

MARRIAGE FOR SAME-SEX COUPLES IN CALIFORNIA

Frequently Asked Questions
Last Updated: July 9, 2015

NOTE: This document is intended to provide information for same-sex couples who are considering getting married in California. It is not intended to be legal advice, and should not be taken as such. For legal advice concerning your particular situation, please consult an attorney.



NATIONAL CENTER FOR LESBIAN RIGHTS

Getting Married in California

Same-sex couples have had the freedom to marry in California since 2013, when the Supreme Court declined to hear the appeal in *Hollingsworth v. Perry*. This reinstated the trial court ruling invalidating Proposition 8, which had stripped same-sex couples of the freedom to marry. Thanks to the U.S. Supreme Court's 2015 ruling in *Obergefell v. Hodges*, same-sex couples have the freedom to marry throughout the United States. On June 26, 2015, the Court ruled that the Fourteenth Amendment requires states to allow same-sex couples to marry and to recognize marriages of same-sex couples performed outside of their home state.

Additionally, thanks to the Supreme Court's 2013 ruling in *Windsor v. United States*, all married couples in California – including same-sex couples – must be treated by the federal government as married, equally, and with respect. On June 26, 2013, the Court ruled that Section 3 of the so-called Defense of Marriage Act (DOMA), which had required the federal government to treat same-sex couples as unmarried and prohibited them from granting same-sex married couples any of the federal benefits, protections, and responsibilities based on marriage, violated our Constitution's guarantees of equality and liberty.

1. Can same-sex couples get married anywhere in California?

Yes. The legal order that stops the State of California from enforcing Prop 8 applies to government officials throughout the state.

2. What do we have to do to marry in California?

To marry in California, you and your partner must get a marriage license from the office of the Registrar-Recorder/County Clerk of any California county, and then have a ceremony performed by someone authorized to solemnize marriages in California (such as a judge or clergy member) within 90 days.

Both partners must go together to the county office, fill out the marriage license application, and present a government issued picture ID and proof that you are over 18 years old. (If either or both is younger than 18, different procedures apply.) Some counties have their marriage license applications posted online so you can fill them out before you arrive at the County Clerk's office. The license fee varies by county but generally is less than \$100. No blood test or health certificate is required. Call ahead or visit the county's website to learn the hours, locations, and fees of the county offices that issue licenses.

The marriage license is valid for 90 days, which means you have 90 days to go get married. Your marriage can be performed anywhere in California. The person who performs your ceremony must be authorized to solemnize marriages in California and must complete and sign your marriage license after the ceremony. In addition, at least one witness 18 years old or older must sign the marriage license. The license then becomes your marriage certificate, which must be returned to the same county in which you obtained the license for filing within ten days of the ceremony. You may also be able to have your ceremony performed at the county office on the same day you obtain a marriage license for an additional fee.

3. Who can marry us?

In California, persons who are legally authorized to solemnize marriage ceremonies include: clergy members; active and retired state court judges and court commissioners and assistant commissioners; commissioners of civil marriages or retired commissioners of civil marriage; justices or retired justices of the U.S. Supreme Court or judges, magistrate judges, retired judges, or retired magistrate judges of other federal courts; state legislators or constitutional officers of the state; and members of Congress who represent a district within this state.

Commissioners and Deputy Commissioners of Civil Marriages perform civil marriage ceremonies by appointment at designated county offices. There is a fee, which generally is less than \$50. Call ahead or visit the county website for more information. A couple can also have a friend deputized to perform

their marriage ceremony through a county "Deputy Commissioner for a Day" program. The specific requirements vary by county.

4. Should my partner and I marry?

Marriage is a serious legal and personal commitment. Before getting married, couples should educate themselves about the legal consequences of marriage.

Certain people should be especially cautious before deciding to marry, including people receiving certain government benefits (especially those receiving SSI disability benefits, TANF, or Medicaid) and people planning to adopt children internationally. If you are in this situation, we strongly suggest you consult an attorney about what marriage will mean for you before deciding to marry.

5. Is a marriage license a public record?

Yes, marriage licenses are public records; however, in California, couples can apply for a "confidential" marriage license. The only additional requirements for obtaining a confidential marriage license are that the spouses must be at least 18 years old, must be living together at the time they apply for the marriage license, and must sign an affidavit on the license attesting to those facts. The couple must be married in the county where the license is issued. The marriage license is a confidential record and is registered at the County Clerk's office in the county where it was issued. Only the spouses may obtain copies of the marriage license.

Persons other than the spouses may obtain copies of a confidential marriage license only by getting a court order permitting them to do so. When a couple obtains a confidential marriage license, the only information available as a matter of public record is the fact that each of the individuals is married; who, when, and where the person married, as well as the person's address aren't publicly available. This may be a good option for those who don't want others to know the name of their spouse or where they live.

6. What happens if we marry in California and later wish to divorce?

The only legal way to end a marriage is to go to court to get a divorce. Typically, in order to divorce in California, at least one of the spouses must be a resident of California for at least six months, and a resident of the county in which the divorce is filed for three months, before filing a divorce petition.

7. If we got married in California before Prop 8 went into effect is my marriage valid? Do we need to get married again?

If you got married in California between June 16, 2008 and November 5, 2008, your marriage is still valid and recognized by the state of California. In 2009, in the case of *Strauss v. Horton*, the California Supreme Court held that Proposition 8 did not state that it would have any impact on the marriages of same-sex couples who married in California before Prop 8 passed, and therefore could not affect them. If you married in California during that period, your marriage is completely valid and entitled to full recognition and respect. You don't need to get re-married.

8. If my partner and I were legally married in another state or country, will California recognize our marriage, or should we remarry in California?

Couples who are legally married in another jurisdiction are recognized as married in California as well, regardless of when they married. Your relationship won't have some other type of status such as a domestic partnership; it will be appropriately treated as a marriage. There is no need for you to re-marry in California.

Registered Domestic Partnerships and Marriage

9. Will couples who are registered domestic partners in California automatically become married?

No. Couples who are registered domestic partners are free to decide whether or not they wish to marry. Those who do wish to marry must go through the formal legal steps required for any couple in California to legally marry.

10. Will registered domestic partnerships in California continue to exist?

Yes. Domestic partnerships still exist under current California law.

11. If we're already in a registered domestic partnership in California, do we have to dissolve our domestic partnership before we can marry?

No. The California domestic partnership statutes permit an individual to be both married and in a registered domestic partnership, so long as it is to the same person.

12. Is there any reason for couples to be both married and in a registered domestic partnership?

Yes. Being married will protect you if you travel or move to another state that will recognize a marriage but not a domestic partnership.

13. Can I marry my current partner if I have a civil union or registered domestic partnership with my former partner?

No. Before you marry your current partner, you need to terminate or dissolve the previous legal relationship first. If you are in a civil union or registered domestic partnership with another person, any marriage to a second person will be invalid. Consult an attorney if you have questions about how to terminate a legal relationship with a former partner.

Marriage in the National Context

14. Can out-of-state couples marry in California?

Yes. There is no residency requirement to marry in California.

15. If my partner and I are from another state and marry in California, will our marriage be valid in our home state?

Yes. Because of the Supreme Court's decision in *Obergefell*, all states must recognize marriages of same-sex couples. In addition, at least eleven American Indian tribal nations explicitly allow same-sex couples to marry.

16. Will the federal government recognize marriages of same-sex couples who marry in California?

Yes. California, all other states and territories (with the possible exception of American Samoa), and the federal government will recognize your marriage. You will be eligible for federal protections and responsibilities afforded to all other married couples.

17. For same-sex couples in bi-national relationships, will getting married in California permit a non-U.S. citizen to gain legal permanent residence in the U.S.?

Because DOMA Section 3 has been held unconstitutional, there is a legal means for you or your spouse to apply for permanent immigrant status in the U.S. based on your marriage. So, in many cases, if you are married or get married, you can sponsor your spouse (or your spouse can sponsor you) for a green card (that is, legal permanent residence). However, immigration law is very complicated and you should speak with a qualified attorney before marrying or filing any marriage-based immigration petitions or adjustment of status application. Options for families will vary from case to case, based upon a number of factors, including: whether you and your partner are together or apart; whether you are living together in the United States or abroad; whether you and your partner have married; and for families together in the United States, whether the non-U.S. citizen partner arrived in the United States after having been inspected by an immigration officer or whether they entered without inspection. You and your partner are strongly encouraged to speak with a qualified immigration attorney to get legal advice before taking steps to marry or seek out an immigration benefit.

This FAQ doesn't address every circumstance in which same-sex bi-national couples may find themselves. But there are other FAQs that do. Please go to www.immigrationequality.org to look for more detailed guides about the impact the *Obergefell*, *Hollingsworth*, and *Windsor* rulings have on

immigration-related matters. Same-sex couples in bi-national relationships should consult an immigration attorney before getting married in California or another jurisdiction.

Parentage

25. What are my rights as a non-biological parent to my child?

In California, if you are married to or in a domestic partnership with the person who gives birth when your child is born, you should be fully respected as a parent in California. But we still strongly recommend that you confirm your legal rights through an adoption or other court judgment, because not all states fully respect non-biological parents. An adoption or court order has to be recognized in every state, even if they have different laws, so it is the best way to make sure that your parental rights will be protected. Parents who were married or in a domestic partnership when their child was born can do a confirmatory adoption that is cheaper and usually doesn't require a home visit, background check, or court hearing.

As is the case for other married couples, if a child was born in a prior relationship, the spouse of a birth parent can obtain a step-parent adoption if the other parent agrees, or if their rights are terminated.

California also provides many rights for unmarried non-biological parents. But, if you were not married when your child was born, it is even more important that you get an adoption or other court order saying you are a parent, because many states do not protect unmarried non-biological parents.

California also allows children to have more than two legally-recognized parents in some situations. If you are in this situation, it is very important to get an adoption to protect all your child's parents' rights. Many other states do not recognize that a child can have more than two parents, but other states must recognize an adoption from another state.

Protection from Discrimination

18. Do religious institutions or clergy members have to perform marriages for same-sex couples?

No. The government may not discriminate against same-sex couples by barring them from civil marriage – a legal institution established and regulated by the government. Religious institutions and clergy members remain free to decline to perform marriages of anyone they want. Some faiths don't permit same-sex couples to marry within that faith; however, a growing number do. Under current California law, all couples regardless of their sexual orientation may choose to be married by a clergy person in a welcoming community of faith or by a civil servant such as a judge or authorized deputy.

19. Can an employee in the clerk's office refuse to give us a license or refuse to sign our license application because they object to marriages between same-sex couples?

No. Civil servants otherwise required to issue licenses for civil marriages may not refuse to do so because of personal beliefs or religious objections. When clerks review marriage license applications, they act on behalf of the State of California. For that reason, they may not treat one group of applicants differently from another group solely because of personal religious objections. If you have any issues or problems with a clerk, please contact one of the LGBT legal organizations listed on this document (ACLU, Lambda Legal, or National Center for Lesbian Rights).

20. Can a private business, such as a florist, photographer, or event space refuse to provide space or a service for my wedding because I am marrying a person of the same sex?

No. California law doesn't permit business establishments that provide goods or services to the public to discriminate on the basis of sexual orientation, gender identity, gender expression, or marital status.

This prohibition on discrimination applies regardless of the religious beliefs of a business owner or employee. Note, however, that this anti-discrimination protection may not apply to some private, membership-based clubs and organizations that aren't generally open to, and don't serve or conduct business transactions with, the general public. If someone is denying you services or event space for your wedding, please contact one of the LGBT legal organizations listed on this document (ACLU, Lambda Legal, or National Center for Lesbian Rights).

21. Can an employer refuse to hire me because I've married my same-sex partner?

Generally, no. California law prohibits employment discrimination based on sexual orientation, gender identity, gender expression, and marital status. However, if your employer or prospective employer is a religious corporation or association, the answer may, in some limited circumstances, be more complicated. If you are facing any problem in employment related to marrying your same-sex partner, please contact one of the LGBT legal organizations listed on this document (ACLU, Lambda Legal, or National Center for Lesbian Rights).

22. Can my employer refuse to provide my same-sex spouse with employment benefits that they give to different-sex spouses or refuse to recognize my marriage as valid?

Generally no. With respect to benefits, California law forbids employers from discriminating on the basis of sexual orientation or gender identity when administering most employment benefits. In addition, federal employment law bars employers from providing their workers unequal benefits based on their sex, which should protect those married to a same-sex spouse. (Note, as discussed above, that the rules that apply to certain religious corporations in certain narrow situations are sometimes different.) If you are having problems with employment benefits please contact one of the LGBT legal organizations listed on this document (ACLU, Lambda Legal, or National Center for Lesbian Rights).

With regard to health benefits, because the Supreme Court struck down Section 3 of DOMA, and because the Court made same-sex marriage legal throughout the United States, if your spouse is covered under your employer's health plan, you and your spouse should be eligible for the following additional federal protections (although note that these protections are generally not available to couples who are registered domestic partners but are not married):

- The value of your spouse's health insurance won't be treated as taxable income to you (the employee) or to your spouse.
- Your spouse and children have the right to remain on your health plan if you lose your job or your hours are reduced, or if you divorce or separate. This is known as "COBRA coverage" or "COBRA continuation coverage." While your employer has to allow you and your children and spouse to remain insured, you can be required to pay the full cost of those benefits. (Nothing prevents a plan from providing continuation coverage to domestic partners, but such coverage isn't required by federal law.)
- While most health plans only let you enroll at specific times, marriage or divorce are "qualifying events" that will let you enroll or un-enroll outside those specific time periods.

23. Can a landlord refuse to rent a house or apartment to my spouse and me?

No. California law prohibits housing discrimination based on sexual orientation, gender identity, gender expression, and marital status.

24. If my partner and I get married, can an adoption or foster agency discriminate against us?

No. California prohibits adoption and foster care agencies from discriminating on the basis of sexual orientation and gender identity. However, international adoption follows different rules, and many countries don't allow gay prospective parents to adopt.

For more information about your freedom to marry and antidiscrimination protections, please [contact us](#) or visit www.marriageequalityfacts.org.