

# Delaware Marriage Law

## Frequently Asked Questions

June 2013

**The Delaware Civil Marriage Equality and Religious Freedom Act of 2013<sup>1</sup> (“Marriage Act”) passed the state legislature and was signed by the Governor on May 7, 2013. The law goes into effect on July 1, 2013. Below are answers to frequently asked questions about the new marriage equality law and what it means for people who live and work in, or visit, Delaware.**

*PLEASE NOTE: This document offers general information only and is not intended to provide legal advice or guidance regarding any person’s specific situation. This is an evolving area of law in which there is bound to be uncertainty. If you have additional questions, encounter difficulty in obtaining appropriate recognition of your relationship status, or need contact information for private attorneys who might advise you, contact Lambda Legal’s Help Desk toll-free at (866) 542-8336 or visit <http://www.lambdalegal.org/help-form>, or contact Equality Delaware at <http://www.equalitydelaware.org>.*

### WHAT DID THE MARRIAGE ACT DO?

The Marriage Act extended the freedom to marry to same-gender couples on the same terms as different-gender couples. It ended the ability to enter into civil unions in Delaware, converts existing Delaware civil unions into marriages, and recognizes couples who have marriages, civil unions or registered domestic partnerships from other states as spouses for all purposes.

In addition, the Marriage Act reiterates constitutional rights of religious freedom for faith communities, making clear that religious societies retain autonomy over their religious practice and are free to determine their own rules about who they will marry. It further states the right of any clergy person authorized to perform weddings to refuse to marry any couple.

### WHEN CAN I GET MARRIED?

The Marriage Act goes into effect on Monday, July 1, 2013. The New Castle County Clerk of the Peace has announced that that Clerk’s office will not accept applications for marriage licenses for same-sex couples prior to that date, and any applications filled out online prior to July 1 will not be accepted.

The Sussex County Clerk of the Peace has announced that on July 1, 2013 the Clerk’s office will open at 7:00 a.m. and begin issuing marriage licenses and converting civil unions to marriages at 8:00 a.m. The Kent County Clerk of the Peace office is open beginning at 8:00 a.m., and the New Castle County office is open beginning at 8:30 a.m.

There also is a mandatory 24 hour waiting period between the time a license is issued and a marriage ceremony can take

place. A Clerk of the Peace may waive or shorten the waiting period for good cause.

Visit the following websites of the Delaware Clerks of Peace for more information about timing and requirements in connection with marriage licensing and ceremonies.

*New Castle County:*

<http://www2.nccde.org/clerkofpeace/default.aspx>

*Kent County:*

<http://co.kent.de.us/Departments/RowOffices/ClerkofPeace/>

*Sussex County:* <http://www.sussexcountyde.gov/dept/cop/>

### WHO CAN GET MARRIED IN DELAWARE?

You may get married in Delaware if:

- You both are at least 18 years old;
- Neither of you is currently in a marriage or civil union or substantially similar legal relationship with a different person; and
- You are not closely related to each other through birth or adoption.

You do not need to be a Delaware resident in order to marry in Delaware.

### CAN I STILL ENTER INTO A CIVIL UNION AFTER THE MARRIAGE ACT GOES INTO EFFECT?

*No.* When the Marriage Act goes into effect on July 1, 2013, Delaware will no longer issue civil union licenses. If you have already received a civil union license, you must have your civil union solemnized prior to July 1, 2013 in order for it to be valid.

<sup>1</sup> [http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/HB+75/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/HB+75/$file/legis.html?open)

## WHAT IF WE ALREADY ENTERED A CIVIL UNION IN DELAWARE?

All civil unions entered in Delaware and not already dissolved or in the process of being dissolved will convert to marriages through one of three ways. *As of July 1, 2014, any Delaware civil union not already converted to a marriage or dissolved will automatically become a marriage.*

## WHAT ARE THE WAYS MY DELAWARE CIVIL UNION MAY CONVERT TO A MARRIAGE?

1. You can apply in person (not online) to the Clerk of the Peace in the county where you received your civil union license for a marriage license, have your marriage solemnized pursuant to a ceremony, and receive a certificate of marriage. You will need valid identification. You should check with the Clerk of the Peace office to determine what paperwork to bring. You will be required to pay a fee for a marriage license (\$50 for residents, \$100 for non-residents; fee for active armed forces servicemembers is waived in Sussex County; plus a \$10 recording fee in New Castle County). Once you have your marriage license, you must wait 24 hours before you can have your marriage solemnized pursuant to a ceremony, and you must have the solemnization within 30 days of receiving the license. (See information below about solemnizing a marriage in Delaware.)
2. You can apply in person (not online) to the Clerk of the Peace in the county where you received your civil union license for a marriage license and request to have your civil union converted into a marriage without having to solemnize the marriage pursuant to a ceremony, at which point you will receive a certificate of marriage. You will have to bring valid identification. You should check with the Clerk of the Peace office to determine what paperwork to bring. You will be required to pay a fee for a marriage license (\$50 for residents, \$100 for non-residents; fee for active armed forces servicemembers is waived in Sussex County; plus a \$10 recording fee in New Castle County).
3. If you do not take steps to apply for a marriage license and convert your civil union to a marriage, as of July 1, 2014, all remaining Delaware civil unions that are not in the process of being dissolved will be converted to marriages by operation of law. You can apply to the Clerk of the Peace to be issued a certificate of marriage if your civil union is automatically converted to a marriage, and you will be required to pay a fee for a certificate of marriage.

## WHEN MY DELAWARE CIVIL UNION IS CONVERTED TO A MARRIAGE, WHAT WILL BE THE EFFECTIVE DATE OF MY MARRIAGE?

For all couples whose Delaware civil unions are converted to marriages, the effective date of the marriage will be the date the couple originally entered into the Delaware civil union.

## CAN I GET MARRIED IN DELAWARE IF I ALREADY ENTERED INTO A MARRIAGE, CIVIL UNION, OR REGISTERED DOMESTIC PARTNERSHIP ELSEWHERE?

As soon as the law goes into effect on July 1, 2013, regardless of where you got married, your marriage will be legally respected in Delaware so long as you and your spouse are not closely related by birth or adoption. Although there is no explicit provision in Delaware law preventing you from marrying the same person again, re-marrying will most likely have no legal significance. It has also been the historical practice of the Clerks of the Peace not to issue marriage licenses to allow couples to re-marry, although the Clerks of the Peace will perform and recognize ceremonies for the renewal of marriage vows.

If you entered into an out-of-state civil union, or substantially similar legal relationship, such as a California registered domestic partnership (“RDP”), which also provides rights and protections equivalent to those of married spouses, Delaware cannot convert that status into a marriage (as it can for Delaware civil unions). Because these relationships are a legal status different from marriage, you will be able to marry your civil union or RDP partner in Delaware. You should consult with an attorney about potential consequences of having *both* a civil union or RDP and a marriage, or about whether to dissolve the civil or RDP before entering into the marriage, such as issues regarding when your legal rights as a couple would accrue.

If you entered into a marriage, civil union, or RDP in another state and want to marry a *different* person, you must first dissolve the previous marriage, civil union, or RDP.

## WHAT STEPS DO I TAKE TO MARRY MY PARTNER?

Both parties must appear in person to submit an application for a marriage license. Applications are available at a Clerk of the Peace office, or online at the websites of the Clerks of the Peace for New Castle and Sussex Counties. The cost of applying for a marriage license is \$50 for residents of Delaware and \$100 for non-residents (cash may be required), and there may be additional costs for filling out the application online. Bring with you a form of identification, such as a birth certificate, driver’s license, or passport. You may want to contact the Clerk of the Peace office in advance to double-check what you will need.

If you previously have been married or in a civil union or RDP with a different partner, you also should bring proof that you

are no longer married or in a civil union or RDP, such as an original or certified copy of your divorce or dissolution decree with a raised seal, or, if applicable, the death certificate of your deceased spouse or partner.

The marriage license is valid for 30 days and only in Delaware, which means that your marriage ceremony must take place within Delaware. There is a mandatory 24 hour waiting period before the license becomes effective, which may be waived by a Clerk of the Peace for good cause.

You may choose a judge, certain public officials, or a religious official to perform your ceremony. Delaware Clerk of the Peace offices will perform marriage ceremonies as well, and their websites post fee schedules for conducting those ceremonies.

Your officiant must complete the certificate confirming that your ceremony has been performed, and forward it to the Clerk of the Peace within 15 days of your marriage.

#### **CAN I CHANGE MY NAME WITH MY MARRIAGE?**

Yes, but it requires several steps. You should obtain a certified copy of your marriage certificate from the office of your Clerk of the Peace. Using this document, you can apply to government agencies and businesses to update your records with your new name. The Delaware Department of Motor Vehicles requires that individuals seeking a new name on their driver's license first change their name with the Social Security Administration (SSA). Bring a copy of your marriage certificate to your local SSA office in order to update your name.

#### **IF I DON'T GET MARRIED, BUT I HAVE A CIVIL UNION OR RDP FROM ANOTHER STATE, HOW WILL DELAWARE TREAT MY RELATIONSHIP?**

If you have a civil union or RDP that grants couples substantially the same rights and obligations as married spouses, Delaware will extend to you the full range of rights and obligations as spouses, too. This would apply to civil unions from New Jersey, Colorado, Hawaii, or Illinois, or RDPs from California, Oregon, or Nevada, for example. By contrast, Wisconsin RDPs, for example, which entail far fewer rights and responsibilities, are unlikely to qualify for full spousal rights and protections in Delaware.

Though these out-of-state unions should entitle you to protections in many circumstances in Delaware, you may of course need to alert others from whom you are seeking recognition that you have a spousal status. There is no legally meaningful procedure to officially "register" your relationship

with the State of Delaware if you have entered into a civil union or RDP elsewhere.

Whether you marry or not, we encourage you to work with legal services organizations and private attorneys to perform adoptions and draw up legal documents such as wills and powers of attorney.

#### **I GOT MARRIED IN ANOTHER STATE, BUT MY MARRIAGE WAS TREATED LIKE A CIVIL UNION WHEN I CAME HOME TO DELAWARE. HOW WILL MY MARRIAGE BE RESPECTED NOW?**

Your marriage will be respected as a marriage in Delaware. You do not need to do anything to have your marriage recognized in Delaware.

#### **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 spouses are both presumed to be parents from birth of children born into the marriage, we strongly encourage a non-biologically related parent to obtain a second-parent adoption as stronger security for the parent-child relationship. This is particularly important when traveling to other states that will not respect your marriage or the legal presumptions of parentage it creates.

#### **WHAT RIGHTS AND OBLIGATIONS DO MARRIED SAME-SEX SPOUSES HAVE IN DELAWARE?**

The Marriage Act is intended to ensure equal treatment for married spouses in every aspect of the law regardless of the gender of the parties. These are some examples of the rights and obligations that come with being married in Delaware:

##### ***Family Law Rights and Responsibilities***

- Duties of joint financial support and liability for family debts arising during the relationship.
- Access to step-parent and joint adoption.
- Legal presumption that both spouses are parents of children born into the marriage. However, we still encourage non-biological parents to adopt their children in addition to drawing up wills and powers of attorney. This is particularly important since they may travel to other states that will not respect the marriage or the presumptions of parentage it creates.
- Dissolution of the marriage by the Delaware Family Court, including access to equitable division of the relationship assets and debts.

- Right to seek financial support upon breakup.
- Access to custody, visitation, and support orders concerning children upon breakup.
- Protection for spouses and their children under domestic violence, crime victim, and crisis assistance laws.

### ***Medical and Death-Related Rights***

- Rights of hospital visitation, medical decision-making, and authority to receive information about a spouse's medical condition or treatment. However, we still encourage spouses to create wills, living wills, and health care powers of attorney. This is particularly important since they may travel to other states that will not automatically respect the marriage or the rights or protections it grants.
- Ability to authorize anatomical gifts, autopsy, and release of medical records, and to make funeral arrangements for a deceased spouse.
- Right to seek money damages for a spouse's wrongful death, lost financial support, and lost companionship.
- Right to inherit in the absence of a will, and certain financial protections while the estate is being settled.
- Financial protections against duty to repay public medical and nursing home costs upon death of a spouse.
- Employment-related spousal or family benefits, including spousal health insurance for state employees and many employees of private businesses.

### ***Other Rights and Responsibilities***

- Right to file joint state income tax returns, and state tax exemption regarding the value of spousal health insurance.
- Right to hold real property in "tenancy by the entirety" (which offers some protection against creditors).
- Right not to testify against a spouse.
- Spousal veterans benefits under state law.

### **HOW WILL SAME-SEX SPOUSES WHO MARRY IN DELAWARE BE TREATED OUTSIDE THE STATE?**

#### ***By other states:***

In states that recognize marriages for same-sex couples, a Delaware marriage will confer the legal status of spouses. In the many other states that discriminatorily deny any recognition to the legal relationships of same-sex couples, the marriage will not receive legal respect.

#### ***By the federal government:***

As of the date these FAQs were developed, the federal government denies all recognition to the marriages of same-sex couples under the discriminatory federal "Defense of Marriage Act" (DOMA). We await a ruling by the end of June 2013 from the U.S. Supreme Court on the constitutionality of DOMA. If DOMA is struck down, married same-sex couples in Delaware will become eligible for a wide array of important federal protections and rights that hinge on marital status. Follow Equality Delaware's and Lambda Legal's websites and social media pages, such as Facebook and Twitter, for updates about the pending Supreme Court cases and federal treatment of marriages of same-sex couples.

### **MUST MY EMPLOYER GIVE MY SAME-SEX SPOUSE HEALTH INSURANCE AND PENSION AND OTHER EMPLOYMENT-RELATED BENEFITS?**

State and local government employers must provide same-sex spouses the same health insurance and pension benefits accorded to different-sex spouses. It may be more challenging, however, to hold certain private employers to their obligation to treat same-sex spouses equally with respect to health insurance and pensions, depending on what type of plan the private employer uses, and whether state and local nondiscrimination laws apply. If your private employer denies same-sex spouses equal access to health insurance or pensions, we encourage you to contact us so that we can help you determine your options and direct you to resources.

### **HOW DO I END A MARRIAGE, CIVIL UNION, OR RDP THAT I ENTERED INTO IN ANOTHER STATE?**

To get a divorce or dissolve a civil union/RDP entered into in another state, you will need to file a petition in Delaware Family Court. One spouse must have been living in Delaware for at least six months prior to filing. Same-sex spouses and civil union partners may be eligible for maintenance (like alimony) and court assistance in allocating child custody, awarding visitation and support, and dividing property.

### **WHAT HAPPENS IF I WANT TO DISSOLVE OUR DELAWARE MARRIAGE WHEN MY SPOUSE AND I DON'T LIVE IN DELAWARE?**

If both spouses live in a state where the courts will not grant a divorce to a same-sex couple, the Marriage Act gives the Delaware Family Court the ability to grant a divorce to a same-sex couple married in Delaware. This includes couples whose civil unions are converted to marriages. It is unclear whether the Delaware Family Court will exercise jurisdiction over ancillary aspects of the divorce of non-residents, such as the division of marital property.

***For more information:***

Contact Lambda Legal's Help Desk  
[www.lambdalegal.org/help](http://www.lambdalegal.org/help) or call (866) 542-8336.

Visit Equality Delaware's website at [equalitydelaware.org](http://equalitydelaware.org).