵ The officiant must do so if the marriage has taken place even if the parties "have a change of mind" after the ceremony and ask the officiant not to report it.³⁶

"The date the marriage license is received by the clerk of the town or city from the officiant shall be recorded on the marriage certificate as the date the marriage registration is filed."³⁷ It shall be signed by the clerk and include the name of the city or town.³⁸

The couple can then request a certified copy of the marriage certificate from the municipal clerk.

How do I change my surname?

Although the marriage application form does not have a place for requesting a change in your last name, you can still bring a certified copy of your marriage certificate to the Social Security Administration and the New

³⁴ NH RSA 5-C:41 XV.

³⁵ NH RSA 5-C:49 I.

³⁶ NH RSA 5-C:49 VI.

³⁷ NH RSA 5-C:41 XVI.

³⁸ NH RSA 5-C:41 XVII.

Hampshire Division of Motor Vehicles³⁹ in order to change your last name on those identity documents. In addition, the marriage certificate can be used to change the name on your passport.

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

Beyond the exemptions for religious institutions that already exist in New Hampshire's anti-discrimination laws (see GLAD's *New Hampshire Overview of Legal Issues for Gay Men, Lesbians, Bisexuals, and Transgender People* at <http://www.glad.org/uploads/docs/publications/nh-lgbt-overview.pdf> for more information), the new marriage law has created some additional exemptions for religious organizations and institutions specifically with regard to marriage.

First, no clergy are required to solemnize any marriage that is contrary to their religious teachings and practices, if doing so would violate their constitutional protections of free exercise of religion.⁴⁰ In addition, religious organizations, associations, or societies, or any nonprofit institutions or organizations operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, are also protected from having to participate in the solemnization of a marriage in violation of their religious beliefs.⁴¹

Second, a "religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with such entities" does not have to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if such request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage, the celebration of a marriage, or the promotion of marriage through religious counseling, programs, courses, retreats, or housing designated for married individuals, and such solemnization, celebration, or promotion of marriage is in violation of his or

³⁹ See <http://www.nh.gov/safety/divisions/dmv/driverlic/faq.html#A20>

⁴⁰ NH RSA 457:37(I).

⁴¹ NH RSA 457:37(II).

her religious beliefs and faith.⁴² The extent of this exemption is not fully clear, although it seems likely that a church that rents its hall to the general public for weddings would not have to do so for a same-sex couple. This exemption also applies to nonprofit institutions that are “operated, supervised or controlled by or in conjunction with a religious organization, association, or society.”⁴³

At the same time, individuals and secular businesses who are open to the general public --e.g., inns, photographers-- are still subject to New Hampshire’s non-discrimination laws.⁴⁴ This means that a wedding photographer or florist cannot refuse their services for your wedding simply because of individual objections against marriages between same-sex couples.

Finally, the new law also adds language to the law governing 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 New Hampshire Constitutions.⁴⁵

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.

Is there anywhere else that we can get married?

Yes. On June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that it is unconstitutional to deny same-sex couples the

⁴² NH RSA 457:37 III.

⁴³ Id.

⁴⁴ NH RSA 354-A:17

⁴⁵ NH RSA 457:37 IV.

right to marry,⁴⁶ and so now same-sex couples can marry anywhere in the United States and every state and the federal government must recognize the marriages of same-sex couples.

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

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

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

⁴⁶ GLAD Attorney, Mary Bonauto, argued this case. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

What If I Already Have A Marriage, Civil Union Or Domestic Partnership From Another State?

Is my marriage valid if I legally married outside New Hampshire prior to January 1, 2010?

In most cases, yes. HB 436 states that every marriage legally contracted outside New Hampshire will be recognized as valid and, moreover, the date the marriage was solemnized will be considered the beginning date of the marriage, even if this date was before January 1, 2010.⁴⁷ There is, however, an exception to this rule. Marriages from another jurisdiction that violate the prohibition on marrying certain blood relatives will not be respected in New Hampshire.⁴⁸

Can I get married in New Hampshire if I am already legally married?

You cannot remarry the *same person* because, while some states allow couples to remarry each other, New Hampshire expressly prohibits remarriage unless the validity of the marriage has been questioned by a court, law enforcement or state registrars outside New Hampshire.⁴⁹

If you have a marriage or civil union with one person and wish to marry a *different person*, you must first dissolve your existing relationship, since otherwise you would violate New Hampshire's bigamy law.⁵⁰ When you complete the marriage application, the clerk will ask you if you have been previously married, and if so you will need to furnish proof that it ended by death, divorce or annulment. For information about dissolving a marriage or civil union in New Hampshire, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In New Hampshire?*

⁴⁷ NH RSA 457:3

⁴⁸ NH RSA 457:2

⁴⁹ NH RSA 5-C:50-51; by contrast, New Jersey expressly allows couples to obtain a license for "remarriage or reaffirming a civil union." (N.J. Revised Statutes 37:1-7).

⁵⁰ NH RSA 639:1.

What if I entered into a civil union in another state?

If you have a civil union from another state, New Hampshire will recognize your civil union as a marriage, provided that the relationship does not violate any independent prohibitions contained in New Hampshire law.⁵¹ That means that New Hampshire will grant you the same rights and benefits, and hold you to the same responsibilities, as a married couple in New Hampshire.

However, that does not mean your out-of-state civil union or equivalent status will be converted into a marriage—only that New Hampshire will recognize it as a marriage. Moreover, couples in a civil union from another state cannot apply to have their civil union converted to a marriage.

NOTE: When New Hampshire passed its marriage equality law, it also stopped offering the ability for same-sex couples to enter into a New Hampshire civil union on January 1, 2010. On January 1, 2011, any New Hampshire civil union that had not already been converted into a marriage was converted to marriage by operation of law.

If you have a civil union license from a state other than New Hampshire and wish to marry the **same** person in New Hampshire, you will be allowed to do that.

NOTE: Prior to the passage of Senate Bill 394 in 2014, if you had a civil union from a state other than New Hampshire and you wanted to marry the SAME person, you were required to dissolve that relationship first, which meant that for some period of time you no longer had any legal relationship with that person. The passage of Senate Bill 394 eliminated the need to dissolve a civil union from another state before you marry the same person.⁵²

⁵¹ NH RSA 457:45

⁵² See <http://www.gencourt.state.nh.us/legislation/2014/SB0394.html>.

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 New Hampshire's bigamy law. Therefore, if you have previously joined in a civil union with a former partner, you must dissolve your civil union first before you get married to your new partner. For information about how to dissolve a civil union in New Hampshire, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In New Hampshire?*

What if I have a comprehensive Domestic Partnership from California, Oregon, Washington or Nevada?

If you are registered as domestic partners with the State of California (under A.B. 205), the State of Oregon (under the Oregon Family Fairness Act) or the State of Washington (under the Act Relating to Further Expanding the Rights and Responsibilities of State Registered Domestic Partners) or the State of Nevada (under an Act Relating to Domestic Relations. . .), you should be able to marry in New Hampshire.

If you have a comprehensive domestic partnership with one person and wish to marry a ***different person***, you must dissolve your domestic partnership first, even if a New Hampshire 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 (www.nclrights.org, 800-528-6257).

What if I have a non-comprehensive Domestic Partnership?

The term "domestic partnership" has no universal definition. The exact meaning of the term and the rights and responsibilities accorded to persons in

a domestic partnership vary, sometimes dramatically, from jurisdiction to jurisdiction.

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

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

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

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

For any person, 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. Along with the important benefits and protections marriage can provide for your family, you also take on significant legal responsibilities and obligations to your spouse.⁵³

It is important to make an informed choice about whether to enter into a New Hampshire 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 New Hampshire.

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

- Under New Hampshire law, a marriage can be terminated only if certain residency requirements are satisfied (see the question below, *How Do I Get Out Of A Marriage Or Civil Union In New Hampshire?*). With divorce in New Hampshire, the court will determine property division, alimony, child custody and child support if the parties cannot agree on these issues themselves. Under New Hampshire law, the court can consider any property owned by either or both of the parties as marital property subject to distribution in a divorce unless the parties enter into an otherwise valid pre-nuptial agreement addressing the question.⁵⁴
- Entering into a New Hampshire marriage may complicate matters if you are in the process of adopting a child or considering

⁵³ For example, under New Hampshire 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 that demonstrates such a mutual intent. As a result, a spouse is entitled to a share of your estate. NH RSA 560:10;561:1. In addition, under New Hampshire law, persons in a marriage may be in many circumstances responsible for the support of their spouses, including such things as medical bills.

⁵⁴ See generally NH RSA 458, 458-B, 458-C, 461-A.

adoption in the future. Some 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.

- Spouses have the right to a certain portion of a deceased spouse's estate, regardless of whether the deceased died with or without a will.⁵⁵
- Being in a marriage could disqualify you from certain state government programs because your spouse's income and assets may be included with your own.
- 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, which could disclose your sexual orientation publicly.
- Foreign nationals should not marry or apply for a spousal benefit without consulting an experienced immigration attorney. Although, now that DOMA has been ruled unconstitutional, in some cases a U.S. citizen can sponsor a foreign national spouse for permanent residency, immigration law is complex and the success of a spousal application depends on a number of factors.
- 29 states and the federal government still have no explicit anti-discrimination protections for sexual orientation. This means that in some cases same-sex married couples may still face discrimination (e.g. not being able to obtain spousal health benefits from an employer or being discriminated against in employment, housing, or public accommodations). However, both the federal Equal Employment Opportunity Commission (EEOC), which accepts complaints about employment discrimination, and the federal Department of Housing and Urban Development (HUD), which accepts complaints about housing discrimination, have processed some claims of sexual orientation discrimination using a different protected characteristic, like sex or disability.⁵⁶ . If you are being discriminated against, please contact GLAD Answers.

⁵⁵ NH RSA 560.

⁵⁶ For more information go to: www.glad.org/uploads/docs/publications/eec-clarifies-protections.pdf and http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

What Protections Do We Gain From A Marriage in New Hampshire?

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

- family law;
- title, tenure, descent and distribution, intestate succession, wills, survivorships, or other incidents of the acquisition, ownership or transfer (during life or at death) of real or personal property;
- state and municipal taxation;
- probate courts and procedure;
- group insurance for government employees;
- state family leave benefits;
- financial disclosure and conflict-of-interest rules;
- protection against discrimination based on marital status;
- emergency and non-emergency medical care and treatment, hospital visitation and notification, and authority to act in matters affecting family members;
- state public assistance benefits;
- workers' compensation;
- crime victims' rights;
- marital privileges in court proceedings; and
- vital records and absentee voting procedures.

Many private parties – e.g., businesses, employers, public accommodations, insurance companies, etc. – are subject to the state law prohibiting discrimination based on marital status.⁵⁷ Of course, the non-discrimination law already prohibits sexual orientation discrimination and that will continue.

⁵⁷ See, e.g., NH RSA 354-A:1,7,10 and 17; 417:4 VIII; 417-A:3; 417-B:2. In many instances, the non-discrimination law will mean equal treatment for same-sex spouses. 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 the section *Will I Be Able To Get Health Insurance Through My Employer For My New Hampshire Spouse?* below.

Employers with fewer than six employees are exempt from the non-discrimination law as are “exclusively social clubs” and “fraternal or religious associations or corporations” if “such club is not organized for private profit.”⁵⁸

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

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

Family law attorneys highly recommend that couples consider entering into a prenuptial agreement before joining in a marriage to clarify what they consider to be the length of their relationship, the ways they wish their property to be divided (in the event that their wishes vary from usual dissolution laws), and other matters of particular concern to them.

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

⁵⁸ NH RSA 354-A:2 VII.

What Protections Do We Gain From A Marriage In New Hampshire?

- 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;
- do Medicaid and long term care planning, concerning issues like assets available to both spouses, asset transfer issues, and liens.

Respect For Your New Hampshire Marriage

Respect by New Hampshire

New Hampshire will respect your marriage in the same way that the marriage of different-sex couple is respected. However, there has been a question about what date a New Hampshire court should use for couples who married outside New Hampshire prior to the date that same-sex couples were able to marry in New Hampshire—January 1, 2010. Senate Bill 394,⁵⁹ which passed in 2014, clarifies that all marriages will be recognized beginning at the date of solemnization—i.e. the date when the couple was legally married.

Also, Senate Bill 394 clarifies that all New Hampshire's family, marriage and divorce laws apply equally to same-sex and different-sex couples, regardless of any gendered language that still remains in the law.

Respect by the Federal Government

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

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

Some programs (like Social Security) have required that the marriage was respected by the state of residence on the date the application was made, or in the case of spousal survivor benefits, on the date the spouse died. As a result,

⁵⁹ See <http://www.gencourt.state.nh.us/legislation/2014/SB0394.html>.

the federal government may still seek to disqualify some same-sex spouses from receiving certain federal benefits. If you have been denied benefits on this basis, please contact GLAD Answers.

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

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

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

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

Respect for the Marriages of Same-Sex Couples Outside of New Hampshire

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

How Will A Marriage Affect My Children?

There is no more important question than establishing legal parenthood. This document can only provide general information. For you and your children, we cannot urge more strongly that you consult an attorney about undertaking co-parent adoption for any current non-legal parents – particularly in light of the information below.

As to legal status as parents, if both parties to the marriage were parents before the marriage (e.g., through joint or second-parent adoption), both parties remain parents.

If one party to the marriage was not a parent before the marriage, the marriage will not change that. He or she will be considered a stepparent, carrying whatever legal weight that status has in New Hampshire. 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 New Hampshire and have legal significance independent of the marriage.

If two people joined in a marriage subsequently have a child, both parties may be presumed to be the legal parents of a child born to either of them. In New Hampshire, a child born into a marriage is presumed to be the child of both parties. Nonetheless, this is just a presumption and does not have the same effect as a court judgment. It is subject to being challenged and overturned.

In addition, parentage through the marriage could encounter a lack of respect in some states and foreign countries, so relying on the fact of the marriage alone to protect your children is not the best approach. Therefore, GLAD strongly recommends that you consult a lawyer and continue the practice of securing a second-parent adoption in order to obtain a decree of legal parenthood that is independent of the marriage.

Unfortunately, in New Hampshire the question of joint or second parent adoption by a same-sex couple has not been addressed expressly by the New

Hampshire statutes on adoption or by any authoritative ruling by the state supreme court.⁶⁰ Second parent adoptions have been granted at the lower court level in some counties, but denied in others. However, with the availability of marriage, same-sex married couples, but not unmarried couples, now have a clear avenue to second parent adoption through the stepparent adoption process.⁶¹

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

⁶⁰ The New Hampshire Supreme Court rejected a petition to jointly adopt by a divorced heterosexual couple in 1987, a decision read by some as also likely blocking joint or second-parent adoptions by same-sex couples. See In Re Jason C., 129 N.H. 762, 533 A.2d 32 (1987). The court read the absence of any procedure for custody determinations within the adoption process to indicate that the legislature did not intend to grant adoptions under these circumstances. The court's determination also turned on the fact that allowing a divorced couple to adopt jointly would not further the legislature's intent to limit adoption to applicants who would most likely provide a unified and stable household for the child.

⁶¹ NH RSA 170-B:4 IV.

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

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

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

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

If you are a private sector employee, the picture is more complicated and evolving.

First, your employer may not be required to offer health insurance and otherwise may not be required to offer spousal or family coverage. Assuming your employer provides individual, spousal and family coverage, your employer is certainly permitted to extend coverage to same-sex spouses.

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

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

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

Under a federal law known as COBRA, private employers with 20 or more employees are required to continue group health coverage for departing employees and covered dependents for a set period of time following certain events. Employers are now required to offer COBRA coverage to the same-sex spouses of employees if they are on the employee's health plan.

Under a state continuation law, a "mini-COBRA law," fully insured plans must provide continuing coverage to same-sex spouses, regardless of the size of the group.⁶² New Hampshire state and municipal plans should also provide this continuation coverage. Yet, this state continuation law does not apply to self-insured health plans. Even with self-insured companies, however, employers are free to extend these benefits voluntarily if available in the insurance marketplace.

Another federal law with a major impact on health insurance is HIPAA. HIPAA allows dependents of a covered employee to enroll outside of the normal open enrollment period. Employers are now required to apply the same rules for both different-sex and same-sex married couples.

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

⁶² NH RSA 415:18.

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

Now that DOMA has been ruled unconstitutional, same-sex married couples in New Hampshire (and every other state) MUST file a married (either married filing joint or married filing separately) federal income tax return. New Hampshire has no state income tax.

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

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

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

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

Marriages and civil unions in New Hampshire are dissolved pursuant to RSA 458, the New Hampshire statute that governs annulment, divorce and separation.

There are residency requirements for obtaining a dissolution of a civil union or a marriage in New Hampshire. Specifically, you must satisfy one of the following requirements:⁶³

1. both parties reside in the state when the action was commenced; or
2. the plaintiff resides in the state and the defendant was personally served with process within the state; or
3. the plaintiff resided in the state for at least one year before the action is commenced.

In summary, residency is a requirement for a dissolution or divorce in New Hampshire although it can be satisfied in several ways. However, at a minimum, one of the parties to the marriage or civil union must be a resident of New Hampshire when the dissolution action is commenced. That residency might well need to be of a year's duration prior to the commencement of the dissolution action although it clearly can be shorter in the circumstances designated in (2) above.

Satisfying the residency requirement gives the New Hampshire court jurisdiction over the parties. In addition, New Hampshire law requires the court to have jurisdiction "of the alleged cause," which means that "jurisdiction of the cause for dissolution exists when it wholly arose or accrued while the plaintiff was domiciled in the state, and not otherwise."⁶⁴ You will need to consult an attorney to determine whether and/or how you might satisfy this requirement of New Hampshire law.

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

⁶³ NH RSA 458:5 I-III.

⁶⁴ NH RSA 458:4 & 6.

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

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

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

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

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

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

1. Relationship or Pre-Nuptial Agreement or Contract:

Agreements regarding property and finances should be respected and honored according to ordinary rules of contract law, but it is important to note that the New Hampshire Supreme Court has not yet ruled on the subject. A number of other states have found such agreements enforceable, including Massachusetts.

2. Durable General Power of Attorney: Any competent person may appoint another person as his or her “attorney-in-fact” for money, property and/or other matters in the event the one becomes incapacitated or disabled.⁶⁵ If no such appointment is made, then a “family” member will be empowered to make decisions for the disabled or incapacitated individual. A power of attorney must be signed and notarized.

3. Advance Directive for Health Care: Since medical care providers look to next-of-kin to make health care decisions for an incapacitated individual, an unmarried person must create an advance directive for health care if he or she wishes a person other than immediate family to make those medical decisions when he or she lacks either the temporary or permanent capacity to do so for herself or himself. Under New Hampshire law, a person may appoint a health care “agent” to make those decisions for him or her upon incompetence, i.e., when the person no longer is able to do so.⁶⁶ People should give a copy of the advance directive for health

⁶⁵ NH RSA 506:6.

⁶⁶ NH RSA 137-J:1.

care to their doctors and should also consider giving it to family members.

Within this document, a person can also deal with end-of-life issues. New Hampshire law permits a person to make advance decisions about medically-administered nutrition and hydration as well as life sustaining treatments without which the person would die.⁶⁷

The advance directive for health care must be signed by the person giving the power of attorney and two witnesses.⁶⁸ Neither of the witnesses can be the agent, the person's spouse or heir, a beneficiary under the person's will or trust, the attending physician or nurse practitioner (or any person acting under the direction or control of either of these). No more than one witness can be the person's health or residential care provider or such provider's employee.⁶⁹ Alternatively, the advance directive can be signed in the presence of a notary public or justice of the peace.⁷⁰

New Hampshire law provides a form that has two parts: (1) a durable power of attorney for health care; and (2) a living will.⁷¹ A person can complete either part or both, but the advance directive must be "substantially in the form set forth" by statute.⁷² Revocation is governed by statute.⁷³

If a guardian is later appointed for a person, the Court presumes the power of attorney for health care remains in the best interests of the person who gave it unless there is clear and convincing evidence to the contrary.⁷⁴

⁶⁷ See NH RSA 137-J:1 I(b) and 137-J:2 XIV (defining "living will").

⁶⁸ If physically unable to sign, the person's name may be signed by another in the person's presence and at her or his "express direction." (N.H. Revised Statutes 137-J:14 II).

⁶⁹ NH RSA 137-J:14.

⁷⁰ NH RSA 137-J:14 I(b).

⁷¹ NH RSA 137-J:20.

⁷² NH RSA 137-J:13 II.

⁷³ NH RSA 137-J:15.

⁷⁴ NH RSA 137-J:21

4. **Appointment of Guardian:** New Hampshire’s broad guardianship laws allow, among other things, an individual to nominate another person as the guardian of their person, estate, or both.⁷⁵ There is a rebuttable presumption that the nominated person shall be appointed. The advantages of nominating a guardian in advance is that you are selecting the person to take over all aspects of your financial matters. Under New Hampshire law, an individual can also name any persons he or she wishes to exclude from consideration as guardian; and a court cannot appoint any person so excluded.

5. **Will:** Without a will, a deceased unmarried person’s property passes to: (1) his or her children; (2) if no children, to his or her family, as carefully delineated by statute; and (3) if no family as provided by statute, to the state of New Hampshire.⁷⁶ If the unmarried 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, she or he can nominate the future guardian of a child in a will.

6. **Funeral Planning Documents:** Upon death, under New Hampshire law in the absence of instructions, a person’s body is given to their next-of-kin, carefully delineated by statute in order of priority, beginning with the spouse and passing to various blood relations.⁷⁷ This means that a person’s own partner has no automatic right to remove the body, write an obituary, or make plans for a final resting place. To avoid that problem, you should create a written, signed document (witnessed and notarized) which designates the person you want to be able to have custody and control of your remains.⁷⁸ (Some people include these instructions as part of a will, but since a will may not be found for days after

⁷⁵ NH RSA 464-A:10.

⁷⁶ NH RSA 561:1 II.

⁷⁷ NH RSA 290:17 II; see also 290:16 IV (defining “next of kin”).

⁷⁸ NH RSA 290:17.

death, it is preferable to give the instructions to the person you want to take care of matters as well as to family).

In the absence of written instructions, a surviving partner can petition the New Hampshire probate court for the residence of the deceased for an award of custody and control if she or he establishes: (1) a “closer personal relationship to the subject than the next of kind”; (2) he or she “lived with the subject”; and (3) was “not in the employ of the subject or the subject’s family.”⁷⁹

Finally, a person can, before death, file a petition in the probate court regarding custody and control of one’s remains.⁸⁰ This may be an important avenue to pursue if conflict is anticipated.

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.

⁷⁹ NH RSA 290:19 III.

⁸⁰ NH RSA 290:19 I.

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.

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

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Thank You!



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