

How to Get Married in Massachusetts

May 2009

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Contents

■ INTRODUCTION	1
■ THE BASICS	2
Who Can Marry?	2
How Do We Get a Marriage License?	3
What Do We Need to Bring with Us When We Apply?	4
How Do I Change My Surname?	6
What if a City or Town Clerk Refuses to Let Us Apply?	6
What's the Story on the Three-day Waiting Period?	6
Can I Get Married Without Waiting the Requisite Three Days?	7
Who Can Perform the Ceremony?	9
Do We Need Witnesses for the Ceremony?	11
Are There Still Efforts Underway to Stop Same-Sex Couples from Marrying in Massachusetts?	11
Is There Anywhere Else We Can Get Married?	11
■ NON-MASSACHUSETTS RESIDENTS	13
Can I Get Married if I Live in Another State or Outside the U.S.?	13
Why Were Most Non-Massachusetts Same-Sex Couples Not Able to Marry in Massachusetts Prior to July 31, 2008?	13
■ SAME-SEX COUPLES WHO ALREADY HAVE A CIVIL UNION OR DOMESTIC PARTNERSHIP	15
Can I Get Married If I Have a Civil Union?	15
Can I Get Married If I Have a Comprehensive Domestic Partnership From California or Oregon?	17
Can I Get Married If I Have a Non-Comprehensive Domestic Partnership?	18
■ REMARRYING THE SAME PERSON IN MASSACHUSETTS	19
What Is the Status of Our Marriage If We Were Non-Massachusetts Residents And Married in Massachusetts Prior to July 31, 2008?	20
If I Was Not A Resident Of Massachusetts And Married in Massachusetts Prior to July 31, 2008, Can I Remarry the Same Person in Massachusetts?	22
What If I Got Married In California after June 16, 2008 or Outside the United States?	22
What If I Got Married in a Place in the United States Where the Marriage Was Not Sanctioned by the State?	23

Introduction

The process for getting married in Massachusetts basically requires an eligible couple to submit an application for a license and pay a fee to any city or town clerk in Massachusetts. After a three-day waiting period (unless it has been waived by a court), the couple will receive the license from the clerk, and must then have the marriage solemnized (i.e., have a ceremony in Massachusetts) within 60 days of filing the application. Once the ceremony has been performed, the person who performed it will state the time and place of the wedding on the license, sign it, and send it back to the city or town where the couple received it. The clerk will then register the marriage and the couple can receive an official certificate of their marriage.

Massachusetts does not have a residency requirement for marriage, but until July 31, 2008 an old law dating back to 1913 was used to deny marriage licenses to same-sex couples from most other states unless they intended to reside in Massachusetts. On July 31, 2008 Governor Patrick signed into law a bill that repealed this so-called “1913 law,” and effective immediately on that date same-sex couples from anywhere in the country or world can legally marry in Massachusetts without having an intent to reside in Massachusetts.

Although this is great news, couples should be aware that whether the marriage will be respected in their home state or country is a complicated issue. In addition, because of the 1996 federal Defense of Marriage Act, the marriages of same-sex couples are not respected by the federal government and so same-sex couples are not allowed access to the 1,138 federal laws that deal with marriage. Also, should the couple at some point wish to end the marriage, unless the couple lives in a state or country which does respect the marriage, it may not be possible to dissolve the marriage until one member of the couple moves to a place that does respect the marriage and lives there long enough to meet that state or country’s residency requirement for divorce.

The following sets forth the details for the process for marrying in Massachusetts – who can marry, how you get a license, what you need to bring with you, the waiting period, and who can perform the ceremony.

The Basics

Who can marry?

To be eligible to marry in Massachusetts, both parties must:

Be 18 years of age or older (or else have a judge’s permission to marry younger)

Any person under the age of 18 who wants to marry must obtain a court order from the probate or district court of his or her city or town of residence. The minor’s parents or guardians must go with him or her to court and consent to the marriage.¹

Not be married to anyone else (any divorce must be final at the time of application)

If you are married to another person, you cannot marry your partner until you have divorced the other person.² Entering into another marriage before you have legally ended the first is a crime punishable by up to five years in prison or two and a half years in jail, or by a fine of up to \$500.³ The municipal clerks may ask for proof of divorce. If you have such proof, you should take it with you. If you do not, at a minimum, you should know the date of the court judgment and the court that issued the divorce and be prepared to go to another clerk’s office if the first one demands proof you cannot provide. If you encounter this problem, please let GLAD know.

See the sections, “Non-Massachusetts Residents”, “Same-Sex Couples Who Already Have a Civil Union or Domestic Partnership” and “Remarrying in Massachusetts”, for information about getting married in Massachusetts if your relationship is already legally recognized in some way.

¹ G.L. ch. 207, § 25.

² G.L. ch. 207, §§ 4, 6.

³ G.L. ch. 272, § 15.

Not be closely related by blood or marriage to his or her intended spouse.

A person may not marry his or her:

- parent or stepparent
- parent's sibling
- grandparent or grandparent's spouse
- child
- grandchild or grandchild's spouse
- sibling or sibling's child
- spouse's parent, grandparent, child or grandchild⁴

This prohibition remains even if the marriage that created the familial relationship has ended by death or divorce.⁵

How do we get a marriage license?

Step one: Both people who are marrying must appear in person⁶ at any city or town hall⁷ and fill out the application form called a *Notice of Intention of Marriage*. (Note: Prior to January 28, 2005, in order to receive the marriage license from the town or city clerk, both parties needed to get a blood test, but this is no longer a part of the marriage licensing process.) This form requires the following information for each party:

- Name
- Date of Birth
- Occupation
- Address of residence
- Number of previous marriages and how the last marriage ended (death or divorce)
- Existence of present or former Civil Union or state-created Domestic Partnership, and dissolution status, if any

⁴ G.L. ch. 207, §§ 1, 2.

⁵ G.L. ch. 207, § 3.

⁶ Both members of the couple do not have to file this form in person if one of you is in the military, but in that case, there is a whole other set of concerns raised by the military's "Don't ask, Don't tell" policy. Also, only one of you need be present if the other is incarcerated.

⁷ G.L. ch. 207, § 19.

- Birthplace
- Full name of parents (including middle and maiden names)
- Gender
- Disclosure of whether applicants are related by blood or marriage

Each applicant must swear before the clerk that all information in the form is true and that no legal impediment exists to the marriage.⁸ Any false statement is punishable by a fine of up to \$100.⁹

Applicants must also complete a supplement to the Notice of Intention that is sent to the state Registry of Vital Records and Statistics. The Registry may make the information in this supplemental form, which includes each applicant's name, residence, and *social security number* (or reason for not having a social security number), available to state and federal agencies for purposes of child support enforcement or other purposes required by law.¹⁰ The city and town clerks charge a fee for processing the notice of intention of marriage and issuing the license. Since this fee varies, you should contact the clerk in the city or town where you plan to apply.

Step two: After a three-day waiting period (see “*What’s the story on the three-day waiting period?*” below), go back to the city or town hall where you filed your application and receive the license. The license is valid for 60 days starting from the day after you filed the notice of intention.¹¹

Step three: Have a wedding ceremony within the state of Massachusetts. The marriage must be solemnized by some official (like a Justice of the Peace) or member of the clergy who is authorized by the state to perform marriages. He or she will then send the license back to the clerk and your marriage will be officially registered by the state.

⁸ G.L. ch. 207, § 20.

⁹ G.L. ch. 207, § 52.

¹⁰ G.L. ch. 207, § 20.

¹¹ G.L. ch. 207, § 28.

What do we need to bring with us when we apply?

In order to receive a marriage license, both members of the couple must bring:

Proof of age

Some cities and towns require applicants to demonstrate their ages (such as by showing a certified birth record or passport), particularly if an applicant is not much older than 18, before they will issue the licenses.¹² Even if the city does not require this proof, if a clerk does not believe you are over 18, he or she may not issue the license without proof, requiring you to return and start the application process over.¹³ Clerks have been advised to accept the following records as proof of age (stated in order of preference): (1) original or certified copy of birth certificate; (2) original or certified copy of baptismal certificate; (3) passport; (4) life insurance policy; (5) employment certificate; (6) school record; (7) immigration record; (8) naturalization record; or (9) a court record.

Money

The city and town clerks charge a fee for processing the Notice of Intention of Marriage and issuing the license. This fee varies, consequently you should contact the clerk in the city or town where you intend to apply. Because some clerks and courts take checks and some do not, better to be on the safe side and bring cash.

In addition, there is usually an extra fee if the couple wants a certified copy of the marriage certificate after the marriage has been solemnized and registered, which fee ranges from about \$5 to \$15 per copy.

Proof of Residency

Prior to the repeal of the 1913 law, applicants were required to indicate whether they intended to reside in Massachusetts. Until the Notice of Intention is revised, this question may still be on the form (Questions 6A

¹² For example, the city of Boston requires proof of age for all applicants under 24 years of age.

¹³ G.L. ch. 207, § 33A.

and 14A), but you should not be denied the ability to marry based on your answer to this question. If you encounter any problems, please contact GLAD.

How do I change my surname?

In addition to being a marriage application form, the Notice of Intention of Marriage form also operates as a legal name change document should you choose to change your last name upon marriage. Questions 3A and 11A on the Notice of Intention ask for the surname you wish to use after marriage. By completing that question, your marriage certificate will identify you by your new last name. A certified copy of your marriage certificate will allow you to change your name with the Social Security Administration. If you intend to marry, but are not sure you want to change your name, you can always change your name at a later point. The advantage to changing your name at the time of marriage is that it allows you to avoid the \$165 fee for initiating a name change through the usual process at the probate court. The usual process is still available to you if you choose to wait. **Also, you should be aware that the Passport Agency, citing the federal 1996 Defense of Marriage Act, is refusing to honor the name change on the marriage license and is requiring couples to go through Probate Court to have their names changed or to wait 5 years before it will issue a passport that reflects their married name.**

What if a city or town clerk refuses to let us apply?

City and town clerks are government employees whom we assume will carry out the law they are obligated to follow. If you encounter a problem, please contact GLAD.

What's the story on the three-day waiting period?

Massachusetts law requires couples to file the Notice of Intention of Marriage at least three days before their wedding.¹⁴ The license will not be issued until at least the third day from the filing of the notice.¹⁵ To be clear, in computing the three-day period, you do not count the day that you submitted

¹⁴ G.L. ch. 207, § 19.

¹⁵ G.L. ch. 207, § 28.

the notice (i.e., if you submit the notice on Monday, the earliest you can receive your license is Thursday), but you do count Sundays and holidays.¹⁶

Can I get married without waiting the requisite three days?

It is possible to obtain a waiver of the three-day notice period from a Massachusetts District Court (also referred to as a municipal court) or Probate Court. There is no guarantee that this waiver will enable you to marry on the same day. At some courts, it may take time to find an available judge to grant the waiver, and the actual processing of the requisite marriage documents (including the marriage application, court waiver, and marriage license) may be time intensive.

Obtaining a waiver

Both the District Court and the Probate Court “recommend” that couples follow steps 1-5 below, in order, to obtain a waiver. However, both courts will permit couples to start at step 2, but caution that this shortcut could result in disappointment if the court grants the waiver, but the city or town clerk ultimately refuses to process your Notice of Intention of Marriage. Also, because the city and town clerks will need time to process your Notice of Intention, you can get the ball rolling by starting at the city or town clerk’s office and then proceeding to the courthouse. This “recommended” approach may shorten the time you have to wait when you arrive at the city or town clerk’s office with the court waiver in hand.

1. A couple must file a Notice of Intention of Marriage with a city or town clerk. (Out of an excess of caution, you may want to obtain a copy of your completed Notice of Intention to take to the courthouse in case a court chooses to require proof that the “recommended” procedure has been followed, but you are not expressly required to do so).
2. Both members of the couple must go together to either the Registry in any Probate Court or the Clerk’s Office in any District Court.

¹⁶ G.L. ch. 207, § 19.

3. At court, the couple must request a certificate waiving the notice period¹⁷ (called a “Marriage Without Delay” form), pay a fee – \$65 in Probate Court, \$195 in District Court (in cash, some courts do not take checks). If you started at Step 1, you may wish to present the completed copy of your Notice of Intention of Marriage.
4. The couple will be granted access to a judge who will ask the couple questions concerning their qualifications to marry in Massachusetts. These questions may include: whether each applicant is older than 18 years old; whether either has already been married, and if so, whether any pre-existing divorce is final. Once the judge is satisfied that the couple is eligible to marry, the court, in its discretion, may grant a certificate authorizing the waiver of the three-day notice period. There is no specific reason you need to give in response to a question asking why you want the waiver. It should suffice to say that you intend to get married within the next three days or simply that you do not want to wait any longer to marry.
5. With the newly issued certificate from the court in hand, the couple must return to the same city or town clerk where they filed their Notice of Intention of Marriage and present their certificate from the court. If you started at step 2, you can go to any city or town clerk’s office of your choosing. Upon receipt of your court waiver, the city or town clerk should prepare the marriage license for issuance without awaiting the expiration of the three-day notice period.

Though this process may seem relatively straightforward, there are a few details worth considering.

First, if you follow the courts’ “recommended” procedures, the entire process will require two trips to the clerk’s office and one trip to the courthouse. (If you start at Step 2, this shortcut will allow you to make one trip to the courthouse and one trip to the city or town clerk). Please understand that processing the waiver certificate from the court and the marriage license from the clerk may take longer than you anticipate.

¹⁷ G. L. c. 207, §30.

Second, if you or your partner are unsure of whether a clerk will allow you to marry (maybe because you have an existing marriage to the same person), it is advisable to simply wait the three days to avoid the court waiver process which may – depending on the application process – needlessly subject your application to a second level of review, or force you to pay \$65 or \$195 for a waiver that a city or town clerk refuses to process.

Who can perform the ceremony?

There are three options: (1) in-state Justice of the Peace (JP) or clergy; (2) out-of-state clergy, only if special permission granted by the governor; and (3) a specially designated “Justice of the Peace for-a-day,” only if special permission is granted by the governor.

First, any willing in-state justice of the peace, minister, rabbi, priest, imam or other person authorized by a faith community that has filed information about the authorized persons with the state secretary’s office can solemnize a marriage in Massachusetts.¹⁸

Justices of the Peace (JPs) can be found through <http://www.findajp.com/findmass.htm>. We do not know and cannot vouch for how friendly these folks will be. Regardless of their personal opinions, JPs are state officials whom we assume will carry out the law they are obligated to follow. If you and your partner encounter a JP who refuses to solemnize your marriage because you are a same-sex couple, GLAD recommends moving on to another officiant to perform your ceremony – do not let a discriminatory JP stand in the way of your marriage. Please let GLAD know about the discriminatory JP so we can respond appropriately.

JPs cannot charge more than \$100 for solemnizing a marriage in his or her home community or \$150 for a ceremony elsewhere in Massachusetts. They cannot require any additional charge for travel, or for providing flowers, music, a photographer, or a location for the ceremony. They may charge more for pre-nuptial counseling, rehearsals or other special requests, however, so long as the amount of these extras is given to the couple in writing at least 48 hours before the scheduled services. Additionally, if the justice of the peace is

¹⁸ G.L. ch. 207, § 38.

a municipal employee and the marriage is taking place at a municipal building during regular business hours, the fee can't exceed the limits set by the municipality.¹⁹ You can ask at the clerk's office about this information.

Second, out-of-state clergy may perform a ceremony in Massachusetts if they receive authorization from the State. The clergy person needs to contact the Secretary of the Commonwealth Public Records Division, One Ashburton Place, Room 1719, Boston, MA 02108, 617-727-2836. This can be done either before or after the wedding takes place, but authorization cannot be obtained earlier than four weeks before the wedding. The clergy person will receive an application and two certificates (a white one and a blue one), all of which must be filled out and returned. The Secretary's office will send the correct certificate to the city or town hall where the license is obtained – the white one if it is returned before the wedding, or the blue one if it is returned after.²⁰

Third, it is possible for a layperson (a non-minister or non-justice of the peace, such as a friend or family member) to obtain special one-time permission from the Governor's office to perform a particular marriage on a particular date in a particular city. This process requires the prospective officiant to submit an application to the Governor's office **at least six weeks before the wedding**, along with a registration fee of \$25 payable to the Commonwealth of Massachusetts and a letter of reference written by someone other than the people to be married stating the high standard of character of the proposed officiant. Once these are submitted and approved, the proposed officiant will receive a Certificate of Solemnization from the Secretary of the Commonwealth, which must be turned in with the marriage certificate to the city/town hall that issued the marriage license after the ceremony has been performed. The Governor may revoke the officiant's designation, but only for cause – a.k.a. not for discriminatory reasons. For more information or to get a copy of the application, you can contact the Governor's Appointments Office at (617) 725-4080, ext. 35339, or see [http://www.mass.gov/?pageID=gov3modulechunk&L=1&L0=Home&sid=Agov3&b=terminalcontent&f=one day marriage designation instructions&csid](http://www.mass.gov/?pageID=gov3modulechunk&L=1&L0=Home&sid=Agov3&b=terminalcontent&f=one%20day%20marriage%20designation%20instructions&csid)

¹⁹ G.L. ch. 262, § 35.

²⁰ G.L. ch. 207, § 39.

[=Agov3](#). If the wedding date approaches and you have not received permission, you may want to consider the other two options (outlined above) for having a marriage solemnized in Massachusetts.

Do we need witnesses for the ceremony?

Massachusetts law does not require that witnesses be present for a civil ceremony. If a member of the clergy is marrying you, however, you might want to ask whether your religious doctrine, if any, requires witnesses.

Are there still efforts underway to stop same-sex couples from marrying in Massachusetts?

Opponents of marriage equality initiated several last minute legal maneuvers to block licenses from issuing on May 17, 2004, but those efforts were unsuccessful and the *Goodridge* decision was implemented as scheduled. It took many months, but finally all of those last ditch attempts to overturn or delay implementation of the *Goodridge* decision were defeated by GLAD in court.

Two attempts were made to pass a constitutional amendment that would restrict marriage to one man and one woman. All constitutional amendments must be approved by *two* successive sessions of the legislature meeting in Constitutional Convention. In each of the two attempts (2004-2005 and 2007), the first vote of the Constitutional Convention approved the amendment, but on the second vote the amendment was defeated. During the 2007 challenge over 75% of the legislature opposed the amendment.

Thus, the right of same-sex couples to marry in Massachusetts is secure.

Is there anywhere else that we can get married?

Yes, currently Connecticut, Iowa, Vermont (starting September 1, 2009), and Canada allow same-sex couples to marry and do not have any residency requirements. Maine has passed a marriage equality law, but most likely before the law can be implemented there will be a voter referendum on it. The New Hampshire legislature passed a marriage equality bill, but its Governor is

requiring that additional religious protections be added to the bill before he will sign it. It is anticipated that this will happen and that same-sex couples will be able to marry in New Hampshire starting January 1, 2010. For information about Connecticut see *How To Get Married In Connecticut* at <http://www.glad.org/uploads/docs/publications/how-to-get-married-ct.pdf> and for Vermont see *How To Get Married In Vermont* at <http://www.glad.org/uploads/docs/publications/how-to-get-married-vt.pdf>. For information about Canada see GLAD's publication, *What Do I Need to Know About Getting Married in Canada?* at <http://www.glad.org/uploads/docs/publications/canada-marriage-faq.pdf>.

Between June 16, 2008 and November 4, 2008, same-sex couples were able to legally marry in California, but a ballot initiative, Proposition 8, has for the moment taken away this fundamental civil right.

In addition, the Netherlands, Belgium, Spain, South Africa, Norway and Sweden allow same-sex couples to marry, but for the most part each of these countries has requirements that make it difficult for non-citizens to marry.

Non-Massachusetts Residents

Can I get married in Massachusetts if I live in another state or live outside the United States?

Yes. Due to the recent repeal of the Massachusetts law that regulated the ability of non-resident couples to marry in Massachusetts, beginning July 31, 2008 any couple from anywhere in the world, same-sex or different-sex, can marry in Massachusetts if otherwise qualified.

Why were most non-Massachusetts same-sex couples not able to marry in Massachusetts prior to July 31, 2008?

Prior to July 31, 2008, one old, local law – dating from 1913 – said that non-residents could not marry in Massachusetts if their marriage would be expressly prohibited if contracted in their home state²¹ unless the couple had an intention to reside in Massachusetts. Former Massachusetts Governor Romney revived this old law and used it as a basis for instructing clerks to deny marriage licenses to same-sex couples from ALL other states.

GLAD felt that the state’s application of this law was discriminatory and filed a suit, *Cote-Whitacre v Department of Public Health*, to challenge it. On March 30, 2006, the Supreme Judicial Court (SJC) of Massachusetts issued a decision clarifying the criteria that must be met for determining which non-residents can marry in Massachusetts. The criteria require that the couple’s home state not have any law, constitutional provision or controlling court decision that would specifically prohibit same-sex couples from marrying in the home state (even though as a practical matter the couples may not be able to marry in their home state).

Subsequently, a Massachusetts trial court judge, interpreting the SJC’s decision, determined that Rhode Island same-sex couples are able to marry in Massachusetts without having to express an intent to reside in Massachusetts (see GLAD’s publication, *Marrying in Massachusetts: A Guide for Rhode Island Same-Sex Couples*, at:

http://www.glad.org/rights/Marriage_Guide_for_RI_Couples.pdf).

²¹ G.L. ch. 207, §§ 11, 12.

The trial court judge also ruled that same-sex couples from New York who married in Massachusetts prior to July 6, 2006 were not subject to the 1913 law (see GLAD's publication, *Legal Issues for New York Same-Sex Couples Who Married In Massachusetts*, at: <http://www.glad.org/marriage/CoteWhitacre/NYCouplesMarriedinMA.pdf>). Later, the Massachusetts Department of Public Health determined that same-sex couples from New Mexico and the Northern Mariana Islands (a U.S. territory) are also entitled to marry in Massachusetts.

In May 2008, the Supreme Court of California declared that it was unconstitutional to deny marriage to same-sex couples, and so beginning June 16, 2008 same-sex couples from California could legally marry in Massachusetts. However, a ballot initiative, Proposition 8, took away this fundamental civil right on November 4, 2008. Briefs have been filed with the California Supreme Court to attempt to reverse this loss.

Also, from the time the *Goodridge* decision went into effect, May 17, 2004, same-sex couples from anywhere have been allowed to marry in Massachusetts if they expressed an intention to reside in Massachusetts on the Notice of Intention of Marriage.

On July 31, 2008, a bill to repeal the 1913 law was signed into law by Governor Patrick and effective immediately on that date same-sex couples from any state or country can marry in Massachusetts without having an intent to reside in Massachusetts.

Same-Sex Couples Who Already Have a Civil Union or Domestic Partnership

Can I get married if I have a Civil Union?

Yes, so long as you intend to marry the same person with whom you already have a civil union. However, if you have a civil union with one person and wish to marry another person, GLAD recommends dissolving your civil union first, even if the clerk will allow you to marry.

If you plan to marry the same person:

If you are contemplating marrying the *same* person with whom you have a civil union, GLAD sees no statutory impediment to doing so. City and town clerks have been instructed to allow persons with civil unions to marry if they are otherwise qualified to marry in Massachusetts. Nonetheless, the clerks will require you to disclose on the Notice of Intention form whether you have a civil union, and if so, whether it has been dissolved. This information is being collected for statistical purposes only and should not affect whether you are eligible to marry. If you encounter difficulty obtaining a marriage license because of your civil union, please contact GLAD. Further, the legal effects of marrying your civil union spouse remain unclear, however, and may play out in different ways regarding when different types of spousal protections attach to your relationship.

If you plan to marry a different person:

While the law on this is not clear, GLAD believes that if you have previously entered into a civil union with a person other than your intended spouse, you should not enter into a marriage in Massachusetts until that union is dissolved. Civil unions are not marriages, but they do create a legal spousal relationship. For example, under Vermont law, a person with a civil union may not marry someone else²² and a married

²² 15 Vt. Stats. Ann. § 4 (marriages contracted while either party has a living civil union spouse shall be void).

person may not enter into a civil union with someone else.²³ Under Connecticut law, a person with a civil union or marriage may not enter into a civil union with someone else.²⁴ Under New Hampshire law, a person with a marriage or civil union may not enter into a civil union with someone else.²⁵ Massachusetts law states that a marriage contracted while either party has a former spouse living is void,²⁶ but this Massachusetts law contemplates marriage and its resulting spousal relationship, not civil unions. This is where the lack of legal clarity comes from, but what seems clear is that if you had a civil union with a person other than the person you are seeking to marry, you have a former spouse, and thus your subsequent marriage to a different person would likely be void.

Further, even if you were able to get a marriage license with a new partner, you would then be in the position of having two legal spouses, which could make you guilty of a crime,²⁷ and would be a nightmare for the administration of marital protections, which assume the existence of only one legal spouse. Therefore, if you have previously joined in a civil union with a former partner, you should have a dissolution proceeding before you get married.

In order to dissolve a civil union in Vermont, one of the parties must live there for one year and file for divorce. Connecticut, New Hampshire and New Jersey also have a residency requirement for dissolving a civil union (for more information, see our publications *Connecticut Civil Unions* at <http://www.glad.org/uploads/docs/publications/ct-civil-union.pdf> or *New Hampshire Civil Unions* at <http://www.glad.org/uploads/docs/publications/nh-civil-unions.pdf>. For information about New Jersey contact Lambda Legal at 212-809-8585).

²³ 15 Vt. Stats. Ann. § 1202 (parties to a civil union may not be a party to another civil union or marriage).

²⁴ Conn. Public Act 05-10, § 2

²⁵ N. H. Revised Statutes, 457-A: 2

²⁶ G.L. ch. 207, § 4.

²⁷ G.L. ch. 272, § 15.

In Massachusetts, several Probate & Family Courts have granted a civil union dissolution,²⁸ and while this is not a guarantee that other courts will reach the same result, we see no legal impediment to other courts doing so. It is important to note that while these cases are brought in equity and are not strictly divorce cases, it may be that in order to file for dissolution in Massachusetts, one party to a civil union must live here for one year.

If you are unable to obtain a judicial dissolution, you may want to explore with your attorney other ways to protect yourself. Other methods exist that attempt to terminate the legal obligations of the civil union relationship, such as an agreement between the parties in which the individuals commit that they will not hold each other to those obligations. We have no idea how Massachusetts or any other state would view such an agreement. Even if you are able to put some of these protections in place, however, they do not sever the legal relationship of a civil union, and will thus likely not affect your ability or inability to marry a subsequent partner. While such agreements may be able to limit the obligations your civil union created, they cannot undo the legal relationship itself. It is important to remember that this is still a developing legal landscape, and it will likely take a while to sort out all of these issues.

Can I get married if I have a comprehensive Domestic Partnership from California or Oregon?

Persons who are registered as domestic partners with the State of California (under A.B. 205) or the State of Oregon (under the Oregon Family Fairness Act) are arguably subject to the principles discussed above for civil unions. Thus, if you intend to marry the same person with whom you are registered in a California or Oregon Domestic Partnership, your legal status in California or Oregon would not prevent you from marrying in Massachusetts. However, if you have a California or Oregon Domestic Partnership with one person and

²⁸ *See, e.g.*, Salucco v. Alldredge, No. 02E0087GC1, Judgment on Complaint for Dissolution of Civil Union (Mass. Prob. & Fam. Ct., Essex County, March 19, 2004) (granting dissolution under court's equity jurisdiction, and applying standards applicable to divorce).

wish to marry a different person, you should dissolve your domestic partnership first, even if a Massachusetts clerk may allow you to marry.

Termination of a California domestic partnership can take different forms and, in some cases, does not require a court proceeding. You should seek advice and consult California's informative brochure at www.ss.ca.gov/dpregistry/forms/sf-dp_termbrochure.pdf. For information about ending an Oregon domestic partnership contact Lambda Legal (www.lambdalegal.org) or for Oregon residents your circuit court.

Can I get married if I have a non-comprehensive Domestic Partnership?

The term “domestic partnership” has no universal definition. The exact meaning of the term and the rights and responsibilities accorded to persons in a domestic partnership vary, sometimes dramatically, from jurisdiction to jurisdiction. The clerks in Massachusetts have been instructed to interpret the term “domestic partnership” to mean only “a relationship that states create to provide certain rights, obligations, and benefits to people who either cannot, or do not want to, marry.” At present, the only places that convey such partnerships are Maine, Washington State and the District of Columbia (as well as California and Oregon which have comprehensive domestic partnerships and were discussed above). Hawaii has a reciprocal beneficiaries program which is similar.

On the Massachusetts marriage application form (i.e., the “Notice of Intention”), you will be asked whether you have a state-created domestic partnership, and if so, whether it has been dissolved. The Massachusetts clerk will not prevent you from marrying regardless of your answers to these questions, because the questions are being asked for statistical purposes only. However, if you intend to marry someone *other* than the person with whom you presently have a state or municipal domestic partnership, GLAD recommends that you formally dissolve the domestic partnership first. Further, if you marry the person with whom you have registered as domestic partners, your marriage may impact your domestic partnership status, so it is important to look into the law of the state or municipality where you previously registered.

Remarrying The Same Person In Massachusetts

In light of the July 31, 2008 repeal of the 1913 law, the Commonwealth of Massachusetts may issue further guidance for same-sex couples who married in Massachusetts before July 31, 2008 and desire to remarry in Massachusetts. You should only consider remarrying if you have reason to doubt the full legality of your prior Massachusetts marriage.

Should you desire to marry the same person again in Massachusetts, nothing in the law expressly prevents you from doing so. As a practical matter, clerks may not process your application. The forms you must fill out to apply for a marriage license require you to state if you have previously been married, and if so, how that marriage ended. Consequently, the general practice of clerks has been not to allow already-married couples to complete the legal paperwork to renew their vows, regardless of any ceremony a couple might have.

In addition, even if you receive a license and are married again in Massachusetts, it is uncertain what the legal effect of the latter marriage would be. There is no case law on this in Massachusetts, but a 1925 opinion of the Attorney General suggests that, while there is no impediment to the issuance of a marriage license to two people already married to one another, if the earlier marriage is valid, the subsequent marriage has no legal effect.²⁹

Conversely, getting married again in Massachusetts could be used as evidence that you believed your original marriage was not valid, and thus could affect how a court or other entity would apply the protections of marriage to your relationship during the time period between the two marriages. For example, if you were to divorce, a judge might question whether property you acquired as a couple after you married the first time in Massachusetts, but before you married in Massachusetts the second time, is actually property of the marriage subject to equitable division.

Nonetheless, should you choose to remarry, you may want to consult an attorney for assistance in memorializing your belief that your first marriage

²⁹ Op. Att’y Gen., Oct. 16, 1925, p. 729.

was valid and that you are remarrying now solely to remove any “cloud” created by the 1913 law.

What is the status of our marriage if we were non-Massachusetts residents and married in Massachusetts prior to July 31, 2008?

The answer to this question depends on the home state in which you resided when you married in Massachusetts and whether you expressed an intent to reside in Massachusetts.

If you did ***NOT*** indicate an intent to reside in Massachusetts, listed a non-Massachusetts residence and yet received a marriage license, the table below indicates the status of your marriage based on your home state when you married in Massachusetts. As the table shows, your marriage will fit one of the following three legal statuses **under the laws of the Commonwealth of Massachusetts**:

- “Valid”—the marriage is fully valid and beyond question
- “Void”—the marriage is invalid and never existed in the eyes of Massachusetts law
- “Voidable”—the marriage has a defect but is presumed valid unless it is challenged in court (usually by one member of the couple).

Home State When Married (Married Prior To July 31, 2008 And You Did <i>NOT</i> Express An Intent To Reside In Massachusetts)	Status Of Your Marriage
“Void Home States” <i>AZ, AR, DE, IN, KS, KY, ME, MN, MS, MT, OH, SC, TN, TX, UT</i>	“Void”
“Silent or Ambiguous Home States” <i>RI, NM, NY prior to July 6, 2006</i>	“Valid”
“Marriage Home States” <i>CA after June 16, 2008</i>	“Valid”³⁰

³⁰ Couples from California who married in Massachusetts after June 16, 2008 should not have been asked whether they intended to reside in Massachusetts, and, if they were asked, their answer should have no effect on the validity of the marriage.

Home State When Married (Married Prior To July 31, 2008 And You Did <i>NOT</i> Express An Intent To Reside In Massachusetts)	Status Of Your Marriage
<p align="center">“Prohibited Home States”</p> <p align="center"><i>AL, AK, CO, CT, DC, FL, GA, HI, ID, IL, IA, LA, MD, MI, MO NE, NV, NH, NJ, NC, ND, OK, OR, PA, SD, VT, VA, WA, WV, WI, WY, NY after July 6, 2006, CA before June 16, 2008</i></p>	<p align="center">“Voidable”</p>

If you ***DID*** express an intent to reside in Massachusetts on the Notice of Intention of Marriage, provided that expression was ***truthful***, your marriage is “valid”. Yet, negative consequences may flow from a couple’s inability to prove the truthfulness of their stated intent.³¹ If the question were ever called, a couple unable to prove the truthfulness of their intent may be deemed to have married based upon a fraudulent statement of intent. This creates a defect in the marriage because the fraudulent statement was central to the couple’s ability to marry.³² In this worst case scenario -- *i.e.*, where a couple marries after having been found to have falsely stated an intent to relocate to Massachusetts -- the marriage is likely to be deemed “voidable.”

If you are from a “Silent or Ambiguous Homes State” (RI, NM or NY prior to July 6, 2006), then you should never have been asked whether you intended to reside in Massachusetts, and so the answer to that question should have no effect on the validity of your marriage.

For more detailed information, non-Massachusetts couples who married in Massachusetts prior to July 31, 2008, should consult GLAD’s publications, *Legal Issues for Non-Massachusetts Same-Sex Couples Who Married in Massachusetts* at <http://www.glad.org/uploads/docs/publications/married-non-ma-couples.pdf>.

³¹ At some point in the future, the couple may be asked to prove the truthfulness of their statement of intent to reside in Massachusetts. If the couple has not already relocated to Massachusetts, the couple may want to preserve evidence of the steps the couple may have taken to relocate to Massachusetts (e.g., evidence of a job/house search, transfer of bank accounts, etc.).

³² See *Cote-Whitacre v. Dept. of Pub. Health*, 446 Mass. 350, 361 n. 10 (citing *Reynolds v. Reynolds*, 85 Mass. 605, 609-11 (1862) (“[F]raud that goes to the essence of a marriage contract renders a marriage ‘voidable.’”))

If I was a not a resident of Massachusetts and married in Massachusetts prior to July 31, 2008, can I remarry the same person in Massachusetts?

First, determine the status of your marriage from the chart above.

If the **status of your marriage is “void,”** you were, in fact, never validly married in the eyes of Massachusetts law. If you wish to be married, you **MUST** marry again. Couples in this situation should ask the Massachusetts clerk how they should complete the marriage application form (i.e., the “Notice of Intention”) in light of the fact that their prior “marriage” never existed under Massachusetts law due to *Cote-Whitacre v. Dept. Public Health* (and not by death, divorce or annulment). If you encounter difficulty obtaining a marriage license because of your prior, “void” marriage, please contact GLAD.

If the **status of your marriage is “voidable”**—which means that your marriage is presumed to be valid by the Commonwealth of Massachusetts, but it has a defect that could be used at some point (most likely by one member of the couple) to ask a court to annul the marriage. You might be able to perfect the marriage by remarrying, but you should also consider the issues discussed at the beginning of this section concerning your status and rights as a couple during the “gap period” between the two marriages. Massachusetts officials may provide some guidance on this at some point.

If the **status of your marriage is “valid,”** your Massachusetts marriage is fully valid and beyond question, and you have no need to remarry.

What if I got legally married outside Massachusetts?

Getting married anywhere that allows same-sex couples to marry should mean that you are legally married no matter where you go. As a legal matter, Massachusetts should respect you as married for all purposes. As a result, there is no reason for an already validly married couple to marry again, and, in fact, there might be reasons not to, as explained above. There is a procedure for registering your non-Massachusetts marriage in Massachusetts if you were

a resident of Massachusetts when you married.³³ Your city or town clerk can explain the procedure.

What if I got married in San Francisco, Multnomah County or another place in the United States where the marriage was not sanctioned by the state?

Given the unfortunate ruling of the California and Oregon Supreme Courts declaring the marriages of those same-sex couples who married in San Francisco or Multnomah County to be void, those couples should be able to marry in Massachusetts as of July 31, 2008. Couples in this situation should ask the Massachusetts clerk how they should complete the marriage application form (i.e., the “Notice of Intention”) in light of the fact that their prior marriage was declared “void” by operation of law (and not by death, divorce or annulment). If you encounter difficulty obtaining a marriage license because of your prior, “void” marriage, please contact GLAD.

If you seek to marry in Massachusetts after having married (the same person) in other places in the United States (i.e., New Paltz³⁴, NY; New Mexico), Massachusetts clerks may refuse to issue you a license because you are already married and no court has declared anything to the contrary. Although it is possible that a court might invalidate your marriage, unless or until that happens, you are married. Accordingly, you should not deny the existence of your previous marriage, even when seeking to marry in Massachusetts. If you deny the existence of your previous marriage, you may be seen as misrepresenting your marital status on forms you must sign under oath. Moreover, as a practical matter, denying the validity of the marriage compromises your ability to assert that previous marriage as a basis for securing marital rights and protections that you may well need.

³³ G.L. c. 207, sec. 36

³⁴ Although we are not aware of any litigation that has decided the status of the New Paltz marriages, the validity of these marriages is in question because these couples were not issued marriage licenses. Although there is a law in New York saying that a solemnized marriage is valid even when an actual license is not issued, it is not clear how that law would be applied to the New Paltz marriages.

Gay & Lesbian Advocates & Defenders (GLAD) is the leading legal rights organization in New England dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Through impact litigation, education and public policy work, GLAD seeks to create a better world that respects and celebrates diversity—a world in which there is equal justice under law for all.

GLAD's Legal Infoline and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

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Thank You!



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