

# MARRIAGE FOR SAME-SEX COUPLES IN CALIFORNIA

Frequently Asked Questions

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**NOTE:** This document is intended to provide information for same-sex couples who are considering getting married in California. It is not intended to be legal advice, and should not be taken as such. For legal advice concerning your particular situation, please consult an attorney.



NATIONAL CENTER FOR LESBIAN RIGHTS

## GETTING MARRIED IN CALIFORNIA

Thanks to the U.S. Supreme Court's ruling in *Hollingsworth v. Perry*, same-sex couples in California will very soon have the freedom to marry once again. Prop 8, the California constitutional amendment that stripped same-sex couples of the freedom to marry, will soon be off the books and unenforceable.

On June 26, 2013, the U.S. Supreme Court ruled that the sponsors of Prop 8 had no legal right (or "standing") to appeal the federal trial court's decision that Prop 8 is unconstitutional because allowing same-sex couples to marry caused them no harm. This historic ruling restores the freedom to marry to same-sex couples in California.

Additionally, thanks to the Supreme Court's ruling in *Windsor v. United States*, all married couples in California – including same-sex couples – must be treated by the federal government as married, equally, and with respect. On June 26, 2013, the Supreme Court struck down Section 3 of the so-called Defense of Marriage Act (DOMA), which had required the federal government to treat same-sex couples as unmarried and prohibited them from granting same-sex married couples any of the federal benefits, protections, responsibilities based on marriage. The Court ruled that DOMA Section 3 violates our Constitution's guarantee of equality.

### **1. When exactly can same-sex couples in California start getting married again?**

A few final, legal steps must be completed before same-sex couples can once again marry in California, which should take only about a month. First, the Supreme Court's ruling must become final, which will happen 25 days after the ruling. Under the Supreme Court's rules, the party who loses a case has a right to ask the Court to re-hear the case within 25 days of the decision's release. Petitions for re-hearing are very rarely granted, so it is unlikely that anything will change during this 25 days. Once the ruling is final, the Ninth Circuit will issue a "mandate" that will send the case back to the District Court. When the mandate is issued, the injunction against the enforcement of Prop 8 will take effect, and same-sex couples in California will once again have the freedom to marry.

We expect that the State of California will issue guidance to all County Clerk offices in the state about when the decision becomes final and when those offices must resume issuing licenses on an equal basis to same-sex couples. Please note that couples should wait until the Supreme Court ruling is final and the Ninth Circuit issues a mandate to the District Court before attempting to obtain a marriage license or to marry, to ensure that your marriage is valid.

## **2. Will same-sex couples anywhere in California be able to marry?**

Yes. The legal order (or injunction) that stops the State of California from enforcing Prop 8 applies to state officials throughout the state. This means that Prop 8 cannot be enforced anywhere in the state. There may be efforts to try to limit the effect of the injunction to apply to only some parts of the State but we strongly believe that those efforts are futile and will not succeed.

## **3. What do we have to do to marry in California?**

To marry in California, you and your partner must get a marriage license from the office of the Registrar-Recorder/County Clerk of any California county, and then have a ceremony performed by someone authorized to solemnize marriages in California (such as a judge or clergy member) within 90 days. Both partners must go together to the county office, fill out the marriage license application, and present a government-issued picture ID and proof that you are over 18 years old. (If either or both is younger than 18, different procedures apply.) Some counties have their marriage license applications posted online so you can fill them out before you arrive at the County Clerk's office. The license fee varies by county but generally is less than \$100. No blood test or health certificate is required. Call ahead or visit the county's website to learn the hours, locations and fees of the county offices that issue licenses.

The marriage license is valid for 90 days, which means you have 90 days to go get married. Your marriage can be performed anywhere in California. The person who performs your ceremony must be authorized to solemnize marriages in California and must complete and sign your marriage license after the ceremony. In addition, at least one witness 18 years old or older must sign the marriage license. The license then becomes your marriage certificate, which must be returned to the same county in which you obtained the license for filing within ten days of the ceremony. You may also be able to have your ceremony performed at the county office on the same day you obtain a marriage license for an additional fee.

## **4. Who can marry us?**

In California, persons who are legally authorized to solemnize marriage ceremonies include: clergy members; active and retired state court judges and court commissioners and assistant commissioners; commissioners of civil marriages or retired commissioners of civil marriage; justices or retired justices of the U.S. Supreme Court or judges, magistrate judges, retired judges, or retired magistrate judges of other federal courts; state legislators or constitutional officers of the state; and members of Congress who represent a district within this state.

Commissioners and Deputy Commissioners of Civil Marriages perform civil marriage ceremonies by appointment at designated county offices. There is a fee, which generally is less than \$50. Call ahead or visit the county website for more information. A couple can also have a friend deputized to perform their marriage ceremony through a county “Deputy Commissioner for a Day” program. The specific requirements vary by county.

## **5. Should my partner and I marry?**

Marriage is a serious legal and personal commitment. Before getting married, couples should educate themselves about the legal consequences of marriage.

Married same-sex couples also face complications that married heterosexual couples do not face, due to the fact that, at present, many states will not respect marriages of same-sex couples and certain questions about how the federal government intends to handle recognition of marriages if a couple has moved to or now lives in a state that does not recognize their marriage. The Supreme Court’s ruling striking down Section 3 of DOMA concerns only the *federal* government’s treatment of marriages. The ruling does not tell *states* whether they must recognize a valid marriage of a same-sex couple performed in another state. Thus, if you marry in California but live elsewhere it is still possible that your home state will not recognize your marriage. See Question 16 below for more information.

Certain people should be especially cautious before deciding to marry, including people receiving certain government benefits (especially those receiving SSI disability benefits, TANF, or Medicaid) and people planning to adoption children internationally. If you are in this situation, we strongly suggest you consult an attorney about what marriage will mean for you before deciding to marry.

## **6. Is a marriage license a public record?**

Yes, marriage licenses are public records; however, in California, couples can apply for a “confidential” marriage license. The only additional requirements for obtaining a confidential marriage license are that the spouses must be at least 18 years old, must be living together at the time they apply for the marriage license, and must sign an affidavit on the license attesting to those facts. The couple must be married in the county where the license is issued. The marriage license is a confidential record and is registered at the County Clerk’s office in the county where it was issued. Only the spouses may obtain copies of the marriage license.

Persons other than the spouses may obtain copies of a confidential marriage license only by getting a court order permitting them to do so. When a couple obtains a confidential marriage license, the only information available as a matter of public

record is the fact that each of the individuals is married; who, when, and where the person married, as well as the person's address are not publicly available. This may be a good option for those who do not want others to know the name of their spouse or where they live.

**7. What happens if we marry in California and later wish to divorce?**

The only legal way to end a marriage is to divorce. Typically, in order to divorce in California, at least one of the spouses must be a resident of California for at least six months, and a resident of the county in which the divorce is filed for three months, before filing a divorce petition. However, under a law that went into effect January 1, 2012, same-sex couples who married in California but live out-of-state (and, thus, cannot meet California's normal divorce residency requirement) can still get divorced in California if they live in a state where they cannot divorce. States that do not permit or recognize marriages between same-sex couples may not allow same-sex couples to obtain divorces there (although Wyoming explicitly allows same-sex spouses to divorce, and this may be possible in other states that do not otherwise respect marriages between same-sex couples). The Supreme Court's ruling in *Windsor v. United States* does not change that reality.

**8. If we got married in California before Prop 8 went into effect is my marriage valid? Do we need to get married again?**

If you got married in California between June 16, 2008 and November 5, 2008, your marriage is still valid and recognized by the state of California. In 2009, in the case of *Strauss v. Horton*, the California Supreme Court held that it would be unconstitutional to take away the marriages of same-sex couples who married in California before Prop 8 passed. If you married in California during that period, your marriage is completely valid and entitled to full recognition and respect. You do not need to get re-married now.

**9. If my partner and I were legally married in another state or country, will California recognize our marriage, or should we re-marry in California?**

Couples who are legally married in another jurisdiction are recognized as married in California as well, regardless of when they married. Because the Supreme Court has held Prop. 8 to be unconstitutional, California will recognize you as *married*. Your relationship will not have some other type of status such as a domestic partnership; it will be appropriately treated as a marriage. There is no need for you to re-marry in California.

## **REGISTERED DOMESTIC PARTNERSHIPS AND MARRIAGE**

### **10. Will couples who are registered domestic partners in California automatically become married?**

No. Couples who are registered domestic partners are free to decide whether or not they wish to marry. Those who do wish to marry must go through the formal legal steps required for any couple in California to legally marry.

### **11. Will registered domestic partnerships in California continue to exist?**

Yes. Domestic partnerships still exist under current California law.

### **12. If we're already in a registered domestic partnership in California, do we have to dissolve our domestic partnership before we can marry?**

No. The California domestic partnership statutes permit an individual to be both married and in a registered domestic partnership, so long as it is to the same person.

### **13. Is there any reason for couples to be both married and in a registered domestic partnership?**

Yes. Being in a registered domestic partnership may protect you if you travel or move to another state that will recognize a domestic partnership but not a marriage.

### **14. Can I marry my current partner if I have a civil union or registered domestic partnership with my former partner?**

No. Before you marry your current partner, you need to terminate or dissolve the previous legal relationship first. If you are in a civil union or registered domestic partnership with another person, any marriage to a second person will be invalid. Consult an attorney if you have questions about how to terminate a legal relationship with a former partner.

## MARRIAGE IN THE NATIONAL CONTEXT

### 15. Can out-of-state couples marry in California?

Yes. There is no residency requirement to marry in California.

### 16. If my partner and I are from another state and marry in California, will our marriage be valid in our home state?

If you live in another state and get married in California you will be *legally married*. However, depending on where you live, your home state may not respect your marriage. The Supreme Court's ruling in *United States v. Windsor* striking down Section 3 of DOMA concerns only the federal government's treatment of marriages. The ruling does not require states to recognize a valid marriage of a same-sex couple performed in another state. Thus, if you marry in California but live elsewhere, it is still possible that your home state will not recognize your marriage.

Your California marriage will definitely be respected as a marriage in Connecticut, the District of Columbia, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington. Your marriage will also be respected in New Mexico: The Attorney General in New Mexico has issued an advisory opinion that recognizes the validity of marriages of same-sex couples performed in states with fair marriage laws. In addition, at least three American Indian tribal nations explicitly allow same-sex couples to marry: the Coquille Indian Tribe, the Suquamish Tribe, and the Little Traverse Bay Bands of Odawa Indians. Several additional states recognize out-of-state marriages between same-sex couples as civil unions.

Unfortunately, many states have passed laws or constitutional amendments denying recognition of marriages of same-sex couples. In those states, state and local governments probably will not respect your California marriage. Even in those states, however, it is likely that at least some private businesses and other private third parties will respect your marriage – particularly those that already recognize same-sex couples through domestic partnership or a similar system. And now that the Supreme Court has struck down DOMA Section 3, couples who live in a state that does not respect their marriage will nonetheless have some *federal* marital protections. We believe all married couples, including same-sex couples, should be treated as married by the federal government no matter where they live, for *all* federal programs. But there are some benefits that are currently only available to couples who are recognized as married in the state where they live.

Marriage is a serious legal decision, and same-sex couples face additional challenges and questions because of continuing unfair treatment of married same-sex couples in

many states. **We urge couples who are considering getting married in California to proceed with caution. Before getting married in California, you should educate yourselves about the law in your state and, if possible, consult an attorney about the best way to protect your relationship based on your circumstances, especially if you plan to adopt a child internationally or receive government benefits such as SSI, TANF, or Medicaid.**

**17. Will the federal government recognize marriages of same-sex couples who marry in California?**

**a) If I was legally married in California and live in California, will the federal government recognize my marriage?**

Yes. Both California and the federal government will recognize your marriage. You will be eligible for federal protections and responsibilities afforded to all other married couples.

**b) If I was married in California and live in a state that allows same-sex couples to marry or recognizes my marriage, or in the District of Columbia, will the federal government recognize my marriage?**

Yes. Couples who live in states that allow same-sex couples to marry or that recognize their marriages, as well as couples who live in the District of Columbia, will clearly be eligible for federal protections and responsibilities afforded to all other married couples.

**c) If I was married in California and live in a state that does not recognize marriages of same-sex couples, will the federal government recognize my marriage?**

Some federal benefits are based on whether a marriage was valid where enacted; others are based on whether a marriage is valid where the couple lives. Now that the Supreme Court has struck down Section 3 of DOMA, we believe that all married couples, including same-sex couples, *should* be treated as married by the federal government no matter where they live. But getting access to all federal marital protections for same-sex couples who were validly married, but live in a state that discriminates against their marriages will take some work. At the current time, couples who live in states that do not respect their marriage will receive only some federal benefits, not all, which may create significant problems and complexities. We are confident the Obama Administration will take prompt action to implement the ruling striking down Section 3 of DOMA and ensuring that all married couples receive



federal benefits where legally possible, no matter where they live. However, some federal programs are required by law to determine marital status based on whether the state where you live recognizes your marriage; for these programs, additional work and possibly new legislation will be needed. So check back here for updates: we will soon have a more extensive guide specifically about the effect of the DOMA ruling on access to federal rights and benefits.

**18. Can we file lawsuits if our marriages are not respected in other states or by the federal government?**

If you feel you have been discriminated against, please contact one of the LGBT legal organizations listed on this document (the ACLU, Lambda Legal, or National Center for Lesbian Rights). We may be able to help you figure out what options you have to protect your rights whether it is your home state or the federal government that is not respecting your marriage.

Some types of unfair treatment can be the basis of a lawsuit, and other times the unfairness may not be suitable for a court to address. Even when litigation is an option, it is not always the only option – there may be quicker solutions. Or, in some cases, litigation may be unnecessary because there are already cases pending in the courts that will resolve the issue. So call one of our organizations to discuss any discrimination you may be experiencing.

**19. For same-sex couples in bi-national relationships, will getting married in California permit a non-U.S. citizen to gain legal permanent residence in the U.S.?**

Now that DOMA Section 3 has been held unconstitutional, there is a legal means for you or your spouse to apply for permanent immigrant status in the U.S. based on your marriage if your marriage is valid in the place where you married. So, *in many cases*, if you are married or get married, you can sponsor your spouse (or your spouse can sponsor you) for a green card (that is, legal permanent residence). *However*, immigration law is very complicated and you should speak with a qualified attorney before marrying or filing any marriage-based immigration petitions or adjustment of status application. Options for families will vary from case to case, based upon a number of factors, including: whether you and your partner are together or apart; whether you are living together in the United States or abroad; whether you and your partner have married; whether your family can marry; and for families together in the United States whether the non-U.S. citizen partner arrived in the United States after having been inspected by an immigration officer or whether they entered without inspection. You and your partner are strongly encouraged to speak with a qualified immigration attorney to get legal advice before taking steps to seek out an immigration benefit.

This FAQ does not address every circumstance in which same-sex bi-national couples may find themselves. But there are other FAQs that do. Please go to [www.immigrationequality.org](http://www.immigrationequality.org) or [www.aclu.org](http://www.aclu.org) to look for more detailed guides about the impact the Prop 8 and DOMA rulings have on immigration-related matters. Same-sex couples in bi-national relationships should consult an immigration attorney before getting married in California or another jurisdiction.

## PROTECTION FROM DISCRIMINATION

### **20. Do religious institutions or clergy members have to perform marriages for same-sex couples?**

No. The government may not discriminate against same-sex couples by barring them from *civil* marriage – a legal institution established and regulated by the government. Religious institutions and clergy members remain free to decline to perform marriages of anyone they want. Some faiths do not permit same-sex couples to marry within that faith; however, a growing number do. Under current California law, all couples regardless of their sexual orientation may choose to be married by a clergy person in a welcoming community of faith or by a civil servant such as a judge or authorized deputy.

### **21. Can an employee in the clerk's office refuse to give us a license or refuse to sign our license application because they object to marriages between same-sex couples?**

No. Civil servants otherwise required to issue licenses for civil marriages may not refuse to do so because of personal beliefs or religious objections. When clerks review marriage license applications, they act on behalf of the State of California. For that reason, they may not treat one group of applicants differently from another group solely because of personal religious objections. If you have any issues or problems with a clerk, please contact one of the LGBT legal organizations listed on this document (ACLU, Lambda Legal, or National Center for Lesbian Rights).

### **22. Can a private business, such as a florist, photographer, or event space refuse to provide space or a service for my wedding because I am marrying a person of the same sex?**

No. California law does not permit business establishments that provide goods or services to the public to discriminate on the basis of sexual orientation, gender identity, gender expression or marital status. This prohibition on discrimination applies regardless of the religious beliefs of a business owner or employee. Note, however, that this anti-discrimination protection may not apply to some private,

membership-based clubs and organizations that are not generally open to, and do not serve or conduct business transactions with, the general public. If someone is denying you services or event space for your wedding, contact one of the LGBT legal organizations listed on this document (ACLU, Lambda Legal, or National Center for Lesbian Rights).

**23. Can an employer refuse to hire me because I've married my same-sex partner?**

Generally, no. California law prohibits employment discrimination based on sexual orientation, gender identity, gender expression, and marital status. However, if your employer or prospective employer is a religious corporation or association, the answer may, in some limited circumstances, be more complicated. If you are facing any problem in employment related to marrying your same-sex partner, contact one of the LGBT legal organizations listed on this document (ACLU, Lambda Legal, or National Center for Lesbian Rights).

**24. Can my employer refuse to provide my same-sex spouse with employment benefits that they give to different-sex spouses or refuse to recognize my marriage as valid?**

Generally no. With respect to benefits, California law forbids employers from discriminating on the basis of sexual orientation or gender identity when administering most employment benefits. (Note, as discussed above, that the rules that apply to certain religious corporations in certain narrow situations are sometimes different.). If you are having problems with employment benefits please contact one of the legal organizations listed on this document (ACLU, Lambda Legal or National Center for Lesbian Rights).

With regard to health benefits, now that the Supreme Court struck down Section 3 of DOMA, if your spouse is covered under your employer's health plan and you are considered validly-married by the federal government, you and your spouse should be eligible for the following additional federal protections:

- The value of your spouse's health insurance will not be treated as taxable income to you (the employee) or to your spouse.
- Your spouse and children have the right to remain on your health plan if you lose your job or your hours are reduced, or if you divorce or separate. This is known as "COBRA coverage" or "COBRA continuation coverage." While your employer has to allow you and your children and spouse to remain insured, you can be required to pay the full cost of those benefits. (Nothing prevents

a plan from providing continuation coverage to domestic partners, but such coverage is not required by federal law.)

- While most health plans only let you enroll at specific times, marriage or divorce are “qualifying events” that will let you enroll or un-enroll outside those specific time periods.

**25. Can a landlord refuse to rent a house or apartment to me and my spouse?**

No. California law prohibits housing discrimination based on sexual orientation, gender identity, gender expression, and marital status.

**26. If my partner and I get married, can an adoption or foster agency discriminate against us?**

No. California prohibits adoption and foster care agencies from discriminating on the basis of sexual orientation and gender identity. However, international adoption follows different rules, and many countries do not allow gay prospective parents to adopt.

**For more information** about your freedom to marry and anti-discrimination protections, please contact:

The American Civil Liberties Union of Northern California: [www.aclunc.org](http://www.aclunc.org)

The American Civil Liberties Union of Southern California: [www.aclu-sc.org](http://www.aclu-sc.org)

Equality California: [www.eqca.org](http://www.eqca.org)

Lambda Legal: [www.lambdalegal.org](http://www.lambdalegal.org)

National Center for Lesbian Rights: [www.nclrights.org](http://www.nclrights.org)