



NATIONAL CENTER FOR LESBIAN RIGHTS



# Marriage for Same-Sex Couples in California

## Frequently Asked Questions

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### What Do I Need To Know About Getting Married In California?

#### 1. Can same-sex couples marry in California?

Yes. On May 15, 2008, the California Supreme Court ruled that barring same-sex couples from marriage is unconstitutional. Beginning as soon as June 16, 5:01 p.m., same-sex couples will be able to marry in California.

#### 2. Can the court's decision be appealed to the U.S. Supreme Court?

No. The decision was based on the California Constitution, and the California Supreme Court has the final say in cases brought under the California Constitution.

#### 3. Does the court's decision affect the rights of heterosexual couples?

No. The rights of heterosexual couples to marry and the rights and responsibilities of those who are married remain exactly the same. The decision simply enables same-sex couples to marry.

#### 4. Does this ruling require religious groups or clergy members to marry same-sex couples?

No. The court's decision said 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 groups and clergy members remain free to recognize or refuse to recognize marriages within their religion as each sees fit. While some faiths do not permit same-sex couples to marry within that faith, a growing number do. As a result of the court's decisions, same-sex couples 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.

#### 5. For same-sex couples in binational relationships, will getting married in California permit a non-U.S. citizen to gain legal permanent residence in the U.S.?

No. Immigration is governed exclusively by federal law, which currently discriminates against married same-sex couples by refusing to recognize their marriages for purposes of any federal rights or benefits. A heterosexual person who marries a non-U.S. citizen can petition to have his or her spouse become a permanent legal resident; however, current federal law does *not* provide the same right to a lesbian, gay, or bisexual person who is married to a same-sex

spouse from another country. Same-sex couples in binational relationships should consult an immigration attorney before getting married in California or another jurisdiction.

**6. 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 couples in California to legally marry.

**7. Will domestic partnerships in California continue to exist?**

Yes. Domestic partnerships still exist under current California law.

**8. In 2004, many couples were married in San Francisco, and the California Supreme Court subsequently held that those marriages were invalid. Does the court's new decision mean that those marriages will now be legally recognized?**

No. Those marriages remain invalid, and those couples would have to remarry.

**9. If my partner and I were legally married in Massachusetts or Canada, will our marriage now be recognized in California?**

Yes. When the court's ruling goes into effect, couples who legally married in another jurisdiction will be recognized as married in California as well.

**10. Should we get married now?**

Marriage is a serious legal and personal commitment that should not be entered into lightly. Before getting married, couples should educate themselves about the legal consequences of marriage, in addition to other considerations.

Same-sex couples also face some additional considerations that heterosexual couples do not face, due to discrimination by the federal government as well as by a number of states. Deciding whether to marry is an important decision for everyone, gay or straight, but lesbian and gay couples have to be prepared for and be willing to take on those additional challenges.

A period of legal uncertainty is likely. For example, if you marry in California, you cannot be certain whether your marriage will be respected if you live in, travel to, or move to a state that has laws or constitutional amendments limiting marriage to heterosexual couples.

In addition, current federal law prohibits the federal government from recognizing marriages of same-sex couples for purposes of the many federal rights and benefits given to married heterosexual couples, such as the right to file joint federal income taxes and the right to social security benefits as a surviving spouse. Being excluded from these federal protections, and often state protections as well, is a serious hardship and can cause significant legal problems.

**Important Note:** Binational couples in which one member does not have permanent legal resident status in this country and anyone serving in the U.S. military should consult with an attorney with expertise in these areas of law before getting married.

**11. 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.

**12. Is there any reason for couples who marry to also remain in a 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.

**13. Can out-of-state couples marry in California?**

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

**14. 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. Many states have passed discriminatory marriage laws, and in those states, state and local governments likely will not respect your California marriage. But even in those states, it is highly 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.

Marriage is a serious legal decision, and same-sex couples face additional challenges and questions because of continuing discrimination against married same-sex couples by the federal government and 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.

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

No. Under current federal law, the federal government does not recognize marriages of same-sex couples. This means that married same-sex couples currently do not have any of the rights, benefits, or protections that federal law gives to married heterosexual couples, such as the ability to file joint federal income taxes or receive federal spousal benefits through social security or other federal programs.

**16. 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. We can help you figure out what options you have to protect your rights. 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 the only option. It is always necessary to weigh the chances of success or failure because bad results in lawsuits can cause set backs and hurt our entire community. We want to increase the chances of winning overall, so it is critical that we work together to have a carefully planned strategy. Together, we can win!

**17. What do we have to do to marry in California?**

First you need to get a marriage license from the office of the Registrar-Recorder/County Clerk of any California county. You can get a license application from most counties' websites

and complete it in advance, or complete it in the county clerk's office. Both of you must go together to the county office 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.) You'll need to pay the license fee, which varies by county but generally is less than \$100. The license will be valid for 90 days and your marriage can be performed anywhere in California. Neither a blood test nor a health certificate is required. Call ahead or visit the county's website to learn the hours and locations of the county offices that issue licenses.

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

In California, clergy members, active and retired judges and court commissioners, and the Commissioner and Deputy Commissioners of Civil Marriages are authorized to perform legal marriages. The Commissioner and Deputy Commissioners of Civil Marriages perform 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.

Any couple wishing to marry can also have a friend deputized to perform their marriage ceremony through a county "Deputy Commissioner for a Day" program. If you choose this option, you will need at least two months advance notice and the person to be deputized to perform your ceremony will have to pay a fee and visit the county office in person to be sworn in. Visit the county website to see if your county has this program. If it does not, check whether a nearby county will deputize an out-of-county resident.

The person who performs your ceremony 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 has to be returned promptly to the county for filing.

## **19.. What happens if we marry in California and then wish to divorce?**

The only legal way to end a marriage is to get a divorce. In order to divorce in California, at least one of the parties to the marriage must be a resident of California for at least six months and of the county in which the divorce is filed for three months before filing a divorce petition. If you move from California to another state, or if you already live in another state, getting a divorce could be difficult. Currently, the only state other than California in which same-sex married couples have a clearly established right to divorce is Massachusetts; however, Massachusetts has a one-year residency requirement before a person can petition a Massachusetts court for a divorce. New York law appears to respect same-sex couples' out-of-state marriages even though same-sex couples cannot yet marry in that state. So, married gay and lesbian couples should be able to petition for divorce in New York; however, New York also has a residency requirement for divorce. States with civil unions or comprehensive domestic partnerships, like Connecticut, New Hampshire, New Jersey, Oregon, and Vermont, also may allow married same-sex couples to divorce, but each of those states has a one-year residency requirement. That means that at least one spouse must be a resident of the state for a year prior to the divorce.

Couples who are unable to obtain a divorce remain legally married. Therefore, being unable to divorce may cause serious legal problems and complications for same-sex couples who find themselves in this situation.

## **20. Could right-wing forces take away the freedom to marry at the ballot box in California?**

Yes. Because the court based its decision on rights guaranteed by the California Constitution, right-wing groups are trying to amend our state Constitution to eliminate these fundamental constitutional protections and take away the basis for the decision.

These groups, which have received significant funding from out-of-state right-wing organizations, are placing an initiative on the November 2008 ballot that will ask voters to amend the California Constitution to reverse the court's decision and deny gay and lesbian couples the freedom to marry.

Already, many state leaders are expressing their opposition to this proposed constitutional amendment. For example, in a public statement on April 11, 2008, Governor Schwarzenegger stated that an initiative to amend the California Constitution to ban gay and lesbian couples from marriage was "a waste of time," adding "I will always be there to fight against that. It will never happen."

We agree with Governor Schwarzenegger that these outsiders are wasting their time and money trying to turn California into a state that would use its Constitution to take away civil rights and hurt families. But it will take every one of us to stop this antifamily initiative. For more information about how to get involved, contact Equality For All at [www.EqualityForAll.com](http://www.EqualityForAll.com).

## **21. What can we do to help preserve the freedom to marry we have just won?**

We urge you to get involved today! For more information about how you can help, please contact Equality For All at [www.EqualityForAll.com](http://www.EqualityForAll.com). Now that we have won this victory, all residents of California are better off, because strengthening any group of families makes stronger communities for everyone. All people who value families and fairness have a stake in preserving the freedom to marry for lesbian and gay couples. We cannot afford to wait, please act now.

**For more information** about the court's ruling, legal information for couples, and action steps to help protect the freedom to marry, please contact:

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

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

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

The American Civil Liberties Union: [www.aclu.org](http://www.aclu.org)