



NATIONAL CENTER FOR LESBIAN RIGHTS



Marriage for Same-Sex Couples in California

Frequently Asked Questions

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NOTE: This document is intended to provide information about marriage for same-sex couples in California. It is not intended to be legal advice, and should not be taken as such. For legal advice concerning your particular situation, please consult an attorney.

Getting Married In California

1. What do we have to do to marry in California?

In order to marry in California, you and your partner must get a marriage license from the office of the Registrar-Recorder/County Clerk of any California county. Both partners must go together to the county office and present a government-issued picture ID and proof that you are over 18 years old. (If either or both is younger than 18, different procedures apply.) The license fee varies by county but generally is less than \$100. The license is valid for 90 days and your marriage can be performed anywhere in California. No blood test or health certificate is required. Call ahead or visit the county's website to learn the hours, locations and fees of the county offices that issue licenses.

2. Who can marry us?

In California, persons who are legally authorized to solemnize marriage ceremonies include: clergy members; active and retired judges and court commissioners and assistant commissioners; commissioners of civil marriages or retired commissioners of civil marriage; justices or retired justices of the U.S. Supreme Court or another federal court; U.S. magistrates or retired magistrates; state legislators or constitutional officers of the state; and members of Congress who represent a district within this state. Commissioners and Deputy Commissioners of Civil Marriages perform marriage ceremonies by appointment at designated county offices. There is a fee, which generally is less than \$50. Call ahead or visit the county website for more information.

A couple can also have a friend deputized to perform their marriage ceremony through a county "Deputy Commissioner for a Day" program. The specific requirements vary by county.

The person who performs your ceremony must complete and sign your marriage license after the ceremony. In addition, at least one witness 18 years old or older must sign the marriage license.

The license then becomes your marriage certificate, which must be returned to the same county in which you obtained the license for filing within ten days of the ceremony.

3. Should my partner and I marry?

Marriage is a serious legal and personal commitment. Before getting married, couples should educate themselves about the legal consequences of marriage.

Married same-sex couples also face complications that married heterosexual couples do not face, due to the fact that the federal government and many states will not honor marriages of same-sex couples. Deciding whether to marry is an important decision for everyone, gay or straight, but same-sex couples have to be prepared for and be willing to take on those additional challenges.

4. Is a marriage license a public record?

Yes, marriage licenses are public records; however, in California, couples can apply for a “confidential” marriage license. The only additional requirements for obtaining a confidential marriage license are that the spouses must be at least 18 years old, must be living together at the time they apply for the marriage license, and must sign an affidavit on the license attesting to those facts. The couple must be married in the county where the license is issued. The marriage license is a confidential record and is registered at the County Clerk’s office in the county where it was issued. Only the spouses may obtain copies of the marriage license. Persons other than the spouses may obtain copies of a confidential marriage license only by obtaining a court order permitting them to do so. When a couple obtains a confidential marriage, the only information available as a matter of public record is the fact that each of the individuals is married; who, when, and where the person married, as well as the person’s address are not publicly available. This may be a good option for those who do not want others to know the name of their spouse or where they live.

5. What happens if we marry in California and later wish to divorce?

The only legal way to end a marriage is to divorce. In order to divorce in California, at least one of the spouses must be a resident of California for at least six months, and a resident of the county in which the divorce is filed for three months, before filing a divorce petition. If you move from California to another state, or if you already live in another state, getting a divorce could be difficult. Currently, the only state other than California in which same-sex married couples have a clearly established right to divorce is Massachusetts; however, Massachusetts has a one-year residency requirement before a person can petition a Massachusetts court for a divorce. New York also respects same-sex couples’ out-of-state marriages even though same-sex couples cannot yet marry in that state. Married gay and lesbian couples should be able to petition for divorce in New York; however, New York also has a residency requirement for divorce.

Couples who are unable to obtain a divorce remain legally married. Being unable to divorce means that one may not marry someone else; it also may cause serious legal problems and complications for same-sex couples who find themselves in this situation if they move to or travel through other states. If you are in this situation, we recommend seeking legal advice specific to your situation.

6. If we get married in California on or before November 4, 2008 and Proposition 8—the marriage ban—is enacted, what would happen to our marriage?

Because your marriage will have been valid at the time it was entered, we believe you will still be married after November 4, 2008 regardless of whether the initiative passes. Initiatives usually are not retroactive and this initiative does not say that it would be. If the initiative passes, there will likely be people or organizations who will try to argue that your marriage is no

longer valid and that you were divorced against your will as of November 4. It is hard to predict with certainty what courts would decide because this situation is unprecedented.

Registered Domestic Partnerships and Marriage

7. Will couples who are registered domestic partners in California automatically become married?

No. Couples who are registered domestic partners are free to decide whether or not they wish to marry. Those who do wish to marry must go through the formal legal steps required for any couple in California to legally marry.

8. Will domestic partnerships in California continue to exist?

Yes. Domestic partnerships still exist under current California law.

9. If we're already in a registered domestic partnership in California, do we have to dissolve our domestic partnership before we can marry?

No. The California domestic partnership statutes permit an individual to be both married and in a registered domestic partnership, so long as it is to the same person.

10. Is there any reason for couples who marry to also remain in a domestic partnership?

Yes. Being in a registered domestic partnership may protect you if you travel or move to another state that will recognize a domestic partnership but not a marriage.

Marriage in the National Context

11. If my partner and I were legally married in another state or country, will California now recognize our marriage, or should we re-marry in California?

Couples who legally married in another jurisdiction are now recognized as married in California as well. If you want to re-marry in California, however, you may be able to do so. If the proposed ballot initiative to ban marriage between same-sex couples succeeds, it is conceivable that couples who are married in California before November might receive greater protections than couples who married outside of the state. If you have questions about whether you are legally married or whether you should re-marry in California, we strongly urge you to consult an attorney.

12. Can out-of-state couples marry in California?

Yes. There is no residency requirement to marry in California. Nonetheless, Wisconsin and Delaware impose criminal penalties on their residents if they enter a marriage outside the state that would have been prohibited in the state, and these may be interpreted to apply to marriages

of same-sex couples who live in those states. (For Wisconsin, the penalty is stiff – up to \$10,000 or 9 months imprisonment, or both.)

13. If my partner and I are from another state and marry in California, will our marriage be valid in our home state?

If you live in another state and get married in California, you will be *legally married*. However, depending on where you live, your home state may not respect your marriage. Many states have passed laws denying recognition to marriages of same-sex couples. In those states, state and local governments likely will not respect your California marriage. But even in those states, it is likely that at least some private businesses and other private third parties will respect your marriage – particularly those that already recognize same-sex couples through domestic partnership or a similar system.

Marriage is a serious legal decision, and same-sex couples face additional challenges and questions because of continuing unfair treatment of married same-sex couples by the federal government and many states. **We urge couples who are considering getting married in California to proceed with caution. Before getting married in California, you should educate yourselves about the law in your state and, if possible, consult an attorney about the best way to protect your relationship based on your circumstances.**

14. Will the federal government recognize marriages of same-sex couples who marry in California?

No. Under current federal law, the federal government does not recognize marriages of same-sex couples. This means that married same-sex couples currently do not have any of the rights, benefits, or protections that federal law gives to married heterosexual couples, such as the ability to file joint federal income taxes or receive federal spousal benefits through social security or other federal programs.

15. Can we file lawsuits if our marriages are not respected in other states or by the federal government?

If you feel you have been discriminated against, please contact one of the LGBT legal organizations listed on this document (National Center for Lesbian Rights, Lambda Legal, or the ACLU). We may be able to help you figure out what options you have to protect your rights. Some types of unfair treatment can be the basis of a lawsuit, and other times the unfairness may not be suitable for a court to address. Even when litigation is an option, it is not always the only option. It is always necessary to weigh the chances of success or failure because bad results in lawsuits can cause setbacks and hurt our entire community. We want to increase the chances of winning overall, so it is critical that we work together to have a carefully planned strategy.

16. For same-sex couples in bi-national relationships, will getting married in California permit a non-U.S. citizen to gain legal permanent residence in the U.S.?

No. Immigration is governed exclusively by federal law, which currently refuses to recognize the marriages of same-sex couples for purposes of any federal rights or benefits. A person who marries a non-U.S. citizen of a different sex can petition to have his or her spouse become a permanent legal resident; however, current federal law does *not* provide the same right to a person who is married to a same-sex spouse from another country. Same-sex couples in bi-

national relationships should consult an immigration attorney before getting married in California or another jurisdiction.

The Meaning of the California Supreme Court's Decision

17. When was the right to marry recognized for same sex couples in California?

On May 15, 2008, the California Supreme Court ruled that barring same-sex couples from marriage is unconstitutional. Since June 17, 2008, same-sex couples have been able to marry across California.

18. Can the court's decision be appealed to the U.S. Supreme Court?

No. The decision was based on the California Constitution, and the California Supreme Court has the final say in cases brought under the California Constitution.

19. Does the court's decision affect the rights of heterosexual couples?

No. The rights of heterosexual couples to marry and the rights and responsibilities of those who are married remain exactly the same. The decision simply enables same-sex couples to marry.

20. Does this ruling require religious groups or clergy members to marry same-sex couples?

No. The court's decision said the government may not discriminate against same-sex couples by barring them from civil marriage – a legal institution established and regulated by the government. Religious groups and clergy members remain free to recognize or refuse to recognize marriages within their religion as each sees fit. Some faiths do not permit same-sex couples to marry within that faith; however, a growing number do. Under current California law, all couples regardless of their sexual orientation may choose to be married by a clergy person in a welcoming community of faith or by a civil servant such as a judge or authorized deputy.

21. In 2004, many couples were married in San Francisco, and the California Supreme Court subsequently held that those marriages were invalid. Does the court's new decision mean that those marriages will now be legally recognized?

No. Those marriages remain invalid, and those couples would have to remarry.

November Initiative to Take Away Marriage Equality (Proposition 8)

22. Could right-wing forces take away the freedom to marry at the ballot box in California?

Yes. There is an initiative, Proposition 8, on the ballot in November that, if enacted, would change the California Constitution to ban marriage for same-sex couples. The fundamental freedom to marry would be denied to lesbian and gay couples, and the concept of treating people differently would be written into the California Constitution.

Proposition 8 must be defeated and, with your help, it will be. For more information about how to get involved, contact the No on 8 campaign, at www.noonprop8.com.

23. What can we do to help preserve the freedom to marry?

Please get involved to protect the fundamental freedom to marry today! For more information about how you can help, please contact the No on 8 campaign at www.noonprop8.com. We must defeat Proposition 8. We cannot afford to wait. Please act now.

For more information about the court's ruling, legal information for couples, and action steps to help protect the freedom to marry, please contact:

Equality for All: www.EqualityForAll.com

National Center for Lesbian Rights: www.nclrights.org

Equality California: www.eqca.org

Lambda Legal: www.lambdalegal.org

The American Civil Liberties Union: www.aclu.org/lgbt