

## Frequently Asked Questions About Marriage Recognition for Same-Sex Couples in Maryland

On February 23, 2010, the Maryland Attorney General issued [an opinion confirming that marriages between same-sex couples](#) entered into in other jurisdictions may be recognized under Maryland law. In response to the opinion, [Maryland's Governor stated](#): “[W]e will be guided by the Attorney General’s thorough analysis and legal advice on this matter. . . . I expect all State agencies to work with the Attorney General’s office to ensure compliance with the law.”

### **We should now expect validly entered out-of-state marriages of same-sex couples to receive respect in Maryland in a broad range of areas.**

This is a big step forward for Maryland and should bring greater security, protections, and peace of mind for many married couples living, working, and visiting in Maryland. This is an exciting time as State and local governments, private parties, and members of our communities assess all the ways that marriage recognition brings protections to same-sex couples in Maryland and how to implement it. While many answers await further developments and analysis, the legal organizations **Lambda Legal, the American Civil Liberties Union of Maryland, and the National Center for Lesbian Rights, along with Equality Maryland**, have prepared preliminary responses to frequently asked questions (FAQs) about marriage recognition in Maryland. Check for updates to these FAQs, and let us know of questions and issues arising in your lives.

### **What did the Attorney General’s decision say?**

The 45-page opinion was issued in response to an opinion request from Maryland State Senator Richard S. Madaleno, Jr. asking whether Maryland may recognize marriages of same-sex couples legally performed in other jurisdictions, including other countries. The opinion concludes that such marriages may be recognized under State law.

The opinion reviews State statutes and case law addressing marriage rights within the State and the recognition

Maryland has historically afforded different types of marriages validly entered in other jurisdictions even if they could not be entered within the State.

The opinion predicts how Maryland’s high court, the Court of Appeals, would rule on the question whether validly entered out-of-state marriages of same-sex couples are entitled to the same recognition under longstanding Maryland common law comity principles that have been applied in the courts over many decades. The opinion concludes that because recognition of out-of-state marriages of same-sex couples is neither barred by express statute nor in conflict with Maryland public policy, which already provides significant recognition and support for same-sex couples in many contexts, the Court of Appeals is likely to recognize the marriage of a same-sex couple validly contracted in another jurisdiction.

The opinion asserts that State agencies will need to evaluate their existing policies to determine how the marriage recognition principle will apply going forward in the context of each agency’s work.

The opinion says that it does not address how the rule of marriage recognition would specifically apply in contexts beyond the direct jurisdiction of the Attorney General and State government, such as whether the couple may obtain a divorce in Maryland — an area the courts handle and decide. (Nonetheless, the Attorney General’s legal conclusion that the marriage recognition rule applies to same-sex couples in Maryland should hold true in other contexts as well.)

Finally, the opinion also observes that consideration will need to be given to whether a particular aspect of Maryland law is governed or impacted by federal law, such as the so-called Defense of Marriage Act (DOMA), which limits marriage for federal purposes to different-sex couples, and whether that might prevent recognition of the marriage for a specific Maryland purpose.

### **Can we get married here in Maryland now?**

No, unfortunately. Maryland same-sex couples cannot marry in their own home state until legislation is passed giving them the right to marry, and full equality will not have been won until that day comes. However, under the marriage recognition rule, the out-of-state marriages of same-sex couples receive respect in Maryland.

### **Will the State government automatically start treating us as married?**

State government is made up of many agencies that provide hundreds of services governed by different laws and regulations — so it may take some time for the Attorney General’s opinion to be applied throughout Maryland State agencies. In some cases there may be existing State laws, regulations, policies, and forms that pose an issue for implementing the Attorney General opinion. These will have to be sorted out, and it will not all happen overnight. In some areas, issues may need to be fixed through advocacy or staff training. The Governor and Attorney General have said that this work is underway. Our organizations are advocating to help with this process and to see marriage recognition principles fully implemented as promptly as possible.

You should also be aware that it is possible Maryland may have some specific State statutes that expressly incorporate and piggyback off federal definitions of marriage, which restrict marriage to a male-female couple under the federal DOMA. State officials, and our organizations, are reviewing State laws to see if this may be the case and how conflicts for State agency recognition of marriages may be addressed.

*The bottom line is that married same-sex couples should live their lives as all married couples do and expect to be treated as married.* There may be instances where legal conflicts will arise, or where there is outright discrimination against married same-sex couples that will require legal advocacy. If you are denied a service or protection to which married couples are entitled, please contact one of our organizations for assistance.

### **Will our marriage be treated the same in Maryland if we are married in the District of Columbia, or in the states of Massachusetts, Connecticut, Iowa, Vermont, or New Hampshire, or in Canada or another foreign country?**

Yes, it should be. So long as you entered into a valid civil marriage in the jurisdiction where your marriage occurred,

the marriage is entitled to the same respect under Maryland law whether you married in the District of Columbia, a U.S. state, or a foreign country.

### **What if we were married in California before Proposition 8 passed in November 2009 denying the right to marry in that state?**

The California Supreme Court has ruled that the civil marriages in California of the approximately 18,000 couples who wed prior to passage of Proposition 8 still remain valid under California law. Since your marriage was valid where entered, it should receive the same respect in Maryland as other marriages.

### **What kinds of protections, services, or obligations are affected by marriage recognition?**

Marriage brings legal protections and obligations in potentially hundreds of ways, including access to spousal health insurance, death benefits for spouses of firefighters and law enforcement officers killed in the line of duty, mutual obligations of spousal support, the ability to stay together in a hospital, protections for crime victims, presumptions of parentage regarding children born to a married couple, and many, many more. Some of these protections are conferred by State or local governments; others are matters between private parties and may involve enforcement by courts.

This is an evolving area of Maryland law, and in some senses same-sex couples will need to be pioneers. State agencies, as well as our organizations, will be analyzing in the weeks and months ahead the State protections and obligations that flow from marriage recognition. You should assume that your marriage is entitled to respect, though how exactly marriage recognition will apply may need to be determined based on the specific situation.

New York State has been widely applying the marriage recognition rule to out-of-state marriages of same-sex couples for several years already, as the Maryland Attorney General’s opinion noted. We can look to [precedents](#) and [developments](#) there for guidance, while also analyzing specific Maryland laws and policies.

### **I would really like to be able to provide spousal health coverage to my spouse under my employer’s policy. Can I do that?**

Now that your marriage is recognized you may be able to access employer-provided spousal health insurance coverage. Of course, you may already have been eligible

for domestic partnership coverage from your government or private employer anyway. Whether you are now entitled to spousal coverage from employers that did not offer domestic partner coverage may depend on where you work. If you work for a government employer, you should be entitled to the same coverage that different-sex married couples receive. If you work for a private employer, you can certainly ask for coverage and your employer can choose to treat you fairly and provide it to you. Whether your private employer is *legally obligated* to do so can depend on what kind of insurance plan your employer offers and the terms of the plan. Lambda Legal's publication [Will Marriage Help Us Get Health Insurance](#) explains this further, and you can contact our organizations if you have additional questions.

**We are a married same-sex couple, but we have to file our federal income taxes as "single" because under DOMA the federal government does not recognize our marriage. What should we do about filing our Maryland State taxes?**

How to handle tax filings and other tax matters is another area that will need to be resolved as a matter of Maryland law, with consideration of what if any impact federal law may have on tax issues. In the past Maryland taxpayers have generally been required to file their tax returns using the same "single" or "married" status they use on their federal returns. Because of the discriminatory federal DOMA, married same-sex couples have had to file their federal returns as "single." Further analysis will be needed to determine whether married same-sex couples can file their State returns jointly as married. We know tax season is fast approaching and hope to get clearer guidance on this issue soon. In the meantime, you should consult your own tax adviser. Lambda Legal's publication [Tax Considerations for Same-Sex Couples](#) also offers additional information.

**My spouse and I were planning to do a second-parent adoption so that we are both the legally-recognized parents of our children. Should we still go through with the adoption now that our marriage will be respected?**

Yes, absolutely. Marriage recognition should bring additional protections to secure the relationship of a child born to a married parent who is unrelated by biology or adoption, but the scope of those protections has yet to be definitively determined in Maryland. And these protections may not in any event apply where the parents have married after the child is already born. The best way

to ensure your child has the security of a legally recognized relationship with both parents is through adoption by the non-biologically or non-adoptively related parent. This may be critical as well to ensuring that the federal government and other jurisdictions where your marriage may not be recognized will nonetheless respect your child's parentage based on an adoption.

**We were going to get wills, health care powers of attorney, and other legal documents to protect our relationship. Do we still need those if we are married?**

It is still important to get these kinds of life planning documents to protect your family. Different-sex couples with marriages also rely on these protections, and they are especially important for same-sex couples, even as your marriage receives recognition in Maryland. Other jurisdictions continue to discriminate against same-sex married couples and refuse recognition of marriages. Legal documents like wills and health care powers of attorney remain crucial for married lesbian and gay couples. Lambda Legal's publication [Take the Power: Tools for Financial and Life Planning](#) offers additional information.

**We are domestic partners. If we get married will we still receive the rights we had under Maryland law as domestic partners?**

Maryland already has enacted some legal protections for domestic partners, such as rights to hospital visitation, to make health care and burial decisions, and exemptions from residential property transfer taxes and inheritance tax on a jointly owned primary residence. Those rights should continue to apply to domestic partners, including those who then marry out of state.

**What if State agencies or other people still fail to treat us as married? What should we do?**

In some situations simply asking for the particular protection and explaining why your marriage should be respected may solve the problem. Sometimes further advocacy and assistance from counsel will work. You should certainly feel free to reach out to one of our organizations for help.

*It's important to bear in mind that rushing into litigation often is not the answer.* Many problems can be worked out

without resort to the courts. Others may someday need to be resolved through litigation, and important protections for same-sex couples ultimately may need to be vindicated in the courts. But with marriage recognition bringing many important rights for many families, any litigation that could have broader impact on how the marriage recognition rule applies should be the product of careful thought and planning. A bad ruling could have far-reaching negative impact for your marriage and the marriages of many other couples.

**My partner and I are committed to one another and live in Maryland. We are trying to decide whether we should get married in another jurisdiction. Are there other considerations we should take into account?**

You should start by asking yourselves such essential questions as whether you're ready to make this binding legal commitment, with many significant financial and other consequences.

There may also be concerns specific to your situation that may factor into your decision to marry. For example, if one of you is in the military or is in the United States on an immigration visa, getting married could be harmful under federal laws, such as "Don't Ask, Don't Tell" in the military context. Entering into a marriage also could be a problem if one of you is in the process of adopting a child in a jurisdiction that allows a single person but not a same-sex couple to adopt.

You should also be aware that while the jurisdictions where you might marry don't have residency requirements to enter into marriage, they do have residency requirements to obtain a divorce. If a Maryland same-sex couple's relationship should someday end, the parties can seek a divorce in Maryland courts. But until divorce cases are brought and divorces granted, uncertainty on access to divorce can't be entirely ruled out for Maryland couples. And if you should move from Maryland to a jurisdiction that does not recognize your marriage and later want to dissolve it, you may be denied access to the courts in your new home state.

Lambda Legal's publication [Traveling to Another State or Country to Marry?](#) offers additional information about these kinds of considerations.

**We live in Maryland but already have a civil union from another state. Should we get married as well?**

The Attorney General's opinion does not address the recognition a civil union might receive in Maryland, and there may be reasons for you to consider entering into a marriage. However, there could be issues depending on your specific situation that you should consider first. In addition, whether you can or should marry having already entered into a civil union may depend on the laws of the jurisdictions where you had your civil union and where you might marry.

**Where can I go for further information or assistance?**

You can contact our organizations for further information. You may also want to consult with a private attorney.

Here is how to reach us:

**Lambda Legal:**

legalhelpdesk@lambdalegal.org  
866-542-8336 (toll-free) or 212-809-8585  
www.lambdalegal.org

**ACLU of Maryland:**

410-889-8555  
www.aclu-md.org

**National Center for Lesbian Rights:**

info@nclrights.org;  
800-528-6257 (toll-free) or 415-392-6257  
www.nclrights.org  
Legal info: www.nclrights.org/gethelp

**Equality Maryland:**

info@equalitymaryland.org  
410-685-6567  
www.equalitymaryland.org

***PLEASE NOTE: This document offers only general and preliminary information on an evolving area of law and is not intended to provide guidance or legal advice regarding anyone's specific situation.***