



Rhode Island Marriage Guide For Same-Sex Couples

May 2013

Funding for this publication provided by:
Reproductive Science Center of New England



This document is intended to provide general information only and cannot provide guidance or legal advice as to one's specific situation. Moreover, the law is constantly changing and this publication is based upon the information that is known to us as of this printing. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. Check our website, www.glad.org, for more information.

If you have questions about this publication, other legal issues or need lawyer referrals, call GLAD's Legal InfoLine weekdays between 1:30 and 4:30 pm at:

800.455.GLAD (4523) or 617.426.1350

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Introduction

On Thursday May 2, 2013, the Rhode Island General Assembly approved and Governor Lincoln Chafee signed a marriage equality law, *An Act Relating to Domestic Relations-Persons Eligible to Marry*,¹ that extended the right to marry to same-sex couples *effective August 1, 2013*. This legislation also ends the ability of same-sex couples to enter into civil unions in Rhode Island on that same date and allows any couples already in a Rhode Island civil union to merge their civil union into marriage.² This makes Rhode Island the sixth and last state in New England and the 10th state and 11th jurisdiction (including Washington, D.C.) in the United States to allow same-sex couples to marry.

The act also reiterates the right of any religion to set any requirements it chooses on who may marry within that religion and the right of any clergy person, rabbi or similar official to refuse to marry any couple. It also provides further exemptions for religiously-controlled organizations and fraternal benefit organizations.

The process for getting married in Rhode Island requires the following basic steps:

1. If at least one party is a resident of Rhode Island, the couple must obtain a license from the clerk in the city or town where either party lives. If neither party is a resident of Rhode Island, the couple must obtain a license from the clerk of the city or town where the proposed marriage is to take place.³
2. The couple must have the marriage solemnized (i.e. have a ceremony which is witnessed by at least two people in addition to the officiant) within 3 months of obtaining the license.⁴

¹ See <http://webserver.rilin.state.ri.us/BillText/BillText13/HouseText13/H5015B.pdf>.

² R.I.G.L. § 15-3.1-12.

³ R.I.G.L. § 15-2-1.

⁴ R.I.G.L. §§ 15-2-8, 15-3-8

3. Once the ceremony has been performed, the person who performed it has 72 hours to return the license to the city or town where it was issued.⁵
4. The clerk will then file the original, and the couple can receive an official certificate of their marriage.

The detailed process for getting married in Rhode Island, whether you should enter a marriage, and what it all means are questions this publication is meant to address. Inevitably, you will have questions to which there are simply no definitive answers at this time. We will continue to update our publications as new developments occur over time.

This document is intended to provide general information only and cannot provide guidance or legal advice as to one's specific situation. These questions and answers are based upon the information that is known to us as of this printing and that can change at any time. For guidance on your particular situation, you must consult a lawyer. You may contact GLAD's Legal InfoLine at www.glad.org/rights/infoline-contact or at (800) 455-GLAD (4523) for more information and to obtain lawyer referrals.

⁵ R.I.G.L. § 15-3-12.

The Basics

Who can marry?

To be eligible to marry in Rhode Island, both parties must:

- **Be 18 years of age or older and not be under the care of a guardian, *OR***
- **Be 16 years or older or under the care of a guardian and have the written consent of the parent or guardian or municipal director of public welfare⁶ (the parent, guardian or director of public welfare in the city or town where the party resides must complete the “Minor’s Permit to Marry” form in the presence of the town or city clerk), *OR***
- **Be under 16 years of age and, in addition to obtaining the permission of the parent or guardian or director of public welfare, obtain a written order from the family court.⁷**
- **Not be married or in a civil union or comprehensive domestic partnership to a *different person* (any dissolution or divorce must be final at the time of application) and not be mentally incompetent.⁸**

If you are married to or are in a civil union or comprehensive domestic partnership with a *different person*, you cannot marry your new partner until you have dissolved the other relationship. Entering into another marriage before you have legally ended your relationship with another person automatically makes the new marriage null and void—so in fact you do not have a marriage. In addition this would be considered bigamy, which is a criminal offense subject to a fine of up to \$1,000.⁹ The municipal clerk will ask to see a certified copy of the dissolution.¹⁰ For more information about getting married in

⁶ R.I.G.L. § 15-2-11(a),

⁷ R.I.G.L. § 15-2-11(b).

⁸ R.I.G.L. § 15-1-5.

⁹ R.I.G.L. § 11-6-1.

¹⁰ R.I.G.L. § 15-2-1(b).

Rhode Island if your relationship is already recognized in some way, see the section below, *What If I Already Have A Marriage, Civil Union Or Domestic Partnership From Another State?*.

- **Not be closely related by blood or marriage to his or her intended spouse.**¹¹

A person may not marry his or her:

- sibling
- parent
- grandparent
- child
- grandchild
- stepparent
- grandparents' spouse
- spouse's child
- spouse's grandchild
- sibling's child
- parent's sibling

NOTE: Couples whose marriage is solemnized in the Jewish faith are allowed to marry within the degrees of affinity or consanguinity allowed by that religion.¹²

Do We Have To Be Rhode Island Residents?

No. Any same-sex couple can marry in Rhode Island, provided they satisfy the above requirements.

How do we get a marriage license?

In order to obtain a Rhode Island marriage license, both parties must appear in person and complete a "Marriage Worksheet" with the clerk of the city or town where one party resides, if at least one party is a resident of Rhode

¹¹ R.I.G.L. § 15-1-2.

¹² R.I.G.L. § 15-1-4.

Island, or, if neither party is a resident of Rhode Island, with the clerk of the city or town where the marriage ceremony will take place.¹³

The applicants must provide the following information on the marriage worksheet:¹⁴

1. current name;
2. name on birth certificate if different
3. place of residence and phone number;
4. place and date of birth;
5. whether either party has a guardian;
6. social security number;
7. last name upon marriage;
8. father's birth name and birthplace;
9. mother's birth name and birthplace;
10. information about previous marriages, civil unions or comprehensive domestic partnerships and how they ended (dissolution, annulment or death);
11. type of identification used by the parties (e.g. birth certificate, passport, etc.);
12. name and contact information of the officiant;
13. date and city or town of marriage ceremony;
14. names of witnesses, if known.

The clerk may ask for:

- proof of birth facts and a valid form of identification (check with the clerk about what proof that city or town requires);
- proof of residency;
- if previously married or in a previous civil union (from Colorado, Delaware, Hawaii, Illinois, New Jersey or Vermont) or comprehensive domestic partnership (from California, Nevada, Washington State or Oregon) with a *different person*, a *certified* copy of the final decree of dissolution or proof of annulment or a

¹³ R.I.G.L. § 15-2-1(a).

¹⁴ See <http://www.providenceri.com/efile/64>.

certified copy of the death certificate of the previous spouse or partner;¹⁵

- when a party is younger than 18 or is under the care of a guardian a “Minor’s Permit to Marry” must be completed by the parent, guardian or director of public welfare of the city or town in which the party resides in the presence of the clerk, and, if a party is under the age of 16, a court order from the Family Court is also required.

When all of the foregoing information has been obtained, the city or town clerk prepares the marriage license (there is no waiting period), which is valid for not more than 3 months from the date of filing. If the license is not used within that time period, it must be returned to the municipal clerk.¹⁶

Rhode Island has no blood tests or other medical requirements to obtain a marriage license.

The fee for obtaining a marriage license is currently \$24, payable to the clerk of the city or town.

How do we solemnize the marriage?

If one party is a resident of Rhode Island, the marriage can be solemnized anywhere in Rhode Island. However, if neither party is a resident of Rhode Island, the marriage **MUST** be solemnized in the same city or town where the marriage license was issued, otherwise there may be questions raised about the validity of the marriage.

The marriage must be solemnized within 3 months of receiving the marriage license.

Officiants who are authorized to join two people in marriage include:¹⁷

- Ordained clergy and elders or similar officials of any religious organizations who are in good standing;

¹⁵ R.I.G.L. § 15-2-1(b)

¹⁶ R.I.G.L. § 15-2-8.

¹⁷ R.I.G.L. § 15-3-5.

- Judges, clerks, administrators and magistrates of the supreme court, superior court, family court, district court or traffic tribunal
- Former judges and administrators of these courts
- Judges and former judges of municipal or probate courts
- Federal judges
- Wardens of the town of New Shoreham.

NOTE: Justices of the Peace in Rhode Island are NOT allowed to officiate at weddings.

Rhode Island requires that in addition to the officiant at least two people 18 years or older witness the wedding ceremony.¹⁸

There are no requirements for the marriage ceremony itself, so the couple is free to have whatever ceremony they choose.

Any person may object to the certification of the marriage by submitting to the official performing the ceremony the legal reason for the objection. The certification of the marriage may not occur until the legal objection is resolved. Failure to obtain witnesses or address legal objections can invalidate the certification of a marriage.¹⁹

What happens after the marriage ceremony?

The authorized officiant completes the officiant's section of the "License and Certificate of Marriage" form and certifies that the marriage has been performed in accordance with the laws of Rhode Island.²⁰

The officiant is required to return the marriage certificate within 72 hours to the clerk of the city or town that issued the license.

¹⁸ R.I.G.L. § 15-3-8.

¹⁹ R.I.G.L. § 15-3-9.

²⁰ R.I.G.L. § 15-3-12

The couple can then request a certified copy of the marriage certificate from the municipal clerk. The charge for the first certified copy is \$20 and \$15 for additional copies issued at the same time.

How do I change my surname?

The “Marriage Worksheet” form has a place for requesting a change in your last name. You can bring a certified copy of your marriage certificate to the Social Security Administration and the Rhode Island Division of Motor Vehicles²¹ in order to change your last name on those identity documents.

Prior to May 27, 2009, the Passport Agency, citing the federal 1996 Defense of Marriage Act (DOMA), refused to honor the marriage certificate of a same-sex couple as a name change document and required couples to go through Probate Court to have their names changed or to wait 5 years before it would issue a passport that reflected their married name.

The U.S. Department of State has now changed its policy and will permit a marriage certificate to be used as proof of a surname change, *provided the marriage certificate creates a way to legally change one’s surname by operation of state law.* Rhode Island’s procedure for changing your name via your marriage certificate satisfies this requirement.

Based on GLAD’s experience with couples who were married in Massachusetts, we would suggest that in addition to a certified copy of your marriage certificate that you also provide a copy of your Rhode Island drivers’ license showing that you are in fact using your married name. The Passport Agency policy can be found at:

http://www.glad.org/uploads/docs/publications/passport_manual.pdf, and it may be advisable to mail a copy of it with your application or bring it with you if you go in person. Please contact GLAD if you encounter any problems.

NOTE: If you come to marry in Rhode Island and return to a state that does not recognize your marriage, then most likely you will not be able to use the marriage certificate to change your name on identification

²¹ See <http://www.dmv.ri.gov/licenses/address/>.

documents and instead will need to go to your local court to get a court ordered name change.

Is there anywhere else that we can get married?

Yes, currently Massachusetts, Connecticut, Iowa, Vermont, New York, New Hampshire, Maine, Maryland, Washington State, the District of Columbia and Canada allow same-sex couples to marry and have no residency requirement. GLAD has detailed publications on how to get married in Massachusetts, Connecticut, Vermont, New Hampshire, Maine and Canada on our website at <http://www.glad.org/rights/publications/c/marriage/>. For information about getting married in Iowa, New York, Maryland, Washington State and the District of Columbia contact Lambda Legal (www.lambdalegal.org).

In addition, the Netherlands, Belgium, Spain, South Africa, Norway, Sweden, Portugal, Iceland, Argentina, Denmark, New Zealand, Uruguay and France allow same-sex couples to marry, but some of these countries have requirements that make it difficult for non-citizens to marry. Moreover, you should speak with an attorney about other consequences of marrying outside the country, particularly with regard to potential differences in the treatment and respect of such marriages within the United States.

COMMON LAW MARRIAGES

Does Rhode Island allow common-law marriages?

Yes, Rhode Island is the only New England state with common-law marriage. The requirements for a common-law marriage in Rhode Island are:²²

1. serious intent to be married, and
2. conduct that leads to a reasonable belief in the community that the couple is married—by inference from co-habitation, declarations,

²² See *Demelo v. Zompa*, 844 A.2d 174 (R.I. 2004).

reputation among members of the community and other circumstantial evidence.

Rhode Island also recognizes common-law marriages from other states.

Religious Exemptions

What religious exemptions does Rhode Island law provide with regard to marriage?

The marriage equality law reiterates the guarantees of freedom of religion set forth by both the First Amendment to the United States Constitution and Article 1 Section 3 of the Rhode Island Constitution that each religious institution has exclusive control over its own religious doctrine, policy and teachings regarding who may marry within their faith.²³

In addition, no clergy or similar official of any religious organization is required to solemnize any marriage and is immune from any civil action based on a refusal to solemnize a marriage. Also, no government action can be taken against a religious organization due to a refusal to solemnize any marriage.²⁴

Finally, religious organizations, associations, or societies, as well as the non-profit organizations they operate, supervise, or control, are not required to provide any services, facilities or accommodations as it relates to the solemnization, celebration, or promotion of any marriage that is in violation of their religious beliefs.²⁵ Religiously controlled or affiliated fraternal benefit organizations also have these same exemptions, as well as exemptions with regard to their membership and insurance benefits.

What does this religious exemption mean to us if we are planning on getting married?

In short, it means that if an organization, association or institution falls within this exemption, even though it generally makes its services, facilities, etc. available to the general public, it is free to refuse those services if the refusal is based upon a religious belief, when it comes to the solemnization, celebration, or promotion of marriages. So, for example, if you wanted to have your marriage ceremony or your marriage reception in the facilities

²³ R.I.G.L. § 15-3-6.1(a).

²⁴ R.I.G.L. § 15-3-6.1(b).

²⁵ R.I.G.L. § 15-3-6.1(c).

owned or controlled by one of these organizations, they are legally allowed to refuse you.

However, Rhode Island has a very strong public accommodations anti-discrimination law²⁶ that provides specific protections against discrimination based on sexual orientation or gender identity. Non-religious organizations and businesses are not allowed to discriminate against you when it comes to providing services and facilities related to your wedding. So photographers, caterers, inns, hotels, etc. have no right to refuse to provide services for your wedding.

If you encounter a problem, please contact GLAD and tell us what happened.

²⁶ R.I.G.L. § 11-24-2.

What Happens To Rhode Island Civil Unions?

Can I still obtain a Rhode Island civil union after the marriage equality law goes into effect?

No. Once the marriage equality law goes into effect on August 1, 2013, Rhode Island will no longer license new civil unions.

Can we marry in Rhode Island if we already have a Rhode Island civil union?

Yes. There are actually two ways that you can convert your Rhode Island civil union into a Rhode Island marriage:

1. You can see the municipal clerk where your civil union certificate was filed and request that it be merged into a marriage. There is no cost for this and you do not need to go through a marriage ceremony. The clerk is then required to provide you with a marriage certificate.
2. You can go through the normal process of getting married described in *The Basics* section, and your civil union will then be merged into your marriage.

What happens if we already have a Rhode Island civil union and choose not to marry?

Nothing. Your civil union will continue as a civil union until you merge it into a marriage, dissolve it or your civil union spouse dies. A Rhode Island civil union is supposed to extend to same-sex couples all the state-based rights, benefits, protections and responsibilities that are given to different-sex married couples.

The civil union law, like the marriage equality law, exempts any religious organization and any charitable or educational organization that is controlled by a religious organization from having to provide services, accommodations, facilities or goods for a civil union ceremony or celebration.

However, unlike the marriage equality law, the civil union law also allows these organizations to refuse to treat a civil union as valid.²⁷ For example, if one civil union spouse enters a hospital that is connected with a religious organization, that hospital could refuse to recognize the civil union. This is one reason why getting married will provide you with greater protections than simply staying in a civil union.

Although this exemption is broad, it is not a license for religious individuals to refuse to respect your civil union writ large. Businesses and service providers that are not affiliated with religious entities are required to treat you as legal spouses by Rhode Island law. If a person, business, or organization discriminates against or refuses to respect your civil union, please call GLAD.

²⁷ R.I.G.L. § 15-3.1-5.

What If I Already Have A Marriage, Civil Union Or Domestic Partnership From Another State?

Is my marriage valid if I legally married outside Rhode Island prior to August 1, 2013?

Yes, Rhode Island has a strong history of recognizing marriages celebrated in other jurisdictions even if the couple would not have been able to marry in Rhode Island. So, wherever and whenever you married, your marriage will be recognized in Rhode Island, and you do not need to take any further action.

Can I get married in Rhode Island if I am already legally married?

Regardless of where you legally married, your marriage will be respected in Rhode Island. Remarrying the same person will most likely have no legal significance and could create some confusion about the date that your marriage began.

Although there is no explicit provision in Rhode Island law that prohibits a person from remarrying the *same person*, as a practical matter, clerks may not process your application since the forms you must fill out to apply for a marriage license require you to state if you have previously been married, and if so, how that marriage ended.

If you have a marriage and wish to marry a *different person*, you must first dissolve your existing relationship, since otherwise this second marriage would be null and void and would violate Rhode Island's bigamy law.²⁸ When you complete the marriage application, the clerk will ask you if you have been previously married, and if so you will need to furnish proof that it ended by death, divorce or annulment. For information about dissolving a marriage in Rhode Island, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Rhode Island?*.

²⁸ R.I.G.L. § 15-1-5..

What if I entered into a civil union in another state?

If you have a civil union from another state, Rhode Island will recognize your civil union as equivalent to a marriage, provided your civil union satisfies the requirements that Rhode Island has for marriage (see *The Basics* section). That means that Rhode Island will grant you the same rights and benefits, and hold you to the same responsibilities, as a married couple in Rhode Island. However, that does not mean your out-of-state civil union will be converted into a marriage—only that Rhode Island will treat it like a marriage. Moreover, couples in a civil union from another state cannot apply to have their civil union converted to a marriage by Rhode Island.

If you have a civil union from another state and wish to marry the ***same person*** in Rhode Island, you should be allowed to do so. However, that will give you two legal relationships, and, if you later decide to end the relationship, it is important to make sure that both legal relationships are dissolved.

If you have a civil union with one person and wish to marry a ***different person***, you must dissolve your civil union first, since otherwise you would have a legally recognized relationship with two different people which would make the marriage null and void²⁹ and would violate Rhode Island's bigamy law. Therefore, if you have previously joined in a civil union with a former partner, you must dissolve your civil union first before you get married to your new partner. For information about how to dissolve a civil union in Rhode Island, see the section below, *How Do I Get Out Of A Marriage Or Civil Union In Rhode Island?*.

What if I have a comprehensive Domestic Partnership from California, Oregon, Washington or Nevada?

If you have a comprehensive domestic partnership, such as from California, Oregon or Nevada, your relationship will be recognized in Rhode Island in the same way that a civil union from another state is (see the question above).

²⁹ R.I.G.L. § 15-1-5(2).

What If I Already Have A Marriage, Civil Union Or Domestic Partnership From Another State?

If you have a comprehensive domestic partnership and wish to marry the *same person* in Rhode Island, you should be allowed to do so. However, that will give you two legal relationships and if you later decide to end the relationship it is important to make sure that both legal relationships are dissolved.

If you have a comprehensive domestic partnership with one person and wish to marry a *different person*, you must dissolve your domestic partnership first, for the same reasons given in the question above.

Termination of a California domestic partnership can take different forms and, in some cases, does not require a court proceeding. You should seek advice and consult California's informative brochure at www.ss.ca.gov/dpregistry/forms/sf-dp_termbrochure.pdf. For information about ending an Oregon or Nevada domestic partnership contact Lambda Legal (www.lambdalegal.org, 212-809-8585) or the National Center for Lesbian Rights (www.nclrights.org, 800-528-6257).

What if I have a non-comprehensive Domestic Partnership?

The term “domestic partnership” has no universal definition. The exact meaning of the term and the rights and responsibilities accorded to persons in a domestic partnership vary, sometimes dramatically, from jurisdiction to jurisdiction.

If you have a municipal or non-comprehensive state domestic partnership and intend to marry a *different person* from the person with whom you presently have the domestic partnership, GLAD recommends that you consult an attorney about whether you need to dissolve the domestic partnership first.

Further, if you marry the person with whom you have registered as domestic partners, your marriage may impact your domestic partnership status, so it is important to look into the law of the state or municipality where you previously registered.

What Are Some Things We Should Consider Before Entering Into A Marriage?

For any person, a marriage is an important commitment and should be considered carefully. Along with the important benefits and protections marriage can provide for your family, you also take on significant legal responsibilities and obligations to your spouse.

In addition, particularly for same-sex couples, entering into a marriage can affect many aspects of your public and private life. Moreover, because only a few states have any sort of comprehensive relationship recognition for same-sex couples, it is important to plan for the worst, i.e., that entities in other states will not respect your marriage, while hoping for the best.

Moreover, this is a rapidly evolving area of new law where some things are unclear and where we do not yet have a great deal of guidance as to the application and implementation of the law. Therefore, please remember that the information provided here is tentative and that circumstances may change rapidly. It is important to make an informed choice about whether to enter into a Rhode Island marriage based on your relationship with your partner and the unique circumstances of your life. You should consult an attorney if you have any questions or concerns.

In preparing to consult with an attorney, here are a few issues to consider that uniquely affect married same-sex couples:

Adoption: Getting married may affect your ability to adopt as a “single” person from some other states and foreign countries. Virtually no foreign countries permit an openly gay or lesbian couple to adopt, thereby likely barring all international adoptions for same-sex couples who are married or in a civil union. Some states in the United States also do not allow same-sex couples to adopt.

Government Program Disqualification: Being in a marriage could disqualify one spouse from certain government programs because the other

spouse's income and assets may be included in determining eligibility for the program.

Immigration: For bi-national same-sex couples, non-citizen spouses could be harmed by marrying. U.S. same-sex spouses cannot sponsor their non-citizen spouses for legal permanent residence due to the discriminatory federal Defense of Marriage Act (DOMA), but marrying may bring spouses to the attention of the government, which could be dangerous if one spouse is “out of status.”

In addition, simply getting married could cause problems if one spouse is applying for a non-immigrant visa or status like a tourist or student visa. The marriage may inadvertently evidence an intent to stay in the U.S. permanently and, thus, undermine the application.

For a more detailed explanation of the risks, consult GLAD's, *Warning for Same-Sex Bi-National Couples*, at: http://www.glad.org/uploads/docs/publications/Binational_Couples_Immigration_Warning.pdf. Individuals seeking further guidance may want to contact GLAD or Immigration Equality at: <http://www.immigrationequality.org>.

Debt Obligations: Under Rhode Island law, spouses are responsible for their spouse's debts such as medical bills, rent and the purchases of items that support the family or benefit the couple.³⁰ This is true under the marriage laws of most other states as well.

Inheritance: Under Rhode Island law, a spouse cannot completely disinherit a spouse by leaving the spouse out of her or his will unless the couple signed a valid pre-nuptial agreement.³¹ As a result, a spouse is entitled

³⁰ See *Landmark Medical Center v. Gauthier*, 635 A.2d 1145 (R.I. 1994) (recognizing reciprocal obligation of support between spouses).

³¹ There are a multitude of protections a surviving spouse receives upon his or her loved one's death, including that a surviving spouse is entitled to household effects, supplies and personal property of the deceased (as long as they are exempt from attachment), see R.I.G.L. § 33-10-1; that a surviving spouse may receive support from the estate while the estate is open, for six months, and even beyond if the assets are sufficient to so provide, see R.I.G.L. § 33-10-3; that after estate debts and obligations are paid, if any surplus remains in the estate, the surviving spouse is entitled to \$50,000 plus one-half of the remainder if there are no children, and to one-half of the total if there are children, see R.I.G.L. § 33-1-10; and that a surviving spouse is generally entitled to a life estate in the real estate of the deceased spouse, see R.I.G.L. § 33-1-5 (establishing life estate).

to a share of your estate. (Note: In Rhode Island, marriage automatically revokes an existing will;³² couples who decide to marry should consult an attorney about re-executing their old will or writing a new one).

Prior Marriages: Being in a marriage may disqualify a person for benefits obtained through a former spouse (like social security payments based on a former spouse's earnings; worker's compensation payments arising from his or her death; or ongoing alimony payments).

State-to-State Variations: Because the benefits and obligations of marriage are governed by state law, you may relocate to a state that imposes different requirements than where you live now. For example, whether you have community property depends on the state where you live, which may not be the same state where you were living at the time of your marriage.

³² R.I.G.L. § 33-5-9.

What Protections Do We Gain From A Marriage in Rhode Island?

The protections that a Rhode Island marriage provides same-sex couples include:

- family law—divorce, stepparent adoption, etc.;
- title, tenure, descent and distribution, intestate succession, wills, survivorships, or other incidents of the acquisition, ownership or transfer (during life or at death) of real or personal property;
- probate courts and procedure;
- group insurance for state or municipal employees;
- state family leave benefits;
- financial disclosure and conflict-of-interest rules;
- emergency and non-emergency medical care and treatment, hospital visitation and notification, and authority to act in matters affecting family members;
- state public assistance benefits;
- Medicaid (Rhode Island will respect the marriages of same-sex couples who qualify for purposes of Medicaid);³³
- workers' compensation;
- crime victims' rights;
- marital privileges in court proceedings; and
- vital records procedures.

Family law attorneys highly recommend that couples consider entering into a prenuptial agreement before joining in a marriage to clarify what they consider to be the length of their relationship, the ways they wish their property to be divided (in the event that their wishes vary from usual dissolution laws), and other matters of particular concern to them.

Although being in a marriage offers many protections for you and your family, GLAD strongly recommends a “belt and suspenders” approach – i.e., also consult with an attorney who can work with you to put in place the legal

³³ R.I.G.L. § 15-1-9(b)

planning documents that will offer your relationship and family the maximum protection. You should use the services of an attorney to:

- gain expert advice and use multiple strategies (through wills, trusts, agreements) to ensure your wishes can be met to the largest degree possible no matter what the situation at your death;
- do tax planning – income tax, gift tax, estate tax – at the state and federal levels;
- do Medicaid and long term care planning, concerning issues like assets available to both spouses, asset transfer issues, and liens.

Respect For Your Rhode Island Marriage

RESPECT BY THE FEDERAL GOVERNMENT

Because of the 1996 federal Defense of Marriage Act (DOMA), the current federal government does not recognize the marriages of same-sex couples and therefore does not extend to same-sex spouses the more than 1138 federal laws that condition benefits, protections and responsibilities on marriage. This includes federal taxes, Social Security, immigration, veterans' benefits and many more.

In March 2009, GLAD filed the first strategic lawsuit to challenge Section 3 of DOMA, *Gill v. Office of Personnel Management* in Massachusetts Federal District Court on behalf of married couples and surviving spouses in Massachusetts. The Commonwealth of Massachusetts filed its own case in July 2010 to complement the *Gill* case. The legal framework developed in the *Gill* case has been used to successfully challenge DOMA throughout the country. In July 2010 the Massachusetts Federal District Court ruled that DOMA Section 3 is unconstitutional and the two decisions (*Gill* and *Commonwealth*) were unanimously upheld on appeal in the First Circuit Court of Appeals in May 2012.

In November 2010, GLAD filed a second DOMA Section 3 case in Connecticut Federal District Court, *Pedersen v. Office of Personnel Management.*, on behalf of couples and a widower from the States of Connecticut, Vermont and New Hampshire. In July 2012, that court also ruled that DOMA Section 3 is unconstitutional.

Writs of Certiorari were filed with the United States Supreme Court for GLAD's two cases together with DOMA Section 3 challenges by the American Civil Liberties Union (ACLU), *Windsor v. United States*, and by Lambda Legal, *Golinski v. Office of Personnel Management*.

On December 7, 2012, the Supreme Court announced that it would review the decision by the Second District Court of Appeals in the *Windsor* case. On March 27, 2013 the oral arguments on the case were held at the Supreme Court.

This means that there should be a ruling by that Court on the constitutionality of Section 3 of DOMA by the end of June 2013. The other three cases are being held by the Supreme Court and decisions about those cases will be made after the *Windsor* ruling.

GLAD has been in the forefront of working to defeat Section 3 of DOMA, and we will continue to do whatever we can to achieve that goal. GLAD worked with the ACLU and the New York City law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP on the *Windsor* case and also coordinated the amici brief effort.

For the latest updates on DOMA, go to www.glad.org/doma. For more information about how DOMA discriminates against same-sex married couples, see GLAD's publication, *How DOMA Hurts Americans*, at <http://www.glad.org/uploads/docs/publications/how-doma-hurts-americans-publication.pdf>.

RESPECT FOR THE MARRIAGES OF SAME-SEX COUPLES OUTSIDE OF RHODE ISLAND

First, the good news. Your Rhode Island marriage will be respected as a marriage in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York, Maine, Maryland, Washington State and the District of Columbia and for some purposes in New Mexico.

It will be respected as a civil union in Colorado, New Jersey, Illinois, Hawaii and Delaware, and it will be respected as a domestic partnership in the states of California and Nevada.

There is uncertainty as to how other states will treat the marriage of a same-sex couple. Although states have a strong tradition of recognizing marriages

that are legal where they were celebrated (unless the state has strong public policy against the recognition of the marriage), unfortunately, many states currently do have laws, constitutional provisions or controlling appellate decisions, that can be deemed to create a “strong public policy” against recognizing the marriages of same-sex couples.

Even in states that do not respect the marriages of same-sex couples, there is nothing to prevent private parties – e.g., businesses, employers, public accommodations, insurance companies, etc. – from respecting your marriage.

What should we do if our marriage is not respected?

If you feel you have been discriminated against, you should contact GLAD or one of the other LGBT legal organizations. We can help you figure out what options you have to enforce your rights.

Many ways exist to advocate in your home state about why your marriage should be respected. You can work with local marriage equality organizations to educate the public, mobilize supporters, and lobby your state legislature. You can write letters to the editor of your local paper about why your family needs the protections due to your marriage. You can participate in efforts to defeat anti-gay constitutional amendments, legislation, and ballot initiatives on both the state and federal levels. You can share your story by participating in public forums. For more information about these kinds of efforts, contact GLAD.

How Will A Marriage Affect My Children?

There is no more important question than establishing legal parenthood. This document can only provide general information. For you and your children, we cannot urge more strongly that you consult an attorney about undertaking co-parent adoption for any current non-legal parents – particularly in light of the information below.

As to legal status as parents, if both parties to the marriage were parents before the marriage (e.g., through joint or second-parent adoption), both parties remain parents.

If one party to the marriage was not a parent before the marriage, the marriage will not change that. He or she will be considered a stepparent, carrying whatever legal weight that status has in Rhode Island. The sure way to become a legal parent in this situation is for the non-legal parent to adopt the child. Moreover, that adoption decree from the court is a legal judgment. As a result, it should be recognized broadly outside of Rhode Island and have legal significance independent of the marriage.

If two people joined in a marriage subsequently have a child, both parties may be presumed to be the legal parents of a child born to either of them. In Rhode Island, a child born into a marriage is presumed to be the child of both parties. Nonetheless, this is just a presumption and does not have the same effect as a court judgment. It is subject to being challenged and overturned.

In addition, the marriage could encounter a lack of respect in some states, so relying on the fact of the marriage alone to protect your children is not the best approach. Therefore, GLAD strongly recommends that you consult a lawyer and continue the practice of securing a second-parent adoption in order to obtain a decree of legal parenthood that is independent of the marriage. Second-parent adoptions have been routinely granted in Rhode Island.

- *Miller-Jenkins Sidebar*

Relying on a partner's good will, or even on the fact that a child was born into a marriage or civil union, is not the best way to ensure ongoing parental rights of both parents if a couple later separates. A case in point is *Miller-Jenkins v. Miller-Jenkins*. This case has been in litigation since 2004, has involved two state Supreme Courts (Vermont and Virginia), and has already made several trips to the U.S. Supreme Court. Proceedings are ongoing.

In that case, Janet and Lisa had a child, Isabella, while they were in a civil union. Janet did not adopt. After the couple separated, Lisa moved to Virginia and used both the lack of an adoption, and Virginia's laws hostile to same-sex relationships to thwart Janet's contact with their daughter. Finally, however, the Virginia courts agreed that the Vermont courts had the authority to make custody and visitation decisions.

After many attempts to get Lisa to allow Janet visitation rights, in November, 2009, the Vermont Family Court issued an order granting Janet responsibility for the day-to-day care of Isabella while granting Lisa liberal visitation rights. The transfer of custody was to have taken place on January 1, 2010. However, Lisa failed to appear at the appointed time, and an arrest warrant was issued. Lisa and Isabella still have not been found.

GLAD and local counsel represent Janet in the Vermont proceedings. For more information about the case, go to <http://www.glad.org/work/cases/miller-jenkins-v-miller-jenkins>.

Beyond these considerations, entering into a marriage will provide your children with every protection and benefit that the Rhode Island government (but not the federal government) extends to enhance the security and safety of children's lives.

Will I Be Able To Get Health Insurance Through My Employer For My Rhode Island Spouse?

Will I be able to get health insurance through my employer for my Rhode Island spouse?

Most people think the answer to this question is straightforward, but it is not. It can be difficult to predict whether you will be able to obtain coverage for your spouse by virtue of your marriage because many different factors affect the legal analysis.

If you are a private sector employee, you should ask your employer whether it will enroll your spouse in its health plan(s). In general, whether the company will be legally required to provide health benefits to your same-sex spouse depends on whether the insurance plan is insured or self-insured (also called self-funded).

Generally speaking, insured plans that are governed by Rhode Island insurance law are required to treat same-sex spouses in the same way they treat different-sex spouses.

Self-insured plans are governed by a federal agency called ERISA which sets minimum standards that employers must meet. ERISA does not require employers to cover same-sex spouses, but it also does not prevent them from doing so. So if you have a self-insured plan and your employer refuses to cover your spouse, it is because your employer has chosen to discriminate against same-sex married couples.

In other words, all private employers have the discretion to provide, on a voluntary basis, the same health benefit protections to same-sex couples that they provide to different-sex couples. Moreover, all private employers can voluntarily provide same-sex spouses with federal health benefit protections automatically available to different-sex spouses like continuing coverage under the federal law known as COBRA and open-enrollment rights under the federal law known as HIPAA.

Because of the complexity of this issue, we encourage you to contact GLAD if you are denied coverage for your spouse.

If you are a Rhode Island state, county or a municipality employee, you will be able to add your spouse to your health plan. If you encounter any difficulty, contact GLAD

If you are employed by the federal government, the federal DOMA law discriminating against legal spouses of the same-sex means that health plans offered through the Federal Employees Health Benefits Program do not cover same-sex spouses of federal employees. However, the federal government is in the process of trying to offer domestic partnership benefits to certain federal employees. If you are a federal employee you should check with your HR person to see if this benefit is available.

Assuming I obtain health insurance for my spouse what should I know about the taxation of employer-sponsored health benefits for my spouse?

Because of federal tax laws and federal discrimination against same-sex couples, if an employer extends coverage to the same-sex spouse or domestic partner of an employee, the “fair market value” of those benefits is treated as income to the employee for federal tax purposes and added to the employee’s W-2 at the end of the year. (In contrast, benefits extended to different-sex spouses of employees are tax free.) There is one exception to this general rule of federal taxation. If the same-sex spouse qualifies as a “health dependent” under IRS rules, the value of the benefit to the “health dependent” is not taxed as wages to the employee.

In terms of state income tax on spousal health benefits, Rhode Island passed a law that does not treat the value of those benefits as income for state tax purposes.³⁴ This applies to same-sex married, civil union and domestic partner couples.

³⁴ R.I.G.L. 44-30-12(c)(6).

Will I Be Able To Get Health Insurance Through My Employer
For My Rhode Island Spouse?

Contact GLAD or a tax lawyer or accountant if you have concerns about the taxation of your employment benefits. You may also wish to consult GLAD's *Taxes on Employment Benefits for Same-Sex Couples* available at:

<http://www.glad.org/uploads/docs/publications/taxes-employment-benefits-spouses.pdf>

Can A Same-Sex Married Couple in Rhode Island File A Joint Tax Return?

FEDERAL INCOME TAX

In light of federal marriage discrimination (that is, the so-called “Defense of Marriage Act” or “DOMA”), the federal government does not consider a married same-sex couple as married for purposes of federal laws, including for filing of federal income taxes.

As a result, on *FEDERAL* tax returns, same-sex married or civil union couples are *NOT* allowed to use the married filing jointly or married filing separately status, but each member of the couple *MUST* file as “single” (or head of household if you meet the requirements for that filing status). In some situations, it may also be possible to claim your spouse as a dependent. GLAD strongly recommends that you get advice from a tax professional if you file other than “single” on your federal return.

GLAD recommends, however, that married couples consider designating in some way that the marriage has occurred. Ideas for designating your true marital status without claiming that status are discussed below. Doing so could help to avoid penalties for underpaying taxes and could also prevent others from using the designation of “single” on the tax return to argue or prove that a person is not really married when that issue arises in other legal contexts (i.e. applying for a mortgage or other loan). In order to acknowledge both the discriminatory federal law as well as the truth of your marriage, accountants suggest two options for designating your marital status on a “single” return:

1. Include a cover letter or disclosure form with the tax return. The disclosure form allows a taxpayer to highlight to the IRS issues raised by the tax return. It could include a statement that the taxpayer was married to a person of the same sex as of a certain date (and the marriage certificate could be attached as well), and that the only reason he or she is filing as a single person is because of the federal discriminatory law known as “DOMA.”

2. On the tax return itself, put an asterisk by the “x” in the “single” box, and indicate somewhere on the form (such as the margin) that the taxpayer is married to a person of the same-sex, the date of the marriage, and that this designation as “single” is for federal income tax filing purposes only.

RHODE ISLAND INCOME TAX

Until the passage of the marriage equality law, Rhode Island tax law did not allow civil union and same-sex married couples in Rhode Island to file joint State income tax returns.

However, the marriage equality law changes this so that **married same-sex should be able to file as “married” (either jointly or separately) on Rhode Island income tax returns.**³⁵

It is GLAD’s opinion that this change also applies to couples who have a civil union or comprehensive domestic partnership, since the marriage equality law states that a couple who has a “. . . legal union other than a marriage that provides substantially the same rights, benefits and responsibilities as a marriage and the union was validly entered into in another state or jurisdiction and the union is not prohibited by this chapter then they shall be afforded the same rights, benefits and responsibilities as a valid marriage in this state.”³⁶

Contact GLAD’s Legal InfoLine at 800-455-GLAD (4523) if you need further information or want referrals to a tax attorney.

³⁵ R.I.G.L. § 15-1-9(a).

³⁶ R.I.G.L. § 15-1-8.

How Do I Get Out Of A Marriage Or Civil Union In Rhode Island?

Until the passage of the marriage equality law, married same-sex couples residing in Rhode Island were not allowed to obtain a divorce there because the Rhode Island Supreme Court ruled that the Family Court did not have jurisdiction to hear the divorce cases of those couples. The marriage equality law changes this. Beginning August 1, 2013, any married same-sex couple who meets the divorce residency requirements of Rhode Island has access to the divorce process through the Rhode Island Family Court.

The procedure for dissolving a marriage or civil union is identical. Rhode Island has a one year residency requirement for dissolving either a marriage or civil union. Couples with non-Rhode Island civil unions or comprehensive domestic partnerships can also dissolve their relationships in Rhode Island provided they meet the Rhode Island residency requirement and their relationship does not violate Rhode Island's prohibitions³⁷ on marriage.

However, because of DOMA, none of the federal laws that pertain to divorce will apply to the dissolution of a marriage or civil union of a same-sex couple.

If a couple gets a Rhode Island marriage and then moves elsewhere, at least one member of the couple will need to live in a jurisdiction that recognizes the marriage for the purposes of dissolution and will need to meet the residency requirements of that jurisdiction.

Same-sex married couples will also be able to divorce in Massachusetts, Connecticut, Vermont, Iowa, New Hampshire, New York, Maine, Maryland, Washington State and the District of Columbia (and possibly in New Mexico), provided they meet the residency requirements for divorce. In addition, Colorado, New Jersey, Illinois, Hawaii and Delaware may dissolve the relationship as a civil union.

³⁷ R.I.G.L. § 15-1-8.

Civil union couples can also dissolve their relationship in Connecticut, Vermont, New Jersey, New Hampshire, Illinois, Delaware, Hawaii and Colorado. In addition, a state that provides same-sex couples with all the state-based rights of different-sex married couples (e.g. California, Oregon and Nevada) is more likely to be willing to dissolve same-sex relationships, even ones that are different from their form of recognition.

If you reside in any of the New England states and have questions about dissolving a marriage or civil union, contact GLAD's Legal InfoLine at 800-455-GLAD (4523). If your residence is outside of New England and you have questions about the dissolution of a marriage or civil union, you should contact Lambda Legal (212-809-8585) or the National Center for Lesbian Rights (800-528-6257).

What Legal Protections Can Same-Sex Couples In Rhode Island Acquire Without Being In A Marriage Or Civil Union?

Here are a number of steps a Rhode Island couple can take to safeguard their relationship *without being in a marriage or civil union*:

Because the establishment of legal statuses for same-sex couples is new throughout the country and taking different forms, this is a rapidly evolving area of the law where there are ongoing questions and considerable uncertainty as to where the law is heading. As a result, no one has sure answers to many important questions. Protecting your relationship and your family is obviously important and means that you should consult an attorney for advice on your particular situation. With or without a Rhode Island marriage, there are a number of steps a Rhode Island couple can take to safeguard their relationship:

1. Relationship Agreement or Contract: Cohabitation agreements regarding property and finances are a good way for couples to sort out their affairs in writing before a separation. As long as the contract is not about sexual services, it has a good chance of being upheld as valid as long as it complies with the requisites for a valid contract.³⁸ Bear in mind that as in any state, specific provisions concerning children may or may not be enforced according to their terms because it is always in the court's power to determine the best interests of children. (See discussion below concerning parenting agreements.)

2. Power of Attorney: Any competent person may appoint another person as his or her "attorney-in-fact" for financial matters in the event the one becomes incapacitated or disabled.³⁹ If no such appointment is made, then a "family" member will be empowered to make decisions for the disabled or incapacitated individual.

³⁸ See *Doe v. Burkland*, 808 A.2d 1090, 1094 (R.I. 2002) (allowing contract claim by former same-sex partner; "The mere existence of a sexual relationship between two parties does not impair the right to contract with each other for consideration independent of the relationship.").

³⁹ R.I.G.L. § 18-16-1 et seq.

3. Durable Power of Attorney for Health Care: Since medical care providers look to next-of-kin to make health care decisions for an incapacitated individual, an unmarried person must appoint a health care agent if he or she wishes another person to make those decisions instead of the family member. Under R.I. Gen. Laws, § 23-4.10-2, a person may appoint a health care agent to make decisions -- whether for a limited amount of time or indefinitely. The attorney-in-fact may then make decisions for you -- either immediately or upon your becoming incompetent to make decisions. Even after you give another person a health care power of attorney, you may make decisions for yourself if that is what you wish and as long as you are competent to do so.

The power of attorney can specify the authority of the agent to make decisions on your behalf, and also state what kinds of treatments you do not desire, including treatments which might keep you alive. You can also specify your wishes regarding organ and tissue gifts after death.

The power of attorney must be signed by two witnesses, at least one of whom is not related to the principal, and neither of whom is the agent of a health care provider or their employee. The power of attorney can be revoked at any time by creating a new power of attorney or by a clear expression of revocation. People often give a copy to their doctors and sometimes to family members.

4. Will: Without a will, a deceased unmarried person's property passes to: (1) his or her children; (2) his or her family; (3) if next-of-kin cannot be located, to the state.⁴⁰ If the person wishes to provide for others, such as his or her partner, a will is essential. Even if a person has few possessions, he or she can name in the will who will administer his or her estate. If a person has children, he or she can nominate the future guardian of the child in a will.⁴¹

5. Funeral Planning Documents: Rhode Island permits a person to name another as his or her "funeral planning agent" with sole

⁴⁰ R.I.G.L. § 33-1-1 et seq.

⁴¹ R.I.G.L. § 33-5-1 et seq.

responsibility and authority to make any and all arrangements and decisions about funeral services, and burial or disposition of remains, including cremation.⁴² The document must be signed and notarized by the individual.⁴³ To prevent any disputes with family members, it is preferable to give the instructions to the person you want to take care of matters, as well as to family members.

Even absent these documents, a surviving same-sex partner who can prove that their relationship satisfied the state criteria for being “domestic partners” (read the “Domestic Partnership” section above) can also assume control of the funeral and burial process. However, this requires proving certain facts about your relationship at a time of tragedy and does not control if someone else has been appointed as the “funeral planning agent.” The best way to ensure that your partner is able to make these decisions is to name your partner your “funeral planning agent.”

6. Living Will: Within a durable power of attorney for health care, language may be inserted stating what the individual wishes regarding termination of life support, preferences for types of medical care, or limits on the agent’s authority.⁴⁴

Does a person need an attorney to get these documents?

GLAD recommends working with an attorney on these documents. Although some forms are available, the form may not be suited to your individual needs and wishes. Moreover, attorneys may be able to help effectuate your goals, for example, by drafting a will in a way which is more likely to deter a will contest by unhappy family members, or drafting a durable power of attorney for health care with specific instructions about the types of treatments to which you do and don’t consent, and the exact scope of the agent’s authority.

⁴² R.I.G.L. § 5-33.3-3.

⁴³ R.I.G.L. § 5-33.3-4.

⁴⁴ R.I.G.L. § 23-4.10-2.

If a couple separates, what is the legal status of a Relationship/Partnership Agreement/Contract?

Upon separation, the terms of a Relationship or Partnership Agreement/Contract will come into play if the couple has one. Absent an agreement, couples can get involved in costly and protracted litigation about property and financial matters but without the divorce system to help them sort through it. The Rhode Island Supreme Court has recognized that, under some circumstances, contract theories and equitable principles may apply to address the property and financial matters of a separating same-sex couple even without a written agreement.⁴⁵ Written agreements offer vastly greater security, however, providing the court with a roadmap as to the intentions of the parties.

If a person has changed his or her mind about who should be his or her attorney-in-fact, or health care agent, or beneficiary or executor under a will, or funeral planning agent, then those documents should be revoked - with notice to all persons who were given copies of those documents, and new documents should be prepared which reflect the person's present wishes.

⁴⁵ See *Doe v. Burkland*, 808 A.2d 1090 (R.I. 2002).

Gay & Lesbian Advocates & Defenders (GLAD) is the leading legal rights organization in New England dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Through impact litigation, education and public policy work, GLAD seeks to create a better world that respects and celebrates diversity—a world in which there is equal justice under law for all.

GLAD's Legal InfoLine and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

To make a tax-deductible contribution, log on to www.glad.org, or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

Thank You!



GLAD

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EQUAL JUSTICE UNDER LAW

Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Tel 617.426.1350
1.800.455.GLAD (4523)
Fax 617.426.3594

www.glad.org