



MARRIAGE RIGHTS IN ILLINOIS



FOREWORD

At Equality Illinois, we work to promote a fair and unified Illinois where everyone is treated equally with dignity and respect and where all people live freely regardless of sexual orientation, gender identity, or expression. We believe that everyone should have the same rights, responsibilities, and opportunities afforded to them, and we envision a world where every loving, committed couple has the freedom to marry.

Because of the hard work and commitment of our members and allies, we moved one step closer to achieving that vision when the Illinois legislature approved the *Religious Freedom and Marriage Fairness Act*, making Illinois the next state to officially provide each and every loving, committed couple the freedom to marry.

With our newly-codified freedom to marry in Illinois, many couples have questions about protections and implementation of the new law. We offer this guide to answer many of those questions and to serve as a resource as you begin your lives together as a married couple.

While we tried to address a comprehensive list of questions and issues that may come up, each individual couple will be presented with its own set of unique circumstances when planning to marry.

Please keep in mind that this summary is intended only as a general description of the laws applicable to same-sex spouses 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 freedom to marry in Illinois could never have been possible without your commitment to make it a reality. From all of us at Equality Illinois, we thank you for your support and dedication.

I. MARRIAGE BASICS

What rights will I have if I marry my same-sex partner?

All laws of the state of Illinois that are applicable to marriage apply equally to marriages of same-sex couples and different sex couples and their children. Therefore, all married couples (same-sex or different-sex) have the same benefits, protections, and responsibilities under the law. Marriage provides over 600 state-level rights, benefits, and protections to same-sex lawfully wedded couples, including rights relating to probate, health care decisions, medical and life insurance, and many other areas. The federal government also recognizes marriages of gay and lesbian couples, making available over 1,100 protections and rights.

When will Illinois recognize the freedom to marry for same-sex couples?

The *Religious Freedom and Marriage Fairness Act* takes effect on June 1, 2014, but a federal court ruled in February that the prohibition on marriages for same-sex couples prior to June 1 is unconstitutional and that couples in Cook County should be able to marry immediately. Consequently, the Illinois Attorney General encouraged all county clerks to issue marriage licenses to same-sex couples prior to June 1, 2014. A number of counties began issuing licenses already, including Cass, Champaign, McLean, and St. Clair. Please check with your county clerk to see if they are issuing licenses before June 1, 2014.

If we were married in another state, or country that has marriage equality, do we need to get married again in Illinois?

No. If you were married in another state or country (as long as it was not a common law marriage) with marriage equality, it will be recognized as a marriage in Illinois. You may be required to provide proof of your marriage such as a copy of your marriage license from another state or country, but you do not need to obtain a new Illinois marriage license from the county clerk's office.

Will civil unions still be an option if I do not want to be married?

Yes. Civil unions will remain an option for both same-sex and opposite-sex couples.

If I entered into a domestic partnership, civil union, or substantially similar relationship lawfully in another state, will Illinois recognize my relationship?

Illinois will recognize your relationship as a civil union.

If my partner and I were registered as domestic partners in Cook County, do we need to get married?

If you want the legal obligations, responsibilities, protections, and benefits extended to spouses under Illinois law, you may wish to get married. The same legal obligations, responsibilities, protections, and benefits afforded to married couples are not extended to domestic partners registered in Cook County. You can legally enter into a marriage regardless of whether you are registered as domestic partners in Cook County.

II. GETTING MARRIED

Who can legally marry?

You can enter into a marriage in Illinois if you are a same-sex or different-sex couple. You and your partner must both be at least 18 years old and neither of you can already be in a marriage, a civil union (see below regarding converting your civil union into a marriage), or a substantially similar legal relationship. Illinois also does not allow marriages between close relatives (e.g., parent, grandparent, aunt, uncle, niece, nephew, brother, sister, child, or grandchild).

Do we need to get a marriage license?

Yes. To obtain a marriage license, 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 performed and certified in that county.

The application requests information about you and your spouse such as your name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage, and name and address of the parents or guardian of each party. You must also provide information regarding whether the parties are related to each other and, if so, their relationship. Finally, 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 marriage. Illinois prohibits you from entering into a marriage if you or your partner is 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 marriage if you or your partner is 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 marriage 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 marriage, the county clerk will issue you a marriage license.

Where do we get a marriage license? How much does it cost?

Licenses are issued by a county clerk. 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 marriage certified in that county by an authorized person or the license becomes invalid. Once you have the marriage certified, it becomes and will remain valid until it is dissolved.

For more information about your county clerk's office, please visit <http://www.elections.il.gov/electionauthorities/elecauthoritylist.aspx>.

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

Yes. Both you and your partner must appear at the county clerk's office to apply for a marriage license. You must each present proof of your identity, such as a current driver's license or state-issued photo identification. Additionally, 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.

Can a county clerk refuse to issue a marriage license because he or she objects to our relationship?

No. County clerks are required to fulfill the duties of their positions as prescribed by Illinois statute, and one of their duties is to issue marriage licenses to eligible couples.

Can I get married in Illinois if I am a resident of another state?

Yes. The law allows an out-of-state couple to marry in Illinois unless the couple lives in, and intends to continue living in, a state that declares marriages of same-sex couples "void." Not all states that preclude lesbian and gay couples from marrying have laws declaring such marriages to be "void."

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

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

Illinois law prohibits you from entering into a marriage if you or your partner are currently married or in a civil union or substantially similar legal relationship unless you are converting your civil union into a marriage (see Section III). To enter into marriage with your same-sex partner, 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.

What do we do with our marriage license?

You must deliver the license to the person (referred to as an officiant) who will perform your marriage during the period of license validity. After the ceremony, the officiant will complete the date, place, and officiant information and will sign your license. You or the officiant must return the license 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 perform my marriage?

A marriage may be performed by a judge of a court of record, a retired judge of a court of record, a judge of the Court of Claims, a county clerk in counties having 2,000,000 or more inhabitants (Cook County), a public official whose duties include solemnization of marriages, or with an officiant in good standing with his or her religious denomination.

Does a church, religious denomination, or clergy member have to solemnize my marriage?

No. A church, religious denomination, or clergy member is free to decide which marriages to solemnize, and your marriage need not be solemnized by a clergy member in order to be valid.

Do we need to have a religious ceremony in order to marry?

No. Illinois does not require a religious ceremony to enter into a marriage. Your marriage may be certified by a religious official in good standing, but can also be certified by a 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 (Cook County), or a public official whose powers include solemnization of marriage.

If my partner and I had a ceremony (religious or otherwise), but have not entered into a legal relationship in any state, do we need to get married?

If you want the legal obligations, responsibilities, protections, and benefits extended to spouses under Illinois law, you must enter into a marriage by obtaining a license and having it certified and filed with the state of Illinois.

III. CONVERTING A CIVIL UNION TO A MARRIAGE

How do I convert my civil union to a marriage?

Couples already in a civil union will always be able to get married in Illinois by going through the same steps as any couple, provided they meet certain requirements (be the same parties to the civil union, not be in process of dissolving their civil union, etc.). They will incur the same waiting periods and process requirements as any other eligible marrying couple, except there is no fee for the marriage license.

BUT...for the first year of the marriage law, starting on June 1, 2014, couples in a civil union will also be able to “convert” their civil union, simply by filling out a form with a county clerk.

Why would I want to convert my civil union to a marriage?

There will be no fees or additional steps associated with this process, and the marriage date would - if you choose - be retroactive to the date of the civil union. However, please note that this shortcut will only be available during the first year of the marriage law, starting June 1, 2014.

When can I convert my civil union to a marriage?

The first date you can convert your civil union to a marriage is June 1, 2014.

Can I get married if I am in a civil union?

You can only convert your civil union into a marriage if you meet the requirements described above. If you convert your civil union to a marriage within a year of the law's effective date, you can avoid paying a fee.

How much will it cost to get married if we are already in a civil union?

If you convert your civil union to a marriage within the one-year grace period, the fee for doing so is waived (\$0).

If after a year after marriage equality becomes law (after the grace period expires), we are still in a civil union, but want to get married, how do we go about getting married?

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

Will my out-of-state civil union, which is currently recognized as a civil union, be eligible for an "upgrade" in Illinois?

Yes. Illinois residents who received a civil union elsewhere can upgrade their civil union to a marriage in the same way that any other civil union can be upgraded – through conversion or through marriage.

IV. NOW THAT YOU ARE MARRIED

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

First, indicate your desire to change your name on the marriage license forms. Then, once certified, you can update your name on the following forms:

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 (such evidence may be your marriage certificate).

To request the change, you must visit a DMV facility to apply for a corrected license. A certified copy of your marriage certificate should be sufficient. The fee to apply for a corrected license is \$5. Find out more information here: http://www.cyberdriveillinois.com/departments/drivers/drivers_license/drlicid.html

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, you 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. You must also 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 marriage certificate, as well as other forms of identification generally required to renew a passport. The fees are the same as those for passport renewals.

To request the change, a person must complete Form SS-5 to apply for a new social security card. Although not explicitly stated, the Illinois individual most likely will have to provide a certified copy of his or her Illinois marriage certificate, as well as other forms of identification generally required to apply for a social security card. There is no fee.

Will my marriage to my same-sex spouse be recognized in other states?

In most cases, no. However, a marriage entered into in Illinois may be recognized under the laws of some states and jurisdictions that recognize same-sex marriage, including California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Washington and Washington DC. Additionally, all states may be required to recognize same-sex marriages entered into legally in other states if and when Article 2 of the Defense of Marriage Act (DOMA) is repealed. Marriage laws are changing at a rapid pace, so you should consult the laws of the state where you move to determine whether that state will recognize your Illinois marriage.

If we are married, will we still be in a civil union?

No. If you convert your civil union to a marriage, your civil union is legally converted into marriage that is deemed effective on the date you solemnized your civil union. Therefore, you are no longer deemed to be in a civil union, but rather you are in a marriage.

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

If you get married in Illinois and your relationship later ends, your marriage must be dissolved by a state court in order to end your legal relationship with your spouse. If you and/or your spouse move to another state after getting married in Illinois, the courts of that state may dissolve your marriage. If your marriage cannot be dissolved by the courts in the state of your residence, your marriage can be dissolved by an Illinois state court.

The dissolution of same-sex marriage follows the same procedures and is subject to the same rights and obligations that are involved in the dissolution of different sex marriages.

Illinois law will dissolve your marriage if you either establish grounds for dissolving the marriage or if you and your spouse have lived apart for at least two years and can establish that your marriage must be dissolved due to irreconcilable differences. If both you and your partner attest to the court that your marriage 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 marriage.

If you do not dissolve your marriage when your relationship ends, your legal relationship with your spouse will continue. You and your spouse 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 marriage is dissolved.

Can I cover my same-sex spouse under health insurance and other benefits provided by my employer?

Your employer is not required to allow you to enroll your same-sex spouse in any benefit plans, unless your employer allows other employees to enroll their spouses. However, Illinois employers are required to offer equal benefits to all employees with same-sex or different-sex spouses.

Are benefits that my employer provides to my same-sex spouse taxable?

No, neither the federal government nor the state of Illinois will not tax you on the value of health benefits your employer provides to your spouse.

Can my spouse and I file jointly for federal income tax purposes?

Yes. Because marriages between persons of the same sex are now recognized under federal law, same-sex spouses are permitted to file joint federal income tax returns or to claim tax credits or protections that the federal government affords to different-sex married spouses.

Can my spouse and I file jointly for Illinois state income tax purposes?

The Illinois Income Tax Act provides that spouses are eligible to file a joint income tax return in Illinois. For more information, please consult your tax professional.

Now that we're married, do we still have to perform a second parent adoption to secure our child's parent-child relationship to the non-biological parent?

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

Will my same-sex spouse inherit my possessions after I die?

If you live in Illinois, die without a will, and you do not have any children, your spouse will inherit all of your possessions. If you have children and you die without a will, your spouse will inherit half of your possessions and the other half will be divided amongst your children.

If you die with a will, your spouse 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 spouse can renounce what you leave to him or her in your will and will be entitled to one-third of your estate.

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

V. MARRIAGE BEYOND ILLINOIS

Will my marriage be recognized by the federal government?

Yes. Under the federal Defense of Marriage Act ("DOMA"), signed into law in 1996, the federal government does not recognize marriages of same-sex couples. The U.S. Supreme Court June 2013 decision in the Windsor case overturned Section 3 of the Defense of Marriage Act, allowing the federal government to recognize same-sex marriages.

Can I sponsor my same-sex spouse for immigration purposes?

Yes. Because same-sex marriage is now recognized under current federal law, a United States citizen who enters into a marriage with a spouse of the same sex who is not a United States resident may sponsor his or her spouse for immigration into the country.

If I die, will my same-sex spouse be entitled to receive Social Security survivor benefits?

Yes. Under federal law your surviving spouse will be treated just like a spouse in a different-sex couple.

VI. ANYTHING ELSE?

What happens if I have another issue not addressed here?

All laws of the state of Illinois that are applicable to marriage apply equally to marriages of same-sex couples and different sex couples and their children. Therefore, all married couples (same sex or different sex) have the same benefits, protections, and responsibilities under the law. You should contact your legal or tax advisor if you have any questions or require legal or tax advice.

Disclaimer: This summary is intended only as a general description of the laws applicable to same-sex spouses 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.

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Equality Illinois is the state's oldest and largest organization securing, defending and protecting equal rights for lesbian, gay, bisexual and transgender Illinoisans.

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