

MARRIAGE FOR SAME-SEX COUPLES IN WASHINGTON STATE



Beginning in December 2012, same-sex couples can marry in Washington. This document is intended to provide general information about marriage for same-sex couples in Washington. It is not legal advice. Marriage is a serious legal and personal commitment. Before getting married, couples should educate themselves about the legal consequences of marriage and should consult an attorney (and possibly a financial consultant and/or a tax professional) if they have questions about their specific circumstances.

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Do the same requirements that apply to different-sex couples who wish to marry apply to same-sex couples?

Yes. The laws and regulations that generally govern the process for marrying in Washington apply to same-sex couples who wish to marry. To marry in Washington, you both must be at least 18 years old (or obtain parental consent if below that age), not currently married to, or in a domestic partnership or civil union with, anyone else, and not close relatives of one another. If you are in a civil union or state registered domestic partnership with a former partner, you must legally dissolve that relationship before you can marry your current partner in Washington.

How do my partner and I get married in Washington?

First, you must obtain a marriage license. Marriage licenses are issued at the county level. You do not have to live in the county where you get your marriage license. Instructions can be found on county auditor websites. You can find information for each county's marriage licensing process at access.wa.gov/topics/licensecertificate/marriagelicense.

Second, you must have your marriage solemnized, by a person authorized to do so under Washington law, and in the presence of at least two witnesses. While there are many people authorized to solemnize marriages under state law, no clergy person is required to marry any couple if doing so would violate the dictates of their faith tradition. Washington law requires all couples to wait three days after getting a marriage license to hold a marriage ceremony. Your ceremony must be held in Washington. A marriage license is valid for 60 days after it is issued. Couples who don't get married within this 60-day period must apply for a new marriage license.

Under Washington law, a government official may not deny a marriage license to a same-sex couple or refuse to solemnize a same-sex couple's marriage on a discriminatory basis.

What if my partner and I already registered as domestic partners in Washington and we want to get married?

If you and your partner are registered as domestic partners in Washington, you may apply for a marriage license and have a marriage ceremony between three and 60 days after you get your marriage license. Your marriage to your registered domestic partner effectively ends your Washington State Registered Domestic Partnership (SRDP).

Automatic Conversion of many Washington SRDPs to marriages on June 30, 2014

If you are in a Washington SRDP and you do not get married before June 30, 2014, your SRDP will automatically convert to a marriage, unless (1) you or your partner are 62 years of age or older, or (2) you are in the process of legally dissolving your SRDP. Automatic conversion applies only to Washington SRDPs and does not apply if you registered as domestic partners only with a city, county, or employer.

For couples in which one person is 62 years of age or older, your SRDP will not convert automatically. In order to be married, you

must apply for a marriage license and have a marriage ceremony.

What if we don't want our Washington SRDP to become a marriage?

If you do not want your SRDP to automatically convert to a marriage, you must start the process of dissolving your SRDP in court by June 30, 2014. Because there are legal consequences to dissolving your SRDP which may impact your property ownership and tax obligations as well as other legal rights and responsibilities, we recommend that you get legal advice before dissolving your SRDP.

If you or your partner will be 62 years of age or older on June 30, 2014, your SRDP will not automatically convert to a marriage.

Will Washington SRDPs exist after June 30, 2014?

Yes, but only for couples (different-sex or same-sex) in which at least one partner is 62 years of age or older.

What should we consider in deciding whether to get married?

Marriage is a serious legal and personal commitment, and the decision whether to marry is yours alone to make. Marriage provides many important rights and protections. However, you also should be aware that the benefits of marriage come with legal responsibilities, such as liability for your spouse's debts, and it may limit your ability to make decisions about property and inheritance.

Same-sex couples face added considerations that married different-sex couples do not because many states do not recognize marriages of same-sex couples. Some issues to consider in deciding whether to marry include:

Taxes and Benefits

On June 26, 2013, the U.S. Supreme Court struck down Section 3 of the so-called Defense of Marriage Act (DOMA), a federal law that had required the federal government to treat same-sex couples as unmarried and prohibited them from granting same-sex married couples any of the federal benefits, protections, and responsibilities based on marriage. Now that Section 3 of DOMA has been held unconstitutional, married same-sex couples in Washington will be treated the same as other married couples for state and federal tax purposes. For more detailed information about the impact that the Supreme Court's opinion striking down DOMA has on federal taxes, please see LGBT Organizations Fact Sheet Series, "After DOMA: What It Means for You" at www.lambdalegal.org/publications/after-doma-federal-taxes or www.aclu.org/lgbt-rights/after-doma-what-it-means-you.

You should know that Washington is a community property state, which generally means when you are married or in an SRDP, half your income belongs to your spouse/partner and vice versa. This has a unique impact on Washington SRDPs regarding federal tax filing. IRS guidelines indicate that SRDPs who reside in Washington are required to split their on community income on their federal income tax returns, unless the couple has legal agreements affecting the legal

status of their property or income. Couples should consult a tax professional or attorney with expertise in this area of the law about how the IRS policy may affect them. For more information, please see the Lambda Legal factsheet “IRS Application of Income-Splitting to Same-Sex Couples” at www.lambdalegal.org/publications/fs_the-irs-applies-income-splitting-community-property.

In addition, if either your partner or you depend on income-based assistance programs, getting married could affect the amount of your benefits or make you ineligible for benefits because your spouse’s income and assets may be considered with yours.

Immigration

Now that Section 3 of DOMA has been held unconstitutional, there is a legal means for you or your spouse to apply for permanent immigration status in the U.S. based on your marriage if your marriage is valid in the place where you married. So, in many cases, if you are married or get married, you can sponsor your spouse (or your spouse can sponsor you) for a green card (that is, legal permanent residence). However, immigration law is very complicated and you should speak with a qualified attorney before marrying or filing any marriage-based immigration petitions or adjustment of status application. Options for families will vary from case to case, based upon a number of factors, including: whether you and your partner are together or apart; whether you are living together in the United States or abroad; whether you and your partner have married; whether your family can marry; and for families together in the United States whether the non-U.S. citizen partner arrived in the United States after having been inspected by an immigration officer or whether they entered without inspection. You and your partner are strongly encouraged to speak with a qualified immigration attorney to get legal advice before taking steps to seek out an immigration benefit.

This FAQ does not address every circumstance in which same-sex bi-national couples may find themselves. For more detailed information about the impact that the Supreme Court’s opinion striking down DOMA has on immigration-related matters, please see LGBT Organizations Fact Sheet Series, “After DOMA: What It Means for You” at www.lambdalegal.org/publications/after-doma-immigration or www.aclu.org/lgbt-rights/after-doma-what-it-means-you or Immigration Equality’s website at www.immigrationequality.org.

Adoption of Children

Also keep in mind that some states and countries allow adoptions by single parents but not same-sex couples. If you have plans to adopt in one of these places, getting married may make it difficult or impossible for you to adopt.

Given these considerations, and the fact that if you marry under Washington law **YOU ARE MARRIED**, it is important to educate yourself before getting married on how marriage will affect your

legal rights and responsibilities.

Can we get married in Washington if we live in another state?

Yes. There is no residency requirement to marry under Washington law.

If you reside in another state or plan to relocate to another state, keep in mind that many states do not recognize marriages between same-sex couples, so you need to be sure to have documents such as powers of attorney, health care directives and wills to make sure you have some protections for your relationship. It is also important to remember that while you do not have to live in Washington to get married, Washington has, as do most states, a residency requirement to obtain a divorce in the state. If you marry in Washington and reside in or move to a state that does not recognize your marriage, it may be difficult to get a divorce if your relationship ends.

If my partner and I married in another state or country, will Washington recognize our marriage?

Yes. If you were validly married in another state or country, Washington recognizes your marriage. Because you already have a legally valid marriage you do not need to get re-married in Washington, and obtaining marriage licenses in multiple states may cause unnecessary complications down the road.

We live in Washington but already entered into a civil union or domestic partnership together in another state. Can we get married in Washington?

Yes. You can get married in Washington even if you and your partner entered into a civil union or domestic partnership in another state provided that you marry the same person.

Washington will treat civil unions and domestic partnerships from other states as marriages. You should be aware that if you are in a civil union or domestic partnership from another state and you permanently relocate to Washington, the state will stop recognizing your civil union or domestic partnership after one year, unless one of you is 62 or older. So couples should consider marrying in Washington if they want continued recognition from the state after relocation.

Will our Washington marriage be recognized by other states?

It depends on the state. Your Washington marriage will be recognized as a marriage in states that recognize the marriages of same-sex couples. For a complete list of these states, please contact any of the LGBT legal organizations listed on this document.

Unfortunately, many states do not recognize marriages of same-sex couples. Even so, some private businesses or other private third parties may recognize your Washington marriage, particularly those that already recognize same-sex couples through domestic partnership or a similar system. To protect your legal rights outside of Washington, married same-sex couples should consult an attorney to have legal documents prepared to protect your rights during interstate travel.

Will the federal government recognize our marriage while we live in Washington?

Yes. Now that Section 3 of DOMA has been held unconstitutional, the federal government will recognize your marriage. You will be eligible for federal protections and responsibilities afforded to all other married couples.

Will the federal government recognize our marriage if we were married in Washington, but reside in a state that does not recognize marriages of same-sex couples?

Some federal benefits are based on whether a marriage was valid where enacted; others are based on whether a marriage is valid where the couple lives. Now that the Supreme Court has struck down Section 3 of DOMA, we believe that all married couples, including same-sex couples, should be treated as married by the federal government no matter where they live. But getting access to all federal marital protections for same-sex couples who were validly married, but live in a state that discriminates against their marriages will take some work. At the current time, couples who live in states that do not respect their marriage will receive only some federal benefits, not all, which may create significant problems and complexities. We are confident the Obama Administration will take prompt action to implement the ruling striking down Section 3 of DOMA and ensuring that all married couples receive federal benefits where legally possible, no matter where they live. However, some federal programs are required by law to determine marital status based on whether the state where you live recognizes your marriage; for these programs, additional work and possibly new legislation will be needed. You may contact any of the LGBT legal organizations listed on this document for more information about your specific questions. More extensive guides addressing the effect of the DOMA ruling on access to federal rights and benefits are available at www.lambdalegal.org/publications/after-doma or www.aclu.org/lgbt-rights/after-doma-what-it-means-you.

What if my partner and I have children?

In Washington, both spouses or domestic partners are legally presumed to be the parents of any children born during their marriage or a SRDP.* However, other states may not recognize the non-biological parent as a legal parent if the couple travels or moves outside of Washington. Thus, couples with children should consult an attorney about obtaining a second-parent adoption or a parentage judgment to protect their rights and ensure that all states will recognize the parent-child relationship.

What happens if we marry in Washington and later wish to divorce?

The only legal way to end your Washington marriage or SRDP is to dissolve it in court. To divorce in Washington, at least one spouse must be a resident of Washington or a member of the armed forces and stationed in Washington. States that do not permit or recognize marriages of same-sex couples may not allow same-sex couples to obtain divorces. Consequently, if you move from Washington to another state, or if you already live in another state and come to Washington to get married, it could be difficult to get a divorce.

States that permit or recognize marriages of same-sex couples will allow same-sex couples to obtain a divorce from a Washington marriage there, but those states may also have residency requirements for divorce.

Couples who are unable to obtain a divorce will remain legally married, which has serious legal consequences, and neither spouse can marry someone else until their marriage is legally dissolved. If you are in this situation, we recommend seeking legal advice specific to your circumstances.

Other protections for same-sex couples

The Washington Law Against Discrimination prohibits discrimination on the basis of sexual orientation. The Washington State Human Rights Commission can investigate discrimination complaints. If you experience discrimination, you may contact any of the LGBT legal organizations listed on this document. We may be able to assist you, and it allows us to understand where discrimination persists.

You can further protect each other, and your children, through legal documents like wills, health care proxies, advance directives, and powers of attorney. And it is important that a non-biological parent of a child born to the marriage complete a second-parent adoption or a parental judgment to ensure that other jurisdictions will respect both parents' parental status. For more information about additional legal protections, please see the Lambda Legal life-planning publication "Take the Power," available at: www.lambdalegal.org/take-the-power. Additional legal protections are regularly obtained by married couples to add greater security for their families; these protections can be even more important for same-sex couples whose Washington marriage may not be recognized outside of the state.

What if I have more questions?

If you have additional questions or are looking for contact information for private attorneys who might advise you, contact one of our organizations (contact information listed below).

This document is brought to you by the following advocacy groups which applaud the legislators and voters who brought marriage equality to Washington. For more information, or for help finding a lawyer, contact one of the legal organizations below:

ACLU of Washington www.aclu-wa.org;
Legal Intake Line: (206) 624-2180

Lambda Legal www.lambdalegal.org;
(866) 542-8336; LegalHelpDesk@lambdalegal.org

Legal Voice www.legalvoice.org;
(206) 682-9552; info@LegalVoice.org

The GLBT Bar Association of Washington Foundation (QLaw Foundation) www.q-law.org/foundation