



How To Get Married In Vermont

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Introduction

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

Vermont was also the first state to allow same-sex couples to enter into a legal relationship that provided all the state protections, benefits and responsibilities afforded to different-sex married couples, as the result of a case, *Baker v. State*,² brought by GLAD with co-counsel Beth Robinson and Susan Murray of the Vermont law firm Langrock, Sperry and Wool. Civil unions were established by the legislature³ on July 1, 2000, in response to the Vermont Supreme Court’s unanimous decision in December 1999 that same-sex couples are constitutionally entitled to all of the protections and benefits provided through state law to different-sex married couples.

Although the “Marriage Act” does not change how civil unions are respected in Vermont, on September 1, 2009, when the provisions of the “Marriage Act” went into effect, same-sex couples were no longer able to enter into civil unions in Vermont.

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

1. an eligible couple submits an application for a license in either the town or city in Vermont where one of the parties lives (out-of-state couples can go to any town or city clerk);⁴ the couple must pay the applicable fee and receive a marriage license from the clerk;

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

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

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

⁴ 18 V.S.A. § 5131 (a)(1).

2. the couple must have the marriage solemnized (i.e., have a ceremony) within 60 days of filing the application⁵;
3. once the ceremony has been performed, the person who performed it has 10 days to send the license back to the city or town where it was issued; and
4. the clerk will then file the original and the couple can receive an official certificate of their marriage.⁶

Anyone can marry in Vermont. You don't need to be a resident of Vermont 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.

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,⁷ 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.

Whether you should enter a Vermont marriage and what it all means are questions this publication will address.

⁵ 18 V.S.A. § 5131 (b).

⁶ 18 V.S.A. § 5131 (c).

⁷ 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?

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

- Neither person may be a party to another civil union or a marriage with a different person⁸;
- Each person must be at least age 18 (someone who is 16 or 17 can marry with permission from a parent or guardian), be competent, and not be under guardianship or have written consent from the guardian⁹; and
- A person cannot marry a parent, grandparent, child, grandchild, sibling, sibling's child or parent's sibling.¹⁰

Do we have to be a Vermont resident?

No. Any couple from anywhere in the world, same-sex or different-sex, can marry in Vermont, if otherwise qualified. 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. Non-resident couples can go to any town or city in Vermont to apply for a marriage license.

How do we get a marriage license?

APPLICATION FOR A LICENSE

Vermont residents must get a marriage license from the town clerk of the town where either party resides. Non-residents may go to any town clerk in the state to obtain a marriage license. It is not necessary for both parties to be present to obtain the license as only one signature is required on the application form.¹¹ A fee must be paid to the town clerk. No blood test is required.

⁸ 15 V.S.A. § 4.

⁹ 18 V.S.A. § 5142.

¹⁰ 15 V.S.A. § 1a.

¹¹ 18 V.S.A. § 5131 (a).

SOLEMNIZING THE MARRIAGE

After obtaining the license, the couple must have the marriage solemnized by an official authorized to solemnize a marriage. A Vermont judge, Vermont Justice of the Peace (JP), or a member of the Vermont clergy, or a clergy person from another state who has been granted permission by a Vermont probate judge may solemnize a marriage. Marriages among the Friends or Quakers, the Christadelphian Ecclesia and the Baha'i Faith may be solemnized in the manner used in such societies.¹² Clergy or religious societies permitted to solemnize marriages are, however, not required to solemnize any marriage and so may refuse to solemnize the marriage of a same-sex couple.¹³

In addition, any person who is over the age of 18 may register with the Vermont Secretary of State to become a temporary officiant to a marriage. A person who has filled out the registration form and who has paid the registration fee of \$100 will receive a certificate authorizing the person to solemnize a specific Vermont marriage. The individual's authority to solemnize that marriage will expire at the same time as the corresponding marriage license.¹⁴ For more information on registering to be a temporary officiant, go to <http://www.sec.state.vt.us/municipal/officiant.htm>.

JPs can be found through www.findajp.com/findvt.htm, and many town clerks have lists of JPs. JPs in Vermont are not required to perform marriages, however, if they do perform marriages, then they cannot discriminate against same-sex couples.

Vermont Freedom to Marry also has a list of lgbt-friendly officiants at <http://vfm.typepad.com/vtfreetomarrytaskforce/wedding-resources.html>.

There is no law governing what a marriage ceremony must include. Indeed, the couple is free to discuss with the justice, judge or clergy member their own ideas of what they want in a ceremony. What is important is that the officiant is present for the ceremony and is able to certify that the parties entered into the marriage with mutual consent. The marriage can be

¹² 18 V.S.A. § 5144 (a).

¹³ 18 V.S.A. § 5144 (b).

¹⁴ 18 V.S.A. § 5144a

solemnized anywhere in the state of Vermont but must occur within sixty days of the issuance of the license by the town clerk. If the certification is delayed for more than sixty days a new license must be obtained.¹⁵

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

CERTIFYING THE MARRIAGE

The official who has solemnized the marriage must fill out and sign a portion of the marriage license, which then becomes known as the marriage certificate. Within ten days of the solemnization, the official who solemnized the marriage must return the marriage certificate to the town clerk who issued it.¹⁶ If the official delays returning the marriage certificate beyond the tenth day, the official may be penalized, but the marriage will still be valid.¹⁷

Once the marriage certificate is returned to the town clerk, the town clerk records the certificate in the permanent records of the town. The clerk must send a copy of the certificate to the Department of Health. A copy of the marriage certificate received from the town clerk, the commissioner of health or the state archivist shall be presumptive evidence of the fact of such marriage in all courts in Vermont.¹⁸

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

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

¹⁵ 18 V.S.A. § 5131 (b).

¹⁶ 18 V.S.A. § 5131 (c).

¹⁷ 18 V.S.A. § 5146.

¹⁸ 18 V.S.A. § 5148

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

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

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

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

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

If your husband, wife or civil union partner has died, you are free to marry. The clerk will ask the date your spouse or civil union partner died. If you are divorced, you may remarry after the date on which your previous marriage or civil union was legally dissolved.

How do I change my surname?

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

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 right to marry,¹⁹ 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.

¹⁹ GLAD Attorney, Mary Bonauto, argued this case. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

Civil Unions V. Marriage In Vermont

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

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

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

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

What is the difference between marriage and civil unions?

First, there is a difference. Although civil unions provide state-based legal rights that normally come along with marriage, marriage is more than the sum of its legal parts. Because it is a social, cultural and legal institution, access to marriage provides protections to the married family on each of those levels. The word is itself a protection because others understand that when you are married you are a family. For some, being married allows them to express publicly the nature of their commitment. Marriages receive widespread respect. Beyond these intangible protections, there are some concrete differences.

The word “marriage” is the gateway to federal obligations and protections, and there are 1138 federal laws that distinguish based on marital status. Now that Section 3 of the 1996 federal Defense of Marriage Act (DOMA) has been ruled unconstitutional, most of the federal benefits, protections and responsibilities of marriage will only be available to married couples (the one exception is Social Security).

Finally, it will be harder to gain respect for one’s civil union in other states – in whole or in part – than it would be for a marriage. Marriages are advantaged over civil unions because all states have a marriage-system, and now, because of the United State Supreme Court ruling in *Obergefell v. Hodges*, every state must respect the marriages of same-sex couples.

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

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

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

Although there is no explicit provision in Vermont law that prohibits a person from remarrying the *same person*, as a practical matter, clerks may not process your application since the forms you must fill out to apply for a marriage license require you to state if you have previously been married, and if so, how that marriage ended.

However, if you have a marriage with one person and wish to marry a *different person*, you must first dissolve your existing relationship, since otherwise you would have a legally recognized relationship with two different people which would violate Vermont's bigamy law²⁰ and the most recent marriage may be "void."²¹ When you complete the marriage application, the clerk will ask you if you have been previously married or in a civil union and if so whether it ended by death, dissolution or annulment. For information about dissolving a marriage in Vermont, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Vermont?*

Can I get married if I have a civil union?

Yes, so long as you intend to marry the *same person* with whom you already have a civil union.

However, if you have a civil union with one person and wish to marry a *different person*, you must dissolve your civil union first, since otherwise you would have a legally recognized relationship with two different people which

²⁰ 13 V.S.A. § 206.

²¹ 15 V.S.A. § 4.

would violate Vermont's bigamy law²² and the new marriage may be "void."²³ For information about how to dissolve a civil union in Vermont, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Vermont?*

Can I get married if I have a comprehensive Domestic Partnership from California, Oregon, Washington or Nevada?

Persons who are registered as domestic partners with the State of California (under A.B. 205) or the State of Oregon (under the Oregon Family Fairness Act) or the State of Washington (under the Act Relating to Further Expanding the Rights and Responsibilities of State Registered Domestic Partners) or the State of Nevada (under an Act Relating to Domestic Relations . . .) are arguably subject to the principles discussed above for civil unions. Thus, if you intend to marry the ***same person*** with whom you are registered in a California, Oregon, Washington or Nevada domestic partnership, your legal status in California, Oregon, Washington or Nevada would not prevent you from marrying in Vermont. However, if you have a California, Oregon, Washington or Nevada domestic partnership with one person and wish to marry a ***different person***, you must dissolve your domestic partnership first, even if a Vermont clerk may allow you to marry.

For information about ending a California, Oregon, Washington or Nevada domestic partnership contact Lambda Legal (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (NCLR) (www.nclrights.org, 800-528-6257).

Can I get married if I have a non-comprehensive Domestic Partnership?

The term "domestic partnership" has no universal definition. The exact meaning of the term and the rights and responsibilities accorded to persons in a domestic partnership vary, sometimes dramatically, from jurisdiction to jurisdiction.

²² 13 V.S.A. § 206.

²³ 15 V.S.A. § 4.

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

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 Vermont Marriage?

A marriage is an important commitment and should be considered carefully. Entering into that status can affect many aspects of your public and private life.

It is important to make an informed choice about whether to enter into a Vermont marriage based on your relationship with your partner and the unique circumstances of your life. You should consult an attorney in your home state before entering a marriage in Vermont.

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

- Entering into a Vermont marriage may complicate matters if you are in the process of adopting a child or considering adoption in the future. Some foreign countries welcome single-parent adoptions but do not allow same-sex couples to adopt. This might also be true for some states in the United States.
- Being in a marriage could disqualify you from certain state government programs that are based on financial need because your spouse's income and assets may be included with your own and your collective income and resources may be too high.
- Under Vermont law, a spouse generally cannot completely disinherit a spouse by leaving the spouse out of her or his will unless the couple signed a valid prenuptial agreement. As a result, a spouse is entitled to a share of your estate.
- Under Vermont law, a marriage can be dissolved in Vermont only if certain residency requirements are satisfied (see "*How Do I Get Out Of A Vermont Marriage Or Civil Union?*"). With divorce in Vermont, the court will determine property division, alimony, child custody and child support if the parties cannot agree on these issues themselves. Under Vermont law, the court can consider any property owned by either or both of the parties as marital property subject to distribution in a dissolution unless the parties enter into an otherwise valid pre-nuptial agreement addressing the question.

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

- Once you are in a marriage, you have assumed a legal status that will have to be disclosed on forms and records in a variety of public and private contexts.
- Foreign nationals should not marry 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.²⁴ . If you are being discriminated against, please contact GLAD Answers

²⁴ For more information go to: www.glad.org/uploads/docs/publications/eeoc-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 Vermont Marriage Or Civil Union?

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

- Preferences for guardianship of and medical decision-making for an incapacitated spouse²⁵;
- Automatic inheritance rights²⁶;
- The right to leave work to care for an ill spouse²⁷;
- Hospital visitation rights²⁸;
- Control of a spouse's body upon death²⁹;
- The right to be treated as an economic unit for state tax purposes³⁰;
- The duty of support spouses owe one another³¹;
- The right to sue for the wrongful death or injury to a spouse and the right to victim's compensation³²;
- Greater access to family health insurance policies³³;
- Parenting rights³⁴; and
- The right to divorce and to an ordered method for ascertaining property division as well as child custody and support.³⁵

In addition, now that DOMA has been ruled unconstitutional, same-sex married couples in Vermont have access to the 1,138 federal laws that pertain to married couples. However, with the exception of Social Security, these federal benefits will not be available to couples who have a civil union. These include:

- the right to file federal taxes as married
- spousal retirement and survivor Social Security benefits
- FMLA leave

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

²⁶ 15 V.S.A. §§ 1204 (e)(1), (16).

²⁷ 15 V.S.A. § 1204 (e)(12).

²⁸ 15 V.S.A. § 1204 (e)(10).

²⁹ 15 V.S.A. § 1204 (e)(11).

³⁰ 15 V.S.A. § 1204 (e)(14).

³¹ 15 V.S.A. § 1204 (c).

³² 15 V.S.A. §§ 1204 (e)(2), (8).

³³ 15 V.S.A. § 1204 (e)(5).

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

³⁵ 15 V.S.A. §§ 1204 (d), 1206.

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

- Complete a second parent adoption of your children, whether you are married, in a civil union, or not.
- Gain expert advice and use multiple strategies (through wills, trusts, agreements) to ensure your wishes can be met to the largest degree possible no matter what the situation at your death;
- Do tax planning – income tax, gift tax, estate tax – at the state and federal levels; and
- Do Medicaid and long term care planning, concerning issues like assets available to both spouses, asset transfer issues and liens.

Respect for Your Vermont Marriage

Respect by the State of Vermont

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

Respect by the Federal Government

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, 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 Vermont

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 Does The Vermont Marriage Law Interact With Religion?

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

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

Distinction Between Civil Marriage and Religious Marriage

First, the new Marriage Act makes it clear that for all couples, whether different-sex or same-sex couples, Vermont law creates a state licensing system for civil marriage, and civil marriage only.³⁶ Every religion can continue to define marriage as it chooses for its own religious purposes.

Clergy Not Required to Solemnize Any Particular Marriage

To that end, the new Marriage Act augments the existing statute governing those persons who are authorized to solemnize a marriage by making explicit that this authorization "does not require a member of the clergy authorized to solemnize a marriage ... nor societies of Friends, Quakers, the Christadelphian Ecclesia, or the Baha'i Faith to solemnize any marriage, and any refusal to do so shall not create any civil claim or cause of action" (emphasis added).³⁷ This did not change the law; it simply restates in forceful terms what the law has always been.

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

³⁷ 18 V.S.A. §5144(b).

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

Second, the new Marriage Act did make changes that could raise issues for same-sex couples marrying in Vermont. Current Vermont law protects citizens from discrimination in places of public accommodation. “Place of public accommodation” means “any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.”³⁸ People are protected from discrimination in public accommodations on account of a number of bases, including a person’s sexual orientation and marital status. Therefore, the law’s protection extends to couples who are entering into a civil union or a marriage or are married or in a civil union.³⁹

PUBLIC ACCOMMODATIONS EXEMPTION

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

- “a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society,
- shall not be required to provide services, accommodations, advantages, facilities, goods or privileges to an individual,
- if the request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage or celebration of a marriage.”⁴⁰

³⁸ 9 V.S.A. §4501(1)

³⁹ Under existing Vermont law predating the new Marriage Act, the owner or operator of an “inn, hotel, motel, or other establishment which provides lodging to transient guests, and which has five or fewer rooms for rent or hire” may restrict such accommodations “on the basis of sex or marital status.” 9 V.S.A. §4502(d). This existing provision of the law allows such owners or operators of certain small establishments to refuse to serve same-sex married or civil union couples for any reason or no reason and including religious reasons.

⁴⁰ 9 V.S.A. §4502(1)

The new law goes on to provide that the exempt entities may selectively provide these various services, etc. “to some individuals with respect to the solemnization or celebration of a marriage but not to others.”⁴¹

IMPACT

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

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

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

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

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

⁴¹ 9 V.S.A. §4502(1)

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

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

Fraternal Benefit Societies – Free Exercise of Religion Protections

The new Marriage Act also adds language to the law governing Vermont fraternal benefit societies, simply making clear what the law already requires: that the civil marriage laws do not: (a) affect the ability of any such society to determine eligibility for admission of its members; or (b) require any such society that is “operated, supervised or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the society’s free exercise of religion” as guaranteed by the United States and Vermont Constitutions.⁴²

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

Accommodation to Religious Belief in Employment

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

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

⁴² 8 V.S.A. §4501(b)

purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment which is calculated by the organization to promote the religious principles for which it is established or maintained.”⁴³

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

“to a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, which limits the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in that religion is restricted on the basis of race, color or national origin. The religious restriction or preference must be stated in written policies and procedures of the religious organization, association or society.”⁴⁴

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

⁴³ 21 V.S.A. §495(e)

⁴⁴ 9 V.S.A. §4504(5)

How Will A Marriage Or Civil Union Affect My Children?

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

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

If one party to the marriage or civil union was not a parent before the union, the marriage or civil union will not change that. He or she will be considered a stepparent, carrying whatever weight that status has in Vermont. The sure way to become a legal parent in this situation is for the non-legal parent to adopt the child. Moreover, that adoption decree from the court is a legal judgment. As a result, it should be recognized broadly outside of Vermont and has legal significance independent of the marriage or civil union.

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

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

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

Will I Be Able To Get Health Insurance Through My Employer For My Vermont Spouse⁴⁵?

If you are employed by the State of Vermont, a Vermont county or a Vermont municipality, your same-sex spouse (either joined by marriage or a civil union) will be entitled to the same health insurance rights and benefits provided to different-sex married employees.

If you are employed by the federal government, the 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

⁴⁵ Spouse means either a partner in a civil union or marriage

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. Vermont law also provides coverage continuation benefits for employees in companies with less than 20 employees, and that law would require treating same-sex spouses the same as different-sex spouses.

Another federal law with a major impact on health insurance is HIPAA. HIPAA allows dependents of a covered employee to enroll outside of the normal open enrollment period. 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.

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

Now that DOMA has been ruled unconstitutional and all states must respect the marriages of same-sex couples, same-sex **married** couples **MUST** file a married federal and state income tax return (either married filing joint or married filing separately).

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.

However, since the IRS does not recognize civil unions, **civil union** couples in Vermont must file two “single” returns for their federal income tax, but they must file their Vermont income tax as a civil union couple (either “jointly” or “separately.”) To accomplish this, the civil union couple must fill out a “dummy” federal form as married and then carry the figures over onto the Vermont income tax form.

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 Vermont?

Although there is no residency requirement to enter a Vermont marriage or civil union, there are residency requirements for obtaining a dissolution of a marriage or civil union in Vermont. The same divorce law applies for both marriages and civil unions.⁴⁶ One of the spouses must live in Vermont continuously for at least six months before filing an action for dissolution, and continuously for one year before the dissolution can be granted.⁴⁷

In 2012 Vermont passed a law that waives the residency requirement for dissolving a marriage or civil union provided:

- The marriage or civil union was established in Vermont;
- Neither party's state of legal residence recognizes the couple's Vermont civil union or marriage for purposes of dissolution;
- There are no minor children who were born or adopted during the marriage;
- The couple files a stipulation that they have reached agreement on all the terms and conditions of the divorce.⁴⁸

If these conditions are met, the couple can file a complaint for dissolution in the Superior Court in the county where the marriage or civil union certificate was filed. The court may then grant the dissolution without requiring a hearing. If the court feels that a hearing is necessary, the hearing can be done by telephone. For more detailed information and forms go to:

<http://www.vermontjudiciary.org/eforms/InstructionsforFilingNonResidentCUDissolutionOrMarriage.pdf>.

NOTE: With the *Obergefell v. Hodges* ruling, same-sex married couples are able to divorce in any state, provided they live there long enough to meet that state's residency requirement for divorce, so this law now only applies to civil unions.

⁴⁶ 15 V.S.A. § 1206.

⁴⁷ 15 V.S.A. § 592.

⁴⁸ 15 V.S.A. § 592

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 Protections Can Same-Sex Couples In Vermont 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 Vermont couple take to safeguard their relationship?

- 1. Relationship or Pre-Nuptial Agreement or Contract:** Cohabitation agreements regarding property and finances provide a way for couples to sort out their affairs in writing before a separation. As long as the contract is not about sexual services and complies with the requisites for a valid contract, it has a good chance of being upheld as valid. Bear in mind that, as in any state, specific provisions concerning children may not be enforced according to their terms because it is always in the court's power to determine the best interests of children. (See discussion below concerning parenting agreements).
- 2. Power of Attorney:** Any competent person may appoint another person as his or her "attorney-in-fact" for financial matters and in the event that one becomes incapacitated or disabled.⁴⁹ If no such appointment is made, then a "family" member will be empowered to make decisions for the disabled or incapacitated individual.
- 3. Guardianship:** A person may also indicate his or her preference regarding the appointment of a guardian -- a longer-term appointment that applies to all areas of a mentally incapacitated person's personal care and financial affairs (court considers preference of incapacitated person in appointing guardian).⁵⁰ The document indicating this preference should be executed with all of the formalities of a will and should be updated to keep track of all aspects of a person's personal and financial situation.

⁴⁹ 14 V.S.A. §§ 3501-3516.

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

4. **Advance Directives for Health Care:** Because medical care providers look to a spouse or next-of-kin to make health care decisions for an incapacitated individual, an unmarried person must execute a durable power of attorney for health care if he or she wishes another person to make those decisions instead of the next-of-kin family member. According to Vermont law, a person may appoint a health care agent to make decisions for him or her upon incompetence.⁵¹ This can be revoked at any time by creating a new advance directive or by a clear expression of revocation.⁵² People often give a copy of their durable power of attorney to their doctors and sometimes to family members. In addition, the advance directive can contain instructions about terminal care, anatomical gifts, funeral arrangements and who should be appointed a guardian.
5. **Will:** If a person is neither married, nor joined in a civil union, without a will, his or her property passes to: (1) his or her children; (2) his or her family; (3) if next-of-kin cannot be located, to the state.⁵³ If the person wishes to provide for others, such as his or her partner, a will is essential. Even if a person has few possessions, he or she can name in the will who will administer his or her estate. If a person has children, he or she can nominate the future guardian of the child in a will.

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

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

⁵¹ 18 V.S.A. §§ 9700-9720.

⁵² 18 V.S.A. § 9704

⁵³ 14 V.S.A. § 301.

Does a person need an attorney to get these documents?

GLAD recommends working with an attorney on these documents. Although some forms are available, the form may not be suited to your individual needs and wishes. Moreover, an attorney may be able to help you achieve your goals, for example, by drafting a will in a way which is more likely to deter a will contest by unhappy family members, or drafting a health care proxy with your specific instructions.

If a couple separates, what is the legal status of a Relationship Agreement/Contract?

Upon separation, the terms of a co-habitation agreement will come into play if a couple has one. If a couple has a civil union or marriage, the divorce laws apply, and any such agreements will be treated the same as agreements between different-sex married couples.⁵⁴ Absent a marriage, civil union or an agreement, couples can get involved in costly and protracted litigation about property and financial matters, with no divorce system to help them sort through it.

What should be done 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.

⁵⁴ 15 V.S.A. § 1205.

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.

GLAD Answers and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

To make a tax-deductible contribution, log on to www.glad.org, or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

Thank You!



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