



Marriage in Maine

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Contents

| | |
|--|----|
| ■ INTRODUCTION | 1 |
| ■ HOW DO WE GET MARRIED IN MAINE? | 3 |
| ■ WHAT IF I AM ALREADY MARRIED OR HAVE A CIVIL UNION OR DOMESTIC PARTNERSHIP? | 9 |
| ■ HOW DOES THE MAINE MARRIAGE LAW INTERACT WITH RELIGION? | 12 |
| ■ WHAT ARE SOME THINGS WE SHOULD CONSIDER BEFORE GETTING MARRIED? | 15 |
| ■ ARE THERE OTHER WAYS IN MAINE TO PROTECT OUR RELATIONSHIP? | 17 |
| ■ WHAT RESPONSIBILITIES AND PROTECTIONS COME WITH BEING MARRIED IN MAINE? | 18 |
| ■ HOW WILL OUR MARRIAGE BE RESPECTED? | 23 |
| ■ HOW WILL MARRIAGE AFFECT MY CHILDREN? | 25 |
| ■ WILL I BE ABLE TO GET HEALTH INSURANCE THROUGH MY EMPLOYER FOR MY SPOUSE IN MAINE? | 27 |
| ■ HOW DOES A MARRIED COUPLE IN MAINE FILE FEDERAL AND STATE INCOME TAX RETURNS? | 29 |
| ■ HOW DO I DISSOLVE A MARRIAGE IN MAINE? | 30 |

Introduction

On November 6, 2012, Maine became the first state to allow committed same-sex couples to obtain government marriage licenses through a popular vote of the people rather than a court case or vote by a legislature. Maine Question 1, *An Act To Allow Marriage Licenses For Same-Sex Couples And Protect Religious Freedom*,¹ was approved by the voters 53 to 47 percent.

This Act:

- repeals the provision that limits marriage to one man and one woman,
- authorizes marriage between any 2 persons who meet the other marriage requirements of state law,
- specifies that a marriage between 2 persons of the same sex in another state that is valid in that state is valid and must be recognized in Maine, and
- provides that a member of the clergy is not required to perform and a religious institution is not required to host or perform a marriage in violation of religious beliefs, and that refusal
 - cannot be the basis for a lawsuit or legal liability, and
 - will not affect the tax-exempt status of the religious institution.

Anyone can marry in Maine. You don't need to be a resident of Maine 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.

¹ See http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/IB000301.asp.

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,² 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.

This publication lays out the process for getting married in Maine, what to do if you are already in a legal relationship, some things to consider before making the decision to marry, what protections and responsibilities Maine provides to married couples, how your marriage will be respected and several areas that are affected by marriage.

² The case was argued by GLAD attorney, Mary Bonauto. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

How Do We Get Married in Maine?

Who can marry?

A same-sex couple³ may enter into marriage in Maine if they meet the following criteria:

- Neither person is a party to another marriage with a different person⁴;
- Each person is at least age 18 (someone who is 16 or 17 can marry with permission from a parent or guardian⁵ and someone under 16 also requires permission from a probate judge)⁶;
- Neither person is incapacitated (unless the incapacitated person has a guardian who consents);⁷
- Neither person is the other's parent, grandparent, child, grandchild, sibling, sibling's child or parent's sibling.⁸

Do we have to be a Maine resident?

No. Neither member of the couple needs to be a Maine resident as long as each member of the couple is otherwise eligible to marry. Non-resident couples can go to any town or city in Maine to apply for a marriage license and can then have the marriage solemnized in any town or city in Maine. 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.

³ Different-sex couples who wish to marry a first cousin must produce a physician's certificate of genetic counseling. *See* 19-A M.R.S.A. § 701(2)(B).

⁴ 19-A M.R.S.A. § 701(4).

⁵ 19-A M.R.S.A. § 652(7).

⁶ 19-A M.R.S.A. § 652(8).

⁷ 19-A M.R.S.A. § 701(3).

⁸ 19-A M.R.S.A. § 701(2)(A).

How do we get a marriage license?

APPLICATION FOR A LICENSE

Maine residents must get an application form (officially called a “Notice of Intention of Marriage”) from the clerk of the town where either party resides. Non-residents may go to any town clerk in the state to obtain a marriage license.⁹

You can see a copy of the “Intention of Marriage” form at: <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>. The forms are being revised to encompass the marriages of same-sex couples.

Both parties must sign the application under oath certifying that all the information is correct¹⁰ and pay a fee to the town clerk. The clerk then delivers a marriage license to the couple. There is no required waiting period between completing the application and receiving the marriage license.

PERFORMING (SOLEMNIZING) THE MARRIAGE

After obtaining the license, the couple must have the marriage solemnized (ceremony performed) within 90 days of completing the application for the marriage license anywhere in Maine by an official authorized to solemnize a marriage. If the certification is delayed for more than ninety days, a new license must be obtained.¹¹

The following can serve as “officiants” to perform/solemnize the marriage:¹²

- These officiants must be residents of Maine:
 - a judge or justice

⁹ 19-A M.R.S.A. § 651(1)

¹⁰ 19-A M.R.S.A. § 651(2).

¹¹ 19-A M.R.S.A. § 652(3).

¹² 19-A M.R.S.A. § 655(1).

- a lawyer admitted to the Maine bar
- a notary public¹³

- These officiants do not need to be residents of Maine:
 - an ordained minister of the Gospel
 - a cleric or person licensed to preach by an association of ministers, religious seminary or ecclesiastical body.

(Please see below for the discussion of the religious exemption for clergy and religious institutions.)

- A resident of another state who is authorized to solemnize marriages in that state can apply to the Office of Data, Research and Vital Statistics to obtain a temporary certificate to solemnize the marriage of a couple that is indicated in the application.¹⁴

- Marriages among the Quakers, Friends or members of the Baha’i faith may be solemnized in the manner used by those societies.¹⁵

The Maine marriage ceremony requires the presence of an officiant, two additional witnesses and the couple, but the couple has freedom regarding the particulars of their marriage ceremony.

- ***Sidebar: What If I Contact A Notary Who Tells Me She Or He Won’t Perform My Marriage?***

The Maine Secretary of State issued the following email to clerks and notaries in December 2012. It explains that, as a general matter, notaries may perform marriages but need not do so. If notaries do perform marriages, then they must do so on a non-discriminatory basis. The text of the email provides:

¹³ You can search for Maine notaries at: <http://www5.informe.org/online/notary/search/>.

¹⁴ Directions and the application form can be found at: <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/forms/index.shtml>.

¹⁵ 19-A M.R.S.A. § 658.

The citizen initiated legislation authorizing the issuance of marriage licenses to same-sex couples that was adopted by the voters at the general election of November 6, 2012 will take effect as a new law on December 29, 2012.

A Maine Notary Public is authorized to solemnize marriages pursuant to 19-A MRSA §655.1. This provision does not require Notaries Public to solemnize marriages.

There are also no provisions in Maine's notary laws that require a Notary Public to perform marriages. Therefore, if you refuse to perform a marriage, you have not violated any of Maine's notary laws. However, if you are a Notary Public who performs marriages and you refuse to perform a marriage for a couple due to a person's race, color, sex, sexual orientation, physical or mental disability, religion, creed, age, ancestry or national origin, you may be subject to a claim of discrimination under the Maine Human Rights Act, 5 MRSA §§ 4551-4634.

The new law authorizing same-sex marriages does not provide any exemption from liability for Maine Notaries who refuse to perform marriages for same-sex couples.

CERTIFYING THE MARRIAGE

The official who has solemnized the marriage must complete the ceremony portion of the marriage license, and then that person and the two witnesses must certify the marriage by signing the marriage license. Once the license is signed, it then becomes known as the marriage certificate.¹⁶

Within seven days of the solemnization, the official who solemnized the marriage must return the marriage certificate to the town clerk who issued it.¹⁷

¹⁶ 19-A M.R.S.A. § 656(2).

¹⁷ 19-A M.R.S.A. § 654(2).

Once the marriage certificate is returned to the town clerk, the town clerk records the certificate in the permanent records of the town. The clerk must send a copy of the certificate to the State Registrar of Vital Statistics.

What will the clerk require in order to process our application?

- Besides basic information about yourselves (names, towns of residence, places and dates of birth), you must also provide your parents' names, including your mothers' maiden names, and their places of birth. A certified copy of your birth certificate can supply most of this information.
- If you were previously married, you will be asked what number the current marriage is and how the last marriage ended (divorce, annulment or death).
- You will be asked if you are:
 - currently registered as a Maine domestic partner
 - first cousins (only different-sex couples who are marrying a first cousin will need to have proof that they have had genetic counseling).
- No blood test is required.

Both parties sign the application in the presence of a notary public or town clerk, certifying under oath that all the information provided is correct and that each person is free to marry under the laws of the State of Maine.¹⁸ The clerk is permitted to request documented proof of any of the statements in the application, e.g. certified copies of birth certificates, divorce decrees, death certificates, etc.

A fee is charged for the licensing process. You are encouraged to contact the clerk of the town or city where you will be completing the application in advance to find out what documentation that clerk will require and what fees will be charged.

¹⁸ 19-A M.R.S.A. § 651(2).

How do I change my surname?

A certified copy of your marriage certificate will allow you to change your surname with the Social Security Administration and the Maine Bureau of Motor Vehicles and on your passport.

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,¹⁹ 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.

¹⁹ GLAD Attorney, Mary Bonauto, argued this case. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

What If I Am Already Married Or Have A Civil Union Or Domestic Partnership?

Can I get married in Maine if I am already married?

Regardless of where you legally married, the new law explicitly states that marriages of same-sex couples will be respected in Maine. The new section 650-B of Title 19-A in the Maine Revised Statutes provides: “A marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized for all purposes under the laws of this State.”

Although there is no explicit provision in Maine law that prohibits a person from remarrying the *same person*, as a practical matter, clerks may not process your application since 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.

However, if you are married and now wish to marry a *different person*, you must first legally dissolve your existing relationship. If you fail to do so before marrying, you will be guilty of bigamy, a Class E crime punishable by 6 months in jail and a \$1,000 fine,²⁰ and your second marriage may be legally void.²¹ When you complete the marriage application, the clerk will ask you if you have been previously married and if so whether the marriage ended by death, dissolution or annulment. Once same-sex couples have the right to marry in Maine, they will also have the right to divorce there, provided they meet Maine’s residency requirements for divorce.

Can I get married if I have a civil union?

Yes, you can marry the same person with whom you have previously joined in a civil union.

²⁰ 17-A M.R.S.A. § 551.

²¹ 19-A M.R.S.A. § 701(4).

However, if you have a civil union with one person and wish to marry a *different person*, you must dissolve your civil union first, even if a Maine clerk would allow you to marry. In a 2012 GLAD case, the Massachusetts high court ruled that a marriage between two men was void because one had a civil union with a different person at the time of marriage.²²

Although Maine never had a civil union system, some civil unions have been dissolved in Maine. If you are a resident of Maine and need to dissolve a civil union, please contact GLAD Answers for attorney referrals.

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

Yes, you can marry the same person with whom you have previously joined in a Registered Domestic Partnership (“RDP”).

However, if you have a Registered Domestic Partnership with one person and wish to marry a *different person*, you must dissolve your RDP first, even if a Maine clerk would allow you to marry. Although Maine never had a RDP system, it should be possible to dissolve such unions in Maine on the same bases that civil unions have been dissolved. If you are a resident of Maine and need to dissolve a RDP, please contact GLAD Answers for attorney referrals.

For information about ending a California, Oregon, Washington or Nevada domestic partnership outside of the New England states, contact Lambda Legal (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (NCLR) (www.nclrights.org, 800-528-6257), or the ACLU LGBT and AIDS Projects at www.aclu.org.

²² For more information about this case, see <http://www.glad.org/work/cases/todd-elia-warnken-v.-richard-elia/>.

Can I get married if I have a “Domestic Partnership” from some other source?

In all likelihood, yes, since only Civil Unions and Registered Domestic Partnerships are state legal statuses that were intended to be parallel to marriage and its status.

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 State to city to employer. If you have a “domestic partnership” that you want or need to keep in place, investigate whether your act of marrying will terminate the domestic partnership, which is typically the case.

If you have such a domestic partnership and intend to marry a *different person*, GLAD recommends that you consult an attorney about whether you need to dissolve the domestic partnership first.

What will happen to my Maine domestic partnership registration if I marry?

Marrying will automatically terminate an existing Maine domestic partnership registration.²³

²³ 22 M.R.S.A. § 2710(4).

How Does The Maine Marriage Law Interact With Religion?

An Act To Allow Marriage Licenses For Same-Sex Couples And Respect Religious Freedom states that the law:

“. . .does not require any member of the clergy to perform or any church, religious denomination or other religious institution to host any marriage in violation of the religious beliefs of that member of the clergy, church, religious denomination or other religious institution. The refusal to perform or host a marriage under this subsection cannot be the basis for a lawsuit or liability and does not affect the tax-exempt status of the church, religious denomination or other religious institution.”

This means that (1) no clergy can be forced to perform a marriage to which they object and (2) no church, synagogue, temple or other religious institution can be forced to perform or host a marriage on their premises.

Distinction Between Civil Marriage and Religious Marriage

The new Marriage Act allows same-sex couples to participate in the existing state licensing system for marriage. Apart from government licensing, every religion can continue to define marriage as it chooses for its own religious purposes.

Clergy Not Required to Solemnize Any Particular Marriage

The new Marriage Act enforces what has always been the law: A clergy member is not required to solemnize any marriage, and any refusal to do so shall not create any civil claim nor affect the tax exempt status of the clergy member's religious institution.

New Exemption to Non-Discrimination Rule in Places of Public Accommodation

In addition to the “First Amendment” protections for clergy and religious institutions described above, there is a new but limited exemption to the state public accommodations laws for churches and religious denominations or institutions.

Current Maine law protects citizens from discrimination in places of public accommodation²⁴, meaning a place that “caters to, or offers its goods, facilities or services, or solicits or accepts patronage from, the general public.”²⁵ Places of public accommodation may not discriminate based on several personal characteristics, including race, sex, national origin, disability or sexual orientation.

This means that businesses or other entities open to the general public cannot discriminate between same-sex and different-sex couples when they provide wedding related services or when dealing with married same-sex couples. Nothing in the new marriage law changes the obligation of places of public accommodation not to discriminate.

However, sometimes churches or religious institutions rent their facilities to the general public and are therefore public accommodations for the limited purpose of renting their facilities. **The new Marriage law provides an exemption to the public accommodation law for religious institutions** stating that “any church, religious denomination or religious institution” does not have to “host” a ceremony or reception for *any* wedding.

While churches and religious denominations and institutions are exempted from the non-discrimination law if they refuse to rent their facilities for a wedding, all other businesses covered by the public accommodations law remain obliged not to discriminate when providing their facilities or services.

²⁴ 5 M.R.S.A. § 4592(1).

²⁵ 5 M.R.S.A. § 4553(8).

Even if a couple seeking to marry is rebuffed in a way covered by this exemption, there is no legal liability or lawsuit that can be brought against them, and no basis for affecting the religious institution's tax exempt status.

Can the Religious Exemption for “Performing or Hosting” Be Applied in Other Contexts?

If a church, synagogue, temple or religious institution generally makes its services, etc. available to the general public, it is free to offer its facilities (and refuse its facilities) to whomever it pleases when it comes to the solemnization or celebration of marriages.

While it is impossible to know all the circumstances where this could arise, some things are clear:

- No government official or institution would be allowed to deny you a service. So, for example, if your town hall is available for rental to the general public, the town cannot refuse to rent to you on the ground that it objects to your marriage.
- No individual doing business with the public can deny you services with respect to your marriage; and no secular, non-religious place of public accommodation can refuse to host a marriage solemnization or celebration.

On the other hand, if a local church has a hall connected to it, the church is permitted to refuse to rent the hall for any particular wedding celebration it chooses.

What Are Some Things We Should Consider Before Joining in Marriage?

While personal considerations usually predominate in making the decision to marry, marriage is an important *legal* commitment with profound consequences for those joining in marriage. Entering into the status of “married” will affect many aspects of your public and private life.

Here are a few issues to consider that strongly suggest you may want to consult with an attorney before marrying:

- Entering into a marriage may complicate matters if you are in the process of adopting a child or considering adoption in the future. Some foreign countries do not allow same-sex couples to adopt. This is also true for some states in the United States.
- Being married could disqualify you from certain state or federal programs that are based on financial need. When determining financial eligibility, your spouse’s income and assets may be included as well and your collective income and resources may be too high.
- A marriage can be dissolved in Maine only if at least one of the parties satisfies certain residency requirements. In divorce proceedings in Maine, the District Court will determine property division, child custody and child support and spousal support if the parties cannot agree on these issues themselves. Under Maine law, the court can consider any property acquired by either or both of the parties subsequent to the marriage as subject to distribution between both parties in a dissolution unless the parties enter into an otherwise valid pre-nuptial or post-nuptial agreement addressing the question of property division.
- Upon marrying, you assume a legal status that will have to be disclosed on forms and records in a variety of public and private contexts.

- 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.
- Under Maine law, a spouse generally cannot completely disinherit the other spouse by leaving him or her out of a will unless the couple signed a valid pre-nuptial or post-nuptial agreement. As a result, a spouse is entitled to a share of your estate.
- When you marry, you should revisit any existing wills with your attorney(s). Failure to do so can have unintended consequences upon death.²⁶
- 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.²⁷ . If you are being discriminated against, please contact GLAD Answers

²⁶ *E.g., see* 18-A M.R.S.A. §2-301 Omitted Spouse.

²⁷ For more information go to: www.glad.org/uploads/docs/publications/eecoc-clarifies-protections.pdf and http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

Are There Other Ways In Maine To Protect Our Relationship?

If I do not want to marry, are there any other ways legally to protect my relationship and partner?

GLAD's publication, *Maine: Overview of Legal Issues for Gay Men, Lesbians, Bisexuals and Transgender People*, at <http://www.glad.org/uploads/docs/publications/me-lgbt-overview.pdf> has several important measures people can take to protect their relationships. In addition to preparing wills, powers of attorney, directives as to remains and other documents (which even married couples need to safeguard their families), you may also wish to register as "Domestic Partners" with the Maine Secretary of State.²⁸

Maine's state-wide domestic partnership registry defines "domestic partners" as "two unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare."²⁹ Registered domestic partners have a number of rights and protections in the event of a partner's death or incapacity. *See the publication above for more information.*

²⁸ "An Act to Promote the Financial Security of Maine's Families and Children" was passed in 2004. LD 1579, 2004 Leg., 121st Leg. (Me. 2004).

²⁹ 22 M.R.S.A. § 2710(2) (establishing Registry); 18-A M.R.S.A § 1-201 (defining "domestic partner" for purposes of Registry).

What Responsibilities And Protections Come With Being Married In Maine?

While marriage is a commitment many people wish to make regardless of legal consequences, government marriage licensing creates a legal relationship and confers protections for and responsibilities on legal spouses. A partial list of *state-based* legal protections and responsibilities includes the following:

MUTUAL ECONOMIC SUPPORT AND RESPONSIBILITIES

- The obligation to file state and federal income taxes with the married status – either “married filing joint return” or “married filing separate return.”³⁰
- Mutual financial responsibilities for each other, including financial support³¹ and responsibility for debts incurred by the other.³²
- Consideration of the spouses as one economic household when applying for “means-tested” government programs, *i.e.* the government will look at the amount of income, assets and other financial resources of *both* spouses.
- Access to courts for divorce if a relationship ends, with its rules for dividing debt and “marital property” as well as parental rights and responsibilities (custody, visitation, support, decision-making), and in some cases, spousal support.³³ The ability to transfer real property to each other during the marriage (and at divorce) without paying a state real estate transfer tax.³⁴

³⁰ See http://www.maine.gov/revenue/publications/alerts/2012/TADecember2012_Vol22_Iss11.html.

³¹ 19-A M.R.S.A. § 1504 (a person shall support his or her spouse and children when in need); 19-A M.R.S.A. § 1652 (establishing right to file legal claim for non-support).

³² 22 M.R.S.A. § 14 (nursing facility); 30-A M.R.S.A. § 1561 (prisons); 34-B M.R.S.A. § 1409 (psychiatric and other behavioral institutions).

³³ 19-A M.R.S.A. § 901 (divorce); 19-A M.R.S.A. §§ 951-A, 952, 953 (property division and spousal support), 19-A M.R.S.A. § 1504 (child support).

³⁴ While 36 M.R.S.A. § 4641-A(1)(A)(B) imposes a tax on each deed in which property is transferred, there is an exemption from the “transfer tax” for spouses who deed property to one another. 36 M.R.S.A. § 4641-C.

- A spouse is considered a member of the family for purposes of obtaining a life insurance policy for two or more members of a family.³⁵

PRESUMPTION OF LEGAL PARENTAGE

- Legal parenthood for any child born into the marital relationships.³⁶
- Because parentage through marriage is a presumption that can be challenged and may not be respected by some states and foreign countries, GLAD strongly recommends that parents continue proceeding with second parent adoptions in Maine. See below: *How Will Marriage Affect My Children*.

EXPECTATION OF MUTUAL CONFIDENCE; PRIVACY PROTECTIONS

- Spouses cannot be required to testify against each other.³⁷
- Privacy protections from debt collectors that require the collectors to talk with the debtor or spouse about accounts, but not others.³⁸
- Required disclosure of their relationships for many state and local government jobs and boards to prevent conflicts of interests.³⁹

DURING INJURY, ILLNESS AND AT DEATH

- When an employee suffers a job-related injury or death, the workers' compensation system provides financial protections for the family and spouse.⁴⁰
- An automatic legal preference for the spouse in matters of guardianship and conservatorship when the other spouse is incapacitated.⁴¹

³⁵ 5 M.R.S.A. § 7054.

³⁶ 22 M.R.S.A. § 2761(3-A).

³⁷ Me. R. Evid. 504; *see also* 15 M.R.S.A. § 1315.

³⁸ 32 M.R.S.A. § 11012 (Maine Fair Debt Collection Practices Act).

³⁹ See, e.g., 3 M.R.S.A. §§ 312-A(7-A), 317 (lobbyists); 1 M.R.S.A. §§ 1012(6), 1014 (legislators), 5 M.R.S.A. §§ 18, 19 (executive branch employees); 20-A M.R.S.A. § 1002 (school board members).

⁴⁰ 39-A M.R.S.A. § 102 (8) (A) & (B) (definitions of “dependent”).

⁴¹ 18-A M.R.S.A. § 5-311(2-A)(priority in guardianship proceedings—this also applies to Maine registered domestic partners); 18-A M.R.S.A. § 4-410(3-A)(priority in conservatorship proceedings).

What Responsibilities and Protections Come With Being Married In Maine?

- Employee’s ability to use accrued sick or vacation time to care for a spouse under the Maine Family Care law.⁴²
- On death, unless there is a valid pre-nuptial or post-nuptial agreement, automatic inheritance rights with⁴³ or without a will⁴⁴, as well as legal protections and allowances for a surviving spouse⁴⁵, and the ability to transfer motor vehicle registration and title to a surviving spouse without fees or taxes⁴⁶, and spousal survivorship rights in certain family businesses.⁴⁷
- Control of a spouse’s body and the funeral arrangements upon death.⁴⁸
- Ability to use workplace bereavement leave for a spouse and often for a death in the spouse’s immediate family.
- The right to sue for the wrongful death or injury to a spouse⁴⁹ and/or loss of consortium⁵⁰, to receive worker’s compensation death benefits⁵¹ or to file an action against a negligent employer.⁵²

PUBLIC SAFETY OFFICERS

- Surviving spouses of firefighters, law enforcement officers and emergency medical service providers are eligible for “line of duty” benefits from the State, including a one-time payment, educational benefits, and retirement benefits where applicable.⁵³

⁴² 26 M.R.S.A. § 636.

⁴³ 18-A M.R.S.A. § 2-201 (elective share of 1/3 of augmented estate when will provides for spouse but surviving spouse wishes a different share); 18-A M.R.S.A. § 2-301 (when a person marries after making out a will and fails to change the will to include the new spouse, the new spouse can take the whole estate or half if there are surviving children or parents).

⁴⁴ 18-A M.R.S.A. § 2-102 (this also applies to Maine registered domestic partners);

⁴⁵ 18-A M.R.S.A. § 2-401 (up to \$10,000 from debts owed by the deceased); 18-A M.R.S.A. § 2-402 (up to \$7,000 of certain property protected from bankruptcy); 18-A M.R.S.A. § 4-403 (up to \$12,000 in family allowance to support the surviving spouse and minor children for up to a year).

⁴⁶ 29-A M.R.S.A. § 663 (transfer of motor vehicle title on death of spouse).

⁴⁷ *E.g.* 10 M.R.S.A. § 1437 (survivorship in recreational vehicle dealerships).

⁴⁸ 22 M.R.S.A. § 2843-A (this right also applies to Maine registered domestic partners).

⁴⁹ 18-A M.R.S.A. § 2-804.

⁵⁰ 14 M.R.S.A. § 302.

⁵¹ 39-A M.R.S.A. § 215.

⁵² 39-A M.R.S.A. § 903.

⁵³ 25 M.R.S.A. § 1612 (survivor benefit); 20-A M.R.S.A. § 12551 et seq (educational benefit); *See* 5 M.R.S.A. § 17852 (4) - (6) (includes law enforcement officers for the Bureau of State Police, Department of Inland Fisheries and Wildlife, and Department of Marine Resources).

In addition, now that DOMA has been ruled unconstitutional, same-sex married couples in Maine 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

For more information about federal benefits go to www.glad.org/doma.

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 marriage automatically offers many protections for spouses and their 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 provide discrete but important protections. GLAD Answers can provide you with referrals to LGBT-friendly lawyers.

Working with an attorney, you can:

- Complete a second parent adoption of your children, so that you have a court judgment that you are both legal parents, whether you are married or not;

What Responsibilities and Protections Come With Being Married In Maine?

- Gain expert advice about wills, trusts, agreements and the like to ensure your wishes can be met to the largest degree possible at death, and after your new marriage revisit any existing wills with your attorney(s) to prevent unintended consequences from occurring upon 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.

How Will Our Marriage Be Respected?

Respect by the State of Maine

All Maine State laws that pertain to marriage apply equally to same-sex and different-sex married couples.⁵⁴

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

⁵⁴ 19-A M.R.S.A. § 650-A.

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 Maine

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 Marriage Affect My Children?

Entering into a marriage will provide your children with the security of having married parents and with every protection and benefit that the Maine and federal governments extend to enhance the security and safety of children's lives.

To protect your child's security and well-being, **you must first establish legal parenthood of your child.** This document provides only general information. We cannot urge more strongly that you consult an attorney about undertaking co-parent adoption – regardless of the fact that you are or are not married – particularly in light of the information below.

If both parties to a marriage were parents before the marriage (e.g., through joint or second-parent adoption), both parties remain parents. GLAD recommends that parents complete second parent adoptions, regardless of their legal status, as it is the best protection for children and both parents.

If one party to the marriage was not a parent before the marriage, the marriage will not change that. That person will be considered a stepparent, carrying whatever weight that status has in Maine. 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 Maine 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 Maine, a child born into a marriage is presumed to be the child of both parties.⁵⁵ Nonetheless, this is a presumption and does not have the same effect as a court judgment. It is subject to being challenged and overturned.

⁵⁵ 22 M.R.S.A. § 2761(3-A).

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 Maine, independent of the marriage.

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Will I Be Able To Get Health Insurance Through My Employer For My Spouse in Maine?

If you are employed by the State of Maine, a Maine county or a Maine municipality, your spouse will be entitled to the same health insurance rights and benefits provided to other 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 spouse on the same terms as a self-employed married to a spouse of the opposite sex.

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.

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. Maine also has a "mini-COBRA" state law that applies to employers with less than 20 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.

How Does A Married Couple In Maine File Federal And State Income Tax Returns?

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 <http://www.glad.org/doma/topics/c/federal-taxes-poc-rule> for more detailed information.

How Do I Dissolve A Marriage In Maine?

Although there is no residency requirement to enter a Maine marriage, there are residency requirements for obtaining a divorce in Maine. In order to be able to file for divorce in Maine one of the following must be true:

1. The spouse filing for divorce has resided in Maine for at least six months;
2. The spouse filing for divorce is a resident of Maine and the marriage occurred in Maine;
3. The spouse filing for divorce is a resident of Maine and the cause of the divorce occurred in Maine;
4. The spouse who is named in the divorce complaint is a resident of Maine.⁵⁶

In addition to dissolving the legal bond of marriage, in most cases⁵⁷ the District Court will be able to address the issues of property division (both real estate and personal property), parental rights and responsibilities for minor children (including child support), spousal support (often referred to as alimony), attorney fees, and a name change for either party so requesting. Not all of these issues will apply to all divorces. Pine Tree Legal Assistance has detailed information about the divorce process in Maine at <http://www.ptla.org/divorce-and-parental-rights-maine#Step1>.

Married same-sex couples will also be able to divorce in other states provided they meet that place's residency or other requirements for divorce.

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.

⁵⁶ 19-A MR.S.A. § 901(1).

⁵⁷ A ruling by the Maine Supreme Judicial Court in 2006 said that if the defendant had no connection with Maine that the marriage could be dissolved but issues pertaining to children, property, etc. might need to be heard in a different state. See *Von Schack v. Von Schack*, [2006 ME 30, 893 A.2d 1004](#) (2006).

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

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.

Thank You!



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