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Legal Issues For Non-Massachusetts Same-Sex Couples Who Married In Massachusetts Prior To July 31, 2008

(Updated November 5, 2014)

Prior to July 31, 2008, there was a law in effect in Massachusetts, the so-called “1913 law,” that prevented most out-of-state same-sex couples from marrying in Massachusetts **UNLESS** both members of the couple expressed an intent to reside in Massachusetts on the Notice of Intention of Marriage (the marriage application form couples initially complete at the city or town clerk’s office). On July 31, 2008, the “1913 law” was repealed, and so from the date on, any same-sex couple from any state or anywhere in the world can come to Massachusetts and marry, provided the couple meets Massachusetts’ other marriage requirements.

For out-of-state couples who did marry in Massachusetts **between May 17, 2004 and July 30, 2008**, here is some important information about the status of your marriage. You will need to know the answers to four questions:

1. When did you get married in Massachusetts (#2 on the Certificate of Marriage)?
2. What city or town issued your Certificate of Marriage?
3. What did you list as your state of residence (#6 and #14 on the Certificate of Marriage)?
4. Did you indicate an intent to reside in Massachusetts (#6A and #14A on the Notice of Intention of Marriage)?

If you do not know the answers to any of these questions (i.e. if you do not have a copy of your Certificate of Marriage or don’t remember how you answered #6A or #14A on the Notice of Intention of Marriage), then contact the town or city clerk where you applied for your marriage certificate. If you don’t remember the city or town that issued your Certificate of Marriage, you can contact the Massachusetts Registry of Vital Records and Statistics at 617-740-2600.

What is the status of our marriage if we indicated on the Notice of Intention of Marriage that we did NOT intend to reside in Massachusetts?

Only a handful of out-of-state same-sex couples, who married in the first few days after marriages began in Massachusetts on May 17, 2004, should have been able to say that they did NOT intend to reside in Massachusetts and still have been allowed to fill out the marriage application form. If you are one of those couples, contact GLAD Answers at www.GLADAnswers.org for information about the status of your marriage.

What is the status of our marriage if we were not a resident of Massachusetts and indicated on the Notice of Intention of Marriage that we did intend to reside in Massachusetts and have at some point become residents of Massachusetts?

You have a wholly valid marriage. You do not need to take any further action.

What is the status of our marriage if we were not a resident of Massachusetts and indicated on the Notice of Intention of Marriage that we did intend to reside in Massachusetts and have not yet carried out that intent?

Your marriage is valid, but there is a “technical defect” because you did not carry out the intent to reside in Massachusetts, and so the legal term for this is that your marriage is “voidable.” All this means is that, if you want to dissolve your relationship, one spouse could use this “technical defect” to try to convince a court that the marriage should be declared “void” (i.e. as though it never happened), thus avoiding the divorce process with all the protections that offers to both spouses.

This “technical defect” is not central to the marriage itself, and so it is very unlikely that any court would declare your marriage “void” based solely on your failure to carry out the intent to reside in Massachusetts. We are not aware of any court that has done so.

So the bottom line is that your marriage is valid, unless at some point a court says otherwise.

If we have not yet carried out the intent to reside in Massachusetts, is there anything we can do to correct this “technical defect” in our marriage?

Yes. The Commonwealth of Massachusetts has adopted a new policy to allow couples married in Massachusetts to “remarry.” In order to remarry the same person you previously married:

- the couple must have married in Massachusetts, having a Certificate of Marriage on file in a Massachusetts city or town clerk’s office;
- the couple must be currently still married to each other – not having been divorced and not having had their marriage annulled or voided by a court.

If you have a “voidable” marriage and meet the criteria above, by remarrying you can remove any question about the validity of your marriage. 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 “Notice of Intention to Remarry” at the same clerk’s office in the city or town in Massachusetts in which you previously filed your 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 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). The reason for this is that the Clerk will need to verify that you actually married in Massachusetts.

(3) The Notice of Intention of Remarry that you will file is a completely new form (see <http://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 in your home state.

FOR INFORMATION ABOUT THE PROCESS FOR MARRYING OR REMARRYING IN MASSACHUSETTS, SEE GLAD’S PUBLICATION: “*How to Get Married in Massachusetts*” at <http://www.glad.org/uploads/docs/publications/how-to-get-married-ma.pdf>.

?QUESTIONS?

Contact GLAD Answers by email or live chat at www.GLADAnswers.org or by phone at 800-455-GLAD (4523).