

Registering as Reciprocal Beneficiaries:

Here's how it works, what it means and how to do it!

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If you are in a committed same-sex relationship in Hawai'i it may be important for you to register with the state as reciprocal beneficiaries. This fact sheet explains the rights and responsibilities the law provides for reciprocal beneficiaries, the legal differences between registering as reciprocal beneficiaries and getting married, who can register and how to do so.

It also answers common questions many people have about reciprocal beneficiary status under Hawai'i law.

Please note:

This publication provides general information, not legal advice. Registered reciprocal beneficiaries still benefit from the protections offered by wills, powers of attorney and second-parent adoptions. Your particular situation may require special attention that can be addressed only by an attorney. Contact the Hawai'i State Bar Lawyer Referral and Information Service at 808-537-9140, or contact Lambda Legal's Help Desk toll free at 866-542-8336 or online at www.lambdalegal.org/help/online-form for suggestions about finding an attorney.

WHY IS IT IMPORTANT FOR COMMITTED SAME-SEX COUPLES TO REGISTER AS RECIPROCAL BENEFICIARIES?

Many lesbian and gay couples in Hawai'i celebrate religious weddings or public commitment ceremonies. Nevertheless, those in committed, same-sex relationships still are not allowed to marry in the state. As a result, couples are denied access to many of the rights and responsibilities that those who can marry take for granted. The consequences of this unequal treatment often are devastating. Lesbians and gay men have been prevented from seeing their partners in the hospital and excluded from decision making when their partners were sick. If a partner is killed, the survivor's right to sue for losses is limited. The reciprocal beneficiary laws fixed a number of these wrongs. But the laws help couples **ONLY IF** they register with the state as reciprocal beneficiaries.

If you are in a committed lesbian or gay relationship and don't take the easy step of becoming reciprocal beneficiaries, in most situations you and your partner are likely to continue to be treated legally as nothing more than roommates or friends.

Registering is not the right step for every couple, but registration can secure important rights, can save money, and may be the only way to protect yourself, your partner and other family members from legal tragedies that can occur without registration.

WHAT RIGHTS AND RESPONSIBILITIES DO RECIPROCAL BENEFICIARIES HAVE?

Rights at Times of Family Crisis:

Hospital Visitation – Reciprocal beneficiaries in Hawai'i have the same rights as legally married spouses to visit one another in the hospital.

Medical Decision Making – Reciprocal beneficiaries have the same right as spouses to make health care decisions for each other if one becomes incapacitated.

Legal and Financial Decision Making – If someone becomes physically or mentally unable to provide for his or her personal needs or to manage his or her finances, a court can appoint a "legal guardian" to make those decisions. Reciprocal beneficiaries are guaranteed the right to be notified if legal proceedings are brought to appoint a guardian for a partner, to object if they believe the partner does not need a legal guardian and to have first priority to be named legal guardian if the court decides that naming a legal guardian is necessary.

Compensation if a Partner is Killed – If someone who is legally married is killed as a result of the wrongful act of another, that person's spouse can sue those responsible for "wrongful death" to recover damages for lost financial support and companionship. Reciprocal beneficiaries are given the same legal rights to sue for these losses.

Workers' Compensation Survival Benefits – If one partner is killed in a work-related accident, the surviving reciprocal beneficiary may be entitled to compensation under the Hawai'i workers' compensation plan in the same way as spouses.

Right to Inherit Without a Will – If a reciprocal beneficiary dies without a will, the surviving partner can inherit some property and can be granted living expenses from the estate in the same way as a spouse. Registration, however, does not mean that a partner will inherit the other partner's entire estate. A will is a clear expression of intent that can help all surviving family members by letting them know exactly how a person's property is to be distributed upon death. There is no substitute for the protection offered by a proper will, trust or other estate plan.

Employment Benefits:

Emergency Medical Leave – A reciprocal beneficiary, like a spouse, can take unpaid time off from work to care for a partner or a partner's child with a serious health condition.

Public Employer Health Insurance Benefits – Public employers who offer health benefits through the Hawai'i Employer-Union Health Benefits Trust Fund should offer health coverage to qualifying domestic partners. If you are a public employee and are being denied access to domestic partner health benefits, contact Lambda Legal's Help Desk by calling toll free at 866-542-8336 or contacting us online at www.lambdalegal.org/help/online-form.

Pension Benefits for State Employees – Surviving reciprocal beneficiaries of state employees are entitled to pension and death benefits through the state pension system.

Hawai'i State Taxes, Property and Financial Benefits:

Conveyance Taxes – Transfers of property between reciprocal beneficiaries are generally not subject to a conveyance tax.

Estate Taxes – Reciprocal beneficiaries have the same protections as spouses against paying Hawai'i estate taxes on money inherited from a partner.

Insurance – Reciprocal beneficiaries are entitled to the same treatment as spouses for some insurance purposes, such as shared auto insurance coverage. Although they may purchase life insurance policies on each other, written consent of the insured partner is required. Married spouses do not require written consent to purchase life insurance on each other.

Tenancy by the Entirety – Reciprocal beneficiaries can take title to real estate as "tenants by the entirety" just as married couples can, which means that each partner owns an undivided interest in the entire property and neither can sell or encumber it without the consent of the other. Tenancy by the entirety prevents a judgment creditor of one partner from enforcing a lien against the jointly held real estate.

WHAT RIGHTS AND RESPONSIBILITIES OF MARRIAGE ARE DENIED TO RECIPROCAL BENEFICIARIES?

Although registration as reciprocal beneficiaries gives couples many important protections, it is not equal to marriage and does not provide many of the most important rights and responsibilities given to different-sex couples under the marriage laws of Hawai'i. The following is a short list of some of the important rights and protections denied to reciprocal beneficiaries:

Joint Adoption – The Hawai'i statutes allow married couples to adopt jointly in a single court proceeding but do not specifically provide for joint adoption by reciprocal beneficiaries. Hawai'i's courts have properly allowed same-sex partners to adopt each other's children in second-parent adoption proceedings, but the law in this area is not yet confirmed in statute.

Private Employer Health Insurance Benefits – Reciprocal beneficiaries are not necessarily treated the same as married people for purposes of private employment-related health insurance. Although employers may and should offer equal coverage for same-sex partners, many do not.

Joint Tax Returns – Reciprocal beneficiaries cannot file a joint Hawai'i state income tax return.

Judicial Dissolution – If reciprocal beneficiaries end their relationship they do not have access to the same structured dissolution proceedings that married couples have for divorce. If either or both decide to fight about property in court, they must do so in a civil action as if their family breakup were a business dispute, which tends to be a slow, expensive legal process.

Spousal Support – A reciprocal beneficiary does not have the right to claim spousal support (alimony) after a breakup.

Legal Privileges – Married couples are entitled to keep their communications private and cannot be forced to testify against each other in court. Reciprocal beneficiaries do not have the same confidentiality protections.

WHO CAN REGISTER?

Any two people who both are at least 18 years old and not eligible to marry each other can register as reciprocal beneficiaries, so long as they are not married or registered as reciprocal beneficiaries with anyone else. If you are registered with someone as reciprocal beneficiaries, you must terminate that registration before you can register with a new partner. Partners need not live in Hawai'i or share a home to register as reciprocal beneficiaries. They also do not need to be a couple; blood relatives and friends who do not share a romantic relationship can register as long as Hawai'i law would bar them from marrying each other.

HOW TO REGISTER

A Registration of Reciprocal Beneficiary Relationship form is available from the Hawai'i Department of Health at the following locations:

Honolulu, Department of Health Building
Lobby Area (1st floor)
1250 Punchbowl Street
(corner of Beretania and Punchbowl Streets)
808-586-4533

Hilo, Governor's Liaison Office
75 Aupuni Street
808-974-6262

Kailua-Kona, Governor's Liaison Office
75-5722 Kuakini Highway, #215
808-327-4953

Wailuku, Governor's Liaison Office
2264 Aupuni Street, #1
808-243-5796

Lihue, Governor's Liaison Office
3060 Eiwa Street, #106
808-274-3100

The form also is available online at:

www.hawaii.gov/health/vital-records/pdf/rbr_app.pdf

Once you and your partner have filled out the form and had your signatures notarized, send it with a cashier's check or money order for \$8.00 payable to the State Director of Finance, along with a self-addressed, stamped, legal-sized envelope to:
RBR Office, P.O. Box 591, Honolulu, HI 96809-0591

More information is posted at: www.hawaii.gov/health/vital-records/vital-records/reciprocal/index.html

COMMON QUESTIONS AND ANSWERS

My partner and I married in another state.

Do we need to register as reciprocal beneficiaries in Hawai'i?

It is unclear how the courts of Hawai'i will treat same-sex couples' marriages from other jurisdictions. To be safe, you should register as reciprocal beneficiaries, too.

If my partner and I have registered as domestic partners or entered a civil union in another state, do we need to register in Hawai'i as well?

It is a good idea to register with Hawai'i even if you entered into a domestic partnership or civil union in another state. We don't know how much respect Hawai'i will give to the legal statuses conferred on same-sex couples outside Hawai'i.

If we register as reciprocal beneficiaries in Hawai'i, will we be protected when we travel to other states?

It remains unclear how much other states will respect reciprocal beneficiary status and give reciprocal beneficiaries legal protection as couples. It is likely that states such as California, Colorado, Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Oregon, Nevada, Vermont, Washington and Wisconsin, and the District of Columbia, that offer statewide protection to same-sex couples, will honor reciprocal beneficiaries to some extent, and that the states with no protection for same-sex couples will give little if any respect to the Hawai'i status. Because this area of law is uncertain, it is important that committed couples have wills, durable powers of attorney and other legal documents to protect them when they travel.

Does registration affect the ownership of property belonging to my partner or me?

No. Rights to property owned by either party are not altered by registering as reciprocal beneficiaries and reciprocal beneficiaries are not governed by the same rules requiring a fair division of property upon breakup of the relationship as spouses are.

I'm on public assistance. Will my benefits be affected if my partner and I register as reciprocal beneficiaries.

Maybe. The Hawai'i statutes do not appear to consider a reciprocal beneficiary's income in determining eligibility for public assistance, and reciprocal beneficiaries do not share any ownership in each other's income as spouses do. Still, it is possible that a state agency may take reciprocal beneficiary status into account when determining eligibility for benefits.

How do I terminate a reciprocal beneficiary relationship?

You must prepare a notarized Termination of Reciprocal Beneficiary Form and send it, along with a money order or cashier's check for \$8, to the RBR Office in Honolulu. The forms are available at the same offices and from the same website as the registration forms. More information is available at www.hawaii.gov/health/vital-records/vital-records/reciprocal/index.html

My reciprocal beneficiary and I broke up. Do we need to notify the state?

Yes. It is very important to terminate the reciprocal beneficiary status after a breakup. Until you have ended the status, your former partner and you may still have rights and responsibilities with respect to each other. For example, would you want your former partner to be able to make medical decisions for you or to inherit your property? Also, you cannot enter into a new reciprocal beneficiary relationship until you have dissolved the existing one.

If my partner and I register as reciprocal beneficiaries and we break up, might one of us have to pay support to the other?

Probably not. Hawai'i law does provide for some very limited duty of support between reciprocal beneficiaries if one partner is disabled, but in most cases reciprocal beneficiary status does not provide for spousal support (alimony) the way marriage does.

My partner is an American citizen and I'm undocumented. If we register as reciprocal beneficiaries will that help me adjust my immigration status?

No. Federal law controls immigration and, unfortunately, the federal government does not treat same-sex couples in the same way it treats different-sex couples. Even with a valid marriage from another state or country, a same-sex spouse is ineligible to adjust immigration status based on that family relationship. For more information about efforts to achieve fair treatment for binational couples, contact Immigration Equality at 212-714-2904 or visit www.ImmigrationEquality.org.

I'm currently in the military. Could registering as a reciprocal beneficiary create problems for me?

It might. Although Hawai'i law doesn't require that reciprocal beneficiaries be involved romantically, some military command staff have attempted to discharge service members who have had commitment ceremonies or who even just purchased rings with their partners. Those seeking advice on these issues should contact Servicemembers Legal Defense Network at 202-328-3244 or visit www.SLDN.org.

We want to protect our family as best as we can. Are there other things we should do besides registering with the state as reciprocal beneficiaries?

Yes. Even with registration, in most cases both partners should

- (1) prepare and execute written wills;
- (2) sign "Advance Directives" regarding health care decisions;
- (3) consider entering into a written agreement together setting forth how you both want to handle matters if you split up;
- (4) consult with an attorney as to how best to hold your property; and
- (5) talk to a lawyer about signing general powers of attorney (which allow one partner to make legal and financial decisions affecting the other under specified circumstances, such as incapacity).

If you and your partner have children and only one of you is any child's legal parent, you both also should consult with an attorney about the possibility of obtaining a second-parent adoption or taking other steps to ensure that both of you will be recognized as the legal parents of all of your children.

Have Questions? Contact Lambda Legal's Help Desk toll free at 866-542-8336 or online at www.lambdalegal.org/help/online-form for more information.