

New York State Marriage Equality Act

Frequently Asked Questions for LGBT Couples and Families with Low or No Income

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Prepared by *Lambda Legal*

General Information and Immigration

New York has enacted legislation providing same-sex couples with equal access to marriage. This document explains how marriage equality may affect same-sex couples and families with low or no income, and provides general information about your legal rights. Please note that this document is not intended to provide legal advice or guidance regarding any specific situation.

■ Should I get married?

Marriage is a profound emotional, social, and legal commitment to another person. Whether to get married is an intensely personal decision that only you can make for yourself. As explained further below, marriage affects a wide array of legal rights, responsibilities and obligations—including potentially a household's eligibility for government and employment benefits, presumptions of parentage, issues relating to inheritance, and immigration status.

■ How do I get married?

When you are applying for a marriage license from a town or city clerk, you will have to pay a fee for the marriage license. New York City charges \$35 for the marriage license. To be legally married, you must have a civil or religious marriage ceremony performed after obtaining the marriage license. The civil or religious marriage ceremony can be held anywhere in the state of New York.

If you choose, the New York City Clerk's

Office will perform a civil marriage ceremony for an additional fee of \$25. All fees in New York City have to be paid by money order or credit card. Cash and personal checks are not accepted. For the ceremony, you need at least one witness 18 years of age or older. It is important to check ahead of time with the particular clerk's office to determine exactly what you will need to bring with you and the price for the marriage license. At the clerk's office, you will need to fill out and sign an application for a marriage license.

Normally, there is a 24-hour waiting period after a marriage license is issued before the marriage ceremony itself may be performed. It may be possible to obtain a waiver from a judge of this waiting period based on hardship, so that you can get married right away. In some parts of the state, like in Manhattan, there may be simple forms available for obtaining a judicial waiver and judges available to consider these applications. You should check ahead with the clerk's office where you intend to get your marriage license

General Information and Immigration *continued...*

about how to obtain a judicial waiver.

Once issued, your license is valid for 60 days.

■ What type of documentation do I need to apply for a marriage license?

After choosing to get married in New York, the first step is to apply for a marriage license from a town or city clerk. You will need an approved form of proof of age and identity to apply for a marriage license. To establish proof of age, you can use: 1) a U.S. or foreign birth certificate; 2) a baptismal record; 3) a naturalization or citizenship certificate; or 4) a census record.

To establish proof of identity, you can use: 1) a driver's license or non-driver identification card; 2) a U.S. or foreign passport; 3) an employment picture ID; 4) an employment authorization card issued by immigration officials; 5) a temporary or permanent resident, alien registration, or "green card" issued by immigration officials; 6) a military ID; or 7) a foreign national identification card, including a *cédula* or *matricula consular*.

If you were previously married, you may need a certified copy of your divorce decree or dissolution of marriage.

■ Are documents issued in foreign countries accepted as proof of age and identity?

Yes, you may present your foreign birth certificate, foreign passport, or foreign national identification card (such as a *cédula* or *matricula consular*) as proof of your age or identity. To establish proof of identity, the document should have your photograph.

■ How does New York's Marriage Equality Law affect transgender individuals?

Transgender people may marry their same- or different-sex partner under New York's Marriage Equality Act. The law eliminates barriers to marriage based on sex, and clarifies that a marriage is valid regardless of whether the parties are of the same or different sex. The law also guarantees gender neutrality in marriage rights and responsibilities.

■ Can I get married in New York if I live in another state?

Yes. You do not have to be a resident of New York to get married in New York. But it is important to be aware that the state where you live may not recognize marriages of same-sex couples; most U.S. states do not. This could carry a number of consequences for you. For example, while New York has no residency requirement to get married here, it does require residency to obtain a divorce. So if you live in a state that does not respect marriages of same-sex couples, and you someday want to end your relationship, you may not be able to obtain a divorce.

■ Can I get married in New York if I am an undocumented immigrant?

Yes. You do not have to be a U.S. citizen to get married in New York, and you do not have to provide proof of immigration status to obtain a marriage license.

■ Can bi-national same-sex couples get married in New York?

Yes. Bi-national same-sex couples can get married, but you will not receive the same immigration-related benefits and protections as a different-sex married couple. Bi-national same-sex couples should be prepared for and willing to take additional considerations into account before deciding to marry because, under a federal law, the so-called Defense of Marriage Act ("DOMA"), immigration officials will not provide a green card or residency to an immigrant who marries a same-sex U.S. citizen partner. Marriage to a same-sex partner has numerous potential consequences for an immigrant who wants to remain in the United States.

■ I am undocumented. Can I get a green card or apply for residency with immigration if I marry my same-sex U.S. citizen partner?

No. It is important to know that you could be placing yourself at significant risk of deportation/removal by applying for a green card or residency based on your marriage to a same-sex U.S. citizen partner. Undocumented persons who file an

General Information and Immigration *continued...*

application for a green card or residency based on a marriage to a same-sex U.S. citizen run the risk of getting the application denied, and being placed in deportation/removal proceedings. To avoid this risk, couples may want to wait until DOMA is changed or immigration officials take an official position about granting immigration benefits and protections to married same-sex couples before applying for a green card or residency. However, if you are an undocumented person who has already been placed in removal/deportation proceedings, your marriage to a same-sex U.S. citizen may, in some instances, help delay your deportation/removal. Please consult with an immigration lawyer to better understand your options and risks.

■ If I am an undocumented person, would it be easier for immigration officials to locate me or detect my immigration status if I get married?

No. Since you do not have to be a U.S. citizen to get married in New York, and you do not have to provide proof of immigration status to obtain a marriage license, immigration officials will not be able to discover your immigration status by virtue of your marriage. However, if you submit an application for a green card or residency based on your marriage to your same-sex partner, immigration officials will discover your undocumented status, and likely place you in deportation/removal proceedings if your application for a green card or residency is denied.

■ As an undocumented person, can I travel outside of the United States if I get married to my same-sex U.S. citizen partner?

Generally, undocumented people should not attempt to travel outside of the United States because of the high risk of being detected by immigration officials, and denied re-entry to the United States. If you are an undocumented person who is married to a U.S. citizen, and thinking of traveling outside of the United States, you should consult with an immigration lawyer to better understand the potential legal problems and consequences of leaving the country.

■ Can I travel across state lines to get married in New York if I am an undocumented immigrant?

Generally, undocumented persons should be cautious about traveling across state lines. An undocumented person may be able to travel across state lines to get married in New York, but traveling always involves a risk because immigration officials have been known to board public buses and trains to request immigration documentation from riders. Recently, this type of immigration enforcement has been on the rise, and some people have ended up in deportation/removal proceedings because of encounters with immigration officials in public buses and trains. Although travel is generally safe, you should be aware of this risk, and make a decision based on your individual needs and circumstances.

■ How does marriage affect my visa to visit, live, or work in the United States?

If you have a visa to visit, live, or work in the United States, getting married may make it more difficult to obtain or extend some visas. If immigration officials discover that you have an interest or incentive to remain in the United States because you are married to a U.S. citizen, this may be a basis for denying a visa application, extension, or renewal. If you have a visa to visit, live, or work in the United States, and are interested in marrying your same-sex partner, you should consult an immigration attorney before you take this step, and find out how marriage may affect your immigration status.

■ What should I do if I face discrimination at a clerk's office when I try to obtain a marriage license?

Such discrimination is prohibited by law, and we are hopeful that government clerks will fully comply with the law and treat same-sex couples with respect. If you feel that you have been discriminated against, contact **Lambda Legal's Help Desk** at 212-809-8585 or www.lambdalegal.org/help, or **Legal Services NYC** at 646-442-3600 or visit www.legalservicesnyc.org, and click on "Find an office" in the top right corner.

Prepared by *Lambda Legal*

Parent-Child Relationships

■ Will getting married to my same-sex partner make me a legal parent of my partner's biological or adoptive children?

New York law presumes that both spouses are parents to a child born to married parents. For example, a married woman who gives birth to a child in New York may place her same-sex spouse's name on the child's birth certificate as the child's second parent. However, even though both spouses are presumed parents under New York law, you nevertheless should obtain a second-parent adoption to secure the legal relationship between your child and the non-biological parent. Even though an adoption proceeding can be expensive and intrusive, an adoption is very important to protect your family because you may travel to states that will not respect your marriage or the presumption of parentage it creates. An adoption decree is far more likely to be respected in these states. In planning for an adoption, please consider that the adoption filing fee is free in New York State Family Court.

If you are thinking of surrogacy as a means of having children, it is important to note that surrogacy contracts are deemed to be void and unenforceable under New York statute, and we encourage you to contact **Lambda Legal's Help Desk** at 212-809-8585 or www.lambdalegal.org/help.

■ My partner and I are unsure at this time whether we will marry. How can I become a legal parent of my partner's biological or adoptive children?

In New York, regardless of whether or not you are married, you may adopt your same-sex partner's biological or adoptive children. This is called a "second-parent adoption," and makes both members of a same-sex relationship the legal parents of the children. However, if the children have another legal parent in addition to your spouse, that parent will have to be involved in the legal proceeding, and terminate his or her parental rights.

■ Why is it important to adopt my children if my unmarried partner and I agree that I will always function as their parent?

When your rights as a parent are recognized by the law, you can provide your child with the security of two legal parents

who share parental rights and responsibilities. These rights and responsibilities include: the ability to make or jointly share in medical decisions; the right to visit your child in the hospital; and automatic custody rights if the other parent dies or becomes incapacitated. Additionally, a second-parent adoption will help ensure that your child receives financial support from both parents; health or other insurance benefits from both parents; social security, retirement or state workers' compensation benefits if either parent dies or becomes incapacitated; and inheritance rights or pension benefits available only from legal parents. Even though an adoption proceeding is expensive and intrusive, an adoption is very important to protect your family. Since adoption is a very important decision, it is crucial that you choose a trusted adoption attorney who knows and understands the issues that you and your family are facing.

■ Before my partner and I split up, we reared our children together, but the children have a biological tie solely to her/him, and I did not adopt them. Can I go to Family Court to request custody or visitation?

It depends. We encourage you to call **Lambda Legal's Help Desk** at 212-809-8585 or visit www.lambdalegal.org/help. Unfortunately, New York courts have disapproved of non-biological parents seeking custody in the absence of a legal relationship to the other parent, such as a marriage or civil union, and in the absence of any question as to the biological parent's fitness to be a parent.

■ Before my partner and I split up, we reared our children together, but the children have a biological tie solely to him/her, and I did not adopt them. Do I have to pay court-ordered child support?

You might. All parents must financially support their children until the children are 21 years old, including parents who adopt children, step-parents, and in some instances functional parents who lack a biological or adoptive tie to their children. In New York, non-biological parents formerly in a same-sex relationship have been ordered to pay child support if they held themselves out as the parent of the child and provided financial support.

Prepared by Legal Services NYC

Public Assistance and HASA

If you receive Public Assistance benefits, including cash and housing assistance such as Family Eviction Prevention Supplement (“FEPS”) and HIV/AIDS Services Administration (“HASA”) benefits, it is important to be aware how marriage may impact your eligibility to receive these benefits. The rules governing how much of a legally responsible same-sex spouse’s income will be budgeted against the Public Assistance household are complex and fact-specific. In addition, with the enactment of the Marriage Equality Act, new regulations may be promulgated. Please consult a Public Assistance specialist if you have questions about how marriage will affect your benefits.

■ If I marry my same-sex partner, will my marriage affect my financial eligibility to receive Public Assistance?

Possibly. To qualify for Public Assistance benefits, your household must meet the New York City Human Resources Administration’s Public Assistance financial eligibility criteria. Generally, a public assistance household cannot have more than \$2000 in liquid assets (or \$3000 if there is someone in the household age 60 or over), and the household’s gross earned and unearned income cannot exceed the monthly poverty level for the household size.¹ In addition, a household’s gross earned and unearned income cannot exceed more than 185% of the household’s standard of need (see information table); and, after certain deductions, cannot exceed 100% of the household’s standard of need.² The amount of benefits a household can receive depends on the household size, composition, countable income, and types of income. Thus, although adding your spouse to your Public Assistance budget could increase your household’s standard of need (or maximum monthly grant), it is important to consider how your spouse’s assets and income may impact the household’s financial eligibility to receive Public Assistance benefits.

■ My partner is a U.S. citizen or qualified immigrant, but I am undocumented. Can I receive Public Assistance if we get married?

No. In addition to meeting the financial eligibility requirements, the household must also meet certain non-financial eligibility requirements. In order to receive cash and shelter assistance in New York, you must be a U.S. citizen or a qualified immigrant. Undocumented persons, even if married to a U.S. citizen or qualified immigrant, cannot receive Public Assistance benefits in New York, but they may request benefits for their U.S. citizen children. However, it is important to be aware that the income of undocumented persons who are legally responsible relatives (including same-sex spouses) can be budgeted against the Public Assistance household if their income exceeds their prorated share of the household needs after applicable deductions.

■ Does my spouse have to be included on my budget? Will my spouse’s income and resources be counted against my Public Assistance benefits?

It depends. Generally, the Public Assistance household consists of people living in the same dwelling unit who choose to apply for benefits together. However, special rules apply when there are minor dependent children in the household and when legally responsible persons (like spouses) reside in the same household. If a minor child is included on the Public Assistance application, the child’s natural and/or adoptive parents, as well as all minor siblings (adoptive and blood related) **must** be included in the Public Assistance household. This means that the income and assets of those parents and siblings will be budgeted in determining the household’s eligibility to receive benefits (unless the individual receives Supplemental Security Income (“SSI”).

¹ Households residing temporarily in a hotel/motel, a homeless or domestic violence shelter, AIDS housing, a congregate care facility, etc., are not subject to the Poverty Level Income Test.

² The Public Assistance Standard of Need is a maximum monthly allowance set by the New York State Office of Temporary and Disability Assistance based on the number of people in the household.

Public Assistance and HASA *continued...*

Legally responsible relatives of a dependent child or spouse, who are not part of the mandatory filing unit, can decide whether or not to be included in the Public Assistance household. However, even if a legally responsible spouse chooses not to apply for benefits or is ineligible to receive benefits, his/her income and resources may still be deemed available to the household.

■ **My partner and I consider ourselves the parents of our two children, but only I have a biological relationship to the children, and my partner has not adopted them. The children and I currently receive Public Assistance. If we choose to marry, will our benefits be affected by my spouse’s income and resources?**

Probably. Currently, the New York City Human Resources Administration treats the income of a non-applying same-sex spouse of a custodial parent—whose children are not blood related or legally adopted by the spouse—like that of a step-parent. A step-parent’s income is evaluated in determining the household’s eligibility to receive benefits

and will be deemed available to the household after all applicable deductions. However, in households with minor dependent children, if the non-applying parent or spouse receives SSI, he/she and all of his/her income can be considered invisible for public assistance purposes. You also should weigh these issues against the vulnerability that you, your children, and your partner may face if the children’s relationship to your partner is not secured through an adoption.

■ **What should I do if I face discrimination when I apply for public assistance?**

Such discrimination is prohibited by law, and we are hopeful that case workers will fully comply with the law and treat same-sex couples with respect. If you do feel that you have been discriminated against, contact **Lambda Legal’s Help Desk** at 212-809-8585 or www.lambdalegal.org/help, or **Legal Services NYC** at 646-442-3600 or visit www.legalservicesnyc.org, and click on “Find an office” in the top right corner.

Public Assistance Standard of Need
New York County With Children
(Monthly) July 1, 2010

WITH CHILDREN

| HH | Standard of Need (SON) Total | 185% of SON |
|----|------------------------------|-------------|
| 1 | 443.10 | 819.73 |
| 2 | 547.50 | 1012.88 |
| 3 | 753.00 | 1393.05 |
| 4 | 904.70 | 1673.70 |
| 5 | 1062.70 | 1966.00 |
| 6 | 1172.00 | 2168.20 |

**add \$75/month for each additional person beyond six household members*

Public Assistance Standard of Need
New York County Without Children
(Monthly) July 1, 2010

WITHOUT CHILDREN

| HH | Standard of Need (SON) Total | 185% of SON |
|----|------------------------------|-------------|
| 1 | 381.00 | 704.85 |
| 2 | 514.00 | 950.90 |
| 3 | 639.00 | 1182.15 |
| 4 | 766.70 | 1418.40 |
| 5 | 898.70 | 1662.60 |
| 6 | 997.00 | 1844.45 |

Prepared by Legal Services NYC

Food Stamps

The Food Stamp Program, also known as the Supplemental Nutrition Assistance Program (“SNAP”), is a federal program administered by the state of New York. Generally, the income and resources of those persons included in the Food Stamp household are considered in determining eligibility and calculating the monthly Food Stamp entitlement (unless the household is categorically eligible to receive benefits). If you receive Food Stamp benefits, you should be aware of how marriage may impact your eligibility and budgeting for these benefits. Food Stamp budgeting is extremely complex, and a household’s actual entitlement depends on many variables. Please consult a Food Stamp specialist if you have questions about how marriage may affect your benefits.

■ If I marry my same-sex partner, will my marriage affect my financial eligibility to receive Food Stamp benefits?

Possibly. In order to be eligible to receive Food Stamp benefits, a household must meet certain financial eligibility requirements. Many households are now considered **categorically eligible** to receive Food Stamp benefits and **do not have to meet either a resource limit or net income test**—including households with monthly gross income at or below 130% of the federal poverty level (“FPL”). Households with an elderly/disabled household member, and some households with dependent care costs with monthly gross income at or below 200% FPL, are considered categorically eligible to receive Food Stamps if no one in the household has been disqualified due to an Intentional Program Violation or other sanction, and do not have to meet either a resource limit or net income test.

However, if a household is not considered categorically eligible, then a \$2000 resource limit applies, or \$3000 if there is an elderly or disabled household member. There are many resources that are considered exempt and do not count toward the Food Stamp resource limit (for example, homestead, vehicles, burial plots and life insurance). There are also several income exemptions and deductions. For households that are not categorically eligible, the household’s **gross** monthly income

must be at or below 130% of the FPL and the **net** income, after applicable deductions, must be under 100% of the FPL. Thus, although adding your spouse to your Food Stamp budget could increase your maximum monthly Food Stamp allotment, it is important to consider how your spouse’s assets and income may impact the household’s financial eligibility to receive Food Stamp benefits.

■ I currently receive Food Stamps, but my same-sex partner does not. If we get married, will my spouse be considered part of the Food Stamp household?

Maybe. Generally, the Food Stamp household consists of individuals who live together and who purchase and prepare meals together.³ Certain people **must** be included in the Food Stamp household: (1) spouses; (2) children under 22 living with their natural, adoptive, or stepparent; and (3) children under 18 who are under the parental control of an adult who is not the parent or step-parent (not including foster children).

The rule that spouses living together must be part of the same food stamp household even if they do not customarily purchase and prepare meals together, **does not apply to same-sex couples** because of DOMA. However, same-sex spouses may be considered part of the Food Stamp household if they live together and customarily purchase food and prepare meals together. If your spouse is included in the Food Stamp household, his/her income and resources will be considered in determining eligibility for Food Stamps and will impact the amount of benefits. If you and your spouse do not customarily purchase and prepare meals together, you could be considered separate households for Food Stamp purposes. In some cases, this may be more financially advantageous than being considered part of the same household.

■ My partner is a U.S. citizen or qualified immigrant, but I am undocumented. Can I receive Food Stamps if we get married?

No. In addition to meeting the financial eligibility requirements,

³ An elderly and disabled person who lives in a household with income under 165% of poverty can be considered a separate food stamp household.

Food Stamps *continued...*

the household must also meet certain non-financial eligibility requirements. In order to receive cash and shelter assistance in New York, you must be a U.S. citizen or a qualified immigrant. Undocumented persons, even if married to a U.S. citizen or qualified immigrant, cannot receive Food Stamp benefits in New York, but they may request benefits for their U.S. citizen children. However, it is important to be aware that the income of undocumented persons who are included in the Food Stamp household may impact the household's eligibility and amount of Food Stamp entitlement.

■ I currently receive Food Stamp benefits. My partner is an undocumented immigrant. If we get married, could my spouse's income and resources impact my Food Stamp budget even though my spouse is not eligible to receive benefits?

Possibly. An undocumented person is not eligible to receive Food Stamps even if he or she marries a U.S. citizen or qualified immigrant, and the income of people who are not included in the Food Stamp household is generally not counted. However, the income of ineligible immigrant **household**

members can be prorated. This means that the income of an undocumented person who is required to be included in the Food Stamp household can impact the household's monthly Food Stamp entitlement even though he or she is not eligible to receive benefits. The resources of ineligible household members are also considered in determining the household's eligibility to receive benefits. However, currently, same-sex spouses are not required to be part of the Food Stamp household because of DOMA, and can have their income and resources excluded (unless they are otherwise required to be part of the Food Stamp household).

■ What should I do if I face discrimination when I apply for Food Stamp benefits?

Such discrimination is prohibited by law, and we are hopeful that case workers will fully comply with the law and treat same-sex couples with respect. If you do feel that you have been discriminated against, contact **Lambda Legal's Help Desk** at 212-809-8585 or www.lambdalegal.org/help, or **Legal Services NYC** at 646-442-3600 or visit www.legalservicesnyc.org, and click on "Find an office" in the top right corner.

Food Stamp Benefit & Eligibility Chart (Effective October 1, 2011)

| Household Size | 200% FPL (Categorically eligible if elderly/disabled and some households with dependent care costs) | 165% FPL (Gross Monthly Income if Elderly/Disabled is separate household) | 130% FPL (Maximum Gross Monthly Income) | 100% FPL (Maximum Net Monthly Income) | Maximum Monthly Food Stamp Benefit Allowance |
|-------------------------------|--|--|--|--|--|
| 1 | \$1815 | \$1498 | \$1180 | \$908 | \$200 |
| 2 | 2452 | 2023 | 1594 | 1226 | 367 |
| 3 | 3088 | 2548 | 2008 | 1545 | 526 |
| 4 | 3725 | 3074 | 2422 | 1863 | 668 |
| 5 | 4362 | 3599 | 2836 | 2181 | 793 |
| 6 | 4998 | 4124 | 3246 | 2500 | 952 |
| 7 | 5635 | 4649 | 3663 | 2818 | 1052 |
| 8 | 6272 | 5175 | 4077 | 3136 | 1202 |
| <i>Each Additional Member</i> | <i>+ \$637</i> | <i>+526</i> | <i>+414</i> | <i>+319</i> | <i>+150</i> |

Prepared by Legal Services NYC

Medicaid

Medicaid is a public health insurance program for New Yorkers. There are many ways that an individual may qualify for Medicaid benefits—for example, if you receive Supplemental Security Income (“SSI”) or if you meet certain income requirements. Medicaid eligibility rules are extremely complex. Income and resource limits, if any, depend upon what category of eligibility an applicant falls under. Further, income limitations (and, where applicable, resource levels) also depend on the household size. Generally,⁴ household size is determined by the number of people in the household applying for Medicaid (but can also include children and legally responsible relatives living in the household even if they are not applying).

New York recognizes marriages between same-sex partners for Medicaid eligibility and case decisions. Medicaid will evaluate the following factors in *all* marriages: required signatures on applications; household composition and size; budgeting methodology; determination of legally responsible relatives; spousal and child support issues; health insurance premium payments; chronic/long term care budgeting issues, including transfers of resources; income from trusts; homestead resource exemptions; burial funds; estates; and liens and recoveries. If you receive Medicaid benefits, it is important to be aware of how marriage could impact each household member’s eligibility. Please consult a Medicaid specialist if you have questions about how marriage will affect your benefits.

■ If I marry my same-sex partner, will my spouse’s income and resources impact my eligibility for Medicaid?

Yes. Under the rules for Medicaid, spouses are considered “legally responsible relatives.” This means that, when one spouse applies for Medicaid, the income and resources of the other spouse will be considered in determining eligibility. The practical implication of this rule depends on each client’s individual circumstances.

■ Is there anything I can do if my spouse’s income or resources makes me ineligible for Medicaid?

Yes. Legally responsible relatives can sign a form stating that their income and resources are not available to the Medicaid applicant/recipient. This is commonly referred to as a “Spousal Refusal form.” Please seek legal advice before exercising this option because Medicaid can sue you and legally responsible relatives in Family Court to recover what they pay out in benefits to the applicant/recipients. In addition, if your spouse chooses to do this, he or she will not be eligible to receive Medicaid.

Depending on the specifics of your situation, there may be other options that you and your spouse may consider, including eligibility for other programs. Please speak with a Medicaid expert about your specific situation.

■ What kind of documentation will I need to prove that my spouse and I are now married?

Generally, attestation by the applicant/recipients that they are married is all that is required for Medicaid eligibility determinations. Documentation of a legally recognized marriage between same-sex spouses is only necessary in the same limited circumstances as documentation of any other marriage—for example, when an individual seeks spousal budgeting for long-term care.

■ My spouse recently entered a nursing home for long term care. Are there any special rules that affect his/her eligibility for Medicaid?

Yes. In general, there are “spousal impoverishment” budgeting rules to protect the non-institutionalized spouse who remains in the community when the other spouse needs long term nursing home care. In addition, an institutionalized spouse (including a spouse in a nursing home), may make certain exempt transfers to the community spouse in order to qualify for Medicaid. However, the rules also allow Medicaid

⁴ Household size for applicants in the SSI related category is usually only one or two, depending on how much the spouse earns, if the spouse is disabled, and if there are children in the household.

Medicaid *continued...*

to hold the community spouse accountable for excess resources and income. It is important to consult a Medicaid specialist if you or your spouse need (or may soon require) nursing home care and are seeking Medicaid coverage.

Note: The Centers for Medicare & Medicaid Services (“CMS”) of the U.S. Department of Health and Human Services sent a letter on June 10, 2011 to all State Medicaid Directors regarding Same Sex Partners and Medicaid Liens, Transfers of Assets, and Estate Recovery. The implementation of the CMS recommendations is optional to the States. Until New York State implements the recommendations of the CMS, the budgeting rules may not be afforded to same-sex spouses due to DOMA.

■ I am an undocumented immigrant. If I marry a U.S. citizen, am I eligible for complete Medicaid coverage?

No. Undocumented immigrants are not eligible for full Medicaid coverage or Family Health Plus, even if they

marry a U.S. citizen. However, undocumented immigrants and other immigrants may be eligible for Medicaid Prenatal Care Services, Child Health Plus, and Emergency Medicaid, which covers care and services needed to treat an emergency medical condition. It is important to note that individuals who are “Permanently Residing Under Color of Law” (“PRUCOL”) are eligible for Medicaid and Family Health Plus. Please consult a Medicaid expert on how to document PRUCOL status.

■ What should I do if I face discrimination when I apply for Medicaid?

Such discrimination is prohibited by law, and we are hopeful that case workers will fully comply with the law and treat same-sex couples with respect. If you do feel that you have been discriminated against, contact **Lambda Legal’s Help Desk** at 212-809-8585 or www.lambdalegal.org/help, or **Legal Services NYC** at 646-442-3600 or visit www.legalservicesnyc.org, and click on “Find an office” in the top right corner.

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Medicare

Generally, DOMA prohibits recognition of marriage between same-sex couples for purposes of federal entitlements, including Medicare. Although the New York Marriage Equality Act permits same-sex couples to marry, there are specific issues concerning enrollment and costs of Medicare benefits that may be affected by your marriage.

■ If I choose to marry my same-sex partner, will my marriage affect my eligibility for Medicare?

No. Medicare enrollment is open to anyone who is a U.S. citizen or legal permanent resident who is over the age of 65, disabled (and has received Social Security Disability Insurance (“SSDI”) for 2 years), or has end-stage renal disease or Lou Gehrig’s disease. The entitlement to Medicare is individually-determined, and based on several factors, but marriage is not one of the relevant factors.

■ If I choose to marry my same-sex partner will my marriage have an effect on the cost of Medicare? Will I be able to avail myself of my spouse’s working credits?

Generally, marriage can have an effect on the cost of Medicare. For most people, Medicare Part A (i.e., hospital insurance) is premium-free because as long as you work in the United States for more than 10 years and pay taxes, you have contributed to the Medicare fund. The 10 years of work can also be based upon a spouse’s work history. However, if you are legally married to your same-sex partner in New York, you cannot use your spouse’s working credits—instead, you can only rely on your own work credits.

■ My spouse needs to enroll in Medicare after the initial enrollment period. Are there any issues we should discuss with a Medicare expert?

Medicare *continued...*

Yes. There are specific triggering events that make someone eligible for Medicare, such as turning 65 or receiving SSDI for 2 years. Once you become eligible for Medicare, you have a limited window in which to enroll. If you do not enroll during that time period, you need to wait until the following year's general enrollment period (January-March), and coverage will be delayed until the following July. In addition, you will have a Part B (outpatient physician's insurance) premium penalty. These penalties can be significant, and the gaps in health insurance coverage are detrimental.

Are there any exceptions to needing to enroll when someone first becomes Medicare-eligible?

The rule on delayed enrollment applies to Medicare Part B (Medical Insurance) and does not apply to Medicare Part A (Hospital Insurance). Medicare Part B is optional and requires a monthly premium, which is currently \$115.40 for a single person with an income below \$85,000 or a married couple with a combined income below \$170,000. If you are currently working and covered under a group health insurance plan by your employer, you can delay enrollment into Medicare Part B. When you retire or leave work, you have a period of eight months to enroll in Part B without a penalty.

Prepared by Legal Services NYC

Housing

There are several benefits for spouses living in rent-stabilized, New York City Housing Authority ("NYCHA"), and Section 8 apartments—most importantly, a spouse being able to live in one of those types of apartments if the other spouse leaves or dies. If you live in a type of housing that requires you to add your spouse to the lease, make sure you do so as soon as possible, because the spouse cannot be added after the spouse listed as the tenant leaves or dies.

■ Will I be able to add my new spouse to my rent-stabilized lease without my rent increasing?

Yes. You cannot, however, add a domestic partner without an

increase in your rent unless your lease or landlord permits it.

My domestic partner is disabled and has delayed enrollment into Medicare because I have a group health insurance plan from my employer that covers my partner. If we get married, how would my spouse be treated for purposes of delaying Medicare enrollment?

Someone who is disabled can delay enrollment into Medicare if they or a family member has a group health insurance plan from a current employer providing coverage to the disabled individual. Social Security guidance defines a domestic partner as a family member. Therefore, a domestic partner may delay enrollment into Medicare.

The Social Security guidance was created when domestic partnerships were the only option for relationship recognition for same-sex couples. Since this is an evolving area of law, it remains unclear how same-sex spouses may be treated in the future.

increase in your rent unless your lease or landlord permits it.

■ As the spouse living in a rent-stabilized apartment where I am not on the lease, will I be able to stay in the apartment if my spouse leaves or dies?

Yes. This is called having succession rights, and if you can show that you used the apartment as your primary residence for at least two years before your spouse left or died, you can stay in the apartment. You can also stay in the apartment if you have lived there from the time your spouse began living there. If you are disabled or a senior, you may stay in the

Housing *continued...*

apartment if you have been living in it for one year.

■ If my partner and I decide not to marry and my name is not on the lease, will I be able to stay in our apartment if my partner leaves or dies?

Yes, you may stay in the apartment provided that (i) you can prove succession rights (see above answer), and (ii) you can show that you shared a close and loving relationship with your partner. You can prove the latter by showing how long you and your partner were together, what household expenses you shared, and if others (i.e. family, friends, and neighbors) state that they regarded you as a family.

■ May I add my new spouse to my household for purposes of NYCHA?

Yes. Spouses are family members under NYCHA rules. It is important that you add your spouse through NYCHA before your spouse, who is on the lease, leaves or dies.

■ Must I obtain approval for my new spouse to live with me for purposes of Section 8—HPD?

Yes. While a family does not need approval for a new family member to live in the apartment if the new family member is a spouse or domestic partner, it is unclear whether marriages of same-sex couples will be recognized for purposes of Section 8. You may add an adult co-head of household under Section 8. However, individuals with a criminal record and individuals listed as sex offenders may not be added.

■ What effect will marriage have on the calculation of my income under Section 8?

Anytime a new household member is added (spouse or otherwise), the rent share of the household is recalculated to include every household member's income. If you add another household member, your rent share may increase.

■ If my spouse, the tenant of record for our apartment leaves or dies, will I be entitled to stay in the apartment?

Yes, if you yourself are eligible for public housing. Spouses, domestic partners, and people with written permission issued before November 24, 2002, have the right to remain on the lease. The current rule permits those who are part of the original household, or who join the household with written permanent permission for at least a year before the tenant of record leaves or dies, to succeed to the tenancy.

■ As a non-voucher holder, what will my rights be?

If the head of household leaves the apartment or dies, you, as the remaining adult household member, will be able to use the tenant-based voucher if you have been living in the apartment for at least six months.

■ As a recipient of Senior Citizen Rent Increase Exemption ("SCRIE") or Disability Rent Increase Exemption ("DRIE"), how will marriage affect my benefits?

If your spouse is on the lease and has a SCRIE/DRIE subsidy and you also qualify for and register for SCRIE/DRIE, if your spouse leaves or dies, you will be able to get that subsidy. This means you can stay in the apartment without the rent going up. Please note that in order to stay in the apartment, you must register for SCRIE/DRIE before your spouse leaves or dies.

■ What should I do if I face discrimination when I apply for housing or seek related benefits?

Such discrimination is prohibited by law, and we are hopeful that case workers will fully comply with the law and treat same-sex couples with respect. If you do feel that you have been discriminated against, contact **Lambda Legal's Help Desk** at 212-809-8585 or www.lambdalegal.org/help, or **Legal Services NYC** at 646-442-3600 or visit www.legalservicesnyc.org, and click on "Find an office" in the top right corner.

Prepared by Legal Services NYC

Consumer Issues

Marriage is considered an economic partnership, and couples considering marriage should discuss their individual finances before marrying. Steps can be taken to ensure that one spouse's debts do not become the burden of the other spouse.

■ If my spouse had debt before we were married, am I legally responsible for paying that debt?

Generally, no. Marriage is considered an economic partnership, but debts that exist when the marriage begins belong to the spouses individually.

■ If my spouse borrows money after we are married, am I responsible for paying the debt while we are married?

No. Each spouse is individually responsible for the money he or she borrows. However, if you agree to be responsible for your spouse's debt, such as by cosigning or becoming a joint account holder, you may be responsible.

■ If someone sues my spouse in court over a debt and gets a judgment, can the judgment creditors take my property?

If your spouse has a judgment against him or her, the judgment creditor can collect on that judgment for 20 years by garnishing wages, taking money from any bank account with your spouse's name on it, placing a lien on his or her house or the house you own together, and selling his or her or your shared personal property of value until the judgment is paid. By law, there are many exceptions and protections for you and your spouse. There are special protections in place for people receiving government benefits that prevent creditors from being able to take those benefits. If your spouse has a judgment against him or her, you should

consult an attorney about the effects of this judgment on both of you.

■ If we decide to get married, should my spouse and I get joint credit cards?

You may not want to get joint credit cards because doing so increases your liability. Instead, you can get a credit card in one spouse's name and make the other spouse an authorized user, which will allow him or her to use the account.

■ If my spouse dies, will I be responsible for his or her debts?

No, you are not personally responsible for paying his or her debts, but your spouse's debt could reduce the amount you inherit.

■ If my spouse and I get a divorce, will I be responsible for his or her debts?

Marriage is considered an economic partnership, and couples considering marriage should discuss their individual finances before marrying. Steps can be taken to ensure that one spouse's debts do not become the burden of the other spouse.

■ What should I do if I face discrimination with respect to credit issues?

Such discrimination is prohibited by law. If you do feel that you have been discriminated against, contact **Lambda Legal's Help Desk** at 212-809-8585 or www.lambdalegal.org/help, or **Legal Services NYC** at 646-442-3600 or visit www.legalservicesnyc.org, and click on "Find an office" in the top right corner.

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Social Security Administration

The Social Security Administration (“SSA”), a federal agency, does not recognize same-sex couples as married couples for either Social Security Disability Insurance (“SSDI”) or Supplemental Security Income (“SSI”) purposes because of DOMA.

■ I am getting married to my same-sex partner and want to change my name on my Social Security card. What should I do?

Although the SSA does not recognize marriages of same-sex couples for other purposes, you should be able to change your name on your Social Security card due to marriage. You must complete an Application for a Social Security Card (Form SSA-5) and show original or certified documents proving your marriage, name change, identity, and U.S. citizenship. The completed application and supporting documents should be delivered to your local Social Security office or your local Social Security Card Center.

■ I currently receive SSDI. If I choose to marry will my same-sex spouse be entitled to Title II auxiliary benefits, such as spousal benefits and survivor benefits?

No. The SSA does not recognize a same-sex spouse for purposes of Title II auxiliary benefits due to DOMA.

■ I currently receive SSI. If I marry my same-sex partner will my eligibility for SSI be impacted?

No. The SSA will not consider the income or resources of your same-sex spouse as available to you. This also means that SSA will not change how it considers your

current living arrangement. Additionally, same-sex couples will not be considered for purposes of marriage as “holding out” spouses.

■ I currently receive SSI. If I choose to marry my same-sex partner, will my monthly benefits change?

No. The SSA will not recognize a marriage of a same-sex couple or deem a same-sex couple a married couple for purposes of determining SSI rates. This means that SSA will not change its definitions of living arrangements based on marriage between same-sex partners. Claimants in New York receive a small supplement to the benefit from the state based on their living arrangements, but New York has not announced any plan to change its definitions of living arrangements because of marriages of same-sex couples.

■ How does the Social Security Administration recognize marriages of transgender people?

The SSA policy is to “treat as questionable” any marriage where either party has changed his or her gender marker from the sex assigned at birth. For federal purposes, SSA will only recognize the marriage if it appears to be between different-sex spouses. If a transgender person originally married someone of a different sex, and then went through a gender transition, the fact that the transgender person and his or her spouse are now the same gender should have no effect on the recognition of the marriage by the federal government. If you face any difficulties with the SSA because you or your spouse identify as a transgender person, please contact **Lambda Legal’s Help Desk** at 212-809-8585 or visit www.lambdalegal.org/help for assistance.

Prepared by Legal Services NYC

New York State Income Tax

Please note that this document is not intended to provide tax advice or guidance regarding any specific situation.

A tax return is a document that you prepare and submit to the Internal Revenue Service (“IRS”) and New York State Department of Taxation and Finance. On the return, you report your income and calculate your tax for the year. You report your filing status, number of dependents, and other information in order to determine your tax. If you lived in New York for all or part of the tax year, and you are required to file a federal tax return, you are also required to file a New York state tax return.

■ If my same-sex partner and I choose to marry, how will this impact our New York state taxes?

Same-sex couples married as of December 31, 2011, will be required to use a married filing status when they file their 2011 New York state tax returns. This means you and your spouse have the option of filing your state tax return as “married filing jointly” or “married filing separately.” Couples choosing to file jointly should report all income, deductions, and exemptions on one tax return, and both spouses will be responsible for any tax owed. If you choose to file separately, each spouse should report his/her income, deductions and exemptions on a separate tax return, and will be responsible only for the tax reported on his/her individual return. Filing a joint tax return usually results in the lowest tax rate and may qualify you to claim certain tax credits. If you choose to file separate tax returns, you cannot claim the Earned Income Tax credit or the Child and Dependent Care credit.

■ Can my spouse and I file as married on our federal tax returns?

No. Because of DOMA, married same-sex couples are treated as unmarried for federal tax purposes. You must choose another appropriate filing status on your federal tax returns, such as “single” or “head of household.” Therefore, your filing status on your federal tax returns will be different from the filing status on your New York state tax returns.

However, New York requires that you determine what your federal tax liability would be *if* you were allowed to file a joint return. New York uses this information to determine your state tax liability and eligibility for certain credits.

■ Am I eligible to claim my spouse’s child as a qualifying child for a dependency exemption and tax credits?

Probably. Before the Marriage Equality Act was passed, same-sex couples could claim their partner’s children as dependents under limited circumstances. If you did not adopt your partner’s children, you were limited to claiming the children under the more restrictive rules governing non-relative dependents. Now that the Marriage Equality Act has passed, married same-sex couples can claim their partner’s children under the more liberal “qualifying child” rule.

Generally, your child (including an adopted child, step-child, or eligible foster child) is a “qualifying child” if the child is under 19, under 24 if he/she is a full-time student, or any age if the child is permanently and totally disabled. Your child must have lived with you for more than six months of the year. You can claim a dependency exemption for each qualifying child you claim, or could have claimed, on your federal tax return. Each dependency exemption claimed on your New York state tax return reduces your overall taxable income by \$1,000.00. If a child is your “qualifying child” for dependency exemption purposes, you may be entitled to claim that child for credits such as the Earned Income Tax credit, Child Tax credit, and Child and Dependent Care credit.

■ My spouse’s New York state tax refund is usually garnished because of a debt he/she owes. If we file a joint New York state tax return, will the whole refund get garnished?

Possibly. If your spouse has a New York state tax debt, a past-due support liability, such as child support, or enforceable debt to a New York state agency, such as a student loan, it is likely that your entire state tax refund will

New York State Income Tax *continued...*

be garnished and applied to the debt. You may be eligible to receive a portion of the refund if you are eligible for certain refundable tax credits, such as the Earned Income Tax credit. You must file form IT-280, Nonobligated Spouse Allocation, with your New York state tax return.

■ What if my 2011 New York state tax returns get audited?

Be sure to keep a copy of all relevant documents including your marriage license, dependent's birth certificates and social security cards, and adoption records. If audited you must be able to support the filing status, dependency exemptions and tax credits claimed on your return. Taxpayers

should be aware they cannot amend previous tax returns to claim a joint filing status; the Marriage Equality Act went into effect July 24, 2011, and is not retroactive.

■ What should I do if I face discrimination or my marriage is not respected in New York?

If you have any difficulty accessing benefits related to marriage or if you feel you have been discriminated against please contact **Lambda Legal's Help Desk** at 212-809-8585 or www.lambdalegal.org/help or **Legal Services NYC** at 646-442-3600 or visit www.legalservicesnyc.org, and click on "Find an office" in the top right corner.

Legal Services NYC is the largest organization in the United States devoted to providing free civil legal services to low income people, with neighborhood offices in every borough of New York City. It provides free help on cases involving housing, family issues, domestic violence, public benefits, income tax, employment, education, consumer rights, and economic development.

Lambda Legal is the oldest and largest nonprofit legal organization dedicated to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and those with HIV through impact litigation, education, and public policy work.