



How to Get Married in Massachusetts

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Introduction

The process for getting married in Massachusetts basically requires an eligible couple to submit an application for a license and pay a fee to any city or town clerk in Massachusetts. After a three-day waiting period (unless it has been waived by a court), the couple will receive the license from the clerk, and must then have the marriage solemnized (i.e., have a ceremony in Massachusetts) within 60 days of filing the application. Once the ceremony has been performed, the person who performed it will state the time and place of the wedding on the license, sign it, and send it back to the city or town where the couple received it. The clerk will then register the marriage and the couple can receive an official certificate of their marriage.

Anyone can marry in Massachusetts. You don't need to be a resident of Massachusetts or a citizen of the United States. However, if you are not a resident of the United States, you should contact the clerk in the town or city where you intend to marry to make sure that you bring the appropriate identification documents.

Until June 26, 2013, the 1996 federal Defense of Marriage Act (DOMA) prevented same-sex married couples from accessing the 1,138 federal laws that pertain to marriage. On that date, the United States Supreme Court, in *Windsor v. United States*, ruled that DOMA was unconstitutional. That case was filed by the American Civil Liberties Union, but GLAD filed the first challenge to DOMA in 2009, *Gill v. OPM*, and the legal framework developed in that case was used in subsequent cases, including the *Windsor* case.

Exactly two years later, on June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that it was unconstitutional to prevent same-sex couples from marrying,¹ and so now every state must allow same-sex couples to marry and must respect the marriages of same-sex couples, regardless of where the couple married.

¹ The case was argued by GLAD attorney, Mary Bonauto. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

The detailed process for getting married in Massachusetts, whether you should enter into a marriage, and what it all means are questions this publication will address.

The Basics

Who can marry?

To be eligible to marry in Massachusetts, both parties must:

Be 18 years of age or older (or else have a judge’s permission to marry younger)

Any person under the age of 18 who wants to marry must obtain a court order from the probate or district court of his or her city or town of residence. The minor’s parents or guardians must go with him or her to court and consent to the marriage.²

Not be married to anyone else (any divorce must be final at the time of application)

If you are married to another person, you cannot marry your partner until you have divorced the other person.³ Entering into another marriage before you have legally ended the first is bigamy, a crime punishable by up to five years in prison or two and a half years in jail, or by a fine of up to \$500.⁴ In addition, if you have not legally ended the first marriage, the second marriage may be “void,” i.e. may not be a valid marriage.⁵

The municipal clerks may ask for proof of divorce. If you have such proof, you should take it with you. If you do not, at a minimum, you should know the date of the court judgment and the court that issued the divorce and be prepared to go to another clerk’s office if the first one demands proof you cannot provide.

See the sections, “Non-Massachusetts Residents Who Married In Massachusetts Prior to July 31, 2008” and “Same-Sex Couples Who Are Already Married Or Have a Civil Union or Domestic Partnership” for information about getting married in Massachusetts if your relationship is already legally recognized in some way.

² G.L. ch. 207, § 25.

³ G.L. ch. 207, §§ 4, 6.

⁴ G.L. ch. 272, § 15.

⁵ G.L. ch. 207, § 8.

Not be closely related by blood or marriage to his or her intended spouse.

A person may not marry his or her:

parent or stepparent

parent's sibling

grandparent or grandparent's spouse

child

grandchild or grandchild's spouse

sibling or sibling's child

spouse's parent, grandparent, child or grandchild⁶

This prohibition remains even if the marriage that created the familial relationship has ended by death or divorce.⁷

Do we have to be a Massachusetts resident?

No. Any couple from anywhere in the world, same-sex or different-sex, can marry in Massachusetts, if otherwise qualified. Non-U.S. residents should check with the clerk in the city or town where they intend to marry to find out what identification documents are needed.

How do we get a marriage license?

Step one: Both people who are marrying must appear in person⁸ at any city or town hall⁹ and fill out the application form called a *Notice of Intention of Marriage* (see www.glad.org/uploads/docs/publications/intention-of-marriage-form.pdf). (Note: Prior to January 28, 2005, in order to receive the marriage license from the town or city clerk, both parties needed to get a blood test, but this is no longer a part of the marriage licensing process.) This form requires the following information for each party:

- Name

⁶ G.L. ch. 207, §§ 1, 2.

⁷ G.L. ch. 207, § 3.

⁸ Both members of the couple do not have to file this form in person if one of you is in the military. Also, only one of you need be present if the other is incarcerated.

⁹ G.L. ch. 207, § 19.

- Date of Birth
- Occupation
- Address of residence
- Number of previous marriages and how the last marriage ended (death or divorce)
- Existence of present or former Civil Union or state-created Domestic Partnership, and dissolution status, if any
- Birthplace
- Full name of parents (including middle and maiden names)
- Gender
- Disclosure of whether applicants are related by blood or marriage

Each applicant must swear before the clerk that all information in the form is true and that no legal impediment exists to the marriage.¹⁰ Any false statement is punishable by a fine of up to \$100.¹¹

Applicants must also complete a supplement to the Notice of Intention that is sent to the state Registry of Vital Records and Statistics. The Registry may make the information in this supplemental form, which includes each applicant's name, residence, and *social security number* (or reason for not having a social security number), available to state and federal agencies for purposes of child support enforcement or other purposes required by law.¹² The city and town clerks charge a fee for processing the notice of intention of marriage and issuing the license. Since this fee varies, you should contact the clerk in the city or town where you plan to apply.

Step two: After a three-day waiting period (see “*What’s the story on the three-day waiting period?*” below), go back to the city or town hall where you filed your application and receive the license. The license is valid for 60 days starting from the day after you filed the notice of intention.¹³

¹⁰ G.L. ch. 207, § 20.

¹¹ G.L. ch. 207, § 52.

¹² G.L. ch. 207, § 20.

¹³ G.L. ch. 207, § 28.

Step three: Have a wedding ceremony within the state of Massachusetts. The marriage must be solemnized by some official (like a Justice of the Peace or member of the clergy) who is authorized by the state to perform marriages. He or she will then send the license back to the clerk and your marriage will be officially registered by the state.

What do we need to bring with us when we apply?

In order to receive a marriage license, both members of the couple must bring:

Proof of age

Some cities and towns require applicants to demonstrate their ages (such as by showing a certified birth record or passport), particularly if an applicant is not much older than 18, before they will issue the license.¹⁴ Even if the city does not require this proof, if a clerk does not believe you are over 18, he or she may not issue the license without proof, requiring you to return and start the application process over.¹⁵ Clerks have been advised to accept the following records as proof of age (stated in order of preference): (1) original or certified copy of birth certificate; (2) original or certified copy of baptismal certificate; (3) passport; (4) life insurance policy; (5) employment certificate; (6) school record; (7) immigration record; (8) naturalization record; or (9) a court record.

Money

The city and town clerks charge a fee for processing the Notice of Intention of Marriage and issuing the license. This fee varies, consequently you should contact the clerk in the city or town where you intend to apply. Because some clerks and courts take checks and some do not, better to be on the safe side and bring cash.

In addition, there is usually an extra fee if the couple wants a certified copy of the marriage certificate after the marriage has been solemnized and registered, which fee ranges from about \$5 to \$15 per copy.

¹⁴ For example, the city of Boston requires proof of age for all applicants under 24 years of age.

¹⁵ G.L. ch. 207, § 33A.

How do I change my surname?

In addition to being a marriage application form, the Notice of Intention of Marriage form also operates as a legal name change document should you choose to change your last name upon marriage. Questions 3A and 11A on the Notice of Intention ask for the surname you wish to use after marriage. By completing that question, your marriage certificate will identify you by your new last name. The advantage to changing your name at the time of marriage is that it allows you to avoid the \$165 fee for initiating a name change through the usual process at the probate court. The usual process is still available to you if you choose to wait.

A certified copy of the Massachusetts marriage certificate will allow you to change the surname on your Massachusetts driver's license, your social security card and your passport.

What's the story on the three-day waiting period?

Massachusetts law requires couples to file the Notice of Intention of Marriage at least three days before their wedding.¹⁶ The license will not be issued until at least the third day from the filing of the notice.¹⁷ To be clear, in computing the three-day period, you do not count the day that you submitted the notice (i.e., if you submit the notice on Monday, the earliest you can receive your license is Thursday), but you do count Saturdays, Sundays and holidays.¹⁸

Can I get married without waiting the requisite three days?

It is possible to obtain a waiver of the three-day notice period from a Massachusetts District Court (also referred to as a municipal court) or Probate Court. There is no guarantee that this waiver will enable you to marry on the same day. At some courts, it may take time to find an available judge to grant the waiver, and the actual processing of the requisite marriage documents (including the marriage application, court waiver, and marriage license) may be time intensive.

¹⁶ G.L. ch. 207, § 19.

¹⁷ G.L. ch. 207, § 28.

¹⁸ G.L. ch. 207, § 19.

Obtaining a waiver

Both the District Court and the Probate Court “recommend” that couples follow steps 1-5 below, in order, to obtain a waiver. However, both courts will permit couples to start at step 2, but this “recommended” approach may shorten the time you have to wait when you arrive at the city or town clerk’s office with the court waiver in hand.

1. A couple must file a Notice of Intention of Marriage with a city or town clerk. (Out of an excess of caution, you may want to obtain a copy of your completed Notice of Intention to take to the courthouse in case a court chooses to require proof that the “recommended” procedure has been followed, but you are not expressly required to do so).
2. Both members of the couple must go together to either the Registry in any Probate Court or the Clerk’s Office in any District Court.
3. At court, the couple must request a certificate waiving the notice period¹⁹ (called a “Marriage Without Delay” form), pay a fee – \$65 in Probate Court, \$195 in District Court (in cash, some courts do not take checks). If you started at Step 1, you may wish to present the completed copy of your Notice of Intention of Marriage.
4. The couple will be granted access to a judge who will ask the couple questions concerning their qualifications to marry in Massachusetts. These questions may include: whether each applicant is older than 18 years old; whether either has already been married, and if so, whether any pre-existing divorce is final. Once the judge is satisfied that the couple is eligible to marry, the court, in its discretion, may grant a certificate authorizing the waiver of the three-day notice period. There is no specific reason you need to give in response to a question asking why you want the waiver. It should suffice to say that you intend to get married within the next three days or simply that you do not want to wait any longer to marry.

¹⁹ G.L. ch. 207, §30.

5. With the newly issued certificate from the court in hand, the couple must return to the same city or town clerk where they filed their Notice of Intention of Marriage and present their certificate from the court. If you started at step 2, you can go to any city or town clerk's office of your choosing. Upon receipt of your court waiver, the city or town clerk should prepare the marriage license for issuance without waiting for the expiration of the three-day notice period.

Though this process may seem relatively straightforward, there are a few details worth considering.

First, if you follow the courts' "recommended" procedures, the entire process will require two trips to the clerk's office and one trip to the courthouse. (If you start at Step 2, this shortcut will allow you to make one trip to the courthouse and one trip to the city or town clerk). Please understand that processing the waiver certificate from the court and the marriage license from the clerk may take longer than you anticipate.

Second, if you or your partner are unsure of whether a clerk will allow you to marry (maybe because you have an existing marriage to the same person), it is advisable to simply wait the three days to avoid the court waiver process which may – depending on the application process – needlessly subject your application to a second level of review, or force you to pay \$65 or \$195 for a waiver that a city or town clerk refuses to process.

Who can perform the ceremony?

There are three options: (1) in-state Justice of the Peace (JP) or clergy; (2) out-of-state clergy, only if special permission granted by the Secretary of the Commonwealth of Massachusetts; and (3) a specially designated "Justice of the Peace for-a-day," only if special permission is granted by the governor.

First, any willing in-state justice of the peace, minister, rabbi, priest, imam or other person authorized by a faith community that has filed information about the authorized persons with the state secretary's office can solemnize a marriage in Massachusetts.²⁰

²⁰ G.L. ch. 207, § 38.

Justices of the Peace (JPs) can be found by going to the website www.mjpa.org/find-a-justice-of-the-peace. We do not know and cannot vouch for how friendly these folks will be. By searching the internet for “ma gay friendly justices of the peace” you can find JPs who are LGBT friendly.

JPs cannot charge more than \$100 for solemnizing a marriage in his or her home community or \$150 for a ceremony elsewhere in Massachusetts. They cannot require any additional charge for travel, or for providing flowers, music, a photographer, or a location for the ceremony. They may charge more for prenuptial counseling, rehearsals or other special requests, however, so long as the amount of these extras is given to the couple in writing at least 48 hours before the scheduled services. Additionally, if the justice of the peace is a municipal employee and the marriage is taking place at a municipal building during regular business hours, the fee can't exceed the limits set by the municipality.²¹ You can ask at the clerk's office about this information.

Second, out-of-state clergy may perform a ceremony in Massachusetts if they receive authorization from the Secretary of the Commonwealth of Massachusetts. Detailed information and an application form can be found at: www.sec.state.ma.us/pre/premar/marnon.htm.²²

Third, it is possible for a layperson (a non-minister or non-justice of the peace, such as a friend or family member) to obtain special one-time permission from the Governor's office to perform a particular marriage on a particular date in a particular city. This process requires the prospective officiant to submit an application to the Governor's office **at least six weeks before the wedding**, along with a registration fee of \$25 payable to the Commonwealth of Massachusetts and a letter of reference written by someone other than the people to be married stating the high standard of character of the proposed officiant. Once these are submitted and approved, the proposed officiant will receive a Certificate of Solemnization from the Secretary of the Commonwealth, which must be turned in with the marriage certificate to the city/town hall that issued the marriage license after the ceremony has been performed. The Governor may revoke the officiant's designation, but only for

²¹ G.L. ch. 262, § 35.

²² G.L. ch. 207, § 39.

cause – a.k.a. not for discriminatory reasons. For more information or to get a copy of the application, you can contact the Governor’s Appointments Office at (617) 725-4080, ext. 35339, or see www.mass.gov/governor/constituent-services/one-day-marriage/one-day-marriage-designation-new-application.html. If the wedding date approaches and you have not received permission, you may want to consider the other two options (outlined above) for having a marriage solemnized in Massachusetts.

Do we need witnesses for the ceremony?

Massachusetts law does not require that witnesses be present for a civil ceremony. If a member of the clergy is marrying you, however, you might want to ask whether your religious doctrine, if any, requires witnesses.

Is there anywhere else that we can get married?

Yes. On June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that it is unconstitutional to deny same-sex couples the right to marry,²³ and so now same-sex couples can marry anywhere in the United States and every state and the federal government must recognize the marriages of same-sex couples.

There is information about getting married in Massachusetts, Vermont, Connecticut, New Hampshire, Maine, Rhode Island and Canada (same-sex couples can marry in Canada, and there is no residency requirement) on GLAD’s website at: www.glad.org/rights/publications/c/marriage/.

For information about getting married outside New England, contact Lambda Legal (www.lambdalegal.org).

Some people may be able to wed outside the United States (see https://en.wikipedia.org/wiki/Same-sex_marriage for a list of countries), but some of these locales have residency and other requirements that make it difficult for non-citizens to marry.

²³ GLAD Attorney, Mary Bonauto, argued this case. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

Non-Massachusetts Residents Who Married In Massachusetts Prior To July 31, 2008

What is the status of our marriage if we were non-Massachusetts residents and married in Massachusetts prior to July 31, 2008?

Prior to July 31, 2008, an old law from 1913 was used to prevent most out of state same-sex couples from marrying in Massachusetts, unless the couple expressed an intent to reside in Massachusetts. Same-sex couples from Rhode Island, New Mexico, New York (prior to July 6, 2006) or California (after June 15, 2008) should have been allowed to marry without having to state an intent to reside in Massachusetts. After July 31, 2008, any same-sex couple was able to marry in Massachusetts without being asked whether they intended to reside there.

NOTE: There is a very small number of couples from out of state who married in Massachusetts in the first few days after the right to marry began on May 17, 2004, who were not asked whether they intended to reside in Massachusetts. If you are in that group, contact GLAD Answers at www.GLADAnswers.org or (800) 455-GLAD (4523) if you have questions about the validity of your marriage.

If you married in Massachusetts prior to July 31, 2008, expressed an intent to reside in Massachusetts on the Notice of Intention of Marriage, but did not carry out that intent, you still have a valid marriage. However, since it is possible that one member of the couple could raise this as an issue as to why the marriage should be annulled, the marriage is called “voidable.” However, since this does not seem to be an issue that is central to marriage, it is unlikely that a court would consider this a serious enough “defect” to void the marriage.

However, for those couples who wish to remove all doubt, Massachusetts has created the opportunity for you to remarry in Massachusetts and by doing so “perfect” your marriage—i.e. remove any possible defect in the marriage.

In order to remarry the same person you previously married:

- You must have married in Massachusetts, having a Mass. Certificate of Marriage and a Mass. Notice of Intention of Marriage on file in a Mass. City or Town Clerk's Office;
- You must be currently still married to each other – not having been divorced and not having had your marriage annulled or voided by a court.

Although you might be able to “perfect” the defect in your marriage by marrying someplace other than Massachusetts, remarrying in another state may raise additional questions about the validity of your Massachusetts marriage and about when your marriage began, and as a practical matter the town clerks in those states may not allow you to remarry. If you choose to remarry in Massachusetts, Massachusetts will view the start of your marriage to be the date on the original marriage certificate.

What is the process for remarrying in Massachusetts?

If you wish to remarry in Massachusetts, you need to follow some very specific directives:

1. You should plan to file the new form, the Mass. “Notice of Intention to Remarry” at the same Clerk's Office in the City or Town in Massachusetts in which you previously filed your Mass. Notice of Intention of Marriage. (If you go to a different City or Town Clerk, you will need to obtain and bring with you certified copies of your prior Mass. Notice of Intention of Marriage and of your Certificate of Marriage from the prior City or Town Clerk. If you return to the same Clerk's Office, they will have your records on file and available for review.) Even if returning to the same Clerk's Office, it would be wise to bring your existing Mass. Certificate of Marriage with you.
2. The reason for this is that the Clerk will need to verify that you actually married in Massachusetts.

3. The Mass. Notice of Intention of Remarry that you will file is a completely new form (see www.glad.org/uploads/docs/publications/intention-to-remarry-form.pdf). Question 7A asks the “STATUS OF CURRENT MARRIAGE,” and you both need to be able to check all three boxes in Question 7A: “Never divorced”; “Never annulled by court order”; and “Never voided by court order or by operation of law at time of marriage.”
4. At that point, assuming the Clerk’s Office is satisfied that you qualify, the process will be exactly the same as your prior experience in Massachusetts, with one exception. There is no 3-day waiting period to receive your license to remarry.

What happens if we choose not to remarry?

Nothing. As far as Massachusetts is concerned, you have a valid marriage unless a court says otherwise. Most often, it is the parties to the marriage itself who can ask a court to dissolve or annul a “voidable” marriage. If one spouse dies before the marriage is annulled or invalidated by a court, the death would typically end any opportunity to have the marriage annulled or declared void. Third parties, like private employers, relatives or creditors, generally cannot ask a court to annul or invalidate the marriage in this situation. If you have questions about the vulnerability of your existing Massachusetts marriage in your current state of residence, you should consult an attorney.

For more information see GLAD’s publication, *Legal Issues for Non-Massachusetts Same-Sex Couples Who Married in Massachusetts Prior to July 31, 2008*, at www.glad.org/uploads/docs/publications/married-non-ma-couples.pdf.

Same-Sex Couples Who Are Already Married Or Have a Civil Union or Domestic Partnership

Can I get married in Massachusetts if I am already legally married?

Regardless of where you legally married, your marriage will be respected in Massachusetts.

Should you desire to marry the *same person* again in Massachusetts, *if you originally married in Massachusetts and have remained married without a divorce or annulment*, Massachusetts has a process for remarrying where a couple files a *Notice of Intention to Remarry*. See the section above for details.

Although this process was primarily created to allow out-of-state couples, who married in Massachusetts while the so-called “1913 law” was in effect, to “perfect” any defects in their marriage, it can be used by any couple who meets the **bold** criteria in the paragraph above.

If you originally married somewhere other than Massachusetts and wish to marry the *same person* again in Massachusetts, nothing in the law expressly prevents you from doing so. As a practical matter, clerks may not process your application. The forms you must fill out to apply for a marriage license require you to state if you have previously been married, and if so, how that marriage ended. Consequently, the general practice of clerks has been not to allow already-married couples to complete the legal paperwork to renew their vows, regardless of any ceremony a couple might have.

In addition, even if you receive a license and are married again in Massachusetts, it is uncertain what the legal effect of the latter marriage would be. There is no case law on this in Massachusetts, but a 1925 opinion of the Attorney General suggests that, while there is no impediment to the issuance of a marriage license to two people already married to one another, if the earlier marriage is valid, the subsequent marriage has no legal effect.²⁴

²⁴ Op. Att’y Gen., Oct. 16, 1925, p. 729.

Conversely, getting married again in Massachusetts could be used as evidence that you believed your original marriage was not valid, and thus could affect how a court or other entity would apply the protections of marriage to your relationship during the time period between the two marriages. For example, if you were to divorce, a judge might question whether property you acquired as a couple after you married the first time, but before you married the second time, is actually property of the marriage.

However, if you have a marriage with one person and wish to marry a ***different person***, you must first dissolve your existing relationship, since otherwise you would have a legally recognized relationship with two different people which would violate Massachusetts' bigamy law.²⁵ When you complete the marriage application, the clerk will ask you if you have been previously married and if so whether it ended by death, divorce or annulment. For information about dissolving a marriage in Massachusetts, see the section below, *How Do I Get Out Of A Marriage In Massachusetts?*

Can I get married if I have a Civil Union?

Yes, so long as you intend to marry the ***same person*** with whom you already have a civil union.

As the result of a GLAD lawsuit, *Todd Elia-Warnken v. Richard Elia*,²⁶ the Massachusetts Supreme Judicial Court ruled that civil unions are to be respected as equivalent to marriage in Massachusetts in all court proceedings. So if you have a civil union with a ***different person***, you must dissolve it before getting married or, as was described above, you would be guilty of bigamy.

Can I get married if I have a comprehensive Domestic Partnership from California, Oregon, Washington or Nevada?

²⁵ G.L. ch. 272, § 15.

²⁶ See <http://www.glad.org/work/cases/todd-elia-warnken-v.-richard-elia..>

Persons who are registered as domestic partners with the State of California (under A.B. 205) or the State of Oregon (under the Oregon Family Fairness Act) or the State of Washington (under the Act Relating to Further Expanding the Rights and Responsibilities of State Registered Domestic Partners) or the State of Nevada (under an Act Relating to Domestic Relations. . .) are arguably subject to the principles discussed above for civil unions. Thus, if you intend to marry the *same person* with whom you are registered in a California, Oregon, Washington or Nevada domestic partnership, your legal status in California, Oregon, Washington or Nevada would not prevent you from marrying in Massachusetts.

As the result of a recent GLAD lawsuit, *A.E.H. v. M.R.*,²⁷ the Massachusetts Supreme Judicial Court ruled that comprehensive domestic partnerships are to be respected as equivalent to marriage in Massachusetts in all court proceedings. So if you have a comprehensive domestic partnership with a *different person*, you must dissolve it before entering into a marriage or, as described above, you would be guilty of bigamy.

Termination of a California domestic partnership can take different forms and, in some cases, does not require a court proceeding. You should seek advice and consult California's informative brochure at www.ss.ca.gov/dpregistry/forms/sf-dp_termbrochure.pdf. For information about ending an Oregon, Washington or Nevada domestic partnership contact Lambda Legal (www.lambdalegal.org, 212-809-8585).

Can I get married if I have a non-comprehensive Domestic Partnership?

The term “domestic partnership” has no universal definition. The exact meaning of the term and the rights and responsibilities accorded to persons in a domestic partnership vary, sometimes dramatically, from jurisdiction to jurisdiction. The clerks in Massachusetts have been instructed to interpret the term “domestic partnership” to mean only “a relationship that states create to provide certain rights, obligations, and benefits to people who either cannot, or do not want to marry.”

²⁷ See <http://www.glad.org/work/cases/aeh-v-mr>.

On the Massachusetts marriage application form (i.e., the “Notice of Intention”), you will be asked whether you have a state-created domestic partnership, and if so, whether it has been dissolved. The Massachusetts clerk will not prevent you from marrying regardless of your answers to these questions, because the questions are being asked for statistical purposes only.

However, if you intend to marry someone *other* than the person with whom you presently have a state or municipal domestic partnership, GLAD recommends that you formally dissolve the domestic partnership first. Further, if you marry the person with whom you have registered as domestic partners, your marriage may impact your domestic partnership status, so it is important to look into the law of the state or municipality where you previously registered.

NOTE: Couples who have a civil union or domestic partnership will not be able to receive most FEDERAL benefits, since, with the exception of Social Security, those benefits are only available to MARRIED couples.

What Are Some Things We Should Consider Before Entering Into A Marriage?

A marriage is an important commitment and should be considered carefully. Entering into a marriage can affect many aspects of your public and private life.

It is important to make an informed choice about whether to enter into a Massachusetts marriage based on your relationship with your partner and the unique circumstances of your life. You should consult an attorney in your home state before entering a marriage in Massachusetts.

In preparing to consult with an attorney, here are a few issues to consider:

- Entering into a marriage may complicate matters if you are in the process of adopting a child or considering adoption in the future. Most foreign countries welcome single-parent adoptions but do not allow same-sex couples to adopt. This is also true for some states in the United States.
- Entering into a marriage may revoke any existing will.²⁸
- Being in a marriage could disqualify you from certain state government programs that are based on financial need because your spouse's income and assets may be included with your own, and your collective income and resources may be too high.
- Under Massachusetts law, persons who are married or are responsible for their spouse's debts such as medical bills, rent and the purchases of items that support the family or benefit the couple.²⁹
- Under Massachusetts law, a spouse of a marriage generally cannot completely disinherit a spouse by leaving the spouse out of her or his will unless the couple signed a valid prenuptial agreement. As a result, a spouse is entitled to a share of your estate.³⁰
- Under Massachusetts law, a marriage can be dissolved only if certain residency requirements are satisfied (see the section, *How Do I Get Out Of A Marriage in Massachusetts?*). With dissolution of a

²⁸ G.L. ch. 191, § 9.

²⁹ G.L. ch. 209, § 1.

³⁰ G.L. ch. 191, § 15.

marriage in Massachusetts, the court will determine property division, alimony, child custody and child support if the parties cannot agree on these issues themselves. Under Massachusetts law, the court can consider any property owned by either or both of the parties as property subject to distribution in a dissolution proceeding unless the parties enter into an otherwise valid pre-nuptial agreement addressing the question.

- Foreign nationals should not marry or apply for a spousal benefit without consulting an experienced immigration attorney. Although, now that DOMA has been ruled unconstitutional, in some cases a U.S. citizen can sponsor a foreign national spouse for permanent residency, immigration law is complex and the success of a spousal application depends on a number of factors.
- Once you are in a marriage, you have assumed a legal status that will have to be disclosed on forms and records in a variety of public and private contexts.
- 29 states and the federal government still have no explicit anti-discrimination protections for sexual orientation. This means that in some cases same-sex married couples may still face discrimination (e.g. not being able to obtain spousal health benefits from an employer or being discriminated against in employment, housing, or public accommodations). However, both the federal Equal Employment Opportunity Commission (EEOC), which accepts complaints about employment discrimination, and the federal Department of Housing and Urban Development (HUD), which accepts complaints about housing discrimination, have processed some claims of sexual orientation discrimination using a different protected characteristic, like sex or disability.³¹ . If you are being discriminated against, please contact GLAD Answers.

³¹ For more information go to: www.glad.org/uploads/docs/publications/eec-clarifies-protections.pdf and http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

What Protections Do We Gain From A Marriage in Massachusetts?

A marriage gives you automatic inclusion within and under hundreds of Massachusetts state laws that apply to spouses, family and next of kin. Here are some categories of Massachusetts laws that relate to marriage:

- family law, including marriage, dissolution, and support;
- title, tenure, descent and distribution, intestate succession, wills, survivorships, or other incidents of the acquisition, ownership or transfer (during life or at death) of real or personal property;
- state and municipal taxation;
- probate courts and procedure;
- group insurance for state government employees;
- family leave benefits;
- financial disclosure and conflict-of-interest rules;
- protection against discrimination based on marital status;
- emergency and non-emergency medical care and treatment, hospital visitation and notification, and authority to act in matters affecting family members;
- state public assistance benefits;
- workers' compensation;
- crime victims' rights;
- marital privileges in court proceedings;
- vital records and absentee voting procedures;
- protection from spousal abuse; and
- recognition as married for all MassHealth programs.

Many private parties – e.g., employers, landlords, public accommodations, etc. – are subject to the state law prohibiting discrimination based on marital status and sexual orientation.³²

³² In many instances, the non-discrimination law will mean equal treatment for same-sex marriages v. different-sex marriages. However, because of federal law, there may be circumstances in which this non-discrimination protection will not be available to same-sex spouses. For examples of where federal law may direct different treatment for same-sex spouses, see employment-related health insurance below.

In addition, now that DOMA has been ruled unconstitutional, same-sex married couples in Massachusetts have access to the 1,138 federal laws that pertain to married couples. These include:

- the right to file federal taxes as married
- spousal retirement and survivor Social Security benefits
- FMLA leave
- spousal COBRA coverage
- right to file jointly in bankruptcy
- spousal military and veteran benefits
- spousal SSI and SSDI benefits
- right to be treated as married under Medicaid, Medicare and Temporary Assistance for Needy Families
- spousal benefits for federal employees
- and many more

Family law attorneys highly recommend that couples consider entering into a prenuptial agreement before joining in a marriage to clarify what they consider to be the length of their relationship, the ways they wish their property to be divided (in the event that their wishes vary from usual dissolution laws), and other matters of particular concern to them.

Although being in a marriage offers many protections for you and your family, GLAD strongly recommends a “belt and suspenders” approach – i.e., also consult with an attorney who can work with you to put in place the legal planning documents that will offer your relationship and family the maximum protection. You should use the services of an attorney to:

- Gain expert advice and use multiple strategies (through wills, trusts, agreements) to ensure your wishes can be met to the largest degree possible no matter what the situation at your death;
- Do tax planning – income tax, gift tax, estate tax – at the state and federal levels; and
- Do Medicaid and long term care planning, concerning issues like assets available to both spouses, asset transfer issues, and liens.

Respect For Your Massachusetts Marriage

Respect by the Federal Government

When DOMA was ruled unconstitutional by the United States Supreme Court on June 26, 2013, for the first time, same-sex married couples gained access to the federal laws that pertain to marriage. However, same-sex married couples, living in states that did not recognize their marriages, were still disqualified from certain federal programs, like Social Security and veterans' benefits.

The United States Supreme Court decision in *Obergefell v. Hodges* on June 26, 2015 requires all states to respect the marriages of same-sex couples, and so all married same-sex couples now have their marriages respected by the federal government for all purposes, e.g. taxes, Social Security (including SSDI and SSI), immigration, bankruptcy, FMLA, federal student financial aid, Medicaid, Medicare, veteran's benefits, TANF and many more, ***provided they meet the requirements of the program.***

Some programs (like Social Security) have required that the marriage was respected by the state of residence on the date the application was made, or in the case of spousal survivor benefits, on the date the spouse died. As a result, the federal government may still seek to disqualify some same-sex spouses from receiving certain federal benefits. If you have been denied benefits on this basis, please contact GLAD Answers.

Also, while DOMA was in effect, if an employer granted a spousal benefit to an employee (e.g. allowing the spouse of the employee to be on the company health plan), the employee was taxed on that benefit. Now that DOMA is gone, that is no longer the case.

Unfortunately, one issue that was not resolved by taking down DOMA was whether an employer can be legally required to provide health insurance to a same-sex spouse. If the company has a self-insured health plan, that plan is controlled by a federal law called ERISA, and because the federal anti-discrimination employment law, Title VII, does not explicitly prohibit

discrimination based on “sexual orientation,” some employers are claiming that they are not legally required to provide this benefit to same-sex spouses.

Also, if the health plan is insured and the owner of the plan is situated in a state that doesn’t have explicit “sexual orientation” anti-discrimination protections, some employers are choosing to discriminate against same-sex spouses.

However, for both self-insured and insured health plans, nothing prevents the employer from offering coverage to same-sex spouses. If your employer is discriminating against same-sex spouses, contact GLAD Answers.

Respect for the Marriages of Same-Sex Couples Outside of Massachusetts

The United States Supreme Court decision in *Obergefell v. Hodges* on June 26, 2015 guarantees that the marriages of same-sex couples will be respected anywhere in the United States. If your marriage is not respected, please contact GLAD Answers.

How Will A Marriage Affect My Children?

There is no more important question than establishing legal parenthood. This document can only provide general information. For you and your children, we cannot urge more strongly that you consult an attorney about undertaking co-parent adoption for any current non-legal parents – particularly in light of the information below.

As to legal status as parents, if both parties to the marriage were parents before the marriage (e.g., through joint or second-parent adoption), both parties remain parents.

If one party to the marriage was not a parent before the marriage, the marriage will not change that. He or she will be considered a stepparent, carrying whatever weight that status has in Massachusetts. The sure way to become a legal parent in this situation is for the non-legal parent to adopt the child. Moreover, that adoption decree from the court is a legal judgment. As a result, it should be recognized broadly outside of Massachusetts and has legal significance independent of the marriage.

If two people joined in a marriage subsequently have a child, both parties may be legally presumed to be the legal parents of a child born to either of them. In Massachusetts, a child born into a marriage is presumed to be the child of both parties, and both parents' names are listed on the birth certificate. Nonetheless, this is just a presumption and does not have the same effect as a court judgment. It is subject to being challenged and overturned.

In addition, parentage through the marriage could encounter a lack of respect in some states and foreign countries, so relying on the fact of the marriage alone to protect your children is not the best approach. Therefore, GLAD strongly recommends that you consult a lawyer and continue the practice of securing a second-parent adoption in order to obtain a decree of legal parenthood that should be recognized broadly outside of Massachusetts, independent of the marriage.

Beyond these considerations, entering into a marriage will provide your children with every protection and benefit that the Massachusetts and federal governments extend to enhance the security and safety of children's lives.

Will I Be Able To Get Health Benefits Through My Employer For My Massachusetts Spouse?

If you are employed by the Commonwealth of Massachusetts, a Massachusetts county or a Massachusetts municipality, your same-sex spouse will be entitled to the same health insurance rights and benefits provided to different-sex married employees.

If you are employed by the federal government, the health plans offered through the Federal Employees Health Benefits Program now cover same-sex spouses of federal employees wherever the employee lives.

If you are self-employed, you should be able to purchase coverage for your same-sex spouse on the same terms as a self-employed different-sex married individual.

If you are a private sector employee, the picture is more complicated and evolving.

First, your employer may not be required to offer health insurance and otherwise may not be required to offer spousal or family coverage. Assuming your employer provides individual, spousal and family coverage, your employer is certainly permitted to extend coverage to same-sex spouses.

Unfortunately, one issue that was not resolved by taking down DOMA was whether an employer can be legally required to provide health insurance to a same-sex spouse. If the company has a self-insured health plan, that plan is controlled by a federal law called ERISA, and because the federal anti-discrimination employment law, Title VII, does not explicitly prohibit discrimination based on “sexual orientation,” some employers are claiming that they are not legally required to provide this benefit to same-sex spouses.

Also, if the health plan is insured and the owner of the plan is situated in a state that doesn't have explicit “sexual orientation” anti-discrimination protections, some employers are choosing to discriminate against same-sex spouses.

Will I Be Able To Get Health Benefits Through My Employer For My Massachusetts Spouse?

However, for both self-insured and insured health plans, nothing prevents the employer from offering coverage to same-sex spouses. If your employer is discriminating against same-sex spouses, contact GLAD Answers.

Under a federal law known as COBRA, private employers with 20 or more employees are required to continue group health coverage for departing employees and covered dependents for a set period of time following certain events. Employers are now required to offer COBRA coverage to the same-sex spouses of employees if they are on the employee's health plan. Massachusetts also has a "mini-COBRA" state law that applies to employers with 2-19 employees.

Another federal law with a major impact on health insurance is HIPAA. HIPAA allows dependents of a covered employee to enroll outside of the normal open enrollment period. Employers are now required to apply the same rules for both different-sex and same-sex married couples.

Also, while DOMA was in effect, if an employer granted a spousal benefit to an employee (e.g. allowing the spouse of the employee to be on the company health plan), the employee was taxed on that benefit. Now that DOMA is gone, that is no longer the case.

Can A Same-Sex Married Couple in Massachusetts File A Married Tax Return?

Now that DOMA has been ruled unconstitutional and all states must respect the marriages of same-sex couples, same-sex married couples **MUST** file a married federal and state income tax return (either married filing joint or married filing separately).

The Internal Revenue Service allows you to file an amended return up to three years from the original date the return was due. For example, if the original due date was April 15, 2013, you have until April 15, 2016 to file an amended return. Some same-sex couples who originally filed “single” returns may benefit from filing amended returns as “married” (provided the couple was already married during those tax years).

In addition to changing status from “single” to “married” on those returns, if imputed income was added to the income for a particular tax year because an employer provided spousal benefits, then the amount of imputed income can be deducted on those amended returns. Finally, if the spouse’s portion of a health plan premium was taxed, that amount can also be deducted when filing the amended return.

Contact GLAD Answers at www.GLADAnswers.org or at 800-455-GLAD (4523) if you need further information or want referrals to a tax attorney. Also see www.glad.org/doma/topics/c/federal-taxes-poc-rule for more detailed information.

How Do I Get Out Of A Marriage In Massachusetts?

Although there is no residency requirement to enter a Massachusetts, there are residency requirements for obtaining a divorce in Massachusetts. Specifically³³:

- if the grounds for divorce occurred in Massachusetts, then one of the spouses must reside in Massachusetts;
- if the grounds for divorce occurred outside Massachusetts, then one spouse must be a resident of Massachusetts for at least one year.

Same-sex married couples will also be able to divorce in any state, provided the couple meets the residency requirement for divorce in that state.

Also, the federal laws that pertain to divorce (such as QDROs or a federal tax deduction for alimony payments) will now apply to the divorce of a same-sex married couple.

For more information on this topic see GLAD's publication, *Separation, Divorce and Marriage Equality*, at:
www.glad.org/uploads/docs/publications/separation-divorce-equality.pdf.

If you need to dissolve a marriage and you reside in New England, contact GLAD Answers at www.GLADAnswers.org or 800-455-GLAD (4523) for the latest information and attorney referrals. If you reside outside New England, contact Lambda Legal at their National Headquarters (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (NCLR) (www.nclrights.org, 800-528-6257).

³³ G. L. ch. 208, §§ 4 & 5.

Other Legal Protections for Same-Sex Couples

Regardless of whether a couple has a legal relationship (such as a marriage, civil union or domestic partnership), what steps should a Massachusetts couple take to safeguard their relationship?

1. Relationship or Pre-Nuptial Agreement or Contract: In 1998, the Massachusetts Supreme Judicial Court ruled that written cohabitation agreements by unmarried parties regarding property and finances will be respected and honored according to ordinary rules of contract law.³⁴ This ruling provides greater incentive for couples to sort out their affairs in writing before a separation. Note that the rules governing cohabitation contracts between married people are based on what is “fair and reasonable,” a more generous standard which is not available to unmarried persons. And as in any state, specific provisions concerning children may not be enforced according to their terms because it is always in the court’s power to determine the best interests of children.

2. Power of Attorney: Any competent person may appoint another person as his or her “attorney-in-fact” for financial matters in the event the one becomes incapacitated or disabled.³⁵ If no such appointment is made, then a “family” member will be empowered to make decisions for the disabled or incapacitated individual.

A person may also nominate his or her guardian or conservator -- a longer term appointment which takes priority over the attorney-in-fact -- in the same document. An individual’s choice can only be rejected by a court for good cause or disqualification. The mere fact that a family member is not appointed is not good cause.

3. Health Care Proxy: Since medical care providers look to next-of-kin to make health care decisions for an incapacitated individual, an unmarried person must appoint a health care proxy if he or she wishes

³⁴ *Wilcox v. Trautz*, 427 Mass. 316 (1998).

³⁵ Mass. Gen. Laws, chap. 190B, Article V, §§ 5-501—5-507.

another person to make those decisions instead of the family member. Under Mass. Gen. Laws, chap. 201D, a person may appoint a health care agent to make decisions for him or her upon incompetence. This can be revoked at any time by creating a new health care proxy or by a clear expression of revocation. People often give a copy of the health care proxy to their doctors and sometimes to family members.

4. Will:³⁶ Without a will, a deceased unmarried person's property passes to: (1) his or her children; (2) his or her family; (3) if next-of-kin cannot be located, to the state. If the person wishes to provide for others, such as his or her partner, a will is essential. Even if a person has few possessions, he or she can name in the will who will administer his or her estate. If a person has children, he or she can nominate the future guardian of the child in a will. **If you marry, any existing wills are revoked unless they indicate the marriage in some way.**

5. Funeral Planning Documents: Upon death, a person's body is given to their next-of-kin. This can mean that a person's own partner has no right to remove the body or make plans for a final resting place. But if a person leaves explicit written directions giving another person (such as their partner or a friend) control over the funeral and burial arrangements, any confusion can be avoided. Some people include these instructions as part of a will, but since a will may not be found for days after death, it is preferable to give the instructions to the person you want to take care of matters as well as to family members.

6. Living Will: Within a health care proxy, language may be inserted stating what the individual wishes regarding termination of life support, preferences for types of medical care, or limits on the agent's authority.

7. Temporary Agent or Guardianship: Parents, particularly those with serious illnesses, may either appoint a temporary agent³⁷ for a period not exceeding 60 days or appoint a guardian³⁸ whose appointment takes

³⁶ See generally, G.L. ch. 190B, Articles II & III.

³⁷ G.L. ch. 190B, Article V, § 5-103.

³⁸ G.L. ch. 190B, Article V, §§ 5-201—5-212.

effect when the parent dies or becomes unable to care for the child. Within 30 days after the appointment of a guardian, the guardian must petition the Probate and Family Court for confirmation of the appointment. The parent has the right to revoke the powers of the temporary agent or guardian at any point.

Does a person need an attorney to get these documents?

GLAD recommends working with an attorney on these documents. Although some forms are available, the form may not be suited to your individual needs and wishes. Moreover, attorneys may be able to help effectuate your goals, for example, by drafting a will in a way which is more likely to deter a will contest by unhappy family members, or drafting a health care proxy with your specific instructions.

If a couple separates, what is the legal status of a Relationship Agreement/Contract?

Upon separation, the terms of a Pre-Nuptial, Relationship or Partnership Agreement/Contract will come into play if the couple has one. Absent an agreement, couples can get involved in costly and protracted litigation about property and financial matters but without the divorce system (available to all married couples) to help them sort through it.

What happens if things change?

If a person has changed his or her mind about who should be his or her attorney-in-fact, or health care agent, or beneficiary or executor under a will, or funeral planner, then those documents should be revoked -- with notice to all persons who were given copies of those documents, and new documents should be prepared which reflect the person's present wishes.

Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.

GLAD Answers and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

To make a tax-deductible contribution, log on to www.glad.org, or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

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