



NATIONAL CENTER FOR LESBIAN RIGHTS



Marriage for Same-Sex Couples in California

Frequently Asked Questions

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NOTE: This document is intended to provide information about marriage for same-sex couples in California. It is not intended to be legal advice, and should not be taken as such. For legal advice concerning your particular situation, please consult an attorney.

Marriage In California

1. Can same-sex couples marry in California?

Not at present. The California Supreme Court ruled that Prop 8 was validly adopted. The passage of Prop 8 therefore changed California's constitution and undid the portion of the California Supreme Court's earlier ruling that California must allow same-sex couples to marry in the state. But, because the Court said that whether or not same-sex couples can marry can be decided at the ballot box, the right to marry can be restored at the ballot box.

2. Can Prop 8 be challenged in federal court?

While a federal challenge is technically possible, it is widely believed that such a suit would be premature at this time, would be very risky, and could significantly set back progress in the national fight for marriage equality and for LGBT civil rights in general. Any claim based on the federal constitution likely would end up before the United States Supreme Court, which is a very conservative body that has decided few cases about the rights of LGBT people, and even fewer favorably. It is important that the Court hears strong cases in a sensible order. It will be much harder to get courts in other states to strike down laws excluding same-sex couples from marriage or to secure marriage equality legislatively if the Supreme Court has said that excluding same-sex couples from marriage does not violate federal constitutional principles. If a federal challenge were brought and lost, it would take a lot longer to get a good Supreme Court decision on marriage because the Court would have to overrule itself. It took 17 years to undo *Bowers v. Hardwick*, the 1986 Supreme Court case that had upheld Georgia's sodomy law, and that was fast for the Supreme Court.

We owe it to ourselves and our community to be strategic about how to reverse Prop 8 and continue making progress on marriage. California was the first state to enact a statewide domestic partnership registry. It was the first state in which the legislature passed measures that would have permitted same-sex couples to marry without being required to do so by a court (although those measures unfortunately were vetoed by Governor Schwarzenegger). California now must ALSO be the first state to reverse a ballot measure barring same-sex couples from marriage. We can and will reverse Prop 8 at the ballot, and when we do, it will send a message of hope to every LGBT person in this country. In order to achieve that goal, we will need to mount an unprecedented public education campaign that mobilizes our community as never before. No matter where you live or what your personal circumstances may be, we need your

involvement and support to win this battle for the hearts and minds of this state. For more information on how you can get involved, please visit our websites and join the efforts already underway across the state to win back the freedom to marry in California.

3. Are same-sex couples who married in California between June 16, 2008 and November 4, 2008 still married?

Yes. Same-sex couples who married in California between June 16, 2008 and November 4, 2008 are still legally married, and their marriages are valid and respected in California.

4. What happens if we married in California and later wish to divorce?

Because your marriage remains valid, your marriage should be treated the same as those of different-sex couples who married in California and that applies to divorce as well. In order for any couple to divorce in California, at least one of the spouses 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.

If you move from California to another state, or if you already live in another state, however, it may be difficult to obtain a divorce from a same-sex spouse. This could create significant problems. Couples who are unable to obtain a divorce remain legally married. If you are not able to obtain a divorce, you may not be able to marry or enter into a domestic partnership or civil union with someone else, and you could be financially liable for your spouse's debts or have them able to make certain decisions for you.

Currently, same-sex married couples do not have a clearly established right to divorce in most states because few states currently recognize marriages between same-sex couples that were lawfully entered elsewhere. In addition, even in states that will recognize your marriage, nearly every state has a residency requirement that must be met before a divorce can be filed in that state. For example, Massachusetts, Connecticut, and Iowa now allow same-sex couples to marry and they will allow a couple married in California to divorce in their state courts, but only if one of you has lived in that state for a year. While same-sex couples cannot marry in New York, it does honor marriages same-sex couples entered elsewhere and therefore married gay and lesbian couples should be able to petition for divorce in New York. But New York also has a residency requirement for divorce. New Jersey currently treats marriages entered by same-sex couples elsewhere as civil unions and allows civil unions to be dissolved following the same procedures as a divorce. We strongly recommend that same-sex couples wanting to dissolve their marriages consult with an attorney. Even if a divorce cannot be obtained in a state, there may be other ways to have the couple's legal relationship declared to be ended and to resolve property and support disputes.

5. Will domestic partnerships in California continue to exist?

Yes. Domestic partnerships still exist under current California law.

6. Is there any reason for couples who are married to also register as domestic partners?

Yes. Being in a registered domestic partnership may protect you if you travel or move to another state that will recognize a domestic partnership but not a marriage.

Marriage in the National Context

7. If my partner and I were legally married in another state or country, will California recognize our marriage?

California should continue to recognize the marriages of same-sex couples who legally married outside of California prior to November 5, 2008. The Court in *Strauss v. Horton* did not specifically address the marriages of same-sex couples who married out-of-state because no one in that situation was a party in the case; however, based on the Court's reasoning in *Strauss* and *In re Marriage Cases*, as well as longstanding family law principles, these marriages should continue to be recognized in California. If you experience any difficulties having your marriage recognized in California, please contact NCLR, Lambda Legal, or the ACLU.

8. If my partner and I are from another state and got married in California, is our marriage valid in our home state?

If you live in another state and got married in California, the California Supreme Court's ruling applies to you as well and, wherever you are, you are still *legally married*. However, depending on where you live, your home state may not respect your marriage. Many states have passed laws denying recognition to marriages of same-sex couples. In those states, state and local governments likely will not respect your California marriage. But even in those states, it is likely that at least some private businesses and other private third parties will respect your marriage – particularly those that already recognize same-sex couples through domestic partnership or a similar system.

9. Will the federal government recognize marriages of same-sex couples who married in California?

No. Under current federal law, the federal government does not recognize marriages of same-sex couples. This means that married same-sex couples currently do not have any of the rights, benefits, or protections that federal law gives to married heterosexual couples, such as the ability to file joint federal income taxes or receive federal spousal benefits through social security or other federal programs.

10. Can we file lawsuits if our marriages are not respected in other states or by the federal government?

If you feel you have been discriminated against, please contact one of the LGBT legal organizations listed on this document (National Center for Lesbian Rights, Lambda Legal, or the ACLU). We may be able to help you figure out what options you have to protect your rights. Some types of unfair treatment can be the basis of a lawsuit, and other times the unfairness may not be suitable for a court to address. Even when litigation is an option, it is not always the only option or the best option and there may be a number of prerequisites to filing any suit. It is always necessary to weigh the chances of success or failure because bad results in lawsuits can cause setbacks and hurt our entire community. We want to increase the chances of winning overall, so it is critical that we work together to have a carefully planned strategy.

11. For same-sex couples in bi-national relationships who married, can the non-U.S. citizen gain legal permanent residence in the U.S. based on the marriage?

No. Immigration is governed exclusively by federal law, which currently refuses to recognize the marriages of same-sex couples for purposes of any federal rights or benefits. A person who marries a non-U.S. citizen of a different sex can petition to have his or her spouse become a permanent legal resident; however, current federal law does *not* provide the same right to a person who is married to a same-sex spouse from another country. The Uniting American Families Act would correct this injustice. For more information on how you can support the Uniting American Families Act, see www.immigrationequality.org.

12. What can we do to help regain the freedom to marry?

Many organizations and individuals are already working to repeal Prop 8. Please get involved and support these efforts to restore marriage equality in California! For more information about how you can help, please contact Equality California at <http://www.eqca.org>.

For more information, please contact:

The American Civil Liberties Union: www.aclu.org/lgbt
Lambda Legal: www.lambdalegal.org
National Center for Lesbian Rights: www.nclrights.org
Equality California: www.eqca.org