



NATIONAL CENTER FOR LESBIAN RIGHTS

Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples Within the United States

I. INTRODUCTION

A. Marriage

Civil marriage is a social and cultural institution that is understood worldwide as an expression of a couple's love and commitment to each other. It is also a legal status that automatically confers over a thousand federal rights and benefits and hundreds of additional rights and benefits under state law. Many of these rights are intended to help families in times of crisis, such as an automatic right to visit a spouse in a hospital or to make medical decisions for an incapacitated spouse. While some of these rights can be obtained, at least partially, through private agreements or other legal procedures, most cannot.

In the United States, same-sex couples may currently marry in California, Connecticut, Delaware, Maine, Massachusetts, Maryland, Iowa, New York, New Hampshire, Vermont, Washington, and the District of Columbia. In addition, at least four American Indian tribal nations explicitly allow same-sex couples to marry: the Coquille Indian Tribe, the Lipan Nation of Santa Ysabel, the Suquamish Tribe, and the Little Traverse Bay Bands of Odawa Indians. Same-sex couples may marry in Minnesota and Rhode Island beginning August 1, 2013.

All states that permit same-sex couples to marry should also recognize the marriages of same-sex couples validly entered into in another jurisdiction, just as they would with any other valid out-of-state marriage.

Some states that do not currently allow same-sex couples to marry nevertheless recognize the marriages of same-sex couples from other jurisdictions for some or all purposes. New Mexico's Attorney General has indicated that the state will recognize

out-of-state marriages. The Wyoming Supreme Court has held that same-sex married couples may divorce in Wyoming, although Wyoming does not recognize marriages between same-sex couples.

B. Civil Unions and Domestic Partnerships with Nearly All the Rights and Responsibilities of Marriage

A civil union is a separate legal status available in some states that provides nearly all the specific rights and responsibilities provided to married persons under state law, but does not provide any of the federal benefits of marriage. Several states also recognize comprehensive domestic partnerships with nearly all the rights and responsibilities of marriage under state law. Civil unions and comprehensive domestic partnerships are a tremendous advance in the struggle for equal treatment of same-sex couples, but they fall far short of full equality. First, parties to a civil union or domestic partnership are denied all of the 1,138 federally conferred rights, benefits, and responsibilities of marriage.¹ Second, it is uncertain whether other states will honor civil unions or domestic partnership, although a few states have enacted legislation. Third, those separate statuses do not provide the same dignity, security, and clarity as marriage, and they perpetuate and encourage discrimination by singling out LGBT people and relegating them to a different legal status based solely on their sexual orientation.

Colorado, Hawaii, Illinois, and New Jersey allow same-sex couples to enter civil unions. California, Oregon, Nevada, Washington, and the District of Columbia offer domestic partnerships that include nearly all the rights and responsibilities of marriage.

C. More Limited Forms of Relationship Recognition

Several states provide some rights and responsibilities to couples who are not married. In some places, registration is available only to same-sex couples; in others, it is open to both same-sex and different-sex couples. The rights and responsibilities granted vary widely from state to state. Many cities and counties also have registries for domestic partnerships or provide other recognition for unmarried committed partners. These generally give partners just a few rights that are recognized only by the city or county.

Maine, Maryland, New York, and Wisconsin grant limited rights and responsibilities to domestic partners. Hawaii grants limited rights to couples who register as “reciprocal beneficiaries,” and Colorado makes available a limited set of rights to couples who register as “designated beneficiaries.”

II. STATES WITH RELATIONSHIP RECOGNITION FOR SAME-SEX COUPLES

California

Same-sex couples have been able to marry in California since June 28, 2013, when the judgment of the United States District Court striking down Proposition 8 went into effect. California previously allowed same-sex couples to marry between June 16, 2008 and November 4, 2008. California also respects the marriages of same-sex couples who married in other jurisdictions.

In 2008, the California Supreme Court held in *In re Marriage Cases* that excluding same-sex couples from marriage violated the California Constitution, and same-sex couples began marrying on June 16, 2008.² On November 4, 2008, a slim majority of California voters passed Proposition 8, which changed California's constitution to prohibit same-sex couples from marrying. On May 26, 2009, the California Supreme Court upheld Proposition 8 in *Strauss v. Horton*, but also held that the state must continue to recognize the marriages of all same-sex couples who married in California between June 16, 2008 and November 4, 2008.³ The California Supreme Court also held that the California Constitution continues to require equal treatment of same-sex couples in every respect except for access to the designation of "marriage." In August 2010, a federal district court held that Proposition 8 is unconstitutional under the U.S. Constitution; that decision was affirmed by the United States Court of Appeals in February 2012.⁴ The U.S. Supreme Court agreed to review the case, and on June 26, 2013, issued its decision holding that the supporters of Proposition 8 did not have the legal authority to appeal the 2010 district court decision striking down the measure. Marriages of same-sex couples resumed in California on June 28, 2013, after the United States Court of Appeals lifted its stay of the district court order striking down Proposition 8.

On October 11, 2009, California enacted S.B. 54, which clarified that all same-sex couples who married outside of California before November 5, 2008 must continue to be recognized as married in California.⁵ S.B. 54 also ensures that same-sex couples who marry outside of California on or after November 5, 2008 will be given all of the rights, benefits, and responsibilities of marriage except for the name "marriage." Now that Proposition 8 has been struck down as unconstitutional, California should fully recognize as married all same-sex couples who lawfully married in any jurisdiction regardless of when the marriage took place.

California has recognized registered domestic partners with nearly all of the rights and responsibilities of marriage since January 1, 2005.⁶ California Family Code section 297.5(a) provides that registered domestic partners have the same rights, protections, benefits, responsibilities, obligations, and duties as married spouses. Prior to the expansion of the domestic partnership law in 2005, California recognized a more limited form of domestic partnership since January 1, 2000.⁷

Under a law that went into effect January 1, 2012, same-sex couples who married in California but live out-of-state can get divorced in California if they cannot divorce in the state where they live by filing a petition in the county where they married.⁸ Registered domestic partners who are not residents may also divorce in a California court.⁹

Colorado

Both same-sex and different-sex couples have been able to enter into civil unions in Colorado since May 1, 2013. Civil unions carry almost all of the same rights, benefits, and obligations of marriage under state law, except that parties to civil unions may not file joint state tax returns.¹⁰ Under the law, similar relationships from other jurisdictions, including marriages of same-sex couples, civil unions, and comprehensive domestic partnerships, are recognized as civil unions in Colorado.¹¹

Any person who enters into a civil union in Colorado consents to the jurisdiction of the Colorado courts for the purpose of any action relating to the civil union (such as dissolution), even if one or both of the parties to the civil union no longer lives in Colorado. In addition, anyone residing in Colorado who entered into a civil union, comprehensive domestic partnership, or a marriage with a same-sex spouse can dissolve that relationship in a Colorado court as a civil union.¹²

Colorado also provides for “designated beneficiaries.” Since July 1, 2009, any two unmarried individuals who are over the age of 18 may enter into a designated beneficiary agreement at the county Clerk and Recorder’s office.¹³ A designated beneficiary agreement can provide a number of rights and responsibilities to the designated beneficiaries, at their election, including hospital visitation, medical decision-making, recognition as beneficiaries of certain state employee pensions, standing to sue for wrongful death, and inheritance. A party to a civil union may not enter into a designated beneficiary agreement, and any previously existing designated beneficiary agreement is deemed revoked if either party marries or enters into a civil union.¹⁴

Connecticut

Same-sex couples have been able to marry in Connecticut since November 12, 2008. On October 28, 2008, the Connecticut Supreme Court ruled that denying same-sex couples the right to marry violates the constitutional right to equal protection.¹⁵

Connecticut previously allowed same-sex couples to enter into civil unions, but it no longer allows couples to enter into new civil unions.¹⁶ On October 1, 2010, all existing civil unions were automatically converted into marriages.¹⁷ Civil union spouses were also allowed to convert their civil unions into marriages before this date by marrying each other.

Couples who have entered into civil unions or domestic partnerships that have substantially the same rights, benefits and responsibilities as a marriage in another state are treated as married in Connecticut.¹⁸

Delaware

Same-sex couples have been able to marry in Delaware since July 1, 2013. The General Assembly passed a law granting same-sex couples the freedom to marry on May 7, 2013, and Governor Jack Markell signed it the same day.

Delaware previously allowed same-sex couples to enter into civil unions with all the rights and responsibilities of marriage under Delaware law.¹⁹ No new civil unions are allowed after July 1, 2013.²⁰ Between July 1, 2013, and July 1, 2014, couples who previously entered into a civil union in Delaware may convert their civil union to a marriage either by applying for a marriage license and marrying, or by applying to have their civil union legally converted to a marriage without requirement of solemnization.²¹ On July 1, 2014, all remaining civil unions will be automatically converted to marriages by operation of law.²² Delaware recognizes civil unions and comprehensive domestic partnerships entered into in other jurisdictions and affords them the same rights, benefits, protections, responsibilities, obligations and duties as marriage.²³

The Delaware Family Court may dissolve a marriage of a same-sex couple who are not residents of Delaware if they married in Delaware and one or both spouses live in a state where the law does not permit them to dissolve their marriage or civil union.²⁴ The couple should file the petition for dissolution in the county where one or both of them last resided in Delaware.

District of Columbia

In December 2009 the District of Columbia passed a law permitting same-sex couples to marry, which went into effect on March 3, 2010.²⁵ The District already recognized marriages between same-sex couples validly entered into in other jurisdictions pursuant to a law passed in May 2009.²⁶

The District of Columbia also allows both same-sex and different-sex couples to register as domestic partners with nearly all the rights and responsibilities of marriage, including parentage recognition, inheritance, hospital visitation and medical decision-making, joint tax filing, alimony, domestic partner benefits for D.C. employees, and property rights.²⁷ Although the domestic partnership law went into effect on June 11, 1992, Congress prevented the District of Columbia from spending funds to implement the law until 2002. Originally, the law only granted a few rights to domestic partners, but these rights have expanded considerably. Registered domestic partners may marry without paying the required fee; marrying automatically converts the domestic partnership into a marriage.²⁸

Under a law that went into effect May 31, 2012, same-sex couples who married in the District of Columbia but who live out-of-state can get divorced in D.C. if they cannot divorce in the state where they live.²⁹

Hawaii

Hawaii has allowed same-sex and different-sex couples to enter into civil unions with all the rights and responsibilities of marriage under Hawaii law since January 1, 2012.³⁰ The Hawaii legislature passed a bill establishing civil unions in February 2011, and the Hawaii governor signed the bill into law on February 23, 2011. Under the law, similar relationships from other jurisdictions, including marriages between same-sex couples, will be recognized as civil unions in Hawaii.³¹

Hawaii grants limited rights to unmarried couples who register as “reciprocal beneficiaries.” While a lawsuit over the constitutionality of denying same-sex couples licenses to marry was pending,³² the Hawaii legislature passed the reciprocal beneficiaries law in 1997.³³ The reciprocal beneficiaries law allows any two single adults who are not eligible to marry under state law³⁴ access to some of the rights, benefits, and responsibilities of marriage, including the right to sue for wrongful death, the right to inherit intestate, the right to hospital visitation, the right to make medical decisions, and some property rights.

Illinois

Illinois has allowed same-sex and different-sex couples to enter into civil unions with all the rights and benefits of marriage since June 1, 2011.³⁵ The legislature passed this law in 2010, and the bill was signed by the Illinois governor in early 2011.³⁶ Illinois recognizes similar relationships from other jurisdictions, including marriages between same-sex couples, as civil unions.³⁷

In general, Illinois requires that one spouse be a resident of the state when an action for dissolution of marriage is commenced. When partners enter into a civil union in Illinois, however, they consent to Illinois courts’ jurisdiction over any action relating to the civil union, even if neither partner resides in the state, so non-resident partners may seek dissolution of an Illinois civil union in Illinois courts.³⁸

Iowa

Same-sex couples have been able to marry in Iowa since April 27, 2009. On April 3, 2009, the Iowa Supreme Court unanimously struck down the 1998 state ban on marriage for same-sex couples.³⁹ The Court recognized that the constitutional guarantee of equal protection requires that same-sex couples have “full access to the institution of civil marriage,” and that civil unions and domestic partnerships could not provide full equality under the constitution.⁴⁰

Maine

Maine has permitted same-sex couples to marry since December 29, 2012, after the voters approved a citizen initiative in the November 2012 election.⁴¹ Maine also recognizes marriages of same-sex couples that were validly entered into in another

jurisdiction.⁴² Previously, the Maine Legislature had passed a law allowing same-sex couples to marry that was signed into law by the state's governor, but that law was overturned in a voter referendum on November 3, 2009.⁴³

Maine has recognized domestic partnerships since July 30, 2004. The law provides a handful of rights to domestic partners, including the right to intestate succession, the right to elect against the will, the right to make funeral and burial arrangements, the right to receive victim's compensation, and preferential status to be named as guardian and/or conservator in the event of the death of a domestic partner.⁴⁴ Domestic partnerships in Maine are available to same-sex or different-sex couples if they are both unmarried adults who have lived together in Maine for at least 12 months and are not registered as domestic partners with anyone else.

Maryland

On March 1, 2012, Governor Martin O'Malley signed a bill that allows same-sex couples to marry.⁴⁵ A referendum that would have repealed the new law failed to pass during the November 6, 2012 election.⁴⁶ The law went into effect on January 1, 2013.⁴⁷

On May 18, 2012, the Court of Appeals of Maryland (the state's highest court), ruled that Maryland must recognize an out-of-state marriage of a same-sex couple if the marriage was valid in the state where the couple married.⁴⁸ Under the legal doctrine of "comity," the court held that Maryland must recognize out-of-state marriages for purposes of divorce and for all other purposes, even if the couple could not have entered into the marriage within the state.

Before the Maryland Court of Appeals' decision requiring recognition of out-of-state marriages, Maryland's attorney general issued an opinion on February 23, 2010 concluding that the state government must recognize valid marriages between same-sex couples entered into in other jurisdictions.⁴⁹ Governor O'Malley directed all state agencies to work closely with the attorney general's office to ensure compliance with the law.⁵⁰

Maryland has recognized domestic partnerships with a limited set of rights since July 1, 2008.⁵¹ Domestic partners in Maryland have the right to visit each other in the hospital, make certain decisions about healthcare and funeral arrangements, and are exempt from taxes on certain property transfers between partners. Same-sex and different-sex couples who are over the age of 18 not closely related to each other may be domestic partners in Maryland.⁵²

Massachusetts

Same-sex couples have been able to marry in Massachusetts since May 17, 2004. On November 18, 2003, in *Goodridge v. Department of Public Health*,⁵³ the Massachusetts Supreme Judicial Court held that denying marriage and its protections to same-sex

couples is unconstitutional under the equality and liberty provisions of the Massachusetts Constitution.

In January 2004, the Massachusetts State Senate asked the court to issue an advisory opinion on whether a law allowing same-sex couples to enter into civil unions would comply with the court's opinion in *Goodridge*. In February 2004, the court sent an advisory opinion to the Senate stating unequivocally that civil unions would *not* provide full equality to same-sex couples as mandated by the Massachusetts constitution.⁵⁴ The court explained that having a separate institution just for same-sex couples compounds, rather than corrects, the constitutional infirmity. Establishing a separate "civil union" status for same-sex couples "would have the effect of maintaining and fostering a stigma of exclusion that the Constitution prohibits," the court explained.⁵⁵ "The history of our nation has demonstrated that separate is seldom, if ever, equal."⁵⁶

Initially, Massachusetts did not allow non-resident same-sex couples to marry if their home states prohibited marriage between same-sex couples.⁵⁷ Massachusetts removed this restriction on July 31, 2008, and any same-sex couple may now marry in Massachusetts regardless of where they live.⁵⁸

Massachusetts recognizes both comprehensive domestic partnerships and civil unions validly entered into in other jurisdictions.⁵⁹

Minnesota

Same-sex couples may marry in Minnesota beginning August 1, 2013.⁶⁰ The Legislature passed a law allowing same-sex couples to marry on May 13, 2013, and Governor Mark Dayton signed it the next day.

Minnesota courts may dissolve a marriage of a same-sex couple who are not residents of Minnesota if they married in Minnesota and neither spouse lives in a state that permits them to dissolve their marriage.⁶¹

Nevada

Nevada has allowed same-sex and different-sex couples to register as domestic partners with all of the rights and responsibilities of marriage under Nevada law since October 1, 2009.⁶² Governor Gibbons initially vetoed the bill, but the legislature overrode the veto on May 31, 2009. Couples may register as domestic partners with the Nevada Secretary of State's Office. Forms and other information can be found at: <http://sos.state.nv.us/licensing/securities/domesticpartnership.asp>.

Nevada recognizes civil unions and comprehensive domestic partnerships from other states, but couples are first required to pay the domestic partnership registry fee to the Secretary of State.⁶³

New Hampshire

New Hampshire has allowed same-sex couples to marry since January 1, 2010.⁶⁴ After the legislature passed a marriage equality bill in April 2009, Governor Lynch agreed to sign it only if it were amended to include a number of provisions regarding religious organizations, including that clergy may choose which marriages to solemnize. The legislature passed those amendments, and Governor Lynch signed the marriage bill into law on June 3, 2009.

New Hampshire previously allowed same-sex couples to enter civil unions between January 1, 2008 and December 31, 2009.⁶⁵ All existing New Hampshire civil unions were automatically converted into marriages on January 1, 2011.⁶⁶ New Hampshire recognizes civil unions and comprehensive domestic partnerships from other states as marriages.⁶⁷

New Jersey

New Jersey has allowed same-sex couples to enter into civil unions since February 19, 2007. In *Lewis v. Harris*,⁶⁸ the New Jersey Supreme Court held that committed same-sex couples in New Jersey must be given the same rights as different-sex married couples. The court allowed the legislature to determine whether to allow same-sex couples to marry or to create a separate status such as civil unions. On December 21, 2006, New Jersey passed legislation allowing same-sex couples to enter into civil unions.⁶⁹ The law provides parties to a civil union with the same benefits, protections, and responsibilities as spouses in a marriage.⁷⁰ New Jersey recognizes civil unions from other states.⁷¹

Before it passed civil union legislation, New Jersey allowed same-sex couples to enter into domestic partnerships, which provided a much more limited set of rights and responsibilities than civil unions. Beginning July 10, 2004, New Jersey recognized domestic partnerships between same-sex couples and different-sex couples over the age of 62.⁷² After February 19, 2007, only couples over the age of 62 may enter into domestic partnerships.⁷³ New Jersey continues to recognize the domestic partnerships of all couples who registered as domestic partners before February 19, 2007, and who have not terminated their partnerships.

New Mexico

While New Mexico does not currently permit same-sex couples to marry, New Mexico's Attorney General issued an opinion on January 4, 2011 concluding that under existing state law, the state government must recognize valid marriages between same-sex couples entered into in other jurisdictions.⁷⁴

New York

New York has permitted same-sex couples to marry since July 24, 2011. The New York legislature passed the Marriage Equality Act on June 24, 2011, and Governor Cuomo signed the bill into law the same day.⁷⁵

New York also recognizes the marriages of same-sex couples who validly married in another state or country, and it recognizes civil unions from other states. Even before the Marriage Equality Act passed, numerous courts held that the state of New York must recognize marriages entered of same-sex couples validly entered into in other jurisdictions.⁷⁶ Based on these decisions, the governor directed all agencies to revise their policies to recognize marriages between same-sex couples in other states and countries that allow same-sex couples to marry,⁷⁷ and the New York Court of Appeal affirmed that state agencies and local governments have the authority to recognize marriages between same-sex couples from other jurisdictions, although it did not reach the question of whether the state government is required to recognize those marriages.⁷⁸ In May 2010, New York's high court held that the state will recognize civil unions from other states for purposes of determining the legal parentage of a child born to a same-sex couple in a civil union.⁷⁹ Nevertheless, same-sex couples who entered into a civil union in another state may still face challenges in getting their relationship to be recognized in other contexts.⁸⁰

New York also recognizes domestic partnerships for same-sex couples with a few limited rights, including hospital visitation,⁸¹ the right to make decisions about disposition of a partner's remains,⁸² and a supplemental burial allowance for partners of veterans killed in combat.⁸³

Oregon

Oregon grants domestic partners nearly all the rights and responsibilities of marriage under state law.⁸⁴ Domestic partnerships in Oregon are only available to same-sex couples. Oregon's law establishing domestic partnerships was signed by the governor on May 9, 2007. The law went into effect on February 4, 2008.

Couples who entered into an Oregon registered domestic partnership but no longer reside there may dissolve their registered domestic partnership in an Oregon court.⁸⁵

Rhode Island

Same-sex couples may marry in Rhode Island beginning August 1, 2013.⁸⁶ The General Assembly passed a law granting same-sex couples the freedom to marry on May 2, 2013, and Governor Lincoln Chafee signed it the same day.

Rhode Island previously allowed same-sex couples to enter into civil unions, but no new civil unions are permitted after August 1, 2013.⁸⁷ Couples who previously entered into a civil union in Rhode Island may convert their civil union to a marriage, either by applying

for a license and marrying, or by applying to the clerk of the city or town in which their civil union is recorded to have their civil union legally designated and recorded as a marriage.⁸⁸ Civil unions that are not converted to marriages remain valid. Rhode Island recognizes civil unions and comprehensive domestic partnerships from other states and affords them the same rights, benefits, and responsibilities as marriage.⁸⁹

Vermont

Same-sex couples have been able to marry in Vermont since September 1, 2009. Vermont was the first state to enact a marriage equality law without a court mandate. On April 7, 2009, the Vermont legislature voted in favor of the marriage equality law, overriding Governor Douglas's earlier veto. The law went into effect on September 1, 2009.⁹⁰

Vermont currently recognizes civil unions entered in Vermont before September 1, 2009, but same-sex couples may no longer enter into new civil unions. Vermont was the first state to allow same-sex couples to enter into civil unions,⁹¹ following the Vermont Supreme Court's 1999 ruling in *Baker v. State*.⁹²

Under a law that went into effect July 1, 2012, same-sex couples living out-of-state who married or entered into civil unions in Vermont may divorce in some circumstances.⁹³ This law allows non-resident same-sex couples to obtain a divorce in Vermont if neither spouse's home state allows them to divorce, they do not have minor children, they agree on how to divide their property, and there are no domestic violence protective orders against either spouse.

Washington

Same sex-couples have been able to marry in Washington state since December 6, 2012.⁹⁴ On February 13, 2012, Governor Chris Gregoire signed a bill allowing same-sex couples to marry in Washington.⁹⁵ The voters upheld the new law in a statewide referendum on November 6, 2012.

Washington permits same-sex couples to enter into comprehensive domestic partnerships, but beginning on June 30, 2014, domestic partnerships will be limited to couples where one or both partners are over the age of 62. Previously existing domestic partnerships will continue to be recognized, but will be automatically converted to marriages on June 30, 2014. Any current domestic partners can convert their domestic partnership to a marriage before this time by marrying each other.⁹⁶

Washington recognizes civil unions and comprehensive domestic partnerships from other states as domestic partnerships if one or both partners are over age 62. It treats other couples in civil unions and comprehensive domestic partnerships from other states as having the rights and responsibilities of marriage only for the first year of their permanent residence in Washington – after that time, couples must marry to retain their relationship recognition.⁹⁷

Wisconsin

Wisconsin began recognizing domestic partnerships with limited rights and responsibilities on August 3, 2009.⁹⁸ Same-sex couples may register as domestic partners if they are over the age of 18, share a common residence, are not married or registered as domestic partners with a different person, and are not closely related. Domestic partners receive some rights and responsibilities, including hospital visitation and some medical decision-making, inheritance, the right to sue for wrongful death, and immunity from testifying against the other partner in court.

Wyoming

Wyoming does not recognize marriages between same-sex couples, but same-sex married couples who married elsewhere may divorce in Wyoming.⁹⁹

American Indian Tribal Nations¹

American Indian tribes are sovereign nations that have the ability to have inherent, retained powers to govern themselves and establish their own laws. There are over 550 tribes formally recognized by the U.S. government and numerous tribes that are not federally recognized.

At least three American Indian tribal nations explicitly allow same-sex couples to marry. The Coquille Indian Tribe amended their laws in 2009 to allow same-sex couples to marry and recognize marriages and domestic partnerships from other jurisdictions.¹⁰⁰ The Suquamish Tribe's tribal council voted in August 2011 to allow same-sex couples to marry.¹⁰¹ On March 15, 2013, the chairman of the Little Traverse Bay Bands of Odawa Indians signed a law approved by the tribal council allowing same-sex couples to marry.¹⁰² On June 24, 2013, the Lipay Nation of Santa Ysabel announced its recognition of marriages of same-sex couples.¹⁰³

Additionally, In May 2004, Kathy Reynolds and Dawn McKinley, a same-sex couple who are members of the Cherokee Nation, obtained a marriage certificate from the Cherokee Nation and married shortly thereafter. Other members of the Cherokee Nation have sought to invalidate Reynolds and McKinley's marriage in three different cases. NCLR successfully defended the couple in two of these cases, and a motion to dismiss a third challenge is still pending.¹⁰⁴ The Cherokee Nation now explicitly prohibits same-sex couples from marrying.¹⁰⁵

Most tribal law does not address recognition of marriage or other relationships between same-sex couples. However, a few tribes expressly prohibit marriage between same-sex couples.¹⁰⁶ If you have questions about the laws of a particular tribe, you should check with the tribal government or leadership.

¹ NCLR thanks Alex Cleghorn of [California Indian Legal Services](#) for his assistance with this section.

Endnotes

- ¹ In 2004, the U.S. General Accounting Office identified 1,138 federal rights and responsibilities that turn on marital status. See U.S. GEN ACCOUNTING OFFICE, GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT 1 (2004) (*available at* www.gao.gov/new.items/d04353r.pdf).
- ² *In re Marriage Cases*, 43 Cal.4th 757, 183 P.3d 384 (Cal. 2008).
- ³ *Strauss v. Horton*, 46 Cal.4th 364, 207 P.3d 48 (Cal. 2009).
- ⁴ *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal. Aug. 4, 2010, *aff'd sub nom Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012).
- ⁵ CAL. FAM. CODE § 308(b)-(c) (West 2010), S.B. 54, 2009-2010 Reg. Sess. (Cal. 2009). For more information about this law, see www.nclrights.org/SB54FAQ.
- ⁶ A.B. 205, 2003-2004 Reg. Sess. (Cal. 2003) (enacted). For more information about A.B. 205 and related legislation, see www.nclrights.org.
- ⁷ A.B. 26, 1999-2000 Reg. Sess. (Cal. 1999) (enacted).
- ⁸ CAL. FAM. CODE § 2320(b).
- ⁹ CAL. FAM. CODE § 299(d).
- ¹⁰ COLO. REV. STAT. ANN. §§ 14-15-107, 14-15-117 (West 2013).
- ¹¹ COLO. REV. STAT. ANN. § 14-15-116 (West 2013).
- ¹² COLO. REV. STAT. ANN. §§ 14-15-115, 14-15-166(2) (West 2013).
- ¹³ COLO. REV. STAT. ANN. § 15-22-101, *et seq.* (West 2013).
- ¹⁴ COLO. REV. STAT. ANN. §§ 15-22-104, 15-22-111 (West 2013).
- ¹⁵ *Kerrigan v. Dep't of Pub. Health*, 289 Conn. 135, 957 A.2d 407 (Conn. 2008). For more information about marriages in Connecticut, visit the website for Gay & Lesbian Advocates & Defenders at www.glad.org.
- ¹⁶ CONN. GEN. STAT. § 46b-38aa to -38pp (2009).
- ¹⁷ CONN. GEN. STAT. § 46b-38rr (2010).
- ¹⁸ CONN. GEN. STAT. § 46b-28a (2009).
- ¹⁹ DEL. CODE tit. 13, § 201 *et seq.*
- ²⁰ 79 DEL. LAWS ch. 19, § 6 (to be codified at DEL. CODE tit. 13, § 218).
- ²¹ *Id.*
- ²² *Id.*
- ²³ 79 DEL. LAWS ch. 19, § 1 (to be codified at DEL. CODE tit. 13, § 101).
- ²⁴ DEL. CODE tit. 13, § 216; 79 DEL. LAWS ch. 19, § 7 (to be codified at DEL. CODE tit. 13, § 1504).
- ²⁵ D.C. CODE § 46-401 (passed as B18-482, 2009-2010 Council, 18th Period (D.C. 2009)).
- ²⁶ D.C. CODE § 46-405.01 (passed as B18-0010, 2009-2010 Council, 18th Period (D.C. 2009)).
- ²⁷ D.C. CODE §§ 32-701 to -710 (passed as B18-0066, 2009-2010 Council, 18th Period (D.C. 2009)).
- ²⁸ D.C. CODE § 32-702 (passed as B18-482, 2009-2010 Council, 18th Period (D.C. 2009)).
- ²⁹ D.C. LAWS 19-133 (ACT 19-330) (to be codified at D.C. CODE § 16-902).
- ³⁰ HAW. REV. STAT. §572B-1, *et seq.*
- ³¹ HAW. REV. STAT. §572B-10 (2012)
- ³² *Baehr v. Miike*, 87 Hawai'i 34, 950 P.2d 1234 (Haw. 1997).
- ³³ HAW. REV. STAT. § 572C-6 (2008).
- ³⁴ HAW. REV. STAT. § 572C-4 (2008).
- ³⁵ 750 ILL. COMP. STAT. 75/1 *et seq.*
- ³⁶ Illinois Religious Freedom Protection and Civil Union Act, 2010 Ill. Legis. Serv. 96-1513 (West).
- ³⁷ 750 Ill. Comp. Stat. 75/60.
- ³⁸ 750 Ill. Comp. Stat. 75/45.

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- ³⁹ *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009). For more information about marriage in Iowa, visit Lambda Legal's website at www.lambdalegal.org.
- ⁴⁰ *Id.* at 907.
- ⁴¹ ME. REV. STAT. ANN. tit. 19-A, § 650-A (2013).
- ⁴² ME. REV. STAT. ANN. tit. 19-A, § 650-B (2013).
- ⁴³ L.D. 1020, 124th Leg., 1st Reg. Sess. (Me. 2009).
- ⁴⁴ See ME. REV. STAT. ANN. tit. 22, § 2710 (2008).
- ⁴⁵ Civil Marriage Protection Act, H.B. 438, 430th Reg. Leg. Sess. (Md. 2011) (signed by Governor O'Malley on March 1, 2012).
- ⁴⁶ See http://www.elections.state.md.us/elections/2012/2012_ballot_questions.pdf (last visited July 16, 2012).
- ⁴⁷ MD. CODE. ANN., FAM. LAW § 2-201 (2013).
- ⁴⁸ *Port v. Cowan*, 426 Md. 435, 44 A.3d 970 (2012).
- ⁴⁹ 95 Op. Md. Att'y Gen. 3 (2010), available at <http://www.oag.state.md.us/Opinions/2010/95oag3.pdf>.
- ⁵⁰ See <http://www.governor.maryland.gov/pressreleases/100224.asp>.
- ⁵¹ S.B. 566, 2008 Reg. Sess., 425th Leg. (Md. 2008) (codified as 2008 Md. Laws 4597); S.B. 597, 2008 Reg. Sess., 425th Leg. (Md. 2008) (codified as 2008 Md. Laws 4649).
- ⁵² MD. CODE ANN. HEALTH-GEN. § 6-101 (West 2008).
- ⁵³ *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309 (2003). For more information about marriages in Massachusetts, visit the website for Gay & Lesbian Advocates & Defenders, at www.glad.org.
- ⁵⁴ *Opinions of the Justices to the Senate*, 440 Mass. 1201 (2004).
- ⁵⁵ *Id.* at 1208.
- ⁵⁶ *Id.* at 1206.
- ⁵⁷ Law of 1913, MASS. GEN. LAWS ch. 207, §§ 11-13, 50 (2005) (repealed 2008).
- ⁵⁸ S. 800, 185th Gen. Court Reg. Sess. (Mass. 2008).
- ⁵⁹ *Hunter v. Rose*, 463 Mass. 488 (2012); *Elia-Warnken v. Elia*, 463 Mass. 29 (2012).
- ⁶⁰ 2013 MINN. LAWS ch. 74, § 2 (to be codified at MINN. STAT. § 517.01).
- ⁶¹ 2013 MINN. LAWS ch. 74, § 8 (to be codified at MINN. STAT. § 518.07).
- ⁶² NEV. REV. STAT. ANN. 122A.010, *et seq.* (passed as S.B. 283, 2009 Leg., 75th Sess. (Nev. 2009)).
- ⁶³ NEV. REV. STAT. ANN. § 122A.500.
- ⁶⁴ N.H. REV. STAT. § 457:1, *et seq.* (West 2009).
- ⁶⁵ N.H. REV. STAT. § 457:46 (West 2009).
- ⁶⁶ During 2010, couples were able to convert their civil unions into marriages by marrying each other, or by applying to the county clerk to designate their civil unions as marriages.
- ⁶⁷ N.H. REV. STAT. § 457:45 (West 2009).
- ⁶⁸ *Lewis v. Harris*, 908 A.2d 196 (N.J. 2006).
- ⁶⁹ N.J. STAT. ANN. §§ 37:1-28 to 1-36 (West 2009).
- ⁷⁰ N.J. STAT. ANN. § 37:1-31 (West 2009).
- ⁷¹ N.J. STAT. ANN. § 37:1-34 (West 2009).
- ⁷² N.J. STAT. ANN. §§ 26:8A-1 to 8A-13 (West 2009).
- ⁷³ N.J. STAT. ANN. § 26:8A-4.1 (West 2009).
- ⁷⁴ N.M. Att'y Gen. Op. No. 11-01 (2011), available at <http://www.nmag.gov/Opinions/Opinion.aspx?OpID=1131>.
- ⁷⁵ N.Y. DOM. REL. § 10-a (passed as A.B. 8354, 234th Gen. Assem., Reg. Sess. (N.Y. 2011)).
- ⁷⁶ See, e.g., *Beth R. v. Donna M.*, 19 Misc.3d 724 (N.Y. Sup. Ct. 2008) (holding that a divorce action may be brought to dissolve a Canadian marriage between a same-sex couple); *Martinez v. County of Monroe*, 50 A.D.3d 189 (N.Y. App. Div. 2008) (holding that a community college employee's same-sex spouse was entitled to health care benefits based on their marriage in Canada).

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- ⁷⁷ Memorandum from David Nocenti, Executive Chamber Legal Counsel to All Agency Counsel (May 14, 2008), *available at* data.lambdalegal.org/in-court/downloads/exec_ny_o_20080514_governer-directive-same-sex-marriage.pdf.
- ⁷⁸ *Godfrey v. Spano*, 13 N.Y.3d 358, 920 N.E.2d 328 (N.Y. 2009).
- ⁷⁹ *Debra H. v. Janice R.*, 14 N.Y.3d 576, 930 N.E.2d 184 (N.Y. 2010).
- ⁸⁰ *Langan v. St. Vincent's Hosp. of N.Y.*, 25 A.D.3d 90 (N.Y. App. Div. 2005).
- ⁸¹ N.Y. PUB. HEALTH LAW § 2805-q.
- ⁸² N.Y. PUB. HEALTH LAW § 4201.
- ⁸³ N.Y. EXEC. LAW § 354-b.
- ⁸⁴ OR. REV. STAT. ANN. § 106.300, *et seq.* (passed as H.B. 2007, 74th Leg., 2007 Reg. Sess. (Or. 2007)).
- ⁸⁵ OR. REV. STAT. ANN. § 106.325(4).
- ⁸⁶ 2013 R.I. PUB. LAWS ch. 4, §§ 1, 8 (to be codified at R.I. GEN. LAWS § 15-1-1 *et seq.*).
- ⁸⁷ 2013 R.I. PUB. LAWS ch. 4, §§ 6, 8.
- ⁸⁸ 2013 R.I. PUB. LAWS ch. 4, § 5 (to be codified at R.I. GEN. LAWS § 15-3.1-12).
- ⁸⁹ 2013 R.I. PUB. LAWS ch. 4, § 2 (to be codified at R.I. GEN. LAWS § 15-1-8).
- ⁹⁰ VT. STAT. ANN. tit. 15 §§ 1a, 8 (passed as S. 115, 2009 Gen. Assem., 2009-2010 Legis. Sess. (Vt. 2009)).
- ⁹¹ VT. STAT. ANN. tit. 15 § 1204 (2008).
- ⁹² *Baker v. State*, 170 Vt. 194, 744 A.2d 864 (Vt. 1999).
- ⁹³ 2012 VT. LAWS NO. 92 (H. 758) (to be codified at VT. STAT. ANN. tit. 15 § 592).
- ⁹⁴ WASH. REV. CODE ANN. § 26.04.010 (2013).
- ⁹⁵ S.B. 6239, 62nd Leg., 2012 Reg. Sess. (Wash. 2012).
- ⁹⁶ WASH. REV. CODE ANN. § 26.60.100 (2013).
- ⁹⁷ WASH. REV. CODE ANN. §§ 26.04.260, 26.60.090 (2013).
- ⁹⁸ WIS. STAT. ANN. § 770.001, *et seq.* (passed as A.B. 75, 2009 Reg. Sess., 99th Legis. Sess. (Wis. 2009)).
- ⁹⁹ *Christiansen v. Christiansen*, 253 P.3d 153 (Wy. 2011) (holding that a same-sex couple who married in Canada could divorce in Wyoming).
- ¹⁰⁰ Coquille Indian Tribal Code, Ch. 740, *available at* <http://www.coquilletribe.org/documents/740MarriageandDomesticPartnership.pdf>.
- ¹⁰¹ <http://www.nytimes.com/2011/08/12/us/12tribe.html>
- ¹⁰² See Statute 2013-003, *available at* <http://www.ltbodawa-nsn.gov/OdawaRegister/Legislative/Statutes/2013/WOS%202013-003%20Marriage.pdf>
- ¹⁰³ See <http://www.kumeyaay.com/all-news/3167-california-native-american-tribe-announces-support-of-same-sex-marriage-santa-ysabel-tribe-first-in-california-to-make-proclamation.html>.
- ¹⁰⁴ *Cherokee High Court Rules in Favor of NCLR and Same-Sex Couple*, (January 24th, 2006), http://www.nclrights.org/site/PageServer?pagename=press_pr_cherokee_010406.
- ¹⁰⁵ Council of the Cherokee Nation, Legislative Act 26-04 (2004) (amending Cherokee Nation Code, tit. 43 §§ 3, 8).
- ¹⁰⁶ See, e.g., Chickasaw Nation Code §6-103 (2011); Oneida Tribe of WI Code §71.4 (2009); 9 Navajo Code §2 (2009).