



# Illinois Marriage Law

June 1, 2014

## Frequently Asked Questions

The Illinois legislature passed the “Illinois Religious Freedom Protection and Marriage Fairness Act.” Below are answers to frequently asked questions about the new marriage law and about the recent court decision ordering the Cook County Clerk to immediately issue marriage licenses.

*Please note:* This document offers general information only and is not intended to provide guidance or legal advice regarding anyone’s specific situation. This is an evolving area of law in which there is bound to be uncertainty, and we will be working closely with Illinois attorneys to promote the best results. If you have additional questions, have encountered difficulty in obtaining appropriate recognition of your married status, or are looking for contact information for private attorneys who might advise you, contact Lambda Legal’s help desk at 866-542-8336 or [legalhelpdesk@lambdalegal.org](mailto:legalhelpdesk@lambdalegal.org) or the ACLU of Illinois at 312-201-9740 or [www.aclu-il.org/about/requesting-legal-assistance/](http://www.aclu-il.org/about/requesting-legal-assistance/)

### WHO CAN GET MARRIED IN ILLINOIS?

Two people are eligible to marry in Illinois if they are:

- Over 18 years old (or meet requirements for an exception)
- Not already legally married to someone else or each other
- Not closely related to each other
- Legally competent to enter into a civil contract

### WHEN CAN I GET MARRIED TO MY SAME-SEX PARTNER?

Due to a lawsuit filed by Lambda Legal and the ACLU of Illinois, you can apply for a marriage license beginning February 21, 2014. Your marriage license becomes effective the day after you receive your license, and expires 60 days later. The new marriage law still goes into effect on June 1, 2014.

### WHAT STEPS DO I TAKE TO OBTAIN A MARRIAGE LICENSE, AND WHERE CAN I GET MARRIED?

Both parties must appear in person to fill out an application for a license to get married. Applications are available through any county clerk’s office. The cost of applying for a marriage license varies by county, and is usually in the range of \$15 to \$40. Bring with you a form of identification, such as a birth certificate, driver’s license, or passport.

The marriage license is valid for 60 days, and is valid only in the county in which it was issued, which means that your marriage ceremony must take place within that county. There is a one-day waiting period before the license becomes effective. A court can waive this waiting period if you file a petition showing sufficient cause.

You may choose a judge, certain public officials, or a religious official to “officiate,” meaning to perform your ceremony. Your officiant must complete the certificate confirming that

your ceremony has been performed, and forward it to the county clerk within 10 days of your marriage.

A list of county clerks offices can be found here: [www.idph.state.il.us/vitalrecords/countylisting.html](http://www.idph.state.il.us/vitalrecords/countylisting.html)

### DO CIVIL UNIONS STILL EXIST, NOW THAT MARRIAGE HAS BEEN PASSED IN ILLINOIS?

Yes. Civil unions are still available for couples (same-sex and different-sex) who choose this option. If you currently have a civil union and you wish to be married, you may follow the steps listed below to apply for a marriage license. Alternatively, beginning June 1, 2014, and for one year thereafter, you may choose to convert your civil union to a marriage, and make the date of your marriage retroactive to your civil union date, as explained below.

### WILL CIVIL UNION COUPLES AUTOMATICALLY HAVE THEIR CIVIL UNION CONVERTED INTO A MARRIAGE?

No. Couples with civil unions may remain in a civil union. Couples with civil unions who wish to marry have two options. The couple may apply for a marriage license without a fee. They will be considered married as of the date of their marriage certificate. Alternatively, beginning on June 1, 2014, and for one year thereafter, a couple with a civil union may apply to a county clerk for a marriage certificate that will show them as married as of the date they entered their civil union, sign the certificate, and return it, also without a fee.

### IF A COUPLE LIVES IN ILLINOIS, BUT ALREADY ENTERED INTO A CIVIL UNION OR DOMESTIC PARTNERSHIP TOGETHER IN ANOTHER STATE, CAN THEY GET MARRIED IN ILLINOIS?

Yes. You can get married in Illinois even if you and your partner entered into a civil union or domestic partnership in another state.

## **CAN OUT-OF-STATE COUPLES GET MARRIED IN ILLINOIS?**

Yes. The law allows an out-of-state couple to marry in Illinois unless the couple lives in, and intends to continue living in, a state that declares marriages of same-sex couples “void.” Not all states that preclude lesbian and gay couples from marrying have laws declaring such marriages to be “void.” If you have questions about your state law, and whether you can marry in Illinois, we recommend that you call the help desk for Lambda Legal or the ACLU at the numbers listed below:

ACLU of Illinois: 312-201-9740

Lambda Legal: 312-663-4413

If you live outside of Illinois, the clerk may ask you to sign an affidavit stating that your home state does not declare your marriage void.

## **WILL OUT-OF-STATE MARRIAGES OF SAME-SEX COUPLES BE RECOGNIZED IN ILLINOIS?**

Yes. The law provides that marriages legally entered into in other states will be recognized in Illinois. If you are already married, your marriage will now be recognized as a marriage, rather than just as a civil union.

## **NOW THAT WE'RE MARRIED, DO WE STILL HAVE TO PERFORM A SECOND-PARENT ADOPTION TO SECURE OUR CHILD'S PARENT-CHILD RELATIONSHIP TO THE NON-BIOLOGICAL PARENT?**

Even though married parents are both presumed to be parents from birth of children born into the marriage, we still strongly encourage parents to perform adoptions in addition to drawing up wills and powers of attorney, since you may travel to other states that will not respect your marriage or the legal presumption of parentage it creates.

## **WILL AN ILLINOIS MARRIAGE BE RECOGNIZED BY OTHER STATES?**

A same-sex couple who marries in Illinois will be recognized as married in those states that recognize the marriages of same-sex couples, a list of states we expect to continue to grow. In addition, some private businesses or other third parties outside of Illinois may recognize an Illinois marriage for their own purposes.

## **WHAT RIGHTS AND OBLIGATIONS DO MARRIED COUPLES HAVE IN ILLINOIS?**

### ***Family Law Rights and Responsibilities***

- Duties of joint financial support and liability for family debts arising during the relationship;

- Access to step-parent and joint adoption on the same terms and using the same procedures as different-sex married couples;
- Legal presumption that both partners are parents of children born into the marriage, including access to custody, visitation and support orders concerning children upon breakup. (However, we still encourage non-biological parents to adopt your children in addition to drawing up wills and powers of attorney, since you may travel to other states that will not respect your marriage or the presumption of parentage it creates).
- Dissolution of the marriage by a domestic relations court, including access to equitable division of the relationship assets and debts;
- Right to seek financial support upon breakup;
- Protection for married partners and their children under domestic violence, crime victim, and crisis assistance laws.

### ***Medical and Death-Related Rights***

- Automatic rights of hospital visitation, medical decision-making, and authority to receive information about a partner's medical condition or treatment. (However, we still encourage married same-sex couples to make out wills, living wills, and health care powers of attorney, since you may travel to other states that will not automatically respect your marriage or the rights it grants);
- Automatic ability to authorize anatomical gifts, and release of medical records, and to make funeral arrangements for a deceased spouse;
- Right to seek money damages for a spouse's wrongful death, lost financial support and companionship;
- Right to inherit in the absence of a will, and certain financial protections while the estate is being settled;
- Same financial protections spouses receive against duty to repay public medical and nursing home costs upon death of a partner; and
- Employment-related spousal or family benefits, including spousal health insurance for public employees.

### ***Other Rights and Responsibilities***

- Right to file joint state income tax returns, and state tax exemption regarding value of partner health insurance;
- Right to hold real property in “tenancy by the entirety” (which offers some protection against creditors);
- Some workplace benefits, including the right to a pension for the surviving married spouse of a fireman or police officer, and where work injury causes death, funeral and burial expenses, and death benefits;

- Equal treatment as spouses under certain state insurance laws;
- Right not to testify against married spouse;
- Right of an incarcerated person to phone a critically ill married spouse;
- Same veterans benefits that are available to different-sex spouses under state law;
- All state law rights and responsibilities spouses receive through marriage, including many others too numerous to list here.

### **WILL MY OUT-OF-STATE CIVIL UNION, WHICH IS CURRENTLY RECOGNIZED AS A CIVIL UNION IN ILLINOIS, BE ELIGIBLE FOR AN “UPGRADE” TO MARRIAGE IN ILLINOIS?**

Illinois residents who got their civil union elsewhere can upgrade their civil union to a marriage using the same process that applies for those who got their civil unions in Illinois.

### **IF WE ARE STILL IN A CIVIL UNION MORE THAN A YEAR AFTER THE MARRIAGE LAW TAKES EFFECT, BUT WANT TO GET MARRIED (AFTER THE GRACE PERIOD EXPIRES), HOW DO WE GO ABOUT GETTING MARRIED?**

Couples in civil unions who wish to marry after the grace period expires can go ahead and marry each other, and the fee is waived.

### **WHAT DOES A MARRIAGE IN ILLINOIS MEAN FOR FEDERAL BENEFITS AND PROTECTIONS?**

Married same-sex couples living in Illinois are eligible for all the protections, responsibilities, and access to federal programs afforded to different-sex married couples. There are more than 1,100 places in federal law where a protection or responsibility is based on marital status. A few key examples include access to Social Security survivors’ benefits; the option to use family medical leave to care for a spouse; the opportunity to sponsor a foreign-born spouse for citizenship; and access to veterans’ spousal benefits. However, at present, married same-sex couples who move from Illinois to a state that does not respect their marriage will have access to *some* federal rights and benefits, such as the ability to file federal taxes as a married couples, but not to others, such as the option to use family medical leave to care for a spouse.

### **MUST MY EMPLOYER GIVE MY MARRIED PARTNER SPOUSAL HEALTH INSURANCE AND PENSION AND OTHER EMPLOYMENT-RELATED BENEFITS?**

Federal, state, county, and local government employers must provide married same-sex partners the same health insurance and pension benefits accorded to married different-sex

couples. It may be more challenging, however, to hold certain private employers to their obligation to treat same-sex couples equally to spouses with respect to health insurance and pensions, depending on what type of plan the private employer uses, and whether state and local nondiscrimination laws apply. Because of the complexity of this issue, we encourage you to contact the ACLU of Illinois or Lambda Legal if you are denied health insurance or pension benefits for your spouse. Both government employers and most private employers must treat married same-sex couples equally when it comes to other employment-related benefits such as bereavement leave, paid parental leave, or spousal relocation policies.

### **WHY MIGHT A SAME-SEX COUPLE BE ADVISED NOT TO GET MARRIED?**

- If you wish to adopt from a state or country that may not approve adoptions by lesbians, gay men, same-sex couples or unmarried different-sex couples;
- If either depends on public assistance;
- If either is a foreign national without permanent legal status in the U.S.;
- If either or both do not want the state law rights and mutual responsibilities the new law will provide married spouses, or are concerned about how your marriage may impact your access to federal benefits or private pension or health care benefits.

### **WHAT HAPPENS IF I WANT TO DISSOLVE MY CIVIL UNION OR I NEED A DIVORCE FROM A MARRIAGE TO A SAME-SEX SPOUSE?**

You will need to file a petition for dissolution of your civil union or marriage using the same procedures that different-sex spouses use to file for divorce. Same-sex couples will be eligible for maintenance (like alimony) and court assistance in allocating child custody, awarding visitation and support, and dividing property on the same terms as spouses. If you and your partner currently do not live in Illinois, but you got married here, you may obtain a divorce in Illinois courts, although it may be challenging for you to obtain an allocation of child custody, visitation, or child support, depending on your circumstances.

#### ***For more information:***

Contact the ACLU of Illinois’ Intake at [www.aclu-il.org/about/requesting-legal-assistance/](http://www.aclu-il.org/about/requesting-legal-assistance/) or Lambda Legal’s Help Desk [www.lambdalegal.org/help](http://www.lambdalegal.org/help).