

MARRIAGE FOR SAME-SEX COUPLES IN WASHINGTON STATE



This document is intended to provide general information about marriage for same-sex couples in Washington. It is not legal advice. Marriage is a serious legal and personal commitment. Before getting married, couples should educate themselves about the legal consequences of marriage and should consult an attorney (and possibly a financial consultant and/or a tax professional) if they have questions about their specific circumstances.

When can same-sex couples begin to get married in Washington?

Same-sex couples can begin applying for marriage licenses on December 6, 2012. Washington law requires all couples to wait three days after getting a marriage license before they can hold a marriage ceremony. December 9, 2012 is the earliest date couples can have a marriage ceremony. Married same-sex couples in Washington will have all the same protections and responsibilities under state law as any other married couple.

Do the same requirements that apply to different-sex couples who wish to marry now apply to same-sex couples?

Yes. The laws and regulations that generally govern the process for marrying in Washington apply to same-sex couples who wish to marry. To marry in Washington, you both must be at least 18 years old (or obtain parental consent if below that age), not currently married to anyone else, and not close relatives of one another. If you are in a civil union or state registered domestic partnership with a former partner, you must legally dissolve that relationship before you can marry your current partner in Washington.

Government websites offer information on the process for getting married in Washington. For King County, visit: www.kingcounty.gov/courts/marriage/GettingMarried.aspx.

How do my partner and I get married in Washington?

First, you must obtain a marriage license. Marriage licenses are issued at the county level. You do not have to live in the county where you get your marriage license. Instructions can be found on county auditor websites.

Second, you must have your marriage solemnized by a person authorized to do so under Washington law, in the presence of at least two witnesses. While there are many people authorized to solemnize marriages under state law, no clergy person is required to marry any couple if doing so would violate the dictates of their faith tradition. Washington law requires all couples to wait three days after getting a marriage license to hold a marriage ceremony. Your ceremony must be held in Washington. A marriage license is valid for 60 days after the three-day waiting period. Couples who don't get married within this 60-day period must apply for a new marriage license.

Under Washington law, a government official may not deny a marriage license to a same-sex couple or refuse to solemnize a same-sex couple's marriage on a discriminatory basis.

What if my partner and I already registered as domestic partners in Washington and we want to get married?

If you and your partner are registered as domestic partners in Washington, you may apply for a marriage license on Decem-

ber 6, or any time thereafter, and have a marriage ceremony three days after you get your marriage license. When you get married, your Washington State Registered Domestic Partnership (SRDP) is dissolved as of the date of your marriage.

Automatic Conversion of many Washington SRDPs to marriages on June 30, 2014

If you are in a Washington SRDP and you do not get married before June 30, 2014, your SRDP will automatically convert to a marriage, unless (1) you or your partner are 62 years of age or older, or (2) you are in the process of legally dissolving your SRDP. Automatic conversion applies only to Washington SRDPs and does not apply if you registered as domestic partners only with a city, county, or employer.

For couples in which one person is 62 years of age or older, your SRDP will convert to marriage only if you apply for a marriage license and have a marriage ceremony. It will not convert to a marriage automatically.

What if we don't want our Washington SRDP to become a marriage?

If you do not want your SRDP to automatically convert to a marriage, you must have started the process of dissolving your SRDP in court by June 30, 2014. Because there are legal consequences to dissolving your SRDP which may impact your property ownership as well as other legal rights and responsibilities, we recommend that you get legal advice before dissolving your SRDP.

If you or your partner will be 62 years of age or older on June 30, 2014, your SRDP will not automatically convert to a marriage.

Will Washington SRDPs exist after June 30, 2014?

Yes, but *only* for couples (different-sex or same-sex) in which at least one partner is 62 years of age or older.

What should we consider in deciding whether to get married?

Marriage is a serious legal and personal commitment, and the decision whether to marry is yours alone to make. Same-sex couples face many of the same considerations as different-sex couples in deciding whether to marry. Marriage provides many important state-based rights and protections. However, you also should be aware that the benefits of marriage come with legal responsibilities, such as liability for your spouse's debts, and it may limit your ability to make decisions about property and inheritance.

Same-sex couples face added considerations that married different-sex couples do not because the federal government and many states do not recognize marriages of same-sex couples.

For example:

Taxes and Benefits

Washington is a community property state, which generally means when you are married or in an SRDP, half your income belongs to your spouse/partner and vice versa. The IRS requires married same-sex couples (as well as registered domestic partners) who reside in Washington to split their community income on their federal income tax returns, unless the couple has legal agreements affecting the legal status of their property or income. Couples should consult a tax professional or attorney with expertise in this area of the law about how the IRS policy may affect them. For more information, please see the Lambda Legal factsheet “IRS Application of Income-Splitting to Same-Sex Couples,” available at: http://www.lambdalegal.org/publications/fs_the-irs-applies-income-splitting-community-property.

In addition, if either your partner or you depend on income-based assistance programs, getting married could affect the amount of your benefits or make you ineligible for benefits because your spouse’s income and assets may be considered with yours.

Immigration

Immigration is governed exclusively by federal law, which currently refuses to recognize the marriages of same-sex couples for purpose of any federal rights or benefits under a federal law called the Defense of Marriage Act (DOMA). Normally, a non-citizen who marries a U.S. citizen can gain legal permanent residence through marriage. However, this benefit is not currently available to same-sex couples who marry. This will change if DOMA is ultimately found unconstitutional. Couples should also be aware that marriage can jeopardize pending immigration applications or petitions and the ability to renew certain types of visas. In other cases, marriage may be viewed as a positive factor in a pending immigration case. For more information on immigration considerations, please see the ACLU of Washington and Northwest Immigrant Rights Project factsheet “Marriage for Same-Sex Couples in Washington: Immigration Considerations,” available at: www.aclu-wa.org/marriage. Prior to deciding whether to marry, bi-national same-sex couples should speak to an immigration attorney about how marriage will impact immigration status.

Adoption of Children

Also keep in mind that some states and countries allow adoptions by single parents but not same-sex couples. If you have plans to adopt in one of these places, getting married may make it difficult or impossible for you to adopt.

Given these considerations, and the fact that if you marry under Washington law YOU ARE MARRIED, it is important to educate yourself before getting married on how marriage will affect your legal rights and responsibilities.

Can we get married in Washington if we live in another state?

Yes. There is no residency requirement to marry under Washington law.

If you reside in another state or plan to relocate to another state, keep in mind that many states do not recognize marriages between same-sex couples. It is also important to remember that while you do not have to live in Washington to get married, Washington does have a residency requirement to obtain a divorce in the state. So, if you move to a state that does not recognize your marriage, it may be difficult to get a divorce if your relationship ends.

If my partner and I married in another state or country, will Washington recognize our marriage?

Yes. If you were validly married in another state or country, it will be recognized in Washington beginning on December 6, 2012. Because you already have a legally valid marriage you do not need to get re-married in Washington, and obtaining marriage licenses in multiple states may cause unnecessary complications down the road.

We live in Washington but already entered into a civil union or domestic partnership together in another state. Can we get married in Washington?

Yes. You can get married in Washington even if you and your partner entered into a civil union or domestic partnership in another state.

Will our Washington marriage be recognized by other states?

Your Washington marriage will be recognized as a marriage in the states that recognize the marriages of same-sex couples. For a complete list of these states, please contact any of the LGBT legal organizations listed on this document.

Unfortunately, many states do not recognize marriages of same-sex couples. Even so, some private businesses or other private third parties may recognize your Washington marriage, particularly those that already recognize same-sex couples through domestic partnership or a similar system. To protect your legal rights outside of Washington, married same-sex couples should consult an attorney to have legal documents prepared to protect your rights during interstate travel.

Will the federal government recognize our Washington marriage?

No. At this time, DOMA prohibits the federal government from recognizing marriages of same-sex couples. This means that same-sex couples who marry in Washington will be denied rights, benefits, and protections that federal law provides to married different-sex couples, such as the ability to file joint federal income taxes, or receive spousal benefits through social security or other federal programs. Married same-sex couples are also taxed on the value of the health insurance benefits they obtain through their spouse's employer, unlike married different-sex couples.

DOMA is unconstitutional, and the U.S. Department of Justice is no longer defending it in court. Thus far, every federal court to have considered the question in the last two years has found DOMA unconstitutional. The U.S. Supreme Court has been asked to determine the constitutionality of DOMA. Before the ink is dry on this publication, we should know whether the Supreme Court will hear any cases and decide whether DOMA violates the U.S. Constitution.

What if my partner and I have children?

In Washington, both spouses or domestic partners are legally presumed to be the parents of any children born during their marriage or a SRDP.* However, other states and the federal government may not recognize the non-biological parent as a legal parent if the couple travels or moves outside of Washington. Thus, couples with children should consult an attorney about obtaining a second-parent adoption or a parentage judgment to protect their rights and ensure that all states will recognize the parent-child relationship.

What happens if we marry in Washington and later wish to divorce?

The only legal way to end your Washington marriage or SRDP is to dissolve it in court. To divorce in Washington, at least one spouse must be a resident of Washington or a member of the armed forces and stationed in Washington. States that do not permit or recognize marriages of same-sex couples may not allow same-sex couples to obtain divorces. Consequently, if you move from Washington to another state, or if you already live in another state and come to Washington to get married, it could be difficult to get a divorce. States that permit or recognize marriages of same-sex couples will allow same-sex couples to obtain a divorce from a Washington marriage there, but those states may also have residency requirements for divorce.

Couples who are unable to obtain a divorce will remain legally married, which has serious legal consequences, and neither spouse can marry someone else until their marriage is legally dissolved. If you are in this situation, we recommend seeking legal advice specific to your circumstances.

Other protections for same-sex couples

The Washington Law Against Discrimination prohibits discrimination on the basis of sexual orientation. The Washington State Human Rights Commission can investigate discrimination complaints. If you experience discrimination, you may contact any of the LGBT legal organizations listed on this document. We may be able to assist you, and it allows us to understand where discrimination persists.

You can further protect each other, and your children, through legal documents like wills, health care proxies, advance directives, and powers of attorney. And it is important that a non-biological parent of a child born to the marriage complete a second-parent adoption or a parental judgment to ensure that other jurisdictions will respect both parents' parental status. For more information about additional legal protections, please see the Lambda Legal life-planning publication "Take the Power," available at: www.lambdalegal.org/take-the-power. Additional legal protections are regularly obtained by married couples to add greater security for their families; these protections can be even more important for same-sex couples whose Washington marriage may not be recognized outside of the state.

What if I have more questions?

If you have additional questions or are looking for contact information for private attorneys who might advise you, contact one of our organizations (contact information listed below).



This document is brought to you by the following advocacy groups which applaud the legislators and voters who brought marriage equality to Washington. For more information, or for help finding a lawyer, contact one of the legal organizations below:

ACLU of Washington www.aclu-wa.org;
Legal Intake Line: (206) 624-2180

Lambda Legal www.lambdalegal.org;
(866) 542-8336;
LegalHelpDesk@lambdalegal.org

Legal Voice www.legalvoice.org;
(206) 621-7691; info@LegalVoice.org

**The GLBT Bar Association of Washington
Foundation (QLaw Foundation)**
www.q-law.org/foundation