

New Jersey Marriage Law

Frequently Asked Questions

11/07/2013

On October 21, 2013, Lambda Legal's case to bring marriage equality to New Jersey concluded in a final, resounding victory: After the New Jersey Supreme Court unanimously refused to postpone our trial court win in *Garden State Equality v. Dow* that ordered marriage without discrimination based on sexual orientation, the government abandoned its appeal! Marriages began across the state at 12:01 a.m., and with so many thousands of couples newly able to wed, Lambda Legal has created and updated our answers to frequently asked questions about the effect of our win and what it means for people in New Jersey.

WHAT EFFECT DOES THE DECISION HAVE?

In June 2011, Lambda Legal filed a lawsuit seeking the freedom to marry, arguing that barring same-sex couples from marriage and restricting them to civil union violates both the New Jersey Constitution and the Fourteenth Amendment of the federal Constitution. In June 2013, the United States Supreme Court struck down Section 3 of the Defense of Marriage Act ("DOMA"), which had barred married same-sex couples from receiving federal benefits and protections. Immediately after the DOMA decision, Lambda Legal filed a motion for summary judgment in the New Jersey case, arguing that by barring marriage, New Jersey now blocked same-sex couples and their families from the full range of federal benefits, rights, and protections available after the Supreme Court decision. On September 27, 2013, the New Jersey Superior Court ruled that same-sex couples in New Jersey must be allowed to marry.

The decision is intended to ensure equal protection under the law for same-sex couples in New Jersey. The federal government does not recognize civil union for the purposes of a myriad of federal benefits, protections and obligations that married spouses have, including, for example, Medicare skilled nursing facility placements, immigration protections, veterans' benefits, and taxation.

The Superior Court's decision required that beginning October 21, same-sex couples be allowed to marry in New Jersey. As the defendants announced on that day that they had decided to abandon their appeal, this ruling is final.

WHEN CAN I GET MARRIED?

The New Jersey Superior Court's ruling that same-sex couples in New Jersey must be allowed to marry went into effect on October 21, 2013.

There is a mandatory 72-hour waiting period after applying for a marriage license, before the license will be issued by a local Registrar.

This waiting period can be waived by getting a Superior Court order. To get a waiver, parties must file an application with the Superior Court. The Superior Court may order the waiver if the

parties show satisfactory proof of an emergency. The order must be filed with the local Registrar and attached to the license application.

Note that the application must be completed by both parties and signed under oath before a local Registrar and in the presence of a witness (who must be over 18 years old) before the license will be granted. Once the license is issued, it is valid for 30 days from the date of issuance. If both parties are unavailable to complete the application at the same time, either applicant may complete his/her part of the application and start the waiting period. The other applicant must return with the same witness to complete his/her part of the application.

Visit the website of the New Jersey Department of Health for more information about timing and requirements for marriage licensing and ceremonies:

http://www.state.nj.us/health/vital/marriage_apply.shtml

For a complete list of New Jersey Local Registrars, visit <http://www.nj.gov/health/vital/regbycnty.shtml>

WHO CAN GET MARRIED IN NEW JERSEY?

You may get married in New Jersey if you both are at least 18 years old, and neither of you is currently in a marriage or civil union or substantially similar legal relationship with a person other than the person you are seeking to marry.

You do not need to be a New Jersey resident in order to marry in New Jersey. However, if neither applicant is a New Jersey resident, the marriage license is valid only in the issuing municipality.

CAN I STILL ENTER INTO A CIVIL UNION NOW THAT THE COURT ORDER HAS TAKEN EFFECT?

Yes. The Superior court ruling does not invalidate the New Jersey Civil Union Act. Visit the New Jersey Department of Health website for more information about applying for a civil union license:

http://www.nj.gov/health/vital/civilunion_apply.shtml

WHAT IF WE ALREADY ENTERED A CIVIL UNION IN NEW JERSEY?

Your civil union does not affect your ability to enter into a marriage with the same partner. The New Jersey Department of Health has confirmed that if you are marrying your current civil union partner you do not have to dissolve your civil union to enter into a marriage. After you enter into marriage, your civil union will remain valid and intact. (That means that under current law, should your relationship end, you would need to divorce as well as dissolve your civil union to terminate both legal statuses.)

In order to marry you must follow the procedure outlined below. The 72-hour waiting period currently applies to civil union partners applying for a marriage license, unless waived by a Superior Court order. The New Jersey Department of Health has stated that civil union partners are not eligible for a remarriage license (<http://www.state.nj.us/health/vital/faq.shtml#ssm>).

If you wish to marry someone other than your civil union partner, you must first dissolve your civil union.

Should you wish to remain in your civil union and not marry, your civil union status is unaffected by the court's decision. The court's decision does not convert your civil union into a marriage.

CAN I GET MARRIED IN NEW JERSEY IF I ALREADY ENTERED INTO A CIVIL UNION OR REGISTERED DOMESTIC PARTNERSHIP ELSEWHERE?

You are able to marry the person you have already committed to in a civil union or domestic partnership. If you encounter any difficulty getting a Registrar to grant you a marriage license because you already have a civil union, contact Lambda Legal's Help Desk at (212) 809-8585 or visit <http://www.lambdalegal.org/help-form>.

However, you should consult with an attorney about potential consequences of having *both* a civil union or RDP and a marriage. Also, under current law, should your relationship end, you would need to divorce as well as dissolve your civil union or RDP, in order to terminate both legal statuses.)

If you entered into a marriage, civil union, or RDP in another state and want to marry a *different* person, you generally must first dissolve the previous marriage, civil union, or RDP.

WHAT STEPS DO I TAKE TO MARRY MY PARTNER?

Both parties must appear in person to submit an application for a marriage license. The license may be obtained from the Registrar in the New Jersey municipality in which either party resides. The license is valid for use anywhere in New Jersey. If neither party is a resident of New Jersey, the license may be obtained from the municipality where the ceremony will be

performed. In this case, the license will only be good for use in that municipality. Parties should contact the local Registrar to find out hours and days when the Registrar is open and if license applications are handled during business hours or by appointment: <http://www.nj.gov/health/vital/regbycnty.shtml>. The license fee is \$28.00. Applications are available online (<http://www.state.nj.us/health/forms/reg-77.pdf>) or at the local Registrar's office. Do not sign the marriage application form before going to the Local Registrar. The application must be signed under oath in the presence of the issuing authority.

Bring with you:

1. State or federal identification, such as a driver's license or passport
2. Proof of residency
3. Social security card or social security number
4. A witness, who must be at least 18 years old
5. \$28.00 application fee

Note that all documents in a foreign language must be accompanied by a certified translation into English.

It may also be helpful to bring your birth certificate, although it is not required. If you have been previously married or in a civil union or registered domestic partnership with a different partner, you also should bring proof that you are no longer married or in a civil union or RDP, such as an original or certified copy of your divorce, annulment, or dissolution decree or, if applicable, the death certificate of your deceased spouse or partner.

The marriage license is valid for 30 days and only in New Jersey, which means that your marriage ceremony must take place in New Jersey.

The following individuals are authorized to perform your marriage ceremony under New Jersey law: A judge of the United States Court of Appeals for the Third Circuit; a judge of a federal district court; a United States magistrate; a judge of a municipal court, the Superior Court or a tax court; a retired judge of the Superior Court or tax court; a judge who has resigned in good standing from what formerly was the County Court, the County Juvenile and Domestic Relations Court or the County District Court; the surrogate of any county; a county clerk; a mayor or deputy mayor when authorized by the mayor; the chairman of any township committee or village president in New Jersey; and any minister of any religion. In addition, every religious society, institution or organization in New Jersey is authorized to join together individuals in a marriage according to its rules and customs.

CAN I CHANGE MY NAME WITH MY MARRIAGE?

Yes, but it requires several steps. You should obtain a certified copy of your marriage certificate from the office of your local Registrar. Using this document, you can apply to government agencies and businesses to update your records with your new name. The New Jersey Motor Vehicle Commission requires that individuals seeking a new name on their driver's license first change their name with the Social Security Administration

(SSA). Bring a copy of your marriage certificate to your local SSA office to update your name.

IF I DON'T GET MARRIED, BUT I HAVE A CIVIL UNION OR RDP FROM ANOTHER STATE, HOW WILL NEW JERSEY TREAT MY RELATIONSHIP?

New Jersey will continue to treat your civil union as a civil union and not as a marriage. The Attorney General of New Jersey has stated that couples with out-of-state civil unions and California RDPs (which are the legal equivalent of civil unions) "need not secure a New Jersey civil union license or solemnize their relationships in this State in order to enjoy all of the rights and obligations of a New Jersey civil union."

If you have an out of state RDP, for instance from Maine, or the District of Columbia, you will continue to be treated as domestic partners in New Jersey.

I GOT MARRIED IN ANOTHER STATE, BUT MY MARRIAGE WAS TREATED LIKE A CIVIL UNION WHEN I CAME HOME TO NEW JERSEY. HOW WILL MY MARRIAGE BE RESPECTED NOW?

Just as with different-sex couples, so long as your out-of-state marriage is consistent with the laws and public policy of New Jersey, your marriage is valid and recognized in this State and you will not need to enter into a New Jersey marriage.

The New Jersey Department of Health has confirmed that any couple married outside of the state, whether same-sex or different-sex, is eligible to apply for a remarriage in New Jersey. Should you wish to apply for a remarriage, or reaffirmation of your out-of-state marriage in New Jersey you can apply online for a remarriage license:

http://www.state.nj.us/health/vital/marriage_apply.shtml.

There is no waiting period for a remarriage license.

NOW THAT WE'RE MARRIED, DO WE STILL HAVE TO PERFORM A SECOND-PARENT ADOPTION TO SECURE OUR CHILD'S PARENT-CHILD RELATIONSHIP TO THE NON-BIOLOGICAL PARENT?

Even though spouses are both presumed to be parents of children born into the marriage, we encourage a non-biologically related parent to obtain a second-parent adoption as further security for the parent-child relationship. This is particularly important when traveling to other states that do not respect your marriage or the legal presumptions of parentage it creates.

WHAT RIGHTS AND OBLIGATIONS DO MARRIED SAME-SEX SPOUSES HAVE IN NEW JERSEY?

Once you are married, you will be subject to both New Jersey and federal rights and responsibilities of marriage.

There are more than 1,100 places in federal law where a protection or responsibility is based on marital status.

For more information regarding federal rights and obligations post-DOMA, please visit:

<http://www.lambdalegal.org/publications/afterdoma>.

HOW WILL SAME-SEX SPOUSES WHO MARRY IN NEW JERSEY BE TREATED OUTSIDE THE STATE?

By other states:

In states that recognize marriages for same-sex couples, a New Jersey marriage will confer the legal status of spouses. In the many other states that discriminatorily deny recognition to the legal relationships of same-sex couples, the marriage will not automatically receive legal respect.

By the federal government:

On June 26, 2013, the Supreme Court struck down as unconstitutional Section 3 of the discriminatory federal "Defense of Marriage Act" (DOMA) that denied all federal recognition to the marriages of same-sex couples. Legally married same-sex couples living in a state that does not respect their marriages may have access to *some* federal rights and benefits, but not to others, at least not immediately. Federal agencies have different approaches regarding which state's laws determine if a marriage is valid for federal purposes.

Depending on your individual circumstances, getting married may be financially or legally detrimental, especially if you are receiving certain government benefits. Couples should seek out individualized legal advice from a knowledgeable attorney before traveling to another place to marry.

MUST MY EMPLOYER GIVE MY SAME-SEX SPOUSE HEALTH INSURANCE AND PENSION AND OTHER EMPLOYMENT-RELATED BENEFITS?

State and local government employers must provide same-sex spouses the same health insurance and pension benefits accorded to different-sex spouses. It may be more challenging, however, to get certain private employers to treat same-sex spouses equally with respect to health insurance and pensions, depending on what type of plan the private employer uses, and whether state and local nondiscrimination laws apply. If your private employer denies same-sex spouses equal access to health insurance or pensions, we encourage you to contact our Legal Help Desk so that we can help you determine your options and direct you to resources: <http://www.lambdalegal.org/help-form>.

HOW DO I END A MARRIAGE, CIVIL UNION, OR RDP THAT I ENTERED INTO IN ANOTHER STATE?

To get a divorce or dissolve a civil union or RDP entered into in another state, you will need to file a petition in New Jersey Superior Court in the county where you live or the county where your civil union partner or spouse lives. One spouse or civil union partner must have been living in New Jersey for at least one year prior to filing. An exception to this requirement is if the ground of divorce or dissolution is adultery. In such a case, at

least one spouse or civil union partner must be a New Jersey resident at the time of filing, for any amount of time, which can be less than one year. Same-sex spouses and civil union partners may be eligible for maintenance (like alimony) and court assistance in allocating child custody, awarding visitation and support, and dividing property.

WHAT HAPPENS IF I WANT TO DISSOLVE OUR NEW JERSEY MARRIAGE WHEN MY SPOUSE AND I DON'T LIVE IN NEW JERSEY

States usually have a residency requirement for divorce, which means that at least one spouse must be a resident of a state that recognizes their marriage in order to dissolve it. If you move out of New Jersey to a state that doesn't recognize same-sex marriage, you may not be able to divorce in that state. New Jersey could in the future pass legislation similar to that of other states (e.g. Delaware, California, Oregon and Vermont) that allows courts to take jurisdiction in certain circumstances over marriage dissolution and divorce proceedings for nonresident same-sex couples who have entered into a marriage, civil union or registered domestic partnership in that state. The court's decision in Lambda Legal's case does not require such legislation.

***PLEASE NOTE:** This document offers general information only and is not intended to provide legal advice or guidance regarding any person's specific situation.*

If you have additional questions, contact Lambda Legal's Help Desk at (212) 809-8585 or visit <http://www.lambdalegal.org/help-form>