

# Illinois Civil Union Law

## Frequently Asked Questions

December 2011

On June 1, 2011 The “Illinois Religious Freedom Protection and Civil Union Act” went into effect. Below are answers to frequently asked questions about the civil union law and what it means for Illinoisans.

**Please note:** This document offers general information only and is not intended to provide guidance or legal advice regarding anyone’s specific situation. This is an evolving area of law in which there is bound to be uncertainty, and we will be working closely with Illinois attorneys to promote the best results. If you have additional questions, have encountered difficulty in obtaining appropriate recognition of your civil union status, or are looking for contact information for private attorneys who might advise you, contact Lambda Legal’s help desk at 866-542-8336 or [www.lambdalegal.org/help-form](http://www.lambdalegal.org/help-form).

### WHAT IS A CIVIL UNION?

Under Illinois’ law, a civil union is a legally recognized relationship of two people entered into by applying for and obtaining a state license from a county clerk’s office, having a formal ceremony, and having a confirming certificate issued by the clerk’s office. Both same-sex and different-sex couples can enter into a civil union. 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 Illinois law to married couples. However, a civil union is not a marriage. Illinois law continues to exclude gay and lesbian couples from marriage.

### WHO CAN ENTER INTO A CIVIL UNION?

You may enter into a civil union with a same-sex or different-sex partner if:

- you both are at least 18 years’ old
- neither of you is currently in a marriage or civil union or substantially similar legal relationship; and
- you are not closely related to each other by blood or adoption.

Same-sex couples who have already married each other or entered into a civil union in another jurisdiction do not need to enter a new civil union in Illinois; your status will qualify as a civil union in Illinois automatically. Those who have registered with an employer for domestic partner benefits or with a county or city as domestic partners must enter into a civil union if you would like the benefits, responsibilities, rights, and protections available to civil union partners.

### DO I HAVE TO ENTER INTO A CIVIL UNION IF I ALREADY MARRIED MY SAME-SEX PARTNER IN ANOTHER JURISDICTION (SUCH AS IOWA, THE DISTRICT OF COLUMBIA, OR CANADA), OR ENTERED INTO A CIVIL UNION OR REGISTERED DOMESTIC PARTNERSHIP ELSEWHERE?

The state of Illinois 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 Illinois.) With a broad or comprehensive legal status from another state, you do not need to take any additional steps to achieve recognition of your relationship as a civil union in Illinois. However, even though your relationship will be respected as a civil union in Illinois, we still encourage you to work with 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. There is no procedure to “register” your civil union with the state of Illinois if you have been married or civil unioned elsewhere.

### 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 through any county clerk’s office. The cost of applying for a civil union license varies by county, and is usually in the range of \$15 to \$40. Bring with you a form of identification, such as a birth certificate, driver’s license, or passport.

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, or, if applicable, the death certificate of your deceased spouse or partner. If you live outside of Illinois, the clerk may ask you to sign an affidavit stating that your home state does not prohibit you from entering into a civil union.

The civil union license is valid for 60 days, and is valid only in the county in which it was issued, which means that your civil union ceremony must take place within that county. There is a one-day waiting period before the license becomes effective. A court can waive this waiting period if you file a petition showing sufficient cause.

You may choose a judge, certain public officials, or a religious official to “officiate,” meaning to perform your ceremony. Your officiant must complete the certificate confirming that your ceremony has been performed, and forward it to the county clerk within 10 days of your civil union.

A list of county clerks offices can be found here: [www.idph.state.il.us/vitalrecords/countylisting.htm](http://www.idph.state.il.us/vitalrecords/countylisting.htm)

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

Yes, you should obtain a certified copy of your civil union certificate from your county clerk’s office. Using this legal document, you can go to various government agencies and businesses with whom you wish to update your records to your new name. These include, but are not limited to: the Illinois Secretary of State’s office for a new driver’s license or state ID; the State department for a passport; your bank to update your accounts; your employer; and any insurer with whom you have policies.

## **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 in addition to drawing up wills and powers of attorney, 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 ILLINOIS?**

### *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 different-sex 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 your children in addition to drawing up wills and powers of attorney, since you may travel to other states that will not respect your civil union or the presumption of parentage it creates);
- Dissolution of the civil union by a domestic relations 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*

- Automatic 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 you may travel to other states that will not automatically respect your civil union or the rights it grants);
- Automatic 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 such benefits will still be taxable under federal law as income for the employee).

### *Other Rights and Responsibilities*

- Right to file joint state income tax returns. It is still unclear whether the Illinois Department of Revenue will permit a 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 fireman 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;
- Right of an incarcerated person to phone a critically ill 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 WOULD NOT BE GIVEN TO CIVIL UNION PARTNERS?**

- All federal rights and responsibilities, including social security survivors' and spousal benefits, certain 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; authority to sponsor a spouse to immigrate; and
- 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?**

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. Generally, if the employer plan is government by the federal ERISA statutes, employers may choose not to provide benefits. 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 what your options are. Regardless of whether you work for a public or private employer, federal law treats spousal health insurance benefits to civil union partners as taxable income to the employee. Putting health insurance and pensions aside for the moment, both 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 different-sex couples;
- If either depends on public assistance and you are concerned that your civil union will affect your eligibility;
- 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 about how state law will interact with federal laws that do not recognize same-sex couples or unmarried different-sex couples.

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

You will need to file a petition for dissolution of your civil union (note that a marriage to a same-sex partner is treated as a civil union under Illinois law) using the same procedures that 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.

### **WOULD COUPLES GET THESE RIGHTS IF THEY ARE SOLELY REGISTERED AS DOMESTIC PARTNERS WITH AN EMPLOYER, OR ARE REGISTERED AS DOMESTIC PARTNERS WITH A COUNTY OR CITY?**

No. Couples who have registered with an employer for domestic partner benefits or with a county or city would not be protected under the new law unless they enter a civil union.

#### **For more information:**

Visit our website: [www.lambdalegal.org/help](http://www.lambdalegal.org/help); call our Help Desk at (866) 542-8336; or write us at 120 Wall Street, Suite 1500, New York, NY 10005.