

A Closer Look at Same-Sex Marriage, Civil Unions & Domestic Partnerships

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Under the Defense of Marriage Act, same-sex couples do not receive federal rights and benefits, regardless of any given state's benefits. The federally excluded same-sex couple rights include:

- Social Security benefits
- Pension plan benefits
- Spousal immigration rights
- Income tax benefits
- Gift and estate tax deductions

As a same-sex couple, there are measures you can take to protect you and your partner on a federal level, regardless of how a state's law and/or constitution defines marriage, civil unions and/or domestic partnerships. First, let's take a look at how some states take different approaches to the legal recognition of same-sex couples for benefits purposes:

Civil Marriage, Civil Unions & Domestic Partnerships

Civil marriage for same-sex couples is currently recognized in **Connecticut, District of Columbia, Iowa, Massachusetts, New Hampshire and Vermont.**

Some states provide same-sex couples with access to all the state level benefits and responsibilities of marriage, either through civil unions or domestic partnerships:

- CA (domestic partnerships)
- NJ (civil unions)
- NV (domestic partnerships)
- OR (domestic partnerships)
- WA (domestic partnerships)

Some states provide same-sex couples with at least some of the basic benefits and protections made available to married heterosexual couples:

- CO (designated beneficiaries)
- HI (reciprocal beneficiaries)
- MD (some benefits)
- ME (domestic partnerships)
- WI (domestic partnerships)

The states of Maryland, New Mexico and New York recognize same-sex marriages that are legally entered into in another jurisdiction.

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State Constitutional Amendments & Law

There are 29 states with **constitutional amendments restricting marriage** to one man and one woman:

AK AL AR AZ CA CO FL GA ID KS KY LA MI MO MS MT NB ND NV OH OK OR SC SD TN TX UT VA WI

There are 11 states with **laws restricting marriage** to one man and one woman:

DE HI IL IN MD MN NC PA WA WV WY

There are 19 states with **"Border Consequences."** These are states where the law or amendment has language that does, or may, affect other legal relationships, such as civil unions or domestic partnerships. These states include:

AL AR FL GA ID KS KY LA MI NB ND OH OK SC SD TX UT VA WI

It's important to note that laws and constitutional amendments are subject to change; they are not necessarily permanent. The summaries above only reflect the laws in effect as of January 2011.

Mimicking the Federal Rights of Marriage

As a same-sex couple, there are key documents you may want to consider drafting with your attorney. Each document will help allow you and your partner to keep control of your decisions, even when you may no longer be able to make decisions for yourself. In addition, these documents extend protection to a surviving partner or a partner who is still healthy when the other is not.

- A **will** is a document by which a person directs his or her estate to be distributed upon their death. Without it, the state decides where one's things go; generally to blood relatives, especially when a union is not legally recognized.
- A **Durable Health Power of Attorney**¹ is an instrument that grants authority to an individual to make medical decisions if one is physically and/or mentally incapacitated. This document can help keep control with the healthy partner.
- A **Durable Financial Power of Attorney** is an instrument that grants authority to an individual to make financial decisions for someone else. The power continues even if one becomes physically and/or mentally incapacitated. Again, this document can help keep the healthy partner in control of the finances.
- A **Living will** is an instrument by which a person provides clear direction as to his or her wishes regarding what heroic life saving measures should be undertaken – or not.
- A **Priority of Visitation** is a document that allows a partner to visit the other partner when one becomes hospitalized or institutionalized.

¹ "Durable" indicates the Power of Attorney will continue in the event the individual becomes incapacitated, whereas a general power of attorney is only effective while the individual is in full control, both physically and mentally.

In addition, **property generally transfers at death in one of four ways:**

- Automatically, through joint ownership (such as a savings account or house)
- By designation of a beneficiary (as through a retirement plan or life insurance policy, POD or TOD designation (Payable on Death/ Transfer on Death))
- Under the terms of a trust
- Through probate

As a same-sex couple, you should work with your attorney to help ensure your property is carefully titled and directed (wills, trusts, beneficiary designations) so that it passes as wished and to potentially help to minimize tax consequences. For example, properly titling a home will help ensure that the survivor continues residence, instead of running the risk of being evicted by otherwise legal heirs.

Lastly, there are measures same-sex couples can take to protect **retirement savings** for a surviving partner. A financial professional well-versed in retirement planning for same-sex couples can offer strategies that can help achieve this.

Seek Professional Guidance

Regardless of how a same-sex couple's state recognizes their union— marriage, civil union, domestic partnership, recognizing a union legally entered into in another state, or not recognizing it at all— it's important for same-sex couples to take measures that will legally protect their partners, decisions and assets.

The bottom line: Same-sex couples do not receive federal rights and benefits, regardless of any given state's benefits. Careful planning with an attorney and financial professional can help counter this – and can help keep couples in control while financially protecting each other.



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