



FREQUENTLY ASKED QUESTIONS FROM COUPLES WHO ARE CONSIDERING GETTING MARRIED IN SAN FRANCISCO

On February 12, 2004, the county clerk in San Francisco began issuing marriage licenses to same-sex couples, pursuant to a directive from Mayor Gavin Newsom. While this is now an option, it is important for couples to understand that getting married in San Francisco will not necessarily guarantee you and your partner the rights and privileges of different-sex married couples and may have significant tax and other legal implications. Although this is still a gray area with many remaining uncertainties, here are preliminary answers to some frequently asked questions:

If my partner and I marry in San Francisco, will our marriage be valid?

Yes, your marriage will be valid; however, discrimination will still exist. Because of this discrimination, some state and local agencies will honor your marriage, and some will not. The same is true for private employers and businesses. Some will treat you equally to other married couples; others will discriminate.

In practical terms, this means that at least in the short run, same-sex couples who marry in San Francisco will confront many legal questions and uncertainties. You may be treated as married by some governmental entities and as unmarried by others, which may create problems.

Because of these problems, couples who marry in San Francisco should also register as domestic partners with the State. This way couples will be assured that they will at least have the protections of registered domestic partners.

Whether to marry is a deeply personal decision. Couples may choose to marry or not to marry for a host of different reasons. If your primary reason for marrying in San Francisco is to gain legal protections, you should be aware that your marriage may not be fully respected and very likely will not be respected by the federal government.

Can a same-sex couple from another city marry in San Francisco?

Yes. California residents can obtain a marriage license in any county, regardless of where they live, so same-sex couples from anywhere in the state can apply for marriage licenses in San Francisco.

Are there any other states that permit same-sex couples to marry?

Not yet, although Massachusetts is scheduled to begin issuing marriage licenses to same-sex couples in May, 2004. For more information about Massachusetts, see <http://www.glad.org>.

Are there any other countries that permit same-sex couples to marry?

Yes. The Netherlands, Belgium, and two provinces in Canada – Ontario and British Columbia -- also permit same-sex couples to marry. The Netherlands and Belgium have strict residence requirements. In the Netherlands, only couples in which one partner is a citizen of the Netherlands or in which both partners reside in the Netherlands may marry. In Belgium, only couples who live in a jurisdiction that also permits same-sex couples to marry are permitted to marry. Canada does not have these restrictions. Any U.S. couple can go to Canada to get married. For more information about going to Canada to get married, see <http://www.nclrights.org/publications/faqmarriage.htm>.

Will the federal government honor our marriage?

No, not under current federal law. In 1996, Congress enacted a law stating that for all federal purpose, the term “marriage” means only a marriage between a man and a woman. Because of this law, the federal government will almost certainly refuse to respect your marriage.

Can we get married in California if we have already gotten married in Canada?

No. If you and your partner married in Canada, you are already legally married. The California marriage statutes require that the parties be unmarried.

If my partner and I marry in San Francisco and later wish to separate, how do we obtain a legal divorce?

To obtain a divorce in California, you must file a formal petition and go through a formal court process. In addition, a divorce may not be granted unless one of the parties has been a resident of the state for six months and a resident of the county in which the petition was filed for at least three months. For couples living in counties outside of San Francisco County, some courts may refuse to honor your marriage even for purposes of granting you a divorce – which may result in you being unable to obtain a legal divorce unless you or your spouse move to San Francisco and live there for at least three months. This difficulty is yet another reason why couples should think very carefully before marrying in San Francisco.

My partner is from another country. Will getting married permit her to stay in the United States?

No, and, depending on your circumstances, getting married may even lead to your partner’s deportation from the U.S. Under a federal law misleadingly called the “Defense of Marriage Act,” the U.S. government will not honor marriages between same-sex

couples, no matter where they are enacted. Because of this law, the immigration service will not honor your marriage to your partner. Instead, the immigration service may use the fact that you and your partner married in California to deport your partner, if she is here on a non-immigrant visa, on the ground that she does not intend to return to her home country. *Getting married is especially risky for same-sex bi-national couples.* Before making any decisions about marriage, consult a competent, qualified immigration attorney who is knowledgeable about LGBT issues for individualized advice about your situation. For more information on this and other immigration-related issues, see <http://www.lgirtf.org> and <http://www.loveseesnoborders.org>.

Will my employer respect my marriage?

We hope so and you should definitely urge them to in the strongest possible way. Some employers will; others will not. For advice on how to talk to employers about your marital status, contact NCLR or another legal organization.

If my employer refuses to honor my marriage, do I have any legal recourse?

Depending on the circumstances, you may have some legal basis to compel your employer to treat you equally to other married employees. Regardless of your specific situation, however, it is almost always better to exhaust every possible remedy before filing a lawsuit against your employer. Litigation is expensive, stressful, time-consuming, and often fails to secure the desired results. Before going this route, consider other options, such as talking with your employer, joining with other employees to educate the employer, or working with your union to negotiate recognition of equal benefits for all employees, regardless of marital status or sexual orientation. If you run into problems with your employer and would like our assistance, please contact us at 415-392-6257 or info@nclrights.org. For more information on workplace issues, see <http://www.prideatwork.org>.

If my partner and I marry, are we required to file joint federal and state income taxes?

The true answer to this question is, no one knows. While there are many legal uncertainties for same-sex couples who marry in California, how to deal with federal and state income taxes is probably the area of greatest uncertainty. On the one hand, married couples are legally required to pay taxes as a married couple: if you are married, filing your taxes as a single person is against the law. On the other hand, current federal law prohibits the federal government from respecting the validity of marriages between persons of the same gender. In addition, many states – including California -- require that you use the same marital status classification for your state incomes taxes as you use for your federal income taxes. This situation creates a double-bind for same-sex couples who marry.

From a legal perspective, there is no clear-cut answer to this dilemma. Some legal experts are recommending that same-sex couples who marry in California file as single (or,

where appropriate, as head of household), but indicate that they are married to a same-sex partner on the form or in a cover letter. Others are recommending that married same-sex couples file two sets of tax returns (one as two single individuals, and one as a married couple), pay whichever is higher (to avoid tax penalties), and include a cover letter explaining that you are a same-sex married couple and are attempting to comply with all applicable federal laws. Others are recommending that married same-sex couples file as single with a cover letter indicating that they married in California and then file for a refund (if appropriate), on the ground that they are married and should be treated as such – recognizing, however, that the federal government is unlikely to accept this argument. No matter which course you take, there is some legal risk involved. Before making a decision about this issue, you should consult a tax attorney or an accountant if you can afford to do so.

If my partner and I marry and then have children, will we both be legal parents?

Under California law, a married couple who has a child together are both automatically considered legal parents. However, given the degree of discrimination against same-sex couples, you should not rely on this to protect your parental rights. The safest course – regardless of whether you are married or not – is to consult an experienced family law attorney where you live and take whatever steps are necessary to give both parents the greatest legal protections. For more information about laws affecting LGBT parents in your state, contact NCLR at 415-392-6257 or info@nclrights.org.

If my partner and I marry, should we describe ourselves as married on applications for jobs, health insurance, car insurance, credit, mortgages, etc.?

Yes, of course. You are legally married, and you should describe yourself accordingly. You should be aware, however, that discriminatory laws and practices still exist in all of these areas. Thus, the fact that you are legally married will not necessarily guarantee that you will be afforded the rights of a married couple by employers, insurers, credit companies, mortgage companies, etc. If you encounter problems in these areas, contact NCLR or another LGBT legal organization for advice.

If my partner and I marry, will it affect my eligibility for public benefits?

Yes. If you are married, it is likely that your spouse's income will be taken into account in calculating whether you are eligible for public benefits. This may be true even if your marriage is not respected for other purposes.

If my partner and I marry, will it affect my eligibility for continuing alimony from a prior marriage?

Yes. If you are married, it is likely a court will take that factor into consideration in determining whether you are eligible for continuing spousal support from a prior marriage.

How can I find out whether my city will honor my marriage?

Unfortunately, there is no simple way to be sure which cities will honor your marriage and which will not. In addition, some jurisdictions may honor your marriage for some purposes, but not for others.

If my partner and I marry, should we also take other steps to protect ourselves?

Yes. At a minimum, for California residents, if you haven't already, you should also register with the state as domestic partners. This will ensure that you will at least be entitled to the protections and responsibilities of domestic partners, even if your marriage is not honored. In addition, you should have a will, powers of attorney for health care and finance, and a partnership agreement. For more information, consult LIFELINES: DOCUMENTS TO PROTECT YOU AND YOUR FAMILY IN TIMES OF TROUBLE, NCLR's new publication on partnership protection documents, available at <http://www.nclrights.org>. Where possible, couples with children should also secure adoptions or court decrees of parentage. Where these are not available, couples should consult with a family law attorney to protect both parents to the extent possible under your state's laws. For more information on adoption and parentage laws in your state, contact NCLR at 415-392-6257 or info@nclrights.org.

If my partner and I marry and then face discrimination, what should we do?

Same-sex couples who marry are almost certain to face at least some discrimination from employers, businesses, or governmental entities. You can protect yourself to some degree by being prepared to educate, advocate, and work with others in your community to change discriminatory policies and practices. In most cases, filing a lawsuit is not the most effective strategy, either for protecting your family, or changing the law. For education materials, talking points about marriage equality, and tips about how to advocate for yourself, contact your statewide LGBT group or one of the national advocacy groups, such as Freedom to Marry (<http://www.freedomtomarry.org>), the Human Rights Campaign (<http://www.hrc.org>), the National Gay & Lesbian Task Force (<http://www.nglhf.org>), or NCLR (<http://www.nclrights.org>). If you are considering filing a lawsuit, contact NCLR (<http://www.nclrights.org>) or another LGBT legal group for assistance.

For more information, contact:

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