



Rhode Island Marriage Guide For Same-Sex Couples

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Introduction

On Thursday May 2, 2013, the Rhode Island General Assembly approved and Governor Lincoln Chafee signed a marriage equality law, *An Act Relating to Domestic Relations-Persons Eligible to Marry*,¹ that extended the right to marry to same-sex couples effective August 1, 2013.

This legislation also ends the ability of same-sex couples to enter into civil unions in Rhode Island on that same date and allows any couples already in a Rhode Island civil union to merge their civil union into marriage.²

This made Rhode Island the sixth and last state in New England and the 10th state and 11th jurisdiction (including Washington, D.C.) in the United States to allow same-sex couples to marry. GLAD congratulates Marriage Equality Rhode Island and Rhode Islanders United for Marriage for their hard work in making this a reality.

The act also reiterates the right of any religion to set any requirements it chooses on who may marry within that religion and the right of any clergy person, rabbi or similar official to refuse to marry any couple. It also provides further exemptions for religiously-controlled organizations and fraternal benefit organizations.

The process for getting married in Rhode Island requires the following basic steps:

1. If at least one party is a resident of Rhode Island, the couple must obtain a license from the clerk in the city or town where either party lives. If neither party is a resident of Rhode Island, the couple must obtain a license from the clerk of the city or town where the proposed marriage is to take place.³
2. The couple must have the marriage solemnized (i.e. have a ceremony which is witnessed by at least two people in addition to the officiant) within 3 months of obtaining the license.⁴

¹ See <http://webserver.rilin.state.ri.us/BillText/BillText13/HouseText13/H5015B.pdf>.

² R.I.G.L. § 15-3.1-12.

³ R.I.G.L. § 15-2-1.

⁴ R.I.G.L. §§ 15-2-8, 15-3-8

3. Once the ceremony has been performed, the person who performed it has 72 hours to return the license to the city or town where it was issued.⁵
4. The clerk will then file the original, and the couple can receive an official certificate of their marriage.

Anyone can marry in Rhode Island. You don't need to be a resident of Rhode Island 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,⁶ 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.

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

⁵ R.I.G.L. § 15-3-12.

⁶ The case was argued by GLAD attorney, Mary Bonauto. For more information go to: www.glad.org/work/cases/deboer-v.-snyder.

The Basics

Who can marry?

To be eligible to marry in Rhode Island, both parties must:

- **Be 18 years of age or older and not be under the care of a guardian, *OR***
- **Be 16 years or older or under the care of a guardian and have the written consent of the parent or guardian or municipal director of public welfare⁷ (the parent, guardian or director of public welfare in the city or town where the party resides must complete the “Minor’s Permit to Marry” form in the presence of the town or city clerk), *OR***
- **Be under 16 years of age and, in addition to obtaining the permission of the parent or guardian or director of public welfare, obtain a written order from the family court.⁸**
- **Not be married or in a civil union or comprehensive domestic partnership to a *different person* (any dissolution or divorce must be final at the time of application) and not be mentally incompetent.⁹**

If you are married to or are in a civil union or comprehensive domestic partnership with a *different person*, you cannot marry your new partner until you have dissolved the other relationship. Entering into another marriage before you have legally ended your relationship with another person may make the new marriage null and void—so in fact you do not have a marriage. In addition this would be considered bigamy, which is a criminal offense subject to a fine of up to \$1,000.¹⁰ The municipal clerk will ask to see a certified copy of the dissolution.¹¹ For more information about getting married in Rhode Island if your relationship is already recognized in some way,

⁷ R.I.G.L. § 15-2-11(a),

⁸ R.I.G.L. § 15-2-11(b).

⁹ R.I.G.L. § 15-1-5.

¹⁰ R.I.G.L. § 11-6-1.

¹¹ R.I.G.L. § 15-2-1(b).

see the section below, *What If I Already Have A Marriage, Civil Union Or Domestic Partnership From Another State?*.

- **Not be closely related by blood or marriage to his or her intended spouse.**¹²

A person may not marry his or her:

- sibling
- parent
- grandparent
- child
- grandchild
- stepparent
- grandparents' spouse
- spouse's child
- spouse's grandchild
- sibling's child
- parent's sibling

NOTE: Couples whose marriage is solemnized in the Jewish faith are allowed to marry within the degrees of affinity or consanguinity allowed by that religion.¹³

Do We Have To Be Rhode Island Residents?

No. Any same-sex couple can marry in Rhode Island provided they satisfy the above requirements. 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?

In order to obtain a Rhode Island marriage license, both parties must appear in person and complete a "Marriage Worksheet" with the clerk of the city or

¹² R.I.G.L. § 15-1-2.

¹³ R.I.G.L. § 15-1-4.

town where one party resides, if at least one party is a resident of Rhode Island, or, if neither party is a resident of Rhode Island, with the clerk of the city or town where the marriage ceremony will take place.¹⁴

The applicants must provide the following information on the marriage worksheet:¹⁵

1. current name;
2. name on birth certificate if different
3. place of residence and phone number;
4. place and date of birth;
5. whether either party has a guardian;
6. social security number;
7. last name upon marriage;
8. father's birth name and birthplace;
9. mother's birth name and birthplace;
10. information about previous marriages, civil unions or comprehensive domestic partnerships and how they ended (dissolution, annulment or death);
11. type of identification used by the parties (e.g. birth certificate, passport, etc.);
12. name and contact information of the officiant;
13. date and city or town of marriage ceremony;
14. names of witnesses, if known.

The clerk may ask for:

- proof of birth facts and a valid form of identification (check with the clerk about what proof that city or town requires);
- proof of residency;
- if previously married or in a previous civil union or comprehensive domestic partnership (from California, Nevada, Washington State or Oregon) with a *different person*, a *certified* copy of the final decree

¹⁴ R.I.G.L. § 15-2-1(a).

¹⁵ See <http://www.providenceri.com/efile/64>.

of dissolution or proof of annulment or a *certified* copy of the death certificate of the previous spouse or partner;¹⁶

- when a party is younger than 18 or is under the care of a guardian a “Minor’s Permit to Marry” must be completed by the parent, guardian or director of public welfare of the city or town in which the party resides in the presence of the clerk, and, if a party is under the age of 16, a court order from the Family Court is also required.

When all of the foregoing information has been obtained, the city or town clerk prepares the marriage license (there is no waiting period), which is valid for not more than 3 months from the date of filing. If the license is not used within that time period, it must be returned to the municipal clerk.¹⁷

Rhode Island has no blood tests or other medical requirements to obtain a marriage license.

The fee for obtaining a marriage license is currently \$24, payable to the clerk of the city or town.

How do we solemnize the marriage?

If one party is a resident of Rhode Island, the marriage can be solemnized anywhere in Rhode Island. However, if neither party is a resident of Rhode Island, the marriage **MUST** be solemnized in the same city or town where the marriage license was issued, otherwise there may be questions raised about the validity of the marriage.

The marriage must be solemnized within 3 months of receiving the marriage license.

Officiants who are authorized to join two people in marriage include:¹⁸

- Ordained clergy and elders or similar officials of any religious organizations who are in good standing;

¹⁶ R.I.G.L. § 15-2-1(b)

¹⁷ R.I.G.L. § 15-2-8.

¹⁸ R.I.G.L. § 15-3-5.

- Judges, clerks, administrators and magistrates of the supreme court, superior court, family court, district court or traffic tribunal
- Former judges and administrators of these courts
- Judges and former judges of municipal or probate courts
- Federal judges
- Wardens of the town of New Shoreham.

NOTE: Justices of the Peace in Rhode Island are NOT allowed to officiate at weddings.

Rhode Island requires that in addition to the officiant at least two people 18 years or older witness the wedding ceremony.¹⁹

There are no requirements for the marriage ceremony itself, so the couple is free to have whatever ceremony they choose.

Any person may object to the certification of the marriage by submitting to the official performing the ceremony the legal reason for the objection. The certification of the marriage may not occur until the legal objection is resolved. Failure to obtain witnesses or address legal objections can invalidate the certification of a marriage.²⁰

What happens after the marriage ceremony?

The authorized officiant completes the officiant's section of the "License and Certificate of Marriage" form and certifies that the marriage has been performed in accordance with the laws of Rhode Island.²¹

The officiant is required to return the marriage certificate within 72 hours to the clerk of the city or town that issued the license.

¹⁹ R.I.G.L. § 15-3-8.

²⁰ R.I.G.L. § 15-3-9.

²¹ R.I.G.L. § 15-3-12

The couple can then request a certified copy of the marriage certificate from the municipal clerk. The charge for the first certified copy is \$20 and \$15 for additional copies issued at the same time.

How do I change my surname?

The “Marriage Worksheet” form has a place for requesting a change in your last name. You can bring a certified copy of your marriage certificate to the Social Security Administration and the Rhode Island Division of Motor Vehicles²² in order to change your last name.

You can also use your marriage certificate to change the name on your passport. Here are directions for doing that:

http://travel.state.gov/passport/correcting/ChangeName/ChangeName_851.html.

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).

²² See <http://www.dmv.ri.gov/licenses/address/>.

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

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.

COMMON LAW MARRIAGES

Does Rhode Island allow common-law marriages?

Yes, Rhode Island is the only New England state with common-law marriage. The requirements for a common-law marriage in Rhode Island are:²⁴

1. serious intent to be married, and
2. conduct that leads to a reasonable belief in the community that the couple is married—by inference from co-habitation, declarations, reputation among members of the community and other circumstantial evidence.

Rhode Island also recognizes common-law marriages from other states.

²⁴ See *Demelo v. Zompa*, 844 A.2d 174 (R.I. 2004).

Religious Exemptions

What religious exemptions does Rhode Island law provide with regard to marriage?

The marriage equality law reiterates the guarantees of freedom of religion set forth by both the First Amendment to the United States Constitution and Article 1 Section 3 of the Rhode Island Constitution that each religious institution has exclusive control over its own religious doctrine, policy and teachings regarding who may marry within their faith.²⁵

In addition, no clergy or similar official of any religious organization is required to solemnize any marriage and is immune from any civil action based on a refusal to solemnize a marriage. Also, no government action can be taken against a religious organization due to a refusal to solemnize any marriage.²⁶

Finally, religious organizations, associations, or societies, as well as the non-profit organizations they operate, supervise, or control, are not required to provide any services, facilities or accommodations as it relates to the solemnization, celebration, or promotion of any marriage that is in violation of their religious beliefs.²⁷ Religiously controlled or affiliated fraternal benefit organizations also have these same exemptions, as well as exemptions with regard to their membership and insurance benefits.

What does this religious exemption mean to us if we are planning on getting married?

In short, it means that if an organization, association or institution falls within this exemption, even though it generally makes its services, facilities, etc. available to the general public, it is free to refuse those services if the refusal is based upon a religious belief, when it comes to the solemnization, celebration, or promotion of marriages. So, for example, if you wanted to have your marriage ceremony or your marriage reception in the facilities

²⁵ R.I.G.L. § 15-3-6.1(a).

²⁶ R.I.G.L. § 15-3-6.1(b).

²⁷ R.I.G.L. § 15-3-6.1(c).

owned or controlled by one of these organizations, they are legally allowed to refuse you.

However, Rhode Island has a very strong public accommodations anti-discrimination law²⁸ that provides specific protections against discrimination based on sexual orientation or gender identity. Non-religious organizations and businesses are not allowed to discriminate against you when it comes to providing services and facilities related to your wedding. So photographers, caterers, inns, hotels, etc. have no right to refuse to provide services for your wedding.

If you encounter a problem, please contact GLAD Answers and tell us what happened.

²⁸ R.I.G.L. § 11-24-2.

What Happens To Rhode Island Civil Unions?

Can I still obtain a Rhode Island civil union after the marriage equality law goes into effect?

No. As of August 1, 2013, Rhode Island no longer licenses new civil unions.

Can we marry in Rhode Island if we already have a Rhode Island civil union?

Yes. There are actually two ways that you can convert your Rhode Island civil union into a Rhode Island marriage:

1. You can see the municipal clerk where your civil union certificate was filed and request that it be merged into a marriage. There is no cost for this and you do not need to go through a marriage ceremony. The clerk is then required to provide you with a marriage certificate.
2. You can go through the normal process of getting married described in *The Basics* section, and your civil union will then be merged into your marriage.

What happens if we already have a Rhode Island civil union and choose not to marry?

Nothing. Your civil union will continue as a civil union until you merge it into a marriage, dissolve it or your civil union spouse dies. A Rhode Island civil union is supposed to extend to same-sex couples all the state-based rights, benefits, protections and responsibilities that are given to different-sex married couples.

The civil union law, like the marriage equality law, exempts any religious organization and any charitable or educational organization that is controlled by a religious organization from having to provide services, accommodations, facilities or goods for a civil union ceremony or celebration.

However, unlike the marriage equality law, the civil union law also allows these organizations to refuse to treat a civil union as valid.²⁹ For example, if one civil union spouse enters a hospital that is connected with a religious organization, that hospital could refuse to recognize the civil union. This is one reason why getting married will provide you with greater protections than simply staying in a civil union.

Although this exemption is broad, it is not a license for religious individuals to refuse to respect your civil union writ large. Businesses and service providers that are not affiliated with religious entities are required to treat you as legal spouses by Rhode Island law. If a person, business, or organization discriminates against or refuses to respect your civil union, please call GLAD.

Finally, now that the Defense of Marriage Act (DOMA) has been ruled unconstitutional, all of the benefits that the federal government extends to married couples and their families are available to married same-sex couples living in Rhode Island, while very few are available to civil union couples. Also, the United States Supreme Court decision in *Obergefell v. Hodges* requires all states to respect the marriages of same-sex couples, but only a few states provide respect to civil unions.

²⁹ R.I.G.L. § 15-3.1-5.

What If I Already Have A Marriage, Civil Union Or Domestic Partnership From Another State?

Is my marriage valid if I legally married outside Rhode Island prior to August 1, 2013?

Yes, Rhode Island has a strong history of recognizing marriages celebrated in other jurisdictions even if the couple would not have been able to marry in Rhode Island. So, wherever and whenever you married, your marriage will be recognized in Rhode Island, and you do not need to take any further action.

Can I get married in Rhode Island if I am already legally married?

Regardless of where you legally married, your marriage will be respected in Rhode Island. Remarrying the same person will most likely have no legal significance and could create some confusion about the date that your marriage began.

Although there is no explicit provision in Rhode Island 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.

If you have a marriage and wish to marry a *different person*, you must first dissolve your existing relationship, since otherwise this second marriage may be void³⁰ and would violate Rhode Island's bigamy law.³¹ When you complete the marriage application, the clerk will ask you if you have been previously married, and if so you will need to furnish proof that it ended by death, divorce or annulment. For information about dissolving a marriage in Rhode Island, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Rhode Island?*.

³⁰ R.I.G.L. § 15-1-5.

³¹ R.I.G.L. § 11-6-1.

What if I entered into a civil union in another state?

If you have a civil union from another state, Rhode Island will recognize your civil union as equivalent to a marriage, provided your civil union satisfies the requirements that Rhode Island has for marriage (see *The Basics* section). That means that Rhode Island will grant you the same rights and benefits, and hold you to the same responsibilities, as a married couple in Rhode Island. However, that does not mean your out-of-state civil union will be converted into a marriage—only that Rhode Island will treat it like a marriage. Moreover, couples in a civil union from another state cannot apply to have their civil union converted to a marriage by Rhode Island. Also, civil union couples are not eligible for most federal benefits.

If you have a civil union from another state and wish to marry the ***same person*** in Rhode Island, you should be allowed to do so. However, that will give you two legal relationships, and, if you later decide to end the relationship, it is important to make sure that both legal relationships are dissolved.

If you have a civil union with one person and wish to marry a ***different person***, you must dissolve your civil union first, since otherwise you would have a legally recognized relationship with two different people which would may the marriage void³² and would violate Rhode Island’s bigamy law. Therefore, if you have previously joined in a civil union with a former partner, you must dissolve your civil union first before you get married to your new partner. For information about how to dissolve a civil union in Rhode Island, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Rhode Island?*.

What if I have a comprehensive Domestic Partnership from California, Oregon, Washington or Nevada?

³² R.I.G.L. § 15-1-5(2).

If you have a comprehensive domestic partnership, such as from California, Oregon, Washington State or Nevada, your relationship will be recognized in Rhode Island in the same way that a civil union from another state is (see the question above).

If you have a comprehensive domestic partnership and wish to marry the *same person* in Rhode Island, you should be allowed to do so. However, that will give you two legal relationships and if you later decide to end the relationship it is important to make sure that both legal relationships are dissolved.

If you have a comprehensive domestic partnership with one person and wish to marry a *different person*, you must dissolve your domestic partnership first, for the same reasons given in the question above.

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 State or Nevada domestic partnership contact Lambda Legal (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (www.nclrights.org, 800-528-6257).

What 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.

If you have a municipal or non-comprehensive state domestic partnership and intend to marry a *different person* from the person with whom you presently have the domestic partnership, GLAD recommends that you consult an attorney about whether you need to dissolve the domestic partnership first.

What If I Already Have A Marriage, Civil Union Or Domestic Partnership
From Another State?

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.

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

For any person, a marriage is an important commitment and should be considered carefully. Along with the important benefits and protections marriage can provide for your family, you also take on significant legal responsibilities and obligations to your spouse. In addition, particularly for same-sex couples, 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 Rhode Island marriage based on your relationship with your partner and the unique circumstances of your life. You should consult an attorney in your home state if you have any questions or concerns.

In preparing to consult with an attorney, here are a few issues to consider that uniquely affect married same-sex couples:

Adoption: Getting married may affect your ability to adopt as a “single” person from some other states and foreign countries. Virtually no foreign countries permit an openly gay or lesbian couple to adopt, thereby likely barring all international adoptions for same-sex couples who are married or in a civil union. Some states in the United States also do not allow same-sex couples to adopt.

Government Program Disqualification: Being in a marriage could disqualify one spouse from certain government programs because the other spouse’s income and assets may be included in determining eligibility for the program.

Debt Obligations: Under Rhode Island law, spouses 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.³³ This is true under the marriage laws of most other states as well.

³³ See *Landmark Medical Center v. Gauthier*, 635 A.2d 1145 (R.I. 1994) (recognizing reciprocal obligation of support between spouses).

Inheritance: Under Rhode Island law, a spouse cannot completely disinherit a spouse by leaving the spouse out of her or his will unless the couple signed a valid pre-nuptial agreement.³⁴ As a result, a spouse is entitled to a share of your estate. (Note: In Rhode Island, marriage automatically revokes an existing will;³⁵ couples who decide to marry should consult an attorney about re-executing their old will or writing a new one).

Prior Marriages: Being in a marriage may disqualify a person for benefits obtained through a former spouse (like social security payments based on a former spouse's earnings; worker's compensation payments arising from his or her death; or ongoing alimony payments).

Immigration: 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.

State-to-State Variations: Because the benefits and obligations of marriage are governed by state law, you may relocate to a state that imposes different requirements than where you live now. For example, whether you have community property depends on the state where you live, which may not be the same state where you were living at the time of your marriage.

Discrimination: 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).

³⁴ There are a multitude of protections a surviving spouse receives upon his or her loved one's death, including that a surviving spouse is entitled to household effects, supplies and personal property of the deceased (as long as they are exempt from attachment), see R.I.G.L. § 33-10-1; that a surviving spouse may receive support from the estate while the estate is open, for six months, and even beyond if the assets are sufficient to so provide, see R.I.G.L. § 33-10-3; that after estate debts and obligations are paid, if any surplus remains in the estate, the surviving spouse is entitled to \$50,000 plus one-half of the remainder if there are no children, and to one-half of the total if there are children, see R.I.G.L. § 33-1-10; and that a surviving spouse is generally entitled to a life estate in the real estate of the deceased spouse, see R.I.G.L. § 33-1-5 (establishing life estate).

³⁵ R.I.G.L. § 33-5-9.

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

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.³⁶ . If you are being discriminated against, please contact GLAD Answers.

³⁶ 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

What Protections Do We Gain From A Marriage in Rhode Island?

The protections that a Rhode Island marriage provides same-sex couples include:

STATE PROTECTIONS:

- family law—divorce, stepparent adoption, etc.;
- 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;
- probate courts and procedure;
- group insurance for state or municipal employees;
- state family leave benefits;
- financial disclosure and conflict-of-interest rules;
- 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;
- Medicaid (Rhode Island will respect the marriages of same-sex couples who qualify for purposes of Medicaid);³⁷
- workers' compensation;
- crime victims' rights;
- marital privileges in court proceedings; and
- vital records procedures.

FEDERAL PROTECTIONS:

- Social Security spousal and family protections;
- Ability to file a joint bankruptcy petition;
- Ability to file a married federal income tax return;
- Ability to sponsor a non-citizen spouse for permanent legal residency;
- No taxes on employer spousal benefits;

³⁷ R.I.G.L. § 15-1-9(b)

- Access to FMLA leave to care for a sick spouse;
- Access to the marriage protections that Medicaid offers to the stay-at-home spouse when the other spouse goes into a nursing home; and
- Many, many more.

For more information about the federal marriage protections that are now available to same-sex married couples because of the U.S. Supreme Court decision declaring the Defense of Marriage Act (DOMA) unconstitutional, go to <http://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 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;
- do Medicaid and long term care planning, concerning issues like assets available to both spouses, asset transfer issues, and liens.

Respect For Your Rhode Island 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 RHODE ISLAND

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 legal weight that status has in Rhode Island. 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 Rhode Island and have legal significance independent of the marriage.

If two people joined in a marriage subsequently have a child, both parties may be presumed to be the legal parents of a child born to either of them. In Rhode Island, a child born into a marriage is presumed to be the child of both parties and both spouses will be 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 is independent of the marriage. Second-parent adoptions have been routinely granted in Rhode Island.

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

Will I Be Able To Get Health Insurance Through My Employer For My Rhode Island Spouse?

Will I be able to get health insurance through my employer for my Rhode Island spouse?

If you are employed by the State of Rhode Island, a Rhode Island county or a Rhode Island 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.

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. Rhode Island also has a "mini-COBRA" state law that may also provide coverage.

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 Rhode Island File A Joint 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.

However, since the IRS does not recognize civil unions, **civil union** couples in Rhode Island must file two “single” returns for their federal income tax, but they must file their Rhode Island income tax as a civil union couple (either “jointly” or “separately.”) To accomplish this, the civil union couple must fill out a “dummy” federal form as married and then carry the figures over onto the Rhode Island income tax form.

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 Get Out Of A Marriage Or Civil Union In Rhode Island?

Until the passage of the marriage equality law, married same-sex couples residing in Rhode Island were not allowed to obtain a divorce there because the Rhode Island Supreme Court ruled that the Family Court did not have jurisdiction to hear the divorce cases of those couples. The marriage equality law changes this. Any married same-sex couple who meets the divorce residency requirements of Rhode Island has access to the divorce process through the Rhode Island Family Court.

The procedure for dissolving a marriage or civil union is identical. Rhode Island has a one year residency requirement for dissolving either a marriage or civil union. Couples with non-Rhode Island civil unions or comprehensive domestic partnerships can also dissolve their relationships in Rhode Island provided they meet the Rhode Island residency requirement and their relationship does not violate Rhode Island's prohibitions³⁸ on marriage.

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. Same-sex married couples can now divorce in any state, provided the couple meets the residency requirement for divorce in that state.

For more information on this topic see GLAD's publication, *Separation, Divorce and Marriage Equality*, at:

<http://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).

³⁸ R.I.G.L. § 15-1-8.

What Legal Protections Can Same-Sex Couples In Rhode Island Acquire Without Being In A Marriage Or Civil Union?

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

1. Relationship or Pre-Nuptial Agreement or Contract: Cohabitation agreements regarding property and finances are a good way for couples to sort out their affairs in writing before a separation. As long as the contract is not about sexual services, it has a good chance of being upheld as valid as long as it complies with the requisites for a valid contract.³⁹ Bear in mind that as in any state, specific provisions concerning children may or may not be enforced according to their terms because it is always in the court's power to determine the best interests of children. (See discussion below concerning parenting agreements.)

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.⁴⁰ If no such appointment is made, then a "family" member will be empowered to make decisions for the disabled or incapacitated individual.

3. Durable Power of Attorney for Health Care: 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 agent if he or she wishes another person to make those decisions instead of the family member. Under R.I. Gen. Laws, § 23-4.10-2, a person may appoint a health care agent to make decisions -- whether for a limited amount of time or indefinitely. The attorney-in-fact may then make decisions for you -- either immediately or upon your becoming incompetent to make decisions. Even after you give another person a health care power of attorney, you may make decisions for yourself if

³⁹ See *Doe v. Burkland*, 808 A.2d 1090, 1094 (R.I. 2002) (allowing contract claim by former same-sex partner; "The mere existence of a sexual relationship between two parties does not impair the right to contract with each other for consideration independent of the relationship.").

⁴⁰ R.I.G.L. § 18-16-1 et seq.

that is what you wish and as long as you are competent to do so. The power of attorney can specify the authority of the agent to make decisions on your behalf, and also state what kinds of treatments you do not desire, including treatments which might keep you alive. You can also specify your wishes regarding organ and tissue gifts after death.

The power of attorney must be signed by two witnesses, at least one of whom is not related to the principal, and neither of whom is the agent of a health care provider or their employee. The power of attorney can be revoked at any time by creating a new power of attorney or by a clear expression of revocation. People often give a copy to their doctors and sometimes to family members.

4. Will: 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.⁴¹ 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.⁴²

5. Funeral Planning Documents: Rhode Island permits a person to name another as his or her “funeral planning agent” with sole responsibility and authority to make any and all arrangements and decisions about funeral services, and burial or disposition of remains, including cremation.⁴³ The document must be signed and notarized by the individual.⁴⁴ To prevent any disputes with family members, it is preferable to give the instructions to the person you want to take care of matters, as well as to family members.

Even absent these documents, a surviving same-sex partner who can prove that their relationship satisfied the state criteria for being “domestic partners” (read the “Domestic Partnership” section above) can

⁴¹ R.I.G.L. § 33-1-1 et seq.

⁴² R.I.G.L. § 33-5-1 et seq.

⁴³ R.I.G.L. § 5-33.3-3.

⁴⁴ R.I.G.L. § 5-33.3-4.

also assume control of the funeral and burial process. However, this requires proving certain facts about your relationship at a time of tragedy and does not control if someone else has been appointed as the “funeral planning agent.” The best way to ensure that your partner is able to make these decisions is to name your partner your “funeral planning agent.”

6. Living Will: Within a durable power of attorney for health care, 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.⁴⁵

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 durable power of attorney for health care with specific instructions about the types of treatments to which you do and don’t consent, and the exact scope of the agent’s authority.

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

Upon separation, the terms of a 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 to help them sort through it. The Rhode Island Supreme Court has recognized that, under some circumstances, contract theories and equitable principles may apply to address the property and financial matters of a separating same-sex couple even without a written agreement.⁴⁶ Written agreements offer vastly greater

⁴⁵ R.I.G.L. § 23-4.10-2.

⁴⁶ See *Doe v. Burkland*, 808 A.2d 1090 (R.I. 2002).

security, however, providing the court with a roadmap as to the intentions of the parties.

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 planning agent, 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.

Thank You!



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