

Iowa – Marriage FAQ

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WHO CAN GET MARRIED IN IOWA?

Two people are eligible to marry in Iowa if they are:

- over 18 years old (or meet requirements for an exception)
- not already legally married to someone else or each other
- not closely related to each other
- legally competent to enter into a civil contract

HOW DO MY PARTNER AND I GET MARRIED IN IOWA?

First, you must obtain a marriage license by applying for one at a County Registrar of Vital Statistics within the County Recorder's office. Both parties must either be physically present at the County Registrar's office or must have the form notarized. You'll need satisfactory proof of identity for either the County Registrar or the notary, as well as \$35 for the Registrar's fee. You'll also need a "competent and disinterested person," someone of legal age who is acquainted with both parties and unbiased regarding the pending marriage, to sign an affidavit on the back of the application.

Once your signed and notarized application has been submitted, you must wait three business days for your license to be valid, unless you've received a waiver (for example, if you hand in your application on a Monday, your license will be valid on Thursday). A judge has the discretion to grant a waiver. According to the State of Iowa Marriage License Instructions (http://www.linncountyrecorder.com/Docs/Marriage_Instructions_200904.pdf), if the license is not picked up within 6 months, the application is null and void.

You will then need to have a marriage ceremony in Iowa. At the ceremony, both parties must be physically present with an officiant and two witnesses, all of whom must sign the marriage certificate. Your officiant is then required to file your certificate with the County Registrar of Vital Records within 15 days.

WHAT IF A COUNTY REGISTRAR REFUSES TO LET US APPLY FOR A MARRIAGE LICENSE?

The Iowa Department of Public Health has issued guidance to County Recorders that as government employees they are obligated to issue marriage licenses to same-sex couples in the same manner as they issue licenses to different sex couples as required by the Iowa Supreme Court ruling in *Varnum*. If you encounter a problem, please contact Lambda Legal's Help Desk at 312-663-4413 (toll-free: 866-542-8336) or <http://www.lambdalegal.org/help/>.

WHO MAY OFFICIATE OUR MARRIAGE CEREMONY?

The ceremony may be performed by a judge, magistrate, or associate judge of the Iowa Supreme Court, Iowa Court of Appeals, or Iowa District Court, or any individual ordained or designated as a leader of a religious faith.

WHEN WILL WE BE ABLE TO GET MARRIED?

The Iowa Supreme Court's decision granting equal marriage rights takes effect on April 27, 2009, 24 days after it was issued (April 3, 2009), when it becomes final (if rehearing is not sought and granted).

PLEASE NOTE: This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation. This is an evolving area of law in which there is bound to be uncertainty, and we will be working with Iowa attorneys to promote the best results. If you have additional questions or are looking for contact information for private attorneys who might advise you, contact Lambda Legal's Help Desk at 312-663-4413 (toll-free: 866-542-8336) or <http://www.lambdalegal.org/help/>.

WHAT WILL OUR RIGHTS AND RESPONSIBILITIES BE UNDER IOWA LAW IF WE GET MARRIED?

You will have the many legal rights and responsibilities state law confers on a married couple. This enormous web of state-based rights and responsibilities includes, for example:

- rights relating to emergency medical care and hospital visitation
- economic protections upon death of a spouse, such as inheritance rights
- rights regarding burial, autopsies, and disposition of remains
- rights to bring wrongful death and other kinds of claims that depend upon spousal status
- rights to receive workers' compensation benefits if a spouse dies in the workplace
- health insurance and pension benefits for spouses of public employees
- entitlement to file joint state tax returns, take spousal deductions on state income taxes, and receive tax benefits when transferring interests in property
- rights and judicial forums relating to separation, divorce, and caring for any children of the couple

You should also be aware that with the benefits of marriage come legal responsibilities, such as liability for your spouse's debts, limitations on your ability to make decisions about your property and who will inherit from you, and obligations to provide support for your spouse during both the marriage and in the case of a divorce.

WHAT DOES A MARRIAGE MEAN FOR FEDERAL BENEFITS AND PROTECTIONS?

The federal government will not respect your marriage for the purpose of federal benefits, protections, and obligations specifically tied to marriage, such as immigration protections and taxation. For example, for married same-sex couples, the value of health insurance benefits from an employer for a spouse will be counted as income to the employee for the purpose of federal taxes. Our sister organization, GLAD, has challenged certain aspects of the federal government's lack of respect for states' legal recognition of same-sex

relationships. In the meantime, it's important to consult a professional accountant regarding the implications of your marriage on your federal tax filing, including the valuation of health insurance benefits as taxable income.

SHOULD WE GET MARRIED?

In most ways, the answer is no different than it has been for different-sex couples deciding whether to marry: such a very serious decision is up to you. You confront the weighty considerations that different-sex couples have confronted across time in deciding whether to marry, because a marriage is an important commitment that carries many state legal rights, protections, and responsibilities that can affect many aspects of your life. So, for example, getting married could disqualify you from the state government's income-based public assistance programs, because your spouse's income and assets may be counted in with yours.

But same-sex couples whose relationships are disrespected by other states and are unlikely to be honored by the federal government have extra considerations. For example, you cannot be certain whether your marriage will be respected should you travel or move to most other states. That can mean, for example, if you've moved to another state, you may not be able to dissolve your relationship if you need to someday (as do roughly half of all married heterosexuals). For some people, there are a few other special issues that are very important to consider before marrying. For example:

- The military may view marriage to a same-sex spouse as grounds for a discharge under its discriminatory policies towards lesbian and gay personnel.
- Being married could raise problems for you if you have certain immigration statuses (for more information, consult Immigration Equality, www.immigrationequality.org).
- If you are in the process of adopting a child or are planning to do so, you should be aware that some states and countries allow adoptions by single parents but not same-sex couples, so, depending on where you would seek to adopt, your marriage could complicate matters for you.

CAN WE GET MARRIED IN IOWA IF WE DON'T LIVE THERE?

Iowa does not have a residency requirement to obtain a marriage license, though the marriage must be performed within Iowa. If you are traveling from outside of Iowa, please remember you must wait three business days after applying to obtain a valid license unless you obtain a waiver.

It is important to be aware, however, that Iowa has a 12-month residency requirement to bring a court proceeding to end a marriage. If the unexpected should happen and you someday want to obtain a divorce, you may be unable to do so in either your home state (depending on where you live) or Iowa, unless you first move to and establish residency in Iowa.

Moreover, you should be aware that depending on where you live, your Iowa marriage may not be accorded legal respect in your home state. This is an evolving area of law that varies a great deal from state to state, and is still very uncertain; you should consult with an attorney for advice about your situation.

Finally, as discussed above, you should also be aware that, at present, the federal government has not been according legal respect to marriages or civil unions of same-sex couples.

IF MY SPOUSE AND I HAVE A MARRIAGE FROM MASSACHUSETTS, CONNECTICUT, VERMONT, CANADA, OR SOMEWHERE ELSE, SHOULD WE GET REMARRIED IN IOWA?

If your marriage to someone of the same sex was validly performed elsewhere, then it is valid in Iowa. Parties with valid marriages that have not been dissolved are not permitted to remarry under Iowa law.

IF I LIVE IN IOWA, BUT I ENTERED INTO A CIVIL UNION IN VERMONT, NEW HAMPSHIRE, CONNECTICUT, OR NEW JERSEY, WILL IT BE RECOGNIZED IN IOWA?

It's unclear whether or not your civil union will be recognized to the same extent as a marriage.

You should know that creating an additional legal status for your relationship by marrying in Iowa may create additional problems if the unexpected happens and your relationship ends, as you may have more difficulty dissolving your legal obligations if there are two outstanding statuses. These are just some of the issues to explore with an attorney.

EVEN IF MY PARTNER AND I GET MARRIED, ARE THERE OTHER PRECAUTIONS WE SHOULD TAKE?

Yes. This is a rapidly evolving legal area with much uncertainty. While some states now respect same-sex couples' legal relationships, the federal government and many other states are unlikely to respect your marriage. So, it is especially important to consider whether you have adequate protections if you are traveling outside of Iowa. You should consult with an attorney if possible about steps you should take in addition to your marriage to provide more security to your family. For example, you can further protect each other through legal documents like wills, health care proxies, advance directives, and powers of attorney. Information about many of these protections is available in Lambda Legal's life-planning publication *Take the Power*. Many of these legal protections are regularly obtained by married couples to afford greater security for their families; they can be that much more important for same-sex couples whose Iowa marriages may not be respected outside of the state.

IF WE APPLIED FOR A MARRIAGE LICENSE AFTER THE DISTRICT COURT RULING IN AUGUST 2007, DO WE NEED TO APPLY AGAIN?

Yes. We recommend that any couple that applied for a license after the district court ruling should apply again.

WHAT IF I HAVE MORE QUESTIONS?

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