

# GLAD

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EQUAL JUSTICE UNDER LAW

## Marriage and Civil Union Guide

for Rhode Island  
Same-Sex Couples

September 2011

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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 evolving 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](http://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 4:30pm at:

800.455-GLAD (4523) or 617.426.1350

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# **INTRODUCTION**

Although Rhode Island does not allow same-sex couples to marry at home, Rhode Island same-sex couples may legally marry in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York, the District of Columbia or Canada without needing to meet any residency requirement.

Also, effective July 5, 2011, same-sex couples may enter into a civil union in Rhode Island. A civil union provides the same **state** rights, benefits, protections and responsibilities that are provided to married couples in Rhode Island, but a broad religious exemption clause that was added to the law means that, in some situations, your civil union may not be respected even in Rhode Island.

Whether you should enter a marriage or a civil union 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 call the GLAD Legal InfoLine at (800) 455-GLAD (4523) or check our website [www.glad.org](http://www.glad.org) for more information and to obtain lawyer referrals.**

# AVAILABILITY OF MARRIAGE AND CIVIL UNION LICENSES

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## *Can same-sex couples legally marry in Rhode Island?*

No. Although a marriage bill has been introduced into the Rhode Island legislature for many years, and Marriage Equality Rhode Island (MERI, <http://www.marriageequalityri.org>) and GLAD have fought hard to get a marriage bill passed, this year a civil unions bill was substituted for the marriage bill and was passed by the legislature and signed into law by Governor Chafee on July 2, 2011.

However, Rhode Island same-sex couples can legally marry in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York, the District of Columbia or Canada without needing to meet any residency requirement. MERI and GLAD continue to fight for marriage equality in Rhode Island and urge you to support this effort.

Some people may also be able to wed in the Netherlands, Belgium, South Africa, Spain, Norway, Sweden, Portugal, Iceland, Argentina or Mexico City, but some of these places 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.

GLAD has prepared publications with detailed information about marrying in New England states where marriage is legal for same-sex couples and in Canada. These publications can be found at: <http://www.glad.org/rights/publications/c/marriage/>. For information about getting married in Iowa, New York or the District of Columbia consult Lambda Legal, [www.lambdalegal.org](http://www.lambdalegal.org).

***Can same-sex couples enter into a legally recognized relationship in Rhode Island?***

Yes. On July 5, 2011, “An Act Relating to Domestic Relations—Civil Unions” went into effect<sup>1</sup> This law allows same-sex couples to enter into civil unions which “shall have all the rights, benefits, protections, and responsibilities under law, whether derived from statutes, administrative rules, court decisions, the common law, or any other source of civil or criminal law as people joined together. . .”<sup>2</sup> in marriage.

***What is the difference between marriage and civil unions?***

Civil unions provide state-based legal rights that normally come along with marriage. However, civil unions are not marriage and keep in place existing discrimination against committed same-sex couples regarding marriage.

The differences are significant. First, civil unions do not bestow the dignity and respect by society that marriage does. Marriage tells the community that two people are committed to each other as a family. Since others understand and respect this, it makes being married something important and something that protects us in daily life as well as in times of crisis. Civil unions cannot come close to conferring the range of social, cultural, and legal protections of marriage.

Second, same-sex couples in civil unions have no claim to the 1138 federal protections afforded married couples. While those protections are presently withheld from married couples of the same-sex because of the 1996 federal Defense of Marriage Act (DOMA), we do not believe that discrimination will stand the test of time.

GLAD has filed two federal lawsuits, *Gill et al. v. OPM et al.* and *Pedersen et al. v. OPM et al.*, to challenge Section 3 of DOMA (see

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<sup>1</sup> See <http://www.rilin.state.ri.us/BillText11/HouseText11/H6103Aaa.pdf>.

<sup>2</sup> R.I.G.L. § 15-3.1-6.

[www.glad.org/doma](http://www.glad.org/doma) for detailed information). Should GLAD succeed in these lawsuits, or should Congress repeal DOMA Section 3, some or all of the federal laws where marriage is relevant will be applicable to married same-sex couples who live in states where their marriage is respected, but under current law civil union couples will not have access to these federal laws because the federal laws only reference marriage.

Third, at the Rhode Island state law level, under the new civil union law, you must be at least 18 years of age to join in a civil union, whereas people as young as 16 can obtain permission to marry.

Finally, civil unions do not receive the same type of recognition across state lines as marriages. While marriages of same-sex couples will face discrimination in some places, marriages are advantaged over civil unions because all states have a marriage-system (with rich histories of respect for marriages validly licensed elsewhere), and few have civil unions or their parallel.

# **RESPECT FOR MARRIAGES AND CIVIL UNIONS**

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## **MARRIAGE**

*If my same-sex partner and I marry, will our marriage be respected in Rhode Island?*

In many circumstances it will be respected. Even though Rhode Island presently does not allow same-sex couples to marry, married same-sex couples have found a mix of both respect and disrespect for their marriages in a wide variety of circumstances.

On the one hand, there are good reasons to think that a valid marriage from anywhere that same-sex couples can legally marry will be respected in Rhode Island once the couple returns home. Rhode Island follows the longstanding legal tradition that states respect marriages legally celebrated in other jurisdictions unless the marriage runs contrary to a strong public policy of the state.<sup>3</sup> Applying this principle, many public and private entities in Rhode Island have respected the valid marriages of same-sex couples. In particular, in one case, GLAD helped a Tiverton, R.I. retiree receive health care benefits for her same-sex spouse.

Additionally, in both October 2004 and February 2007, former Attorney General Patrick Lynch issued legal opinions recommending that governmental entities recognize the same-sex spouses of employees and retirees. In the latter opinion, the Attorney General said that, under established legal principles and a review of Rhode Island public policy, a marriage validly entered into by a same-sex couple in another jurisdiction remains valid in Rhode Island. Though technically non-binding, this opinion is a clear roadmap of the relevant legal principles involved in considering whether a marriage will be recognized under

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<sup>3</sup> *Ex Parte Chace*, 26 R.I. 351, 58 A.978 (1904).

Rhode Island law and makes clear that nothing in Rhode Island public policy prevents that recognition.

Examples of respect abound in the private context as well, as private employers and service providers in Rhode Island recognize that there are no obstacles to such recognition, and, indeed, in some instances, they may be obligated to do so.

On the other hand, however, legal uncertainty remains in this area. In the *Chambers v. Ormiston* case,<sup>4</sup> the Rhode Island Supreme Court countered this positive trend. The Court ruled that the Family Court does not have the jurisdiction to hear the divorce case of a same-sex Rhode Island couple who was married in Massachusetts. The Court avoided considering the established legal principles discussed above by focusing narrowly on the Rhode Island divorce jurisdiction statute. Although the decision does not therefore broadly disrespect the marriages of same-sex couples, it will certainly be used by those who seek to discriminate against the marriages of same-sex couples as an excuse to do so.

Until there are further court rulings or legislative action, the question of respect for a same-sex couple's marriage will proceed on a case-by-case basis.

As same-sex, married Rhode Island couples encounter instances of respect (or lack of respect) for their marriages, GLAD encourages them to call the Legal InfoLine at 1-800-455-GLAD (4523) so that we can be kept informed of the most recent developments in this changing legal landscape.

***If my same-sex partner and I marry, where outside Rhode Island will our marriage be respected?***

Each state has the power to decide whether to respect a marriage legally celebrated in another state. Places in the United States that currently fully respect the marriages of same-sex couples are

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<sup>4</sup> 935 A.2d 956 (R.I. 2007).

Massachusetts, Connecticut, Vermont, New Hampshire, Iowa, New York and the District of Columbia. Also Maryland and New Mexico appear to be respecting the marriages of same-sex couples even though same-sex couples cannot marry in those states, but check with Lambda Legal, [www.lambdalegal.org](http://www.lambdalegal.org), for the latest information.

Some states that have legal statuses that are parallel to marriage, like civil unions, may recognize your marriage as equivalent to the legal status they provide their citizens. This is the case in New Jersey, Illinois and, beginning January 1, 2012, Delaware. The state of Washington will respect your marriage as a domestic partnership.

It is likely that other states will not respect your marriage for most or all purposes. Certainly, governmental respect may be inconsistent, respecting families for purposes of some programs, but not for others. It will be nearly impossible to predict what marital protections will be available under what circumstances in any given state or instance. It will take some time to resolve these issues, and in the meantime, same-sex couples who marry will face many legal questions and uncertainties.

If your primary purpose for getting married is to access legal protections at home or elsewhere, you should be aware that your ability to do so is not as clear as it should be. As a result, it is still particularly important to take all other available steps to protect your relationship and your children. See section, ADDITIONAL PROTECTIONS FOR SAME-SEX COUPLES AND THEIR FAMILIES, for a discussion of other legal protections you should consider.

***If my same-sex partner and I marry, will my marriage be respected by the federal government?***

No. The federal government has a discriminatory law in place, called the Defense of Marriage Act (DOMA), that restricts marriage to a man and a woman for all purposes under federal law. Therefore, the federal government will not currently extend to legal spouses of the same sex approximately 1138 federal benefits, protections and responsibilities

applicable to spouses in a different-sex marriage. This federal discrimination encompasses federal taxes, employment protections, Social Security, immigration, veterans' benefits and many other issues.

On March 3, 2009, GLAD filed a lawsuit, *Gill et al v. OPM et al*, in the Federal District Court of Massachusetts to challenge this discrimination. On July 8, 2010, that court ruled that DOMA was unconstitutional, and on October 12, 2010 the United States Department of Justice appealed this decision to the United States Court of Appeals for the First Circuit. It will still be many months before there is a decision from the 1<sup>st</sup> Circuit. In the meantime, there is a stay in place, and so DOMA continues to discriminate against married same-sex couples.

On November 9, 2010, GLAD filed its second lawsuit against DOMA, *Pedersen et al. v. OPM et al.*, in the Federal District Court of Connecticut. It will be many months before there is a decision in this case, and whatever that decision is, it will most likely be appealed to the United States Court of Appeals for the Second Circuit.

Should GLAD succeed in these lawsuits, or should Congress repeal DOMA Section 3, some or all of the federal laws for which marriage is relevant will be applicable to married same-sex couples who live in states where their marriage is respected, and it is even possible that some of these laws could apply to married same-sex couples in states that do not respect their marriage.

***If a Rhode Island same-sex couple marries, will the marriage be respected by private employers and businesses?***

Many private employers in Rhode Island have already extended health care benefits to married same-sex couples, but it is nearly impossible to predict how other private employers and businesses in Rhode Island and other states will treat these marriages. In most instances, private employers and businesses have the discretion to respect the marriages of same-sex couples even if the state in which they operate may not respect

these marriages. For example, a private employer could grant family leave to an employee to care for his or her same-sex spouse even though the state in which employer operates would not respect the couple's marriage.

GLAD has prepared a publication to help you advocate with your employer for spousal benefits

(<http://www.glad.org/uploads/docs/publications/ri-same-sex-couples.pdf>). Some of the steps you can take are:

- Find out what benefits your employer provides to married employees.
- Meet with your employer to ask for these benefits.
- If you belong to a union, meet with your union rep to ask for support.

## CIVIL UNIONS

### ***What respect will a Rhode Island civil union receive within Rhode Island?***

Entering into 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. However, the civil union law also 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 and allows these organizations to refuse to treat a civil union as valid.<sup>5</sup>

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. So, the protections that would normally be provided to a spouse in such a situation (such as the right to visit the spouse and the right to make medical decisions if the spouse is

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<sup>5</sup> R.I.G.L. § 15-3.1-5.

incapacitated) may not be available. By contrast, there is no religious exemption to marriage recognition.

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.

***What other non-marital relationships will be respected in Rhode Island?***

Civil unions from other states and comprehensive domestic partnerships that provide most of the rights of marriage (e.g. those from California, Oregon, Washington and Nevada) will be recognized in Rhode Island as equivalent to a Rhode Island civil union, provided the couple meets the eligibility requirements listed in the section, RHODE ISLAND CIVIL UNIONS.<sup>6</sup>

***Where will a Rhode Island civil union be respected outside of the state?***

Most other states that provide either marriage or a legal relationship parallel to marriage to same-sex couples will also recognize Rhode Island civil unions. This includes New Jersey, Illinois, California, Oregon, Washington, Nevada, Connecticut, Vermont, New Hampshire, and, beginning January 1, 2012, Delaware and Hawaii. Other places, including Massachusetts, may provide recognition in some circumstances and not others, and private companies and organizations are free to recognize civil unions if they so choose.

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<sup>6</sup> R.I.G.L. § 15-3.1-8.

***What respect will a civil union be given by the federal government?***

None. Because of the 1996 Defense of Marriage Act (DOMA), no relationship between two people of the same sex is currently respected at the federal level. If DOMA is either declared unconstitutional or repealed by Congress, then married same-sex couples who live in states where their marriages are respected will have access to some or all the federal laws that pertain to married couples, and it is even possible that some of these laws could apply to married same-sex couples in states that do not respect their marriage.

However, under current law, civil union couples will still not be respected by the federal government because all the federal laws only reference marriage.

NOTE: If your primary purpose for getting a civil union is to access legal protections at home or elsewhere, you should be aware that your ability to do so is not as clear as it should be. As a result, it is still particularly important to take all other available steps to protect your relationship and your children. See the section, **ADDITIONAL PROTECTIONS FOR SAME-SEX COUPLES AND THEIR FAMILIES**, for a discussion of other legal protections you should consider.

# THE DECISION TO MARRY OR TO GET A CIVIL UNION

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*What should we do—get married outside of Rhode Island, get a Rhode Island civil union, do both or do nothing?*

Since the answer to this question depends on your particular circumstances and reasons for entering into a marriage or civil union, GLAD is not able to give you a definitive answer. We do encourage you to read carefully the information above that addresses differences between marriage and civil unions. Consider the risks and certainties that each of these statuses provides, both in the long and short term.

There is no question that marriage is “the gold standard” – the status that should provide certainty and protection in most circumstances, but there is also no guarantee that your marriage will be respected in every context, and, should your relationship come to an end, at present there is no way to end a marriage for same-sex couples in Rhode Island.

The protections provided by a civil union are technically clearer, but between the broad exemption for religiously-affiliated entities and the confusion people have about what a civil union really means, those protections may not be guaranteed either. Regardless, there are no religious exemptions written into Rhode Island’s marriage recognition principles, and only marriage will grant couples access to federal protections in the long run.

This is a rapidly evolving area of new law in which we do not yet have a great deal of guidance as to the application and implementation of the law. It is important to make an informed choice about whether to enter into a marriage or civil union based on your relationship with your partner, the impact of that decision on your present or future children, and the unique circumstances of your life.

***Should I consult with an attorney before marrying or getting a civil union?***

That's a good idea. Though we provide some general information in this document, it cannot provide guidance or legal advice as to anyone's specific situation. Thus, you should consult an attorney in your home state, presumably Rhode Island, for guidance on your particular situation before entering into a marriage or civil union. If you have questions or would like lawyer referrals, please contact GLAD's Legal InfoLine weekdays between 1:30 to 4:30 p.m. at 1-800-455-GLAD (4523) or 617-426-1350.

***What are some of the potential pitfalls of either marriage or civil unions that I should consider?***

**Adoption:** Getting married or entering a civil union 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 or civil union could disqualify one spouse from certain state 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 or being in a civil union. U.S. same-sex spouses cannot sponsor their non-citizen spouses for legal permanent residence due to the discriminatory federal DOMA law, but marrying or being in a civil union 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 or being in a civil union could cause problems if one spouse is applying for a non-immigrant visa or

status like a tourist or student visa. The marriage or civil union 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](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.<sup>7</sup> 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.<sup>8</sup> As a result, a spouse is entitled to a share of your estate. (Note: In Rhode Island, marriage or being in a civil union automatically revokes an existing will;<sup>9</sup> couples who decide to marry or enter a civil union should consult an attorney about re-executing their old will or writing a new one). These general principles are the same under the marriage laws of most other states as well.

**Prior Marriages or Civil Unions:** Being in a marriage or civil union may disqualify a person for benefits obtained through a former spouse (like social security payments based on a former spouse's earnings;

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<sup>7</sup> See *Landmark Medical Center v. Gauthier*, 635 A.2d 1145 (R.I. 1994) (recognizing reciprocal obligation of support between spouses).

<sup>8</sup> 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).

<sup>9</sup> R.I.G.L. § 33-5-9.

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 and civil unions 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 or civil union.

# DISSOLVING MARRIAGES AND CIVIL UNIONS

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## MARRIAGE

### *What happens if we marry and then break up?*

Though no one wants to think about divorce when they marry, divorces will be a fact of life for same-sex couples just as they have been for different-sex couples. Divorce is one of the key protections of marriage because it offers an orderly way to dissolve the union. For example, in Rhode Island divorce proceedings, courts will determine property division, alimony, child custody and child support if the parties cannot agree on these issues themselves.<sup>10</sup>

The only way to end a marriage is through divorce or annulment, which thus requires same-sex couples to find a court willing to dissolve their relationship. At the moment, the courts of Rhode Island are unwilling to do so. In December 2007, the Rhode Island Supreme Court ruled that the Family Court does not have the jurisdiction to hear the divorce case of a same-sex Rhode Island couple who was legally married in Massachusetts. As was stated in the dissenting opinion, this ruling “places the parties, and all those similarly situated, in an untenable position. They are denied access to the Family Court and thus are left in a virtual legal limbo.” Though couples may be able to access the courts to address property dissolution and child-related issues, there is, at present, no mechanism for same-sex couples to dissolve the legal relationship of marriage in Rhode Island.

Unfortunately, this leaves Rhode Island residents to turn to the courts of other states. The most logical place to turn would be the courts of the states that allow same-sex couples to marry, or recognize their

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<sup>10</sup> See, e.g., R.I.G.L. § 15-5-16.1 (recognizing the equitable division of property upon divorce); R.I.G.L. § 15-5-16(a) (providing for alimony upon divorce). Note that in some states, the court can consider any property owned by either or both of the parties as marital property subject to distribution, unless the parties enter into an otherwise valid pre-nuptial agreement addressing the question.

marriages. All of these states have residency requirements of varying lengths in order to get divorced there although that they have no residency requirements to get married.

For example, to get divorced in Massachusetts, at least one partner must reside in Massachusetts for one year before a Massachusetts court will have jurisdiction to grant the divorce. (See GLAD's publication, *Separation, Divorce, and Marriage Equality*, available at: <http://www.glad.org/uploads/docs/publications/separation-divorce-equality.pdf>). For more specific information on divorce in Connecticut, Vermont, New Hampshire and Canada, see the marriage publications for each of these locales at <http://www.glad.org/rights/publications/c/marriage/>. For more information on divorce in Iowa, New York and the District of Columbia, contact Lambda Legal ([www.lambdalegal.org](http://www.lambdalegal.org), 212-809-8585).

To make things more complicated, if a couple is unable to obtain a legal divorce, the marriage may still be recognized for other purposes and the couple may still be held responsible for the obligations of marriage, such as providing financial support and being held responsible for each other's debts.

The potential difficulty of obtaining a divorce (as well as the rights and obligations extended to couples engaged in divorce proceedings) is yet another reason why couples should think very carefully before getting married.

***Would getting a civil union help me get divorced?***

Probably not. Nothing in the civil union law changed the inability of the Family Court to issue a divorce ruling for a married same-sex couple. Layering on another legal status – even assuming you and your ex were willing to do so – will not give that court the power to end your marriage.

## CIVIL UNIONS

### *What happens if we get a civil union and then break up?*

The civil union law gives the Rhode Island Family Court jurisdiction over the dissolution of civil unions and all the state laws that apply to divorce apply to the dissolution of a Rhode Island civil union.<sup>11</sup> Rhode Island has a one year residency requirement for dissolving a 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 satisfy the criteria for getting a Rhode Island civil union. None of the federal laws that pertain to divorce will apply to the dissolution of a civil union, and this will remain true even if DOMA no longer exists.

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

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<sup>11</sup> R.I.G.L. § 15-3.1-9.

# **ADDITIONAL PROTECTIONS FOR SAME-SEX COUPLES AND THEIR FAMILIES**

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Given the present legal landscape, all same-sex couples, even those who are married or in a civil union, should take all available steps to make sure they can access basic legal protections for their relationship and family. We strongly recommend consulting with an experienced attorney to create legal planning documents that provide the maximum protection to you and your family. These documents may include:

- having a will (including naming the guardian of your children) – NOTE: In most states, including Rhode Island,<sup>12</sup> a marriage or civil union automatically revokes any existing will. In order for a will to be valid, it must be re-executed after entering a marriage or civil union;
- signing documents authorizing others to make health care decisions;<sup>13</sup>
- signing documents authorizing others to make financial decisions;<sup>14</sup>
- directing the disposition of your remains;<sup>15</sup>
- gaining expert advice and using multiple strategies (through wills, trusts, pre-nuptial agreements, co-parenting agreements, co-habitation agreements, etc) to ensure your wishes can be met to the largest degree possible no matter what the situation at your death or upon the dissolution of your relationship;
- doing tax planning – income tax, gift tax, estate tax – at the state and federal levels;
- doing Medicaid and long term care planning, concerning issues like assets available to both spouses, asset transfer issues, and liens and estate recovery; and

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<sup>12</sup> R.I.G.L. § 33-5-9.

<sup>13</sup> R.I.G.L. § 23-4.10-2.

<sup>14</sup> R.I.G.L. § 18-16-1 et seq.

<sup>15</sup> R.I.G.L. § 5-33.3-4.

## Additional Protections For Same-Sex Couples And Their Families

- solidifying legal parenting rights through second-parent adoption, pre-birth declarations of parentage, legal guardianships, etc.

# RHODE ISLAND CIVIL UNIONS

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## THE BASICS

### *Who can get a Rhode Island civil union?*

A person is eligible to enter into a civil union in Rhode Island if both partners of the civil union meet the following requirements:

1. Both parties are least 18 years of age
2. Both parties are of the same sex
3. Each party is not married to another person and not already in a civil union (or comprehensive domestic partnership) with another party
4. The parties are not closely related by blood (for a list see R.I. Gen. Laws, §§ 15-1-1, 15-1-2)
5. Both parties are mentally competent

**NOTE:** You can enter into a civil union with someone to whom you are already married. If you are currently in a marriage, civil union or comprehensive domestic partnership with a *different* person, you must first dissolve that relationship before entering into a Rhode Island civil union.

### *Do we have to be Rhode Island residents?*

No, anyone may obtain a civil union from Rhode Island. According to the civil union law, a license may be obtained in two ways:

1. From the town or city in which one of the parties is a resident;  
or
2. If neither party is a resident, from the town or city in which the couple intends to certify their civil union.<sup>16</sup>

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<sup>16</sup> R.I.G.L. § 15-3.1-3.

***Can we get a Rhode Island civil union if we are already married to each other?***

Yes. When you are asked by the clerk whether you are already married, you should indicate that you are married to the same person but also wish to enter into a Rhode Island civil union. The clerk should allow you to apply for a civil union license. If you experience any problems, please contact GLAD.

However, before taking on a second legal relationship with all the complications that might bring, we strongly recommend that you get advice from an attorney. GLAD can provide you with LGBT-friendly attorney referrals.

***If we get a Rhode Island civil union will we be able to get married later?***

If you already have a Rhode Island civil union, there should be no impediment to you subsequently marrying the same person anywhere same-sex couples can marry. Should marriage become available in Rhode Island, the legislature might well act to clarify this question by, for example, creating a mechanism to convert existing civil unions to marriages, as Connecticut and New Hampshire did.

Couples who enter a civil union in Rhode Island may still wish to marry for a number of reasons. For example, other states may not give civil unions the same respect that they would give to a same-sex couple's marriage. For some couples, the dignity and respect that marriage confers may be of paramount importance.

***Do we need a Rhode Island civil union if we already have a civil union or a comprehensive domestic partnership with the same person?***

No. Your civil union or comprehensive domestic partnership will be treated as though it were a Rhode Island civil union provided you meet the eligibility requirements for a Rhode Island civil union. You will have all the rights, benefits, protections and responsibilities that marriage provides, but the religious exemption also applies.

***How do we get a civil union license?***

The first step to entering into a Rhode Island civil union is to obtain a license. Both parties must be present when obtaining the license and should have photo identification and proof of birth.

Before a license is given in any town or city in Rhode Island, however, the clerk will establish whether or not either party has previously been in a civil union or marriage with a different person. If either party has, then that person “shall present to the town or city clerk a **certified copy** of the decree granting the divorce or dissolving the civil union.”

The cost of the license is \$24.00, payable to the clerk, and will only be valid for three months after the license has been issued. If the ceremony does not occur within this three month period, the license needs to be returned to the city or town clerk’s office from which it was obtained.

There are no blood tests or other medical requirements to obtain a license.

***Who can perform a civil union ceremony?***

The individuals who can perform a civil union ceremony include:

- Ordained clergy or elders in good standing within their denomination

- 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

For a complete list of who can officiate, see R.I.G.L. § 15-3.1-4.

***What must the official who performs the ceremony do to certify the civil union?***

- Perform the ceremony (no specific ceremony is required)
- Sign the official section of the civil union license
- Have two persons (in addition to the official) who are at least 18 years old witness the ceremony and sign the civil union license
- Register the civil union license with the town or city clerk where the license was issued within 96 hours following the date of the ceremony.

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

## PROTECTIONS PROVIDED BY A RHODE ISLAND CIVIL UNION

A Rhode Island civil union provides same-sex couples who reside in Rhode Island with all the rights, benefits, protections and responsibilities Rhode Island law provides to married couples. These 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;
- 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 civil union 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.

## CIVIL UNIONS AND CHILDREN

### *Will obtaining a civil union affect my legal relationship with my children?*

If both civil union spouses were legal parents before the civil union (e.g., through joint or second-parent adoption), both will remain parents. The civil union will not affect a person's pre-existing status as a legal parent.

If one spouse was not a legal parent before the civil union, the civil union will not change that. As a result of the civil union, he or she will be considered a stepparent, but that does not confer legal parental rights to the stepparent. The sure way to become a legal parent in this situation is for the non-legal parent to adopt the child either through a second parent or stepparent adoption. The adoption decree from the court is a legal judgment that should be recognized broadly and has legal significance independent of the civil union.

If two people joined in a civil union later have a child in Rhode Island, both parties may be legally presumed to be the legal parents of a child born to either of them and both parties should get their names on the child's birth certificate. This is so because in Rhode Island -- as in many other states -- a child born into a marriage or civil union is presumed to be the child of both spouses.<sup>17</sup> Nonetheless, this is just a presumption, even if reflected on a birth certificate, and does not have the same effect as a court judgment. **The parentage on a birth certificate is subject to being challenged and overturned, and thus, an adoption would provide the best legal protection.**

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<sup>17</sup> R.I.G.L. § 15-8-3 (man rebuttably presumed to be father of child if married to child's mother at the time of conception); R.I.G.L. § 23-3-10 (providing that the name of the husband shall be entered on the birth certificate if the mother was married either at the time of conception or birth, unless paternity has been determined otherwise by a court).

If both spouses plan to jointly adopt a child after getting a civil union, be aware that international adoption is likely not available to civil union couples.

For all couples, because the civil union could encounter a lack of respect in some states, relying on the fact of the civil union alone to protect their children is not the best approach. It is advisable to continue the practice of securing a second-parent adoption in order to obtain a decree of legal parenthood that should be generally recognized and is independent of the civil union.

This document can only provide general information about the need to establish legal parenthood independent of a civil union. For you and your children, we cannot urge more strongly that you consult an attorney about undertaking co-parent adoption. Contact GLAD for more information and to obtain referrals to adoption attorneys.

- *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.

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>.

## SPOUSAL HEALTH BENEFITS

*Will I be able to get health insurance through my employer for my civil union spouse?*

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

However, despite the existence of discriminatory laws in certain states and at the federal level, all private employers have 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 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.

If you are a private sector employee and the question of health benefits is critical to your decision to enter a civil union, you should ask your employer whether it will enroll your intended spouse in its health plan(s). In general, whether the company will be legally required to provide health benefits to your civil union 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 civil union spouses in the same way they treat married 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 civil union spouse, it is because your employer has chosen to discriminate against civil union couples.

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

If you are employed by a religious organization or any organization that is connected to a religious organization, then the Rhode Island civil union law may allow your employer to disrespect your civil union and not provide any kind of employee spousal benefits. Talk to both your employer and your insurance provider to find out more about how this will be handled.

If you are a Rhode Island state, county or a municipality employee, you will be able to add your civil union 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. It seems almost certain that the federal government will not provide spousal health insurance coverage to an employee who enters into a civil union with someone of the same sex. 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 through the civil union, 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 (either married or in a civil union) 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.<sup>18</sup> This applies to same-sex married, civil union and domestic partner couples.

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>

## **INCOME TAXES**

***If my partner and I enter a civil union, how should we file our taxes?***

How to deal with federal and state income taxes is complicated by the fact that the federal government will not respect any same-sex relationship, and Rhode Island, like many states, currently requires that a person use the same marital status classification for state income taxes as

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<sup>18</sup> R.I.G.L. 44-30-12(c)(6)

for federal income taxes. Without giving legal advice, to help couples navigate these complexities, we provide some useful information below, but there is no substitute for contacting your own attorney or tax professional for assistance specific to your situation.

## ■ Federal Income Taxes

In light of the federal DOMA, the federal government will not recognize any same-sex relationship for purposes of federal income taxes. As a result, each member of a civil union couple must file as single. Even if DOMA is declared unconstitutional or is repealed by Congress, because the only legal relationship that the federal government currently recognizes is marriage, civil union couples will still not be able to file a joint return but will still have to file two single returns.

## ■ State Income Taxes

At present, Rhode Island tax law requires tax filers to use the same filing status that they are using for their federal tax filings. This linkage has the effect of incorporating the federal government's discrimination into state law. It is possible that either through legislative or administrative action that Rhode Island will make a change so that civil union couples will be able to file using statuses that are equivalent to married filing jointly or married filing separately. The state of Connecticut made this change when civil unions were introduced there.

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, visit our website, [www.glad.org](http://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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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](http://www.glad.org)