

Marriage Equality for Same-Sex Couples in New York

Frequently Asked Questions

Lambda Legal is the leading national 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.

WHEN AND HOW TO GET MARRIED IN NEW YORK

When does the Marriage Equality Act take effect in New York?

The Act takes effect 30 days from enactment. The New York legislature passed the Act on June 24, 2011, and Governor Cuomo signed it into law that night, making the effective date Sunday, July 24, 2011. Since government offices are generally closed on Sundays, many municipalities will start issuing marriage licenses to same-sex couples on Monday, July 25, 2011. Clerks' offices in some locales have announced that they will open on Sunday, July 24, 2011, to begin issuing marriage licenses to same-sex couples as soon as possible.

New York City is holding a lottery, closing at noon July 21, 2011, for 764 couples to obtain marriage licenses and have their wedding ceremonies during special Sunday Clerk's Office hours on July 24, 2011. Go to <http://www.cityclerk.nyc.gov/html/marriagelottery.shtml> to register for the lottery. For five days after the 24th, through July 29, 2011, Clerk's Offices in all five boroughs will have the extended office hours of 8:30 am to 6:30 pm. It is also possible to start the license application process online already. Please visit the New York City Clerk's Office website at http://www.cityclerk.nyc.gov/html/marriagelesame_sex_couples_faq.shtml for more information, and watch for updates.

The City Clerk's Offices of **Binghamton** and **Syracuse** have said they will both be open on Sunday, July 24, 2011, from 10 am to 2 pm to issue marriage licenses.

The **Buffalo** City Clerk's Office has reported that currently it does not plan to open on July 24.

Check with local Clerk's Offices for more information about their hours and license application process.

Do the same marriage requirements that apply to different-sex couples now apply to same-sex couples?

Yes. The laws and regulations that generally govern the requirements and process for marrying in New York apply to lesbian and gay couples who wish to marry. Government

websites and city and town clerks' offices offer extensive information on an array of questions you might have about the process for getting married in New York. For example, for information about getting a marriage license within New York City, go to NYC Marriage Bureau, "Frequently Asked Questions," www.cityclerk.nyc.gov/html/marriagefaq.shtml.

For information about getting a marriage license elsewhere in the state, go to New York State Department of Health, "Getting Married in New York," www.health.state.ny.us/vital_records/married.htm. Answers to common questions are summarized below.

Who can marry under New York law?

To marry in New York you must both be at least 18 years old (or obtain parental consent if below that age), not currently married to anyone else and not close relatives of one another. See "Issues for Non-New York Residents" below for information about getting married in New York if your relationship is already legally formalized in some other way (such as an out-of-state marriage, a civil union or a domestic partnership).

How do we start the process to get married?

The first step is to apply for a marriage license from a town or city clerk in the state. You do not have to live in the part of the state where you get your marriage license.

Both partners must appear together in person to apply for their license.

THIS DOCUMENT OFFERS GENERAL INFORMATION ONLY and is not intended to provide guidance or legal advice regarding anyone's specific situation. Please bear in mind that this is an evolving area of law in which there is bound to be uncertainty.

If you have additional questions or are looking for contact information for private attorneys who might advise you, contact Lambda Legal's Help Desk at **212-809-8585** or at lambdalegal.org/help

Check ahead of time with the particular clerk's office to determine what exactly you'll need to bring with you. Generally, however, you'll need approved forms of proof of identity and age, such as a driver's license, passport, naturalization record and/or birth certificate.

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

You will also need to pay a fee. Within New York City, you will need to pay \$35 by money order or credit card; outside New York City you will need to pay \$40, using the form of payment required by the particular city or town clerk's office.

At the clerk's office you will need to fill out and sign an application for a marriage license.

Once you have satisfied all the requirements, your marriage license should be issued to you immediately by the clerk's office.

Once we have our license, when can we get married?

Unless you obtain a judicial waiver of the waiting period, you must wait 24 hours after your license is issued before you can get married, which New York's marriage laws call "solemnizing" your marriage. It may be possible to obtain judicial waivers of the waiting period, depending on your circumstances. Contact the Clerk's Office in your area for more information about obtaining a judicial waiver.

Once issued, your license is valid for 60 days.

How is our marriage solemnized?

Solemnization is an essential step to entering into civil marriage. You must take this step within the state; you cannot use your New York marriage license in a ceremony outside of the state. Some things to bear in mind:

- Only individuals authorized under New York law to officiate at a marriage ceremony may solemnize a marriage. New York grants this authority to a variety of people, such as mayors, judges, religious clergy, city clerks, and municipally appointed marriage officers.
- Besides the person authorized to solemnize the marriage, at least one witness must be present at the ceremony.
- New York does not require any particular form of ceremony when a marriage is solemnized, except that the parties must "solemnly declare" to take each other as spouses.
- In fact, New York also allows for a marriage to be solemnized by a written contract of marriage, signed by both parties and at least two witnesses within the state, and acknowledged before a judge.

Are religious clergy required to marry same-sex couples if that is counter to the dictates of the clergy's faith?

No. Although more and more denominations and clergy welcome same-sex couples, those that still wish to deny requests to marry them remain free to do so, just as some denominations refuse to marry people who are divorced or of a different faith than their partner. The Marriage Equality Act makes explicit that no clergy person is required to marry a same-sex couple. But under the Marriage Equality Act a same-sex couple cannot be denied a marriage license and the right to have their marriage legally solemnized by a civil servant such as a judge or clerk or by a willing clergy person.

Is a religious organization required to rent its facilities to anyone who wants to get married or throw their wedding celebration there?

No. The Marriage Equality Act and provisions already part of New York law exempt religious organizations and private "benevolent orders," like the Knights of Columbus, from non-discrimination requirements applying to public accommodations, like commercial banquet halls, with respect to wedding celebrations. This means that while commercial establishments are subject to non-discrimination requirements and cannot refuse services to same-sex couples, religious organizations and entities specifically defined under New York law as benevolent orders can choose not to provide their facilities for a marriage ceremony or celebration. Of course, there should be no shortage of businesses eager to serve same-sex couples among the thousands making up New York's wedding industry.

What happens after our marriage is solemnized?

Once the marriage has been solemnized, the officiate must sign the marriage license and include the date and time the marriage was solemnized. Within five days after the solemnization, the officiate must return the marriage license to the city or town clerk where the license issued.

The clerk should then send you a Certificate of Marriage Registration. This Certificate is notice that a record of your marriage is on file with the state. If you have not received this Certificate within four weeks after the wedding, contact the office where the license issued.

DECIDING WHETHER TO MARRY IN NEW YORK, YOUR HOME STATE

What will be our rights and responsibilities under New York law if we get married?

Married same-sex New York couples will have all the same protections and responsibilities under state law as any other

married couples. Already many New York same-sex couples have gone to other jurisdictions like Canada, Connecticut, Massachusetts and Vermont to marry. They have returned home to New York to have their marriages recognized here for nearly all state law purposes, *with the notable exception of some state tax provisions*. The rights and responsibilities married same-sex couples have already had under New York law will continue. *In the area of state tax law, married same-sex couples will also now be treated equally, as married.*

The enormous web of state-based rights and responsibilities includes, for example:

- rights relating to emergency medical care and hospital visitation
- economic protections upon the death of a spouse, such as inheritance rights
- rights regarding burial, autopsies and disposition of remains
- rights to bring wrongful death and other kinds of claims that depend upon spousal status
- rights to receive workers' compensation benefits if a spouse dies in the workplace
- health insurance and pension benefits for spouses of public employees
- entitlement to file joint state tax returns, take spousal deductions on state income taxes, exclude employer contributions for spousal health insurance from taxable income for state taxes, exempt property inherited from spouses from state estate tax, and receive tax exemptions when transferring interests in property
- rights and judicial forums relating to separation, divorce, and caring for children of the couple

You should also be aware that with the benefits of marriage come legal responsibilities, such as liability for your spouse's debts, limitations on your ability to make decisions about your property and who will inherit from you, and obligations to provide support for your spouse during both the marriage and in the case of a divorce.

How will New York State tax provisions be applied to married same-sex couples?

The Marriage Equality Act requires equal legal treatment of same-sex married couples under State law in all respects—and taxation is no exception. Although same-sex married couples continue to be treated as unmarried for federal tax purposes under DOMA, for state tax purposes they are treated as married.

The New York State Department of Taxation and Finance has issued important guidance to married same-sex couples on a range of state tax issues, which can be accessed at www.tax.ny.gov.

According to the Tax Department's guidance:

- **Personal income tax returns:** Married same-sex couples must file their state personal income tax returns as married, even though their marital status is not recognized for federal tax purposes. Couples married as of December 31, 2011 will be considered married for the entire year. They must file their state returns using a married status for the 2011 tax year. This does not apply retroactively to prior tax years.
- **Employer withholding and taxes on certain employment benefits:** Employers do not need to withhold state, New York City or Yonkers taxes on certain employment benefits provided to employees for their same-sex spouses. The Tax Department also suggests that married employees may want to file a new "Employee's Withholding Allowance Certificate" with their employers.
- **Motor vehicle sales and use taxes:** As of July 24, 2011, sales of motor vehicles between same-sex spouses or between a same-sex spouse and his or her child are exempt from sales and use taxes.
- **Estate taxes:** The New York taxable estate of an individual in a marriage with a same-sex spouse must be computed in the same manner as if the deceased individual were married for federal estate tax purposes. Accordingly, the same deductions and elections allowed for different-sex spouses are allowed for same-sex spouses, whether or not a federal estate tax return is filed. For New York State estate tax purposes, the Marriage Equality Act takes effect for the estates of decedents who died on or after July 24, 2011.

You should consult a professional tax advisor for information about your situation and advice and assistance with your taxes—Lambda Legal is not a tax advisor and does not offer tax advice.

What should we consider in deciding whether to get married now?

The important and personal decision about whether to marry is yours alone to make. New York same-sex couples face the same considerations as different-sex couples in deciding whether to marry. Marriage represents a profound emotional, social and legal commitment to another person, and also brings an enormous array of legal protections – and reciprocal responsibilities. So, for example, getting married could disqualify you from the state government's income-based public assistance programs, because your spouse's income and assets may be counted in with yours.

But same-sex couples, who are still discriminated against in other states and under federal law, face added considerations.

- For example, in states that have laws or constitutional amendments limiting marriage to different-sex couples, you cannot be certain whether your marriage will be respected should you travel or move there.
- That can mean that if you move to one of those states you will not be able to dissolve your marriage if you need to some day (as do roughly half of all married heterosexuals).
- If you are in the process of adopting a child or are planning to do so, you should be aware that some states and countries allow adoptions by single parents but not same-sex couples, so, depending on whether you would seek to adopt, your marriage could complicate matters for you.
- And under the so-called Defense of Marriage Act (DOMA), enacted by Congress in 1996, the federal government refuses to respect your marriage for federal purposes, like Social Security, federal income taxation and immigration. In fact, getting married can create serious issues for those with a vulnerable immigration status. The Obama Administration agrees with us that DOMA is unconstitutional, and DOMA is under challenge in several test cases around the country, including in Lambda Legal's lawsuit *Golinski v. United States Office of Personnel Management* (www.lambdalegal.org/in-court/cases/golinski-v-us-office-personnel-management.html) filed in federal court in California. But while those cases are being litigated, DOMA continues to be enforced.

In any event, if you marry under New York law, whether you are traveling or dealing with the federal government, YOU ARE MARRIED, and if you are not truthful about that, you may face legal penalties and make it easier for others to argue that even you do not always respect your marriage. So, while deciding whether to marry is a serious decision for anyone, gay or straight, gay people have to be prepared for and willing to take on additional challenges.

Should we file lawsuits if our marriage is not respected in other states or by the federal government?

You would be right to be angry that your marriage is disrespected by the federal government or by another state government. But we have to be careful about running into court so as not to cause legal setbacks for yourselves and other lesbian and gay couples. Already DOMA is being challenged by Lambda Legal and other civil rights organizations in several carefully planned test cases. It is best to proceed as part of a thoughtfully planned strategy so the effort is less likely to backfire and cause further harm to you and other same-sex couples. You should certainly contact

us before taking any step in this direction, at 212-809-8585. And remember there are other ways to combat discrimination besides rushing into court. See our website at www.lambdalegal.org for action steps you can take.

Can my partner and I get married if we are registered as domestic partners under the law of a city or county in New York?

It should be no impediment to marrying in New York that you and your partner registered as domestic partners in a New York locale. In fact, New York City and Albany domestic partnership laws specifically provide that a domestic partnership is automatically terminated upon marriage. It might be advisable for you to contact the government office where you registered as a domestic partner in other locales in New York to consider whether you should take any other steps with respect to your domestic partnership now that you are getting married.

Can my partner and I get married now in New York if we were married in some other jurisdiction?

In the past years, many New York same-sex couples have gone to other jurisdictions that allow same-sex couples to validly marry and have gotten married there. These marriages have been entitled to legal respect in New York, just as many out-of-state marriages of different-sex couples that could not be entered into in New York are nonetheless given legal respect here.

If you and your partner validly married in another jurisdiction, you are already a married couple in New York and your marriage should be fully respected here. You do not need to marry again in New York.

If for some reason you are still interested in re-marrying your spouse in New York, the marriage laws in New York permit this, but you would be well advised to consult a private attorney or contact Lambda Legal's Help Desk before you take this step to determine if it could carry legal complications for your family.

We live in New York but already entered into a civil union together in another state. Can we get married to one another in New York?

Yes. There is nothing in New York's marriage laws that should stand in the way of marrying here if you and your partner entered into a civil union together in New Jersey or another state. By marrying in New York you will be entitled to the myriad tangible and intangible legal protections that come only with marriage under New York law. However, you would be well advised to consult with counsel to make sure there are no legal consequences that might arise in your particular situation from entering into a New York marriage when you and your partner have already entered into a civil union together.

What if I have not terminated my domestic partnership, civil union or out-of-state marriage but I want to marry a different partner now in New York?

You should terminate your legal relationship with a prior partner before marrying a different partner in New York (unless you registered as a domestic partner in a place like New York City or Albany where a domestic partnership legally terminates automatically upon marriage). Not terminating the prior formal legal relationship could set up legal conflicts between the obligations arising from the prior relationship and those arising as the result of marrying in New York. And, of course, bigamy prohibitions forbid entering into marriages to two different people.

ISSUES FOR NON-NEW YORK RESIDENTS

Do I have to be a New York resident to get a marriage license and marry here?

No. You do not have to be a resident of New York or a citizen of the United States to receive a marriage license and solemnize your marriage in New York.

Should out-of-state same-sex couples get married in New York?

As with residents of New York, such an important and personal life decision is ultimately up to you and your partner. If you live outside the state but either of you work, spend considerable time or own property in New York, you may want to consult with an attorney to learn about legal protections that might apply to you under New York law if you marry in New York.

Out-of-state couples need to take important additional considerations into account as well. For example:

- Most home states will not respect your marriage, so you should be prepared for the hassles of consistently acknowledging that you are married, such as on your state's tax forms, while at the same time getting none of the benefits in your home state from doing so. And, as discussed above, running into court to challenge your state's disrespect for your marriage may well be unwise and could lead to losses in court that might be very difficult to reverse later.
- Also, you should take very seriously the fact that New York does have a residency requirement to commence a divorce or marriage dissolution proceeding. New York requires that at least one spouse must have lived in the state for at least one year before commencing a proceeding to end a marriage.

If the unexpected should happen and you someday want to terminate the marriage, you may be unable to obtain a divorce or dissolution in your home state, and if neither you nor your spouse has moved to New York, you would be unable to end your marriage here as well. You may be locked into a marriage you cannot dissolve.

- Your marriage also could result in serious negative consequences if, for example, you have a vulnerable immigration status or are in the process of adopting a child from a jurisdiction that does not permit placements with same-sex couples.
- If you already have obtained or could obtain formal legal recognition of your relationship in your home state through, for example, civil union or domestic partnership, you should consult with counsel on potential legal consequences in your situation from marrying in New York.

OTHER PROTECTIONS FOR COUPLES

Even if we get married, are there other precautions we should take?

Yes. This is a rapidly evolving legal area with much uncertainty. While some states now respect same-sex couples' legal relationships, the federal government and many other states currently do not to respect your marriage. So, it is especially important to consider whether you have adequate protections if you are traveling outside of New York. If possible, consult with an attorney about steps you should take in addition to your marriage to provide more security to your family. For example, you can further protect each other through legal documents like wills, health care proxies, advance directives and powers of attorney. It is also important that the non-biologically related parent of a child born to the marriage complete a second-parent adoption to ensure that other jurisdictions will respect both parents' parental status. Information about many of these protections is available in Lambda Legal's life-planning publication *Take the Power* (available at www.lambdalegal.org/take-the-power). Many of these legal protections are regularly obtained by married couples to afford greater security for their families; they can be that much more important for same-sex couples whose New York marriages may not be respected outside of the state.

In some other states marriage rights were taken away by ballot initiatives. How likely is that for New York?

Highly unlikely. In contrast to some other states, New York does not have a voter referendum or initiative process whereby voters could repeal at the ballot box a statute enacted and supported by

the legislature. Here, discrimination against same-sex couples in marriage would have to be enacted as an amendment to the State Constitution, a very difficult process in New York. Both houses of the legislature—which just enacted the Marriage Equality Act—would first have to approve the proposed amendment twice, in two legislative sessions, one before and one after a biennial general election of the Assembly. Only then could the proposed amendment even go to the voters in the following general election, a majority of whom would have to vote in favor of the discriminatory amendment to change the Constitution and take away marriage rights. This would be a many year endeavor, and should be unlikely to succeed in a State whose legislature has enacted marriage equality and where voter polls show majority, and steadily growing, support for the freedom to marry. That said, we must still always be vigilant in opposing efforts to elect anti-LGBT legislators and in opposing discrimination against our community.