

CHAPTER XIII

Transgender People and Marriage Laws

When the Supreme Court legalized marriage for same-sex couples on June 26, 2015, it was a great day for transgender people of all sexual orientations: the highest court in the land had proclaimed the right to marry to be gender-blind. Transgender people have a long history of being denied the right to marry and having their partnerships and marriages disrespected.

Now, anyone can marry in any of the 50 states, regardless of gender—and also regardless of whether someone’s gender is recognized by officials in the state where they live.

However, transgender people and their families continue to face marriage-related problems in the wake of the historic Supreme Court ruling. Here are some examples:

- Some courts will continue to challenge certain parent-child relationships.
- Not all state or local officials provide a marriage license that reflects a person’s gender identity.
- Many states only have marriage licenses and certificates with “bride” and “groom” language, which may not be relevant for all couples.

- Some officials may insist that a person’s name and gender be registered according to what is listed on identity documents, even when the information is no longer accurate.

None of these scenarios affect the validity of a marriage, but some may have the effect of outing people, and parenting disputes often have serious repercussions.

It is vital for governments and courts to recognize that gender identity defines a person’s sex. Lambda Legal is working hard to ensure that transgender people are acknowledged for who they are according to their gender identity, in the context of marriage and beyond. If you have questions or concerns, talk to an attorney or contact Lambda Legal’s Legal Help Desk at 1-866-542-8336 or www.lambdalegal.org/help.

MY STORY ROBINA ASTI

(pictured with her late husband, Norwood Patton)

“Our 2004 wedding was unique and distinctive. It was in an aircraft hangar. The altar was a helicopter and the reverend was a flight instructor, like me. Norwood made the card—he was an artist—and we entitled it ‘The September of our Lives.’

“Norwood died eight years later. And people kept saying you’ve got to collect his Social Security. So I went in for an interview. I thought they’d accepted it because they had all the information. I had changed all my documents back in the 1970s.

“It took a year, but finally they contacted me—and summarily denied my application, saying I was not a woman at the time of my marriage. That was a direct shock.

“Well, I got so mad that I said this has got to change. And that’s when I found Lambda Legal. They fought Social Security to change their ruling about this. And they did. And they changed the policy as well.

“Valentines Day 2014 I went into my bank account and I saw a bunch of money in it and I swear to God I looked up at the sky and I said, ‘Thank you, Norwood!’”



FAQ

Answers to Common Questions about Marriage Laws

Q: As a transgender parent, can I rely on being married to protect my parental rights?

A: Unfortunately, marriage itself may not be enough to protect your rights if you are not a biological or adoptive parent—a restriction that applies to cisgender people as well. The truth is that parental rights can be very hard to defend in court once they're challenged, whether as part of divorce or custody proceedings or because of sheer discrimination.

Lambda Legal strongly recommends that all non-biological parents secure an adoption or court judgment of parentage to protect their parental rights. Also, documenting your intentions for a child through a will and other legal documents and proceedings is especially important when a parent is transgender. Couples should consider writing up a statement of intention as well.

For more information, consult Lambda Legal's "Transgender Parenting" at lambdalegal.org/publications/toolkits.

Q: Can my state use its restrictive requirements for changing the gender marker on my birth certificate to prevent or invalidate my marriage?

A: No, not even the most restrictive state rules for changing the gender marker on birth certificates can interfere with your right to marry.

Most U.S. states still do require a court order to change the gender on birth certificates. And many still require proof of gender-affirming surgery, despite mainstream medical and legal consensus that such requirements are irrelevant and inappropriate. As of October 2015, Idaho, Kansas, Ohio and Tennessee don't allow gender markers to be changed on birth certificates under any circumstance. But since the June 2015 Supreme Court marriage ruling, all states must respect your right to marry another person, regardless of gender.

Q: Will my marriage be affected if I move to a state where my gender is not recognized?

A: All valid marriages must be fully respected even if a couple moves to a state with anti-transgender laws on the books.

Q: If I transition after marrying, will my marriage still be valid?

A: All marriages remain valid if they were valid at the time at which they were entered. And since the June 2015 Supreme Court decision legalizing marriage for same-sex couples,

states are no longer allowed to restrict marriage according to gender. Anyone already in a valid marriage must have access to marriage-related federal and state rights and benefits.

Lambda Legal has consistently defended the principle that marriages may not be invalidated retroactively—an idea that remains important amid continued anti-transgender policies and sentiments. In 2007 Lambda Legal won a Florida alimony case known as *Roach v. Roach n.k.a. Silverwolf* involving a transgender man who transitioned during his marriage. The judge upheld the couple's alimony agreement based on the determination that the marriage was valid when it was entered.

Q: Will my marriage certificate accurately reflect my gender?

A: Most states have incorporated gender-neutral terminology into marriage contracts. For example, Washington and New York marriage contracts have replaced "Bride" and "Groom" with "Spouse A" and "Spouse B." Georgia uses "Applicant 1" and "Applicant 2." If your state is still issuing marriage licenses that are not gender-neutral or do not reflect your gender identity, contact Lambda Legal's Legal Help Desk at 1-866-542-8336 or www.lambdalegal.org/help.

Q: Do my spouse and I need special documents for immigration applications?

A: The U.S. Citizenship and Immigration Services (USCIS) no longer requires a court order or proof of surgery to affirm transgender status (unlike some states). Instead, a transgender person can show a medical certification from a licensed physician (M.D. or D.O.) certifying appropriate clinical treatment under guidelines issued by the World Professional Association for Transgender Health (WPATH). Or, one can use an amended birth certificate, passport, naturalization certificate or in some cases a driver's license. (See "Immigration Rights" on page 56 for more about this.)

Q: Before the 2015 Supreme Court decision legalizing marriage for same-sex couples, I was denied a marriage license because I am transgender. Should I reapply now?

A: There should be nothing preventing you from getting a marriage license now, although your marriage won't likely be recognized retroactively. Contact Lambda Legal Help Desk

“ **Social Security denied my application, saying I was not a woman at the time of my marriage.** ”

—ROBINA ASTI

for further assistance or if you experience more problems getting married in your state.

Q: Do I need to disclose my transgender identity to my spouse prior to getting married?

A: A person’s transgender status is deeply personal and private, and it is constitutionally protected. In the U.S., there is no

legal duty to disclose to a partner even if you are getting married. It is ultimately up to each transgender person to decide whether to tell your partner that you are transgender. This may not be true in other countries, such as England, where the 2004 Gender Recognition Act requires people to disclose their transgender status or risk having their marriages annulled.



DEFINITION

“LEGAL GENDER”

This expression gets thrown around a lot, but there is no such magical wand to make you “legally” male or female when it comes to gender transition. Laws vary from state to state concerning the requirements for changing gender markers on birth certificates and other identity documents. Laws also vary concerning whether a state will accept such identity documents as conclusive with respect to your gender identity. Finally, context also can make a difference as to whether your gender identity will be respected. For example, a court might recognize your gender identity or the sex designation on your birth certificate as your “legal gender” in one marriage-related context, but then a government agency in the same state might deny you respect in another marriage-related context, despite the change to your gender marker.

To read more about state variations in identity documents and requirements, see “Identity Documents,” another fact sheet in this series, which can be found at lambdalegal.org/publications/toolkits.

IMMIGRANT RIGHTS

PREPARING FOR AN IMMIGRATION INTERVIEW

The U.S. Citizenship and Immigration Services (USCIS) has a policy (since 2013) of treating same-sex and different-sex married couples identically for the purposes of immigration. The Supreme Court's 2015 decision legalizing marriage for same-sex couples further clarifies that couples—where one or both are transgender—can marry in any state and have access to full federal immigration benefits, such as the right to petition for a spouse's permanent residence (also known as a "green card") or a fiancé(e) visa (also known as a "K-1").

- Lambda Legal and other organizations are watching closely to make sure these policies are enforced fully, including during in-person interviews at an office of the U.S. Citizenship and Immigration Services (USCIS) in which married couples making certain applications are required to participate.
- If you're headed into one of these interviews, you should know that there will be questions about your relationship, including how you met and details about your married life. But all couples must be treated the same regardless of their gender.

Contact Lambda Legal, an immigration lawyer or Immigration Equality if you feel you have been discriminated against during this process because of your sexual orientation or gender identity.

Tips

DOCUMENTS YOU MIGHT NEED IF YOU'RE GETTING MARRIED AND ONE OR BOTH OF YOU IS TRANSGENDER:

- Power of attorney
- **Health care proxy**
- **Living will**
- **HIPAA release**
- **Guardianship/custody agreement or second-parent adoption (if kids are involved)**

Also: It's helpful to have your identity documents (such as your birth certificate, driver's license and passport) changed to reflect your gender identity. Rules for changing gender on your ID vary from state to state. For more information, see www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations