

# Delaware Civil Union Law

December 2011

**PLEASE NOTE:** This document offers general information only and is not intended to provide guidance or legal advice regarding any person's specific situation. This is an evolving area of law in which there is bound to be uncertainty. If you have additional questions, encounter difficulty in obtaining appropriate recognition of your civil union status, or need contact information for private attorneys who might advise you, contact Lambda Legal's Help Desk toll-free at (866) 542-8336 or visit [www.lambdalegal.org/help-form](http://www.lambdalegal.org/help-form), or contact Equality Delaware at [www.equalitydelaware.org](http://www.equalitydelaware.org). We hope you will complete Lambda Legal's Civil Union Tracking Form ([www.lambdalegal.org/delaware-civil-unions](http://www.lambdalegal.org/delaware-civil-unions)) so we can provide you with updates.

The Delaware Civil Union and Equality Act passed the state legislature in April 2011 and was signed by the Governor in May 2011. The law goes into effect on January 1, 2012. Below are answers to frequently asked questions about the new civil union law and what it means for Delawareans.

## WHAT IS A CIVIL UNION?

Under Delaware's new law, a civil union is a legally recognized relationship of two people. Only same-sex couples can enter into a civil union in Delaware. A couple in a civil union will receive all the legal benefits and protections, and be subject to the same legal responsibilities, as are provided under Delaware law to married couples. However, a civil union is not a marriage. Delaware law continues to exclude gay and lesbian couples from marriage.

To enter into a civil union, you must obtain a state license from a Clerk of the Peace office, have a formal ceremony (called "solemnization") before a person authorized to perform civil unions (called an "officiant"), and have the officiant sign and return to the Clerk's office the civil union form.

## WHEN CAN I GET A CIVIL UNION?

The civil union law goes into effect at 10 a.m. on Sunday, January 1, 2012, New Year's Day. Because of the New Year's holiday, Clerk of the Peace offices where civil union licenses are issued normally would not be open until January 3, 2012. New Castle County's Clerk of the Peace office plans to open for special hours on New Year's Day by appointment only. Sussex and Kent County Clerks of the Peace Offices will be open to issue licenses on January 3, 2012, after the holiday observance.

There also is a mandatory one-day waiting period between the time a license is issued and a civil union ceremony can take place. A Clerk of the Peace may waive or shorten the waiting period for good cause, and the New Castle County Clerk of the Peace may make these waivers available to allow couples to start entering into civil unions right away.

## WHO CAN ENTER INTO A CIVIL UNION?

You may enter into a civil union if:

- you both are of the same sex;
- you both are at least 18 years old;
- neither of you is currently in a marriage or civil union or substantially similar legal relationship with a different person; and
- you are not closely related to each other through birth or adoption.

You do not need to be a Delaware resident in order to enter into a civil union in Delaware.

## DO I HAVE TO ENTER INTO A CIVIL UNION IF I ALREADY ENTERED INTO A MARRIAGE, CIVIL UNION, OR REGISTERED DOMESTIC PARTNERSHIP ELSEWHERE, OR REGISTERED FOR DOMESTIC PARTNER BENEFITS WITH MY EMPLOYER IN DELAWARE?

As soon as the law goes into effect on January 1, 2012, the state of Delaware will treat your out-of-state marriage, civil union, or substantially similar legal relationship, such as a California registered domestic partnership, as a civil union. (In contrast, Wisconsin registered domestic partnerships, for example, which entail far fewer rights and responsibilities, are unlikely to qualify as civil unions in Delaware.) With a broad or comprehensive legal status from another state, you do not need to take any additional steps to obtain a civil union status in Delaware. You may of course need to alert others from whom you are seeking recognition that you have a civil union

status. There is no procedure to “register” your civil union with the State of Delaware if you have been married or civil unioned elsewhere. **Even though your relationship will be respected as a civil union in Delaware, we still encourage you to work with legal services organizations and private attorneys to perform adoptions and draw up legal documents such as wills and powers of attorney in case you travel to states that do not respect your legal relationship.**

If you already registered with an employer for domestic partner benefits or with a county or city as domestic partners, you would still need to enter into a civil union to receive the full range of benefits, responsibilities, rights, and protections available under the civil union law to civil union partners.

## WHAT STEPS DO I TAKE TO ENTER INTO A CIVIL UNION WITH MY PARTNER?

Both parties must appear in person to fill out an application for a license to enter into a civil union. Applications are available at a Clerk of the Peace office. The cost of applying for a civil union license is \$50 for residents of Delaware and \$75 for non-residents (cash may be required). Bring with you a form of identification, such as a birth certificate, driver’s license, or passport. You may want to contact the Clerk of the Peace office in advance to double-check what you will need.

If you previously have been married or in a civil union, you also should bring proof, in case the clerk asks to see it, that you are no longer married or in the prior civil union, such as a copy of your divorce or dissolution decree with a raised seal, or, if applicable, the death certificate of your deceased spouse or partner. If you live outside Delaware, the clerk may ask you to sign a form stating that you are not in a substantially similar legal relationship in another state.

The civil union license is valid for 30 days and only in Delaware, which means that your civil union ceremony must take place within Delaware. There is a mandatory one-day waiting period before the license becomes effective, which may be waived by a Clerk of the Peace for good cause.

You may choose a judge, certain public officials, or a religious official to perform your ceremony. Delaware Clerk of the Peace offices will perform civil union ceremonies as well, and their websites post fee schedules for conducting those ceremonies.

Your officiant must complete the certificate confirming that your ceremony has been performed, and forward it to the Clerk of the Peace within 15 days of your civil union.

Visit the following websites of the Delaware Clerks of Peace for more information:

[New Castle County](#)

[Kent County](#)

[Sussex County](#)

## CAN I CHANGE MY NAME WITH MY CIVIL UNION?

Yes, but it requires several steps. You should obtain a certified copy of your civil union certificate from the office of your Clerk of Peace. Using this document, you can go to various government agencies and businesses with whom you wish to update your records with your new name, such as your bank to update your accounts, your employer, and any insurer with whom you have policies. The Delaware Department of Motor Vehicles requires that individuals seeking a new name on their license first change their name with the Social Security Administration (SSA). Bring a copy of your civil union certificate to your local SSA office in order to update your name. Please contact our helpdesk if you have any problems with making this change.

## NOW THAT WE’RE IN A CIVIL UNION, DO WE STILL HAVE TO PERFORM A SECOND PARENT ADOPTION TO SECURE OUR CHILD’S PARENT-CHILD RELATIONSHIP TO THE NON-BIOLOGICAL PARENT?

Even though civil union partners are both presumed to be parents from birth of children born into the civil union, we still strongly encourage parents to perform adoptions, since you may travel to other states that will not respect your civil union or the legal presumption of parentage it creates.

## WHAT RIGHTS AND OBLIGATIONS DO CIVIL UNION PARTNERS HAVE IN DELAWARE?

The civil union law is intended to give parties to a civil union all the same rights, benefits, protections, and responsibilities of “married persons under Delaware law.” These are some examples of the rights and obligations that come with civil union:

### *Family Law Rights and Responsibilities*

- Duties of joint financial support and liability for family debts arising during the relationship;
- Access to step-parent and joint adoption on the same terms and using the same procedures as married couples;
- Legal presumption that both partners are parents of children born into the civil union. (However, we still encourage non-biological parents to adopt their children in addition to drawing up wills and powers of attorney, since they may travel to other states that will not respect the civil union or the presumption of parentage it creates);
- Dissolution of the civil union by the Delaware Family Court, including access to equitable division of the relationship assets and debts;

- Right to seek financial support upon breakup;
- Access to custody, visitation, and support orders concerning children upon breakup;
- Protection for civil union partners and their children under domestic violence, crime victim, and crisis assistance laws.

### ***Medical and Death-Related Rights***

- Rights of hospital visitation, medical decision-making, and authority to receive information about a partner's medical condition or treatment. (However, we still encourage civil union partners to make out wills, living wills, and health care powers of attorney, since they may travel to other states that will not automatically respect the civil union or the rights it grants);
- Ability to authorize anatomical gifts, autopsy, and release of medical records, and to make funeral arrangements for a deceased partner;
- Right to seek money damages for a partner's wrongful death, lost financial support, and companionship;
- Right to inherit in the absence of a will, and certain financial protections while the estate is being settled;
- Same financial protections spouses receive against duty to repay public medical and nursing home costs upon death of a partner; and
- Employment-related spousal or family benefits, including spousal health insurance for public employees (although employer contributions for such benefits will still be taxable under federal law as income to the employee).

### ***Other Rights and Responsibilities***

- Right to file joint state income tax returns, and state tax exemption regarding value of partner health insurance;
- Right to hold real property in "tenancy by the entirety" (which offers some protection against creditors);
- Some workplace benefits, including the right to a pension for the surviving civil union partner of a firefighter or police officer, and where work injury causes death, funeral and burial expenses and death benefits;
- Equal treatment as spouses under certain state insurance laws;
- Right not to testify against civil union partner;
- Same veterans benefits that are available to spouses under state law;
- All state law rights and responsibilities spouses receive through marriage, including many others too numerous to list here.

## **WHAT RIGHTS AND RESPONSIBILITIES OF MARRIAGE WILL NOT BE GIVEN TO CIVIL UNION PARTNERS?**

- The federal government currently does not recognize same-sex couples' marriages or civil unions for purposes of federal spousal rights and protections. Thus, a Delaware civil union will not confer such federal rights and responsibilities as social security survivors' and spousal benefits, federal spousal employment benefits, the ability to file joint federal income tax returns, exemption from income tax on domestic or civil union partner health insurance, exemption from federal inheritance tax, spousal protections in bankruptcy, federal veterans' spousal benefits, and authority to sponsor a spouse to immigrate.
- A Delaware civil union also will not confer automatic legal status in many other states that attempt to deny any recognition to the legal relationships of same-sex couples.

## **MUST MY EMPLOYER GIVE MY CIVIL UNION PARTNER SPOUSAL HEALTH INSURANCE AND PENSION AND OTHER EMPLOYMENT-RELATED BENEFITS?**

State and local government employers must provide civil union partners the same health insurance and pension benefits accorded to spouses. It may be more challenging, however, to hold certain private employers to their obligation to treat civil union partners equally to spouses with respect to health insurance and pensions, depending on what type of plan the private employer uses, and whether state and local nondiscrimination laws apply. If your private employer denies civil union partners equal access to health insurance or pensions, we encourage you to call our help desk so that we can help you determine your options and direct you to resources.

Regardless of whether you work for a public or private employer, federal law treats premiums your employer pays for health insurance for your civil union partner as extra income to you and requires you to pay taxes on it, unless your partner qualifies as your dependent. State and local government employers and most private employers must treat civil union partners equally when it comes to other employment-related benefits, such as bereavement leave, paid parental leave, or spousal relocation policies.

## **WHY MIGHT A COUPLE BE ADVISED NOT TO ENTER A CIVIL UNION?**

- If you wish to adopt from a state or country that may not approve adoptions by lesbians, gay men, same-sex couples, or unmarried couples;
- If either partner depends on public assistance;

- If either is a foreign national without permanent legal status in the U.S.;
- If either or both do not want the state law rights and mutual responsibilities the new law will provide civil union partners, or are concerned about the open questions as to how Delaware law will interact with federal and other states' laws that do not recognize same-sex or unmarried couples.

## **WHAT HAPPENS IF I WANT TO END MY CIVIL UNION, OR IF I NEED A DIVORCE FROM A MARRIAGE TO A SAME-SEX SPOUSE THAT I ENTERED INTO IN ANOTHER STATE?**

To get a divorce from a civil union, you will need to file a petition for dissolution of divorce of your civil union using the same procedures that married spouses use to file for divorce. Civil union partners will be eligible for maintenance (like alimony) and court assistance in allocating child custody, awarding visitation and support, and dividing property on the same terms as spouses.

An out-of-state marriage to a same-sex partner is treated as a civil union under Delaware law, so you could seek to dissolve the marriage in Delaware. However, you should consult with an attorney regarding whether and how other states, including the one in which you married, will recognize a dissolution obtained in the Delaware courts under the civil union law.

## **WHAT HAPPENS IF I WANT TO DISSOLVE OUR DELAWARE CIVIL UNION WHEN MY PARTNER AND I DON'T LIVE IN DELAWARE?**

If both civil union partners live in a state where the courts will not grant a divorce of your civil union, the new law gives the Delaware Family Court the ability to grant a divorce of a civil union entered in Delaware.

### **FOR MORE INFORMATION:**

Visit Lambda Legal's website at [www.lambdalegal.org/help-form](http://www.lambdalegal.org/help-form), call our Help Desk toll-free at (866) 542-8336, or write to us at 120 Wall Street, New York, NY 10005.

Visit Equality Delaware's website at [equalitydelaware.org](http://equalitydelaware.org).