

## Same-Sex Marriage

In the United States, issues of family law, including marriage, are handled at the state level. This means that there's quite a bit of difference in family law from state to state.

By far the most controversial family law issue facing the country is same-sex marriage. Public opinion seems to be about evenly divided as to whether gays and lesbians should have the right to marry a partner of the same gender.

Currently, only 6 jurisdictions in the United States (Massachusetts, Vermont, Connecticut, New Hampshire, Iowa, and the District of Columbia) recognize same-sex marriage. Several more states, though still a minority, provide some alternative arrangements for same-sex couples, which provide most, or all, of the legal rights and obligations of marriage, but go by a different name.

This article will discuss the various legal options available to same-sex couples who wish to secure as many of the legal benefits (such as automatic inheritance of their partner's property upon the death of the partner, hospital visitation, power of attorney, etc.) inherent in marriage as possible, regardless of what the law of your state is.

### States with Same-Sex Marriage

If you and your partner live in a state that recognizes same-sex marriage, or are willing and able to relocate to one, you have it easier than most. In these states, you and your partner can simply go through the exact same procedure that opposite-sex couples would go through in getting married. This varies from state to state, but usually (though not always) involves establishing residency in the state for a specific period of time, filling out the necessary paperwork, and possibly going through a mandatory waiting period before the marriage is finalized.

The states of New York, Rhode Island, and Maryland recognize same-sex marriages performed in other states, but do not grant same-sex marriages. So, a same-sex couple that marries in one state will enjoy all the benefits of marriage if they move to one of these states.

While this should provide you with all of the legal benefits and obligation that marriage provides under *state* law, including inheritance rights, joint adoption of children, equitable division of property upon divorce, spousal benefits for state employees, joint filing of state income taxes (if your state has an income tax), etc., the same cannot be said for federal law.

The "Defense of Marriage Act" (DOMA) is a federal law that bans the federal government from recognizing same-sex marriage. So, all of the federal benefits that come with marriage (joint filing of federal tax returns, spousal benefits for federal employees, and many others) are not available to same-sex couples, even if they are legally married under the laws of their state.

### States with Alternative Arrangements for Same-Sex Couples

California, Colorado, Hawaii, Maine, New Jersey, Nevada, Oregon, Washington and Wisconsin have legal arrangements for same-sex couples which provide most or all of the benefits of marriage, but go by another name. They are typically referred to as “civil unions” or “domestic partnerships.”

Some of these arrangements are functionally identical to marriage – they simply go by a different name – and some provide only limited recognition for same-sex partnerships.

These limited arrangements typically provide the legal rights that most people would consider to be the most important, such as hospital visitation, inheritance rights, the right to make medical decisions on behalf of an incapacitated partner, the right to sue for wrongful death of a partner, etc. They sometimes exclude some of the rights that are granted to married couples, but aren't matters of life and death, such as joint filing of tax returns, and some spousal benefits for state employees.

Because the scope of legal rights provided by these arrangements can vary widely from state to state, it's essential that you and your partner speak with an experienced [family law attorney](#) to determine exactly what rights civil unions or domestic partnerships provide in your state.

### States with No Legal Recognition of Same-Sex Partnerships

Unfortunately, the majority of states provide no formal legal recognition for same-sex partnerships. While it is more difficult for gay and lesbian couples to obtain the security that can be had relatively easily through marriage or a domestic partnership, it is usually possible.

Of the hundreds of legal benefits that come with marriage, there's a general consensus as to which ones are the most important to most couples. They include the right to make medical decisions for a partner, if he or she is incapacitated, the right to automatically inherit a spouse's property, the right to jointly adopt children, and the right to visit a sick or injured partner in the hospital.

While most states don't provide a single legal arrangement, like marriage, that secures all these rights for same-sex couples, clever use of contract law and good estate planning can provide same-sex couples much of the security that opposite-sex married couples take for granted.

#### **Medical Decisions**

When someone is very sick or severely injured, they sometimes become unable to express their preferences as to medical treatment. In such cases, state law usually allows

the patient's next of kin to make important medical decisions (such as the type and extent of treatment they want, when to be taken off of life support, etc.). The "next of kin" is the patient's spouse, if they have one. If they aren't married, the decision usually goes to the patient's children, parents, siblings, etc. Basically, their closest living relative.

In states that don't have any legal recognition for same-sex partnerships, one partner, no matter how committed, is a "legal stranger" to the other, meaning that they have absolutely no legal relationship with one another.

This means that you might find yourself in a position where you have the most knowledge about what your partner's wishes would be if he or she is unable to express them, but you will have no legal authority to make that decision for them. If the patient has few living relatives, the decision might fall on a distant relative with whom the patient hasn't spoken in years.

This can be averted if you and your partner each draft a [living will](#). A living will, or "advance healthcare directive" is a document in which a person lays out exactly what type of medical treatment they want, in case they become unable to express their wishes. In addition to laying out instructions for medical care, your living will should explicitly grant your partner the [authority](#) to make decisions on your behalf if you become incapacitated.

## **Inheritance**

When a person dies without a will, they are said to have died "[intestate](#)." In such a situation, there has to be a way to distribute their property. Under the laws of every state, the property goes to the decedent's (the person who died) closest living relative, with the spouse being the first preference.

As discussed above, in states with no recognition of same-sex partnerships, two life partners who happen to be of the same sex have absolutely no legal relationship with one another, meaning that they can be completely shut out of an inheritance, no matter how committed they were.

The only way to get around this is to draft a will clearly stating that your property is to go to your partner upon your death, and your partner should do the same. That is, of course, assuming you want to leave your property to your partner – when you write a will, you can leave your property to anyone you want.

When drafting a will, it's essential to seek the advice of an [estate planning attorney](#).

## **Conclusion**

As you can see, the legal status of same-sex relationships in the United States is complicated, and constantly changing. If you and your partner have any questions about

your legal options, you should not hesitate to speak with [a family law attorney](#) who is experienced in these matters.