Questions and Answers:
Marriage for Same-Sex Couples in Washington

On November 6, 2012, Washington voters approved Referendum 74 to allow same-sex couples to legally marry in Washington. This memo gives general information about marriage for same-sex couples in Washington. It is not meant to be legal advice.

This memo does not address all possible questions that same-sex couples may have about marrying in Washington. We plan to update this memo periodically to provide more information.

When can we apply for marriage licenses in Washington?

Same-sex couples will be allowed to apply for marriage licenses on Thursday, December 6, 2012.

Washington law requires all couples to wait three days after applying for their marriage license before having their marriage ceremony. So if you receive your marriage license on December 6, you will have to wait until December 9 to get married.

Note: A marriage ceremony must be performed within 60 days after a marriage license is issued. If you do not have a marriage ceremony within that time, you will have to apply for a new license in order to get married.

Where do we apply for a marriage license?

You can get a marriage license from any county, usually at the county auditor. You do not have to get the marriage license from the county where you live or the county where you plan to have the marriage ceremony. You can find information about county offices that issue marriage licenses here: http://access.wa.gov/living/resources/marriage.aspx
Is there a fee to apply for a marriage license?

Yes. The fee varies by county. It is usually $64 or less. Some counties require payment in cash. You should check with the county office where you plan to apply for your license to find out how much they charge and which forms of payment they will accept.

Note: If you are already registered domestic partners in Washington, you will still have to pay a fee to apply for a marriage license.

Who can perform a marriage ceremony in Washington?

A marriage ceremony must be performed by a licensed or ordained religious official, or by certain judicial officials.

The following religious officials may perform marriages in Washington: A minister, priest, imam, rabbi, or similar official of any religious organization.

The following active or retired judicial officials may perform marriage ceremonies in Washington: Justices of the Washington Supreme Court, judges of the Washington Court of Appeals, judges of the superior court, judges of the district court, judges of municipal courts, supreme court commissioners, court of appeals commissioners, and superior court commissioners.

Note: Some counties provide a list of judicial officials who will perform marriage ceremonies.

What are the options for couples who are already registered domestic partners with the state of Washington?

State-registered domestic partners will have to decide whether they want to become married, unless one partner is 62 years of age or older. That is because the law phases out domestic partnerships, except for senior couples.

If you are registered domestic partners and want to become married now, you will need to apply for and receive a marriage license, and then have a marriage ceremony. Once you are married, your registered domestic partnership is automatically dissolved.

If at least one of you will be 62 years old or older on June 30, 2014, you will be able to remain as registered domestic partners. This is because for some older couples, marriage can mean a loss of social security or pension benefits, so the law was crafted to make sure seniors continue to have the option of a domestic partnership.

If neither of you will be 62 years old or older on June 30, 2014, there is a grace period until June 30, 2014 for couples in registered domestic partnerships to make decisions about marriage. You can apply for a marriage license at any time starting on December 6. Or you can choose to wait
and have the state automatically convert your registered domestic partnership into a civil marriage at the end of that grace period on June 30, 2014. Or you can at any time dissolve (legally end) your domestic partnership or start the legal process for dissolving your domestic partnership before that date.

It is important for you to be aware that if you do nothing, your state registered domestic partnership will be automatically converted to a marriage on June 30, 2014, unless one of you is 62 years old or older.

All same-sex registered domestic partners will get two notices in the mail from the Secretary of State. The first notice will explain the new law. It will be sent within 60 days of the law’s effective date of December 6, 2012. The second notice will be sent by May 1, 2014.

As of June 30, 2014, couples will only be able to register as domestic partners if one of the partners is 62 years of age or older. Both same-sex and different-sex couples can still register as domestic partners if at least one partner is 62 or older.

**One of us is at least 62 years old and we are in a registered domestic partnership. We want to keep it that way. How can we be sure that our domestic partnership will not be automatically converted to a marriage by the State?**

The State is not allowed to automatically convert your domestic partnership to a marriage if you or your partner is 62 years old or older on June 30, 2014. The State should be aware of your age because you provided your date of birth when you registered as domestic partners. As a result, we do not expect that you should need to do anything to keep your domestic partnership. However, you should carefully review any notices that you receive from the Secretary of State’s office about changes to the domestic partnership law and follow any instructions they provide.

**Note:** If you have moved since you registered as domestic partners, you should inform the Secretary of State’s office of your new address to ensure you receive important notices from their office. You can update your records by using the “Domestic Partnership Statement of Change” form that is available on the Secretary of State’s website. Here is a link to the form: [www.sos.wa.gov/_assets/corps/domesticpartnerships/DomesticPartnershipNameChange.pdf](http://www.sos.wa.gov/_assets/corps/domesticpartnerships/DomesticPartnershipNameChange.pdf)

**If we are now registered domestic partners but later become married, what would be the legal date of our marriage?**

If registered domestic partners marry or have their partnership converted to a marriage, the legal date of the marriage under Washington law will be the date of the original registered domestic partnership. For example, if you registered as domestic partners with the state on July 1, 2008, but then married in Washington on December 31, 2012, the legal date of your marriage will be July 1, 2008.
We registered as domestic partners with our city, county, or employer. Do those registrations affect our legal rights or our ability to marry?

Registering as domestic partners with a city, county, or employer is not the same as registering as domestic partners with the state and does not provide the same legal rights and obligations as a state-registered domestic partnership.

If you are registered as domestic partners with your city, county, or employer, it will not affect your ability to marry in Washington. You do not need to dissolve those domestic partnership registrations if you wish to marry. In addition, those registrations will not automatically convert to a marriage.

If you registered as domestic partners with a city, county, or employer, it will not have any effect on the legal date of your marriage if you choose to marry.

My partner and I were legally married in another state or country. Will Washington recognize our marriage?

Yes, as long as the marriage was legally recognized in the state or country where you married. You do not need to get married again in Washington for your marriage to be legally recognized in Washington.

What if we want to get married again in Washington, even though we were legally married in another state or country?

In general, we do not recommend that couples seek marriage licenses in Washington if they are already married in another state or country. It is not necessary because your marriage will be legally recognized in Washington.

As a practical matter, your marriage license application in Washington may not be processed if you are already married. Some counties may interpret the law to prohibit them from issuing a marriage license to a couple that is already legally married (both for same-sex and different-sex couples).

Of course, you can still have a marriage ceremony or celebration in Washington, even if you are not able to obtain a Washington marriage license because you were already legally married elsewhere.

We were legally married in another state or country that recognizes marriages of same-sex couples. We also registered as domestic partners in Washington. Do we need to dissolve our registered domestic partnership in Washington?

No, you should not need to take any action dissolve your registered domestic partnership in this situation. Your out-of-state marriage will be legally recognized in Washington on December 6,
2012, and it will not be affected by the fact that you also registered as domestic partners in Washington.

However, it is not clear at this point how your registered domestic partnership in Washington will be treated. It is possible that the law could be interpreted to mean that your Washington registered domestic partnership is automatically dissolved when your out-of-state marriage is recognized in Washington. It is also possible that the law could be interpreted to mean that your registered domestic partnership will automatically convert into a Washington marriage on June 30, 2014 (unless one of you is 62 years old or older), which could result in you having marriage certificates from two different states. In either case, there may be questions about what is the legal date of your marriage under Washington law. We are seeking more information about how this particular situation will be addressed and will update this memo when we have more information.

**My partner and I entered a civil union or registered domestic partnership in another state or country. How will our relationship be treated in Washington?**

If you entered into a civil union or domestic partnership in another state or country and the civil union or domestic partnership gives substantially the same rights and responsibilities as a marriage, then you have the same rights and responsibilities as married people while you are in Washington. However, if you and your partner become permanent residents of Washington and live in the state for more than a year, you will have to get married if you want to continue to have the rights and responsibilities of marriage.

**If we marry in Washington, will the federal government recognize our marriage?**

Not at this time. The federal Defense of Marriage Act (DOMA) currently prohibits the federal government from recognizing marriages of same-sex couples. Unfortunately, that means you will not receive the protections and responsibilities that married couples receive under federal law. However, there are ongoing court challenges to DOMA, and it is possible that this policy will soon be reversed.

**If we marry in Washington, will we be able to file our federal tax returns jointly or will it affect how we are supposed to file our federal taxes?**

You will not be able to file your federal tax returns jointly at this time. That is because the federal Defense of Marriage Act prevents same-sex couples from filing their federal tax returns jointly.

However, marrying will affect how you file your federal taxes in other ways. The Internal Revenue Service requires same-sex spouses and registered domestic partners in Washington to report half of the couple’s “community income” on each partner’s individual tax return. This policy is sometimes called “income splitting.”

The income splitting policy is based on the fact that Washington’s community property laws apply to spouses and registered domestic partners. With some exceptions, community property laws
laws normally mean that income earned by either spouse or domestic partner is treated as community income.

The income splitting policy may not apply if you and your spouse or partner have a legally enforceable agreement that makes it clear you both do not want to have community property laws apply to your relationship. You should consult an attorney if you are interested in creating this kind of legal agreement.

In many cases, the income splitting policy will lower the total amount of federal taxes that a couple must pay. However, this policy can make filing federal taxes more complicated for same-sex couples who are married or who are registered domestic partners. It is a good idea to consult a tax professional who is knowledgeable about how same-sex couples are treated under federal tax law.

If we marry in Washington, will other states recognize our marriage?

Some states will, but most will not at this time. So it is a good idea for you to complete documents like powers of attorney and to take these documents when you travel out-of-state in case another state will not recognize your relationship.

Can same-sex couples marry in Washington if they live in another state?

Yes. There is no residency requirement to marry in Washington.

However, you should know that your marriage may not be recognized in your home state if your state does not permit same-sex couples to marry. It is a good idea to talk to a lawyer before marrying in Washington to understand whether your marriage will be recognized in your home state and other legal results of marrying.

Note: Although Washington does not have a residency requirement for marriage, it does have a residency requirement for divorce. So if you marry in Washington, you may not be able to get a divorce in Washington unless at least one spouse becomes a resident of Washington. In addition, some states will not allow same-sex couples who are legally married in Washington to dissolve their Washington marriage in the other state’s courts. That is one reason why it is a good idea for out-of-state couples to talk to a lawyer before marrying in Washington.

My partner is not a U.S. citizen. Will marrying have a negative impact on his or her immigration status?

This is a complicated question. You should talk to an immigration attorney who has experience working with LGBT couples. You may also wish to read this information from Immigration Equality, an organization that fights for equality under U.S. immigration law for LGBT and HIV-positive individuals: http://www.immigrationequality.org/issues/couples-and-families/should-we-marry/
I am legally married in another state or country to another person. We separated, but did not complete a divorce. What do I need to do if I want to marry a different person?

You cannot get married in Washington if you are still legally married to another person. So you will need to complete a divorce if you want to get married again. You can dissolve an out-of-state marriage in Washington if either you or your spouse is a Washington resident. You will need to file a petition for dissolution in court.

I entered a civil union or domestic partnership with a former partner in another state or country. We separated and I would like to legally end the relationship. Can I do that in Washington?

You should be able to dissolve a civil union or registered domestic partnership from another state or country in Washington, as long as one of you is a resident of Washington. You will need to file a petition for dissolution in court.

If we marry, will my employer be required to provide health insurance benefits to my spouse?

Maybe. It depends on how your employer offers health insurance benefits to its employees.

The first question to ask is whether your employer’s health plan offers benefits to spouses of employees. If the plan does not cover spouses, then you will not be able to receive coverage for your spouse.

If your employer’s health plan does cover spouses, in most cases the law requires the health plan to offer equal coverage to same-sex married couples if the health plan is issued in Washington. However, the law may not require coverage of same-sex spouses if an employer’s health plan is “self-insured.” A health plan is self-insured if the employer has created a fund to pay health care costs, instead of buying a health plan from a private insurance company.

If you work for a state or local government in Washington State, your employer must offer the same coverage to same-sex spouses that it offers to different-sex spouses. Federal employees, however, do not get coverage for same-sex spouses because of the federal Defense of Marriage Act.

Even if your employer is not required by law to provide coverage to same-sex spouses, employers can choose to offer such benefits voluntarily.

NOTE: An employer’s contribution to the health insurance benefits of an employee’s same-sex spouse will be seen by the IRS as taxable income to the employee. Once again, this is because the federal Defense of Marriage Act does not recognize marriages of same-sex couples.
How can I find a lawyer who has experience working with LGBT clients and legal issues?

You can call Legal Voice’s Legal Information and Referral telephone line. We can provide referrals to lawyers who have indicated that they are knowledgeable on legal issues facing LGBT clients. You can reach the Legal Information and Referral line at 206-621-7691 or toll-free at 1-866-259-7720.

Are there other issues that we should consider before marrying?

Yes. Marriage is a very important personal and legal commitment and carries both rights and responsibilities. Marriage also brings unique challenges for same-sex couples because the federal government and many states will not recognize your marriage at this time.

Here are a few issues that you may want to consider before marrying:

- Marrying could affect your ability to adopt a child from a country or state that does not allow same-sex couples to adopt.
- If you marry, it could affect your ability to receive public benefits that are based on your income. That is because your spouse’s income and assets may be considered in determining whether you are eligible for benefits.
- Your marriage will be a public record, so other people may be able to find out if you are married.

Resources

Online: Access Washington website for county offices that issue marriage licenses
http://access.wa.gov/living/resources/marriage.aspx

Related publications available online or by phone from Legal Voice:

- Marriage and Transgender Couples
- The Legal Rights of Registered Domestic Partners in Washington State
- Q&A: Washington’s Domestic Partnership Law
- How to Find a Lawyer

David Ward, November 29, 2012