

UNDERSTANDING CIVIL UNIONS IN ILLINOIS^{*}

What is a civil union?

A civil union is a legal relationship granted by the State of Illinois. Partners who enter into a civil union in Illinois are entitled to the same legal obligations, responsibilities, protections, and benefits that state law provides to married spouses.

However, civil unions entered into in Illinois are not recognized under federal laws. Partners to a civil union in Illinois are entitled to almost none of the obligations, responsibilities, protections, and benefits that federal law provides to married spouses.

When do civil unions become legal in Illinois?

Civil unions became effective on June 1, 2011.

Are civil unions only for gay and lesbian couples?

No. Both same-sex and opposite-sex couples who are in committed relationships can enter into a civil union in Illinois.

Who can enter into a civil union?

You can enter into a civil union in Illinois if you are a same-sex or opposite-sex couple in a committed relationship. You and your partner must both be at least 18 years old and neither of you can already be in a marriage, civil union, or substantially similar legal relationship. Illinois also does not allow civil unions between close relatives. You cannot enter into a civil union with your parent, grandparent, aunt, uncle, niece, nephew, first cousin, brother, sister, child or grandchild – whether by full-blood, half-blood, or adoption.

What if I come from a state that does not recognize civil unions?

Illinois law provides that parties seeking to enter into a civil union must not be prohibited from entering such unions in their home jurisdictions. While many states have laws on the books purporting to deny recognition of validly performed unions between persons of the same sex, no state prohibits a person from actually entering such a union.

Can we enter into a civil union if either of us has been married or in a civil union before?

Illinois law prohibits you from entering a civil union if you or your partner are currently married or in a civil union or substantially similar legal relationship. To enter into a civil union, your prior marriage, civil union, or substantially similar legal relationship must either be dissolved or your previous spouse or civil union partner must have died.

Do we need a license to enter into a civil union?

Yes. To obtain a license to enter into a civil union, you must submit an application to a county clerk's office. You may submit the application to any county clerk's office in the state. A license is valid only in the county where it was issued and thus must be certified in that county.

^{*} We are grateful to the law firm of McDermott Will & Emery LLP, and its terrific attorneys Todd Solomon and Brian Tiemann for their generous assistance with this project.

Disclaimer: This summary is intended only as a general description of the laws applicable to civil union partners in Illinois. It is not intended as legal or tax advice. You should consult with a legal or tax advisor to discuss the impact of these laws on your personal situation.

The application requests basic information about you and your partner such as your names, sexes, occupations, address(es), social security numbers, dates of birth, and places of birth, as well as the names and addresses of your parents or guardians. You must also state whether you and your partner are related to each other and, if so, your relationship to each other. In addition, if you or your partner were previously married or in a civil union or substantially similar legal relationship, you must provide the name, date, place, and court in which the marriage, civil union, or other legal relationship was dissolved or declared invalid or the date and place of the former spouse or partner's death.

You may also need to provide proof to the county clerk that you and your partner are not prohibited from entering into a civil union. Illinois prohibits you from entering into a civil union if you or your partner are under 18 years old. Proof of your age may include your birth certificate, passport, driver's license, or an employment certificate. You are also prohibited from entering into a civil union if you or your partner are already married or in a civil union or substantially similar legal union that has not been dissolved. Proof that your prior marriage, civil union, or substantially similar legal relationship has been dissolved may include a certified copy of your divorce or dissolution decree. If your prior spouse or partner died, you may be asked to provide a certified copy of his or her death certificate. You may also be prohibited from entering into a civil union if you and your partner are too closely related to each other.

Once you and your partner have submitted the application, the filing fee (described below), and any required proof that you are not prohibited from entering into a civil union, the county clerk will issue you a license to enter into a civil union.

Where do we get a license and how much does it cost?

Licenses are issued by a county clerk. In most counties, the license costs \$30. The license becomes valid in the county where it was issued the day after it is issued and is valid for 60 days. During that time, you must have the civil union certified in that county by an authorized person or the license becomes invalid. Once you have the civil union certified, it becomes and will remain valid until it is dissolved.

Do we both need to be present at the county clerk's office to apply for a license?

Yes. Both you and your partner must appear at the county clerk's office to apply for a civil union license. You must each present proof of your identity, such as a current driver's license or state-issued photo identification. In addition, both you and your partner must sign the application in the presence of the county clerk. A representative cannot sign on one or both of your behalves, even if you have a power of attorney or notarized affidavit giving the representative authority to sign the application for you or your partner.

What do we do with the license?

You must deliver the license to the person (referred to as an officiant) who will certify your civil union during the period of license validity. After the ceremony, the officiant will complete the date, place and officiant information and will sign your license. Your license then becomes a civil union certificate. The officiant must return the certificate to the county clerk's office where it was issued within 10 days of the ceremony/certification so that it can be officially registered by the clerk. The certificate is not a complete legal document until it has been recorded in the county clerk's office where it was issued.

Who can certify our civil union?

Your civil union may be certified by a judge or retired judge of a court of record, a judge of the Court of Claims, a county clerk in a county having 2,000,000 or more residents, or a public official whose powers include solemnization of marriage. You may also have your civil union certified in accordance with the rules of any religion, Indian Nation or Tribe or Native Group, provided that any required officiant is in good standing.

Do we need to have a religious ceremony in order to enter into a civil union?

No. Illinois does not require a religious ceremony to enter into a civil union. Your civil union may be certified by a religious official, but can also be certified by non-religious officiant such as a judge or retired judge of a court of record, a judge of the Court of Claims, a county clerk in a county having 2,000,000 or more residents, or a public official whose powers include solemnization of marriage.

What is the process if we want to change our last name?

Illinois Driver's License - The Illinois Department of Motor Vehicles will permit a person to change the name on his or her driver's license with evidence linking the change from the previous information to the new information. To request the change, an Illinois civil union partner must visit a DMV facility to apply for a corrected license. Although the Illinois DMV has not issued guidance on the documents necessary for a civil union partner to change the name on his or her driver's license, a certified copy of the Illinois civil union certificate should be sufficient. The fee to apply for a corrected license is \$5.

Passport - The Department of State recognizes name changes that are permitted under state law for purposes of changing a person's name on a passport. To request the change, an Illinois civil union partner must complete Form 5504 (if his or her passport was issued less than one year prior) or Form DS-82 (if his or her passport was issued more than one year prior). These are the same forms that are generally used for passport renewals. The Illinois civil union partner must provide evidence verifying his or her name change on a form of state identification (such as an Illinois driver's license) and a certified copy of his or her Illinois civil union certificate, as well as other forms of identification generally required to renew a passport. The fees are the same as those for passport renewals.

Social Security Card - The Social Security Administration ("SSA") issued guidance in May 2011 stating that it will recognize an Illinois civil union certificate as proof of a name change for social security purposes. This is available online at <https://secure.ssa.gov/apps10/poms.nsf/lnx/1502705016>. This guidance should alleviate issues that could arise with a name change for social security purposes since the policy of the SSA on this issue is in writing. To request the change, a civil union partner must complete Form SS-5 to apply for a new social security card. The Illinois civil union partner must provide a certified copy of his or her Illinois civil union certificate, as well as other forms of identification generally required to apply for a social security card. There is no fee.

If I enter into a civil union in Illinois, will it be recognized in other states?

In most cases, no. However, a civil union entered into in Illinois may be recognized under the laws of some states. You should consult the laws of the state where you move to determine whether that state will recognize your civil union.

If I entered into a same-sex marriage, civil union or domestic partnership in another state, do I need to enter into a civil union again in Illinois?

No. If you entered into a same-sex marriage, civil union, or substantially similar legal relationship in another state, it will be recognized as a civil union in Illinois. You may be required to provide proof of your out-of-state union such as a copy of your marriage or civil union certificate or proof that you and your partner have validly registered as domestic partners.

If my partner and I registered as domestic partners in Cook County, do we need to enter into a civil union?

If you want the legal obligations, responsibilities, protections, and benefits extended to civil union partners under Illinois law, you may wish to enter into a civil union. These same legal obligations, responsibilities, protections, and benefits are not extended to domestic partners registered in Cook County. You can legally enter into a civil union even if you registered as domestic partners in Cook County.

If my partner and I had a religious ceremony but have not entered into a legal relationship in any state, do we need to enter into a civil union?

If you want the legal obligations, responsibilities, protections, and benefits extended to civil union partners under Illinois law, you must enter into a civil union. Your religious ceremony will not prohibit you from entering into a civil union in Illinois.

What happens if we enter into a civil union and our relationship later ends?

If you enter into a civil union in Illinois and your relationship later ends, your civil union must be dissolved by a state court in order to end your legal relationship with your civil union partner. If you and/or your partner move to another state after entering into a civil union in Illinois, the courts of that state may dissolve your civil union. If your civil union cannot be dissolved by the courts in the state of your residence, your civil union can be dissolved by an Illinois state court. The dissolution of civil unions follows the same procedures and is subject to the same rights and obligations that are involved in the dissolution of marriages.

Illinois law will dissolve your civil union if you either establish grounds for dissolving the civil union or if you and your partner have lived apart for at least two years and can establish that your civil union must be dissolved due to irreconcilable differences. If both you and your partner attest to the court that your civil union needs to be dissolved due to irreconcilable differences, the court may only require you to have lived apart for a period of six months in order to dissolve the civil union.

If you do not dissolve your civil union when your relationship ends, your legal relationship with you civil union partner will continue. You and your partner will continue to have certain legal responsibilities to each other and neither of you can enter into a marriage or another civil union or substantially similar legal relationship until the civil union is dissolved.

Can I sponsor my civil union partner for immigration?

No. Because civil unions are not recognized under federal law, a United States citizen who enters into a civil union with a partner who is not a United States resident cannot sponsor his or her partner for immigration into the country.

Can I cover my civil union partner under health insurance and other benefits provided by my employer?

Your employer is not required to allow you to enroll your civil union partner in any benefit plans, unless your employer allows other employees to enroll their spouses.

Are benefits that my employer provides to my civil union partner taxable?

You must pay federal income tax on the value of any health benefits that your employer provides to your civil union partner, unless your civil union partner qualifies as your “dependent” under federal income tax law. The fair market value of the portion of your civil union partner’s benefits that your employer pays will be “imputed” as income to you that is reported as taxable income for federal income tax purposes, as well as for payroll tax purposes.

The Illinois Department of Revenue issued a bulletin in June 2011, announcing that the civil union law did not change Illinois income tax laws. As a result of this position and the fact that Illinois income tax laws track federal law for purposes of determining and individual's taxable income, the value of employer-provided benefits for your civil union partner will be taxable under state income tax laws to the same extent as under federal income tax laws. This position is in apparent contradiction to the expressed intent of the Illinois General Assembly in enacting the civil union law. Equality Illinois is pursuing a final resolution of this matter.

Can my civil union partner and I file jointly for federal income tax purposes?

No. Because civil unions are not recognized under federal law, partners to a civil union are not permitted to file joint federal income tax returns or to claim tax breaks or protections that the federal government affords to married spouses.

Can my civil union partner and I file jointly for state income tax purposes?

The Illinois Department of Revenue issued a bulletin in June 2011, announcing that it will continue to direct all tax return filers to follow IRS determination of who may file jointly. As a result of that practice, Illinois couples in a civil union would not be allowed to file Illinois tax returns jointly, which is in apparent contradiction to the expressed intent of the Illinois General Assembly. Equality Illinois is pursuing a final resolution of this matter.

Will my civil union partner inherit my possessions after I die?

If you die without a will and you do not have any children, your civil union partner will inherit all of your possessions. If you have children and you die without a will, your partner will inherit half of your possessions and the other half will be divided amongst your children.

If you die with a will, your civil union partner has the right to renounce what you leave him or her in your will and will be entitled to half of your estate if you have no children. If you have children, your partner can renounce what you leave to him or her in your will and is entitled to one-third of your estate.

Your civil union partner will also have a right to certain financial protection while your estate is being settled following your death. Your civil union partner is entitled to a portion of the assets of your estate that an Illinois court determines is reasonable to support your partner during the first nine months after you die. In addition, if you and your civil union partner have children, the court will include additional money to enable your partner to support your children for up to nine months following your death while your estate is being settled.

If I die, will my civil union partner be entitled to receive Social Security survivor benefits?

No. Because federal law does not recognize civil unions, your civil union partner will not receive Social Security survivor benefits in the event of your death.

This summary was prepared in partnership with McDermott Will & Emery LLP for exclusive use and distribution by Equality Illinois.