



NATIONAL CENTER FOR LESBIAN RIGHTS

How to Marry in California

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This document is intended to provide general information only and is not intended to provide guidance or legal advice about anyone's specific situation. The law in the area of marriage, civil unions, domestic partnerships and relationship recognition for same-sex couples is constantly evolving, and this publication is based on the information we know as of this printing. Visit our website at www.nclrights.org for the latest information.

For guidance on your particular situation, you must consult a lawyer. You should not act based only on the information in this document. By providing this information to the public, NCLR is not creating an attorney-client relationship with you.

If you have questions about this publication, other legal issues or need the name of an LGBT-friendly attorney, contact NCLR's Legal Information Helpline, available through our website at www.nclrights.org/gethelp, or by phone at [415.392.6257](tel:415.392.6257) or toll-free [1.800.528.6257](tel:1.800.528.6257).

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Introduction

To marry in California, the couple must first be eligible to marry (for example, they must be 18 or older, capable of consenting, and not married or in a civil union or domestic partnership with another person). They must then file an application for a license and pay a fee to the County Clerk. Assuming all the basic requirements are met, the clerk will issue a marriage license to the couple. The couple must then have the marriage “solemnized,” meaning have a marriage ceremony (wedding) in California within 90 days of filing the license application. Once the ceremony has been performed, the person who performed it must write the time and place of the wedding on the license and sign it. It must be sent back to the county where the couple received it so that the clerk can register the marriage. The couple can then request the county to send them an official certificate of their marriage.

This publication provides the details about the marriage process in California – who can marry, how to get a marriage license, what a couple needs to bring with them, and who can perform the marriage ceremony.

It also highlights special considerations for same-sex couples who are considering marrying, because this is a new legal landscape. The law around the country on how the marriages of same-sex couples will be treated as a legal matter is complex and constantly evolving. The best thing to do is get expert legal advice, and we recommend that every couple consult an attorney in your state about your individual situation.

Before You Get Married

NCLR strongly recommends that you think about these important considerations before you decide to get married.

- Marriage is a serious legal and personal commitment that should not be entered into lightly. Before getting married, couples should understand the legal consequences of marriage.
- Same-sex couples face some additional considerations that heterosexual couples do not face, due to unfair treatment by the federal government as well as by a number of states. Deciding whether to marry is an important decision for everyone, gay or straight, but same-sex couples have to be prepared for, and be willing to take on, those additional challenges.
- A period of legal uncertainty is likely. For example, if you marry in California, you cannot be certain whether your marriage will be respected if you live in, travel to, or move to a state that has laws or constitutional amendments limiting marriage to heterosexual couples. In addition, current federal law prohibits the federal government from recognizing marriages of same-sex couples for purposes of any of the federal rights and benefits given to married heterosexual couples. Being excluded from those federal protections, and from many other states' protections as well, while being legally married, can cause significant legal problems.
- In order to ensure maximum protection, couples should consider registering as domestic partners in California **in addition** to getting married. For more information, speak with an LGBT-friendly family law attorney or contact NCLR.
- **Important Note:** Are you in a bi-national relationship in which one partner does not have permanent legal resident status in this country, serving in the U.S. military, considering adopting a child from another country, or receiving government financial assistance? If so, it is critically important that you consult with an attorney with expertise in these areas of law before getting married.

The Basics of Getting Married

Who can marry?

To be eligible to marry in California, each person in a couple must:

- **Be 18 years of age or older (if either or both are younger than 18, different procedures apply that are not addressed here).**
- **Not be closely related by blood or marriage to their intended spouse.**
 - Parents and children, ancestors and descendants of every degree, brothers and sisters (including half-siblings,) and uncles/aunts and nieces/nephews are prohibited from marrying each other.
- **Not be married to or in a registered domestic partnership or civil union with anyone else (any divorce from a previous marriage, or dissolution of a civil union or domestic partnership with another person, must be final at the time a person applies for a marriage license.)**
 - If you are married to or in a registered domestic partnership or civil union with another person, you cannot marry your partner in California until you have divorced the other person or dissolved your registered domestic partnership or civil union. If you marry without legally dissolving your prior marriage, civil union, or domestic partnership with another person, you may be found guilty of committing a crime.
 - If you are unable to obtain a judicial dissolution, you should talk to your attorney about other ways to protect yourself and your new relationship.

Can I marry my registered domestic partner?

It is fine to marry your domestic partner. You do not need to dissolve your registered domestic partnership in order to marry your domestic partner, and as a general rule, doing so is not advisable for most couples. In addition, we encourage couples who are getting married in California also to register as domestic partners in California, to ensure that you will have the maximum protection in other jurisdictions that may honor a domestic partnership but not a marriage.

How do we get a marriage license?

You must apply for a marriage license at the office of the County Clerk or County Recorder of any California county (it does not need to be to be the county where you plan to marry.) Some clerks' offices require that you set up an appointment in advance to apply. (San Francisco County is by appointment only. In some other counties no appointment is necessary. Call the clerk's office in your county for more information.) You can get a license application from most counties' websites, complete it in advance and take it to the Clerk's office with you, or simply get and complete the form when you visit the County Clerk's office.

The couple must go together to the county office to submit the marriage license application and present a government-issued picture ID and proof that you are over 18 years old. (If one or both of you are younger than 18, different procedures apply.) You'll need to pay the license fee, which varies by county but generally is less than \$100.

The license will be valid for 90 days and your marriage can be performed anywhere in California. Neither a blood test nor a health certificate is required. Call ahead or visit the county's website to learn the hours and locations of the county offices that issue licenses.

What do we need to bring with us when we apply?

In order to receive a marriage license, both members of the couple must go to the Clerk's office together and bring:

- **Picture ID**
 - Bring a Driver's License or other valid government-issued identification. Some counties recommend bringing certified copies of your birth certificates - you can contact the county office you plan to visit in advance to find out. Know your parents' names, mother's maiden name and where your parents were born.
- **Money**
 - The county clerks charge a fee for issuing the license, and the fee varies by county. Contact the clerk in the county where you intend to apply to find out how much the fee is and what method of payment – cash, check or credit card – they will accept.
- **Information About Previous Marriages**
 - If you have been married before, you will need to provide information about the specific date your last marriage ended as well as how it ended (e.g. death, dissolution, divorce or nullity.) Some counties may require a copy of the final judgment if your previous marriage ended by dissolution or nullity.

How do I change my surname?

In California, anyone can change their name using the marriage license form itself. Before you can change your name on your driver's license or state identification card, you first have to change your name with the Social Security Administration. A spokesperson for the Social Security Administration has indicated that they will be accepting California marriage certificates of same-sex couples for the purpose of changing a spouse's last name. Please contact NCLR if you have difficulty getting your name change recognized.

What if a county clerk refuses to let us apply for a marriage license because we are a same-sex couple?

The California Office of Vital Records has instructed all county clerks to carry out the law and issue marriage licenses to same-sex couples who meet the basic qualifications. If you and your partner have difficulty obtaining a marriage license because you are a same-sex couple, please contact NCLR.

Who can perform the marriage ceremony (wedding)?

In California, persons who are legally authorized to solemnize marriage ceremonies include: clergy members; active and retired judges and court commissioners and assistant commissioners; commissioners of civil marriages or retired commissioners of civil marriage; justices or retired justices of the U.S. Supreme Court or another federal court; U.S. magistrates or retired magistrates; state legislators or constitutional officers of the state; and members of Congress who represent a district within this state. The Commissioner and Deputy Commissioners of Civil Marriages perform marriage ceremonies by appointment at designated county offices. There is a fee, which generally is less than \$50. Call ahead or visit the county website for more information.

A couple can also have a friend deputized to perform their marriage ceremony through a county “Deputy Commissioner for a Day” program. If you choose this option, you generally should plan to give the clerk some advance notice, and the person to be deputized to perform your ceremony will have to pay a fee and visit the county office in person to be sworn in. The specific requirements vary by county. Visit the county website to see if your county has this program. If it does not, check whether a nearby county will deputize an out-of-county resident.

The same follow-up procedures apply regardless of who performs the ceremony. The person who performs your ceremony must complete and sign your marriage license after the ceremony. In addition, at least one witness 18 years old or older must sign the marriage license. The license then becomes your marriage certificate, which has to be returned promptly to the same county in which you obtained the license for filing within ten days of the ceremony.

Do we need witnesses for the ceremony?

Yes, at least one witness 18 years old or older must sign the marriage license. There is space on the form for two witnesses, which is the maximum number of witnesses permitted.

Non-California Residents

Can I get married in California if I live in another state?

Yes. California does not have a residency requirement for marriage.

But, a California marriage may not be right for all out-of-state couples. We recommend that you speak to an attorney about your specific situation. This requires careful consideration, because while there is no residency requirement for marriage in California, there is a residency requirement for divorce. In order to divorce in California, at least one of the parties to the marriage must be a resident of California for at least six months, and a resident of the county in which the divorce is filed for three months before filing a divorce petition. Therefore, couples who live in another state and marry in California may find themselves legally unable to obtain a divorce because many states will not recognize their marriage even for the limited purpose of legally dissolving it.

The only legal way to end a marriage is to get a divorce. Currently, the only state other than California in which same-sex married couples have a clearly established right to divorce is Massachusetts; however, it takes even longer to qualify to divorce in Massachusetts than in California. Massachusetts requires a person to reside in-state for one year before he or she can petition a Massachusetts court for a divorce.

Whether it is possible to divorce in other states depends on the state. New York law appears to respect same-sex couples' out-of-state marriages even though same-sex couples cannot yet marry in that state, meaning that it should be possible for gay and lesbian couples to petition for divorce in New York. But New York also has a residency requirement of one year to obtain a divorce.

In other states, unfortunately, the ability of same-sex couples to divorce has not yet been established.

Couples who are unable to obtain a divorce *remain legally married*. Being unable to divorce may cause serious legal problems and complications for same-sex couples who find themselves in this situation. This is why it is so important to consider whether you would be able to get divorced before making a decision about entering into a marriage. Again, we recommend speaking to an attorney about your specific situation.

What If I Am In A Civil Union or Domestic Partnership?

Can I get married if I am in a registered domestic partnership or civil union through California or another state?

Yes, you may marry the same person with whom you are already in a registered domestic partnership or civil union. But if you have a registered domestic partnership or civil union with one person and wish to marry another person, you must dissolve your current domestic partnership or civil union first.

If you plan to marry your domestic partner or civil union spouse:

The county clerks will allow couples who are in registered domestic partnerships or civil unions to marry one another as well if they are otherwise qualified to marry in California. If you encounter difficulty obtaining a marriage license because of your registered domestic partnership or civil union, please contact NCLR.

If you plan to marry a different person:

If you have previously entered into a registered domestic partnership or civil union with a person other than your intended spouse, *you are legally prohibited from entering into a marriage in California until that domestic partnership or civil union is dissolved.* Registered domestic partnerships and civil unions are not marriages, but they are a type of a legal spousal relationship in California and in some other states. If you marry another person before that spousal relationship is dissolved, your marriage would likely be void. In addition, you could be subject to criminal penalties for bigamy.

If you are unable to legally dissolve a previously registered domestic partnership or civil union, you may want to speak with an attorney about other ways to protect your current relationship or your current partner.

What if we have married outside of the United States, in Canada, Spain, Belgium, the Netherlands, or South Africa?

When you marry in a country that allows same-sex couples to marry, that means you are legally married no matter where you go. As a legal matter, California will respect you as a married couple for all purposes. As a result, there is no reason for an already validly married couple to marry again. If you are not sure whether you are legally married, please seek an attorney's advice regarding your individual situation.

What if we married in San Francisco in 2004?

The California Supreme Court declared that the 2004 marriages of same-sex couples were void, and the Court's recent decision does not change that. The 2004 marriages remain invalid, and those same-sex couples who married in San Francisco in 2004 will need to marry again in order to have a valid marriage. The good news is that gay and lesbian couples now have the opportunity to marry without any current question about the legal or constitutional validity of their marriages.

Have We Won the Right to Marry in California Forever?

We still must defeat efforts to stop same-sex couples from marrying in California.

There is an initiative on the November 2008 ballot in California that could ban marriage between same-sex couples. That proposal would put into the California Constitution a clause that only allows marriage between a man and a woman. The fundamental freedom to marry could be denied to gay and lesbian couples, and the concept of treating people differently would be written into the California Constitution.

Already, many state leaders are expressing their opposition to this proposal. For example, in a public statement on April 11, 2008, Governor Schwarzenegger stated that an initiative to alter the California Constitution to ban gay and lesbian couples from marriage was “a waste of time,” adding “I will always be there to fight against that. It will never happen.”

We agree with Governor Schwarzenegger that this ballot measure must be defeated and, with your help, it will be. For more information about how to get involved, contact Equality for All at www.EqualityforAll.com.

What can we do to help preserve the freedom to marry?

Please get involved to protect the fundamental freedom to marry today! For more information about how you can help, please contact Equality for All at www.EqualityforAll.com. We cannot afford to wait - please act now.

For more information about marriage for same-sex couples in California, legal information for couples, and action steps to help protect the freedom to marry, please contact:

Equality California: www.eqca.org

National Center for Lesbian Rights: www.nclrights.org

Lambda Legal: www.lambdalegal.org

The American Civil Liberties Union: www.aclu.org/lgbt