



KNOW YOUR RIGHTS MARRIAGE EQUALITY

The U.S. Supreme Court ruled in *Obergefell v. Hodges* that the constitutional right to marry extends to same-sex couples. As a result, gay, lesbian, and transgender Texans now enjoy the freedom to marry in our state. Here are answers to frequently asked questions about marriage.

GETTING A MARRIAGE LICENSE IN TEXAS

In Texas the law provides that you must obtain a marriage license from a Texas county clerk's office before marrying your partner. Below we answer important questions about getting a marriage license in Texas.

Because requirements for obtaining a license often change and may vary in each county, please contact the county clerk's office you anticipate going to in order to verify the address, fees, and hours of operation.

Do we need a Texas marriage license if we are planning to get married in Texas?

Yes. Under the Texas Family Code, all couples must apply for and receive a marriage license from a county clerk's office in Texas in order to get legally married in the state. Once issued, the license is good throughout Texas, regardless of where you filed your license application. For example, if you and your partner received your marriage license from Denton County, you can still get married in Houston if you choose.

What is the application process like?

Texas law provides that in order to receive a marriage license a couple must:

1. Appear in person before the county clerk.
2. Submit proof of identity and age.
3. Fill out the application for a marriage license.
4. Take the oath printed on the application and sign the application before the county clerk.

Where do I get a marriage license? Who will issue it to me?

In Texas the law provides that you must appear before the county clerk at the county clerk's office from which you wish to receive a marriage license. However, in practice, depending on what city in Texas you're in, there may be multiple county clerk branch offices. An employee working at any of those locations can issue your license to you.

Example: If you wish to receive your license in Harris County there are multiple county clerk branch offices that you can go to. In a smaller Texas county such as Cameron County there is only one county clerk's office serving the entire county.

For a full list of all 254 counties in Texas along with their contact information, please visit: bit.ly/1fmD7C0

Do we have to go to the clerk's office in a particular town, city, or county?

You can get a license from any clerk in the state and use that license to get married anywhere in the state of Texas.

What if I am not a resident of Texas?

Neither one of you has to be a Texas resident to get a marriage license in Texas.

Do my partner and I have to apply for our marriage license together?

According to Texas law both applicants do not need to appear together to apply for their license. Any adult individual can apply on behalf of an absent applicant who is 18 years or older.

- The person applying on behalf of the absent applicant will need to provide a notarized affidavit from the absent applicant, and proof of the identity and age of the absent applicant.
- If this is your situation, your local county clerk's office will have more information about the proper procedures for absentee applications.

What forms of ID should I bring to apply for my marriage license?

Texas law requires that each applicant provide proof of identity and age. Proof can be established using many different forms of identification. Some common forms of ID that establish identity and age include:

- A driver's license or identification card issued by Texas or another state;
- A passport;
- An unexpired Certificate of United States Citizenship, Certificate of Naturalization, United States Citizen Identification Card, Permanent Resident Card, Temporary Resident Card, or other document issued by the federal Department of Homeland Security or the United States Department of State that includes an identification photograph;
- An original or certified copy of a court order relating to the applicant's name change or sex change.

For a full list of accepted forms of identification, please visit: bit.ly/1MSGmMN

Can an employee in the county clerk's office refuse to give me a license or refuse to sign my license application because he or she objects to marriages between same-sex couples?

While the Supreme Court's recent ruling on same-sex marriage did not address the obligations of county clerks specifically, we believe that the Court's ruling means that state civil servants are required to treat same-sex couples the same as any other applicants for a marriage license. Although everyone is entitled to his or her personal religious beliefs, no one has the right to use those personal beliefs to discriminate against or harm others. When county clerks review marriage license applications, they act on behalf of the State of Texas, which is required to treat same-sex partners equally under the law. If you are denied a marriage license because you are in a same-sex partnership, please contact the ACLU of Texas.

Are there any fees associated with obtaining a marriage license in Texas? Is there any way to waive them?

Yes. Fees for marriage licenses generally range from \$31 to \$71. The fees may vary from county to county, so contact the clerk's office to which you anticipate going for the exact amount and accepted payment methods. Up to \$60 of your license fee will be waived if you and your partner take the Texas premarital preparation course and complete it during the year preceding your application for a marriage license.

When will my marriage license become valid? Can I waive the waiting period?

Your marriage license will become valid 72 hours after you submit your application. Texas's 72-hour waiting period is mandatory, so this means that you must apply for the license more than three days before your wedding in order for your marriage to be legally valid. After the 72-hour waiting period is up, the marriage license remains valid for 90 days. After those 90 days, the license expires and can no longer be used to legalize your marriage.

- Couples who complete the state-offered premarital education class can have the waiting period waived. Additionally, if either you or your partner is on active military duty, then the 72-hour waiting period is automatically waived.
- If none of these exceptions apply to you, then you can ask any of the following judges to waive the 72-hour waiting period for good cause: a judge of a court with jurisdiction in family law cases, a justice of the supreme court, a judge of the court of criminal appeals, a county judge, or a judge of a court of appeals.

GETTING MARRIED IN TEXAS

Are there any courses that my partner and I can take to prepare us for marriage?

Yes. In Texas, couples are encouraged (not required) to attend a pre-marital education course that covers important marital skills and issues such as conflict management and communication. Contact the county clerk for a roster of area course providers. However, keep in mind that these courses were likely created with only different-sex couples and cisgender individuals in mind.

For more information about pre-marital courses, please visit: bit.ly/1NaDKuB

Who can perform our wedding?

Texas law allows only certain individuals to perform weddings in Texas. Generally, those individuals include: Officers of religious organizations who are authorized by the organization to perform weddings, judges, and magistrates.

For a specific list of individuals who can perform weddings in Texas, please visit: bit.ly/1TBH9an

I've lived with my partner for a long time. Are we common law married?

Texas law also refers to common law marriage as an informal marriage. For a couple to have an informal or common law marriage in Texas, they must: 1) Live together as a married couple in Texas, 2) represent to others that they are married, and 3) agree with one another that they are married.

So, whether you have lived with your partner for a short or long time, that alone does not automatically mean that you have entered into a common law marriage with your partner.

Although the Supreme Court didn't address common law marriage in its recent ruling about same-sex marriage, the Equal Protection Clause of the 14th Amendment of the U.S. Constitution requires Texas to treat your relationship as it would any other relationship. If you would like to enter into a common law marriage but feel you're being denied the right to do so, please contact the ACLU of Texas.

What if one or both of us was previously married?

In Texas there is a 31-day waiting period following a divorce to re-marry a new spouse. If you have been divorced from your previous spouse for 31 days then you can marry again in Texas. However, if you have been divorced for fewer than thirty one days, then Texas requires you to provide a certified copy of your divorce decree and a waiver granted by a Texas judge when you apply for your marriage license.

If we were married outside of Texas in another state or country can or should we marry again in Texas?

Texas generally recognizes a formal marriage conducted according to the law of any state or foreign country. After *Obergefell*, that same rule applies to same-sex couples married in other states. If a Texas court or governmental agency refuses to recognize your out-of-state marriage because you are in a same-sex partnership, you should contact the ACLU of Texas.

Do I have to change my last name if I get married?

No. You do not have to change your last name if you don't wish to. But if you would like to take your partner's last name, you may. In order to change your last name on all of your identification documents, you will need to notify each entity that you wish to be notified of your name change individually. You will want to consider notifying important government agencies of your decision. For instance, the Texas Department of Public Safety requires notification of name changes within 30 days.

In some cases, you may be required to show proof of your marriage to support your request for a name change. A copy of your marriage certificate is often accepted as a legal record to document this change. Certified copies of your marriage license can be purchased from a county clerk's office. Many people use a certified copy of their license when conducting business matters and keep their original marriage license as a keepsake.

Agencies you may want to notify of your name change include:

- U.S. Social Security Administration - www.ssa.gov
- U.S. Internal Revenue Service - www.irs.gov
- Texas Department of Public Safety - www.txdps.state.tx.us
- Your local county tax assessor-collector if you own real property
- Your local county voter registrar - <http://www.votetexas.gov/register-to-vote/did-you-change-something>
- U.S. State Department (for passports or visas) - www.state.gov
- U.S. Post Office - www.usps.com

For a fee, some companies provide services to manage your name change with these governmental agencies. While you may want to pay for this service, please be aware that government agencies usually do not charge for name changes.

If any of the government agencies above will not process your request because they will not recognize your same-sex marriage, please contact the ACLU of Texas.

What if my partner and I were married in another state and have separated?

Regardless of where you were married, same-sex spouses should now have access to state and local judicial forums in proceedings related to separation, divorce, orders of protection and the care and custody of any children of the couple. Prior to *Obergefell*, the State of Texas took the position that family courts could not grant divorces to same-sex spouses, which left some families in a legal limbo, unable to obtain legal orders separating their property or specifying their child custody arrangements. Although *Obergefell* didn't deal with divorce specifically, the holding of the case means that Texas courts and judges should treat same-sex couples the same as any other married couple. If you are being denied equal treatment because of your sexual orientation, gender identity, or gender expression in the context of a divorce, please contact us.

What kinds of benefits do I get from marriage?

Married couples enjoy many state and federal benefits that affect their ability to make joint decisions about their lives.

Health insurance benefits:

Whether you are entitled to add your spouse to your employer-provided health insurance depends on a lot of factors, including whether you work for a government employer or private company, what kind of coverage your employer offers, and what insurance company your employer uses. Here are a few basic guidelines, but you should consult your health plan for details about your situation.

State employers:

Texas law authorizes certain insurance benefits for spouses if you are a government employee. Under the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, Texas cannot treat government employees in same-sex marriages differently from other married employees. Thus, if you would otherwise qualify for spousal coverage, you shouldn't be denied because of your sexual orientation or gender identity. If your government employer denies you or your spouse health insurance benefits because you are same-sex partners where you would have been otherwise eligible, then contact the ACLU of Texas.

Austin, Dallas, Fort Worth, and Houston already provide benefits for same-sex spouses.

Private employers:

Whether a private employer will cover you or your spouse depends on different factors such as: the number of employees the employer has, if your employer currently offers health insurance to employees and their spouses, and the particulars of the pre-existing insurance policy such as whether it is insured or self-insured.

A private employer is not required to provide same-sex spouses with insurance coverage, even if such coverage is provided to other married employees. That's because neither state nor federal law prohibits an employer from discriminating against employees on the basis of sexual orientation. However, if your employer does not provide coverage to same-sex spouses, and you feel safe being out at work, consider asking your employer to extend coverage. It may be the case that your employer is willing to extend coverage but unaware that the policy does not currently provide it.

For more information about advocating for insurance equality in the work place, please visit: bit.ly/1bMFjAZ

Affordable Care Act coverage:

Insurers who offer coverage through the Affordable Care Act exchange must offer the same benefits to opposite-sex spouses and same-sex spouses. As long as a couple is married in a jurisdiction with legal authority to authorize the marriage, an insurance company can't discriminate against them when offering coverage through the exchange. This means that it must offer to same-sex spouses the same coverage it offers to opposite-sex spouses. This is true regardless of the state where the couple lives, the insurance company is located, or the plan is sold, issued, renewed, or in effect.

Family medical leave:

The federal Family Medical Leave Act (FMLA) applies to many government and private sector employers. If the Act applies to your employer, you are entitled to take unpaid time off from work to care for a sick spouse or child. You and your spouse are entitled to FMLA benefits where they apply. If you or your spouse are denied FMLA benefits because you are in a same-sex relationship where you otherwise would be entitled to them, contact the ACLU of Texas.

Other leave from work:

Under Texas law, private employers are not required to offer bereavement leave, sick leave, or parental leave, unless time off would be a reasonable accommodation under disability- or pregnancy-related laws. However, many private employers have voluntarily adopted policies providing for such leave—for example, upon the birth or adoption of a child. The law doesn't require private employers to provide such benefits on an equal basis. But larger companies often have leave policies that include all employees, regardless of sexual orientation or gender identity or expression. If your employer offers such policies only to

heterosexual employees, and you feel safe being out at work, consider asking your human resources department to extend the same benefit to you and your spouse. For more information about advocating for equal employment benefits at work, see: bit.ly/1bMFjAZ

If you are employed by a state or local government entity and your employer provides bereavement or parental leave, then under the Equal Protection Clause you are entitled to receive it as well.

Health care:

Married couples enjoy special rights to make decisions related to medical treatment for one another and to visit an ill spouse in the hospital. For example, if your spouse is too sick to make decisions about end-of-life medical care, Texas law provides that you can give instructions to the doctor and hospital based on your understanding of what your spouse would want in such circumstances.

Inheritance, property, ownership, and transfer of rights:

In Texas spouses generally have management and control of one another's property. Additionally, many Texas laws make it easier for spouses to inherit and jointly own property.

Example: Texas is a community property state, meaning that spouses jointly own most property acquired during their marriage. For example, if you purchase a home during your marriage, the law will presume that both you and your spouse legally own the home together. In order to overcome that presumption, you'd have to take special steps to show that you paid for the home with resources you own separately. Similarly, you and your spouse generally both have control of the money in your bank accounts, furniture in your homes, or pets that you've acquired while together.

Workers compensation and wrongful death claims:

In Texas, state employers must carry workers' compensation insurance coverage, while private employers have the choice of providing it or not. Spouses may receive workers' compensation benefits if a spouse dies in the workplace, and they may bring a wrongful death suit and related civil claims that are dependent on the marital status.

If you or your spouse is employed by the state, then you are entitled to these benefits under the Equal Protection Clause of the 14th Amendment. If you or your spouse is denied these benefits because you are same- sex partners then contact the ACLU.

Cemetery plots:

Spouses have rights to possession, care, control and succession to ownership of, and right of interment in, a public cemetery plot.

Spousal privilege:

In legal proceedings, discussions between spouses are protected from disclosure

in court. Therefore, you can't be compelled to testify about private conversations between you and your spouse. Moreover, if your spouse is accused of a crime, you can't be compelled to testify for the state against your spouse.

Federal marriage benefits

Married, same-sex couples should have access to the federal benefits of marriage as well. Federal marriage benefits include:

Taxes:

Spouses are able to file joint federal tax returns, take advantage of the marital exemption to gift taxes, and take the marital deduction on a taxable estate.

Immigration:

A spouse may sponsor his or her spouse for immigration purposes.

Bankruptcy:

Spouses have the option of filing a joint petition for bankruptcy.

Social Security benefits:

Spouses who qualify have access to Social Security spousal benefits.

Military benefits:

The spouse of a service member is entitled to a number of benefits including insurance, housing allowance, visas, and access to legal assistance.

What kinds of obligations does marriage entail?

Marriage establishes numerous legal responsibilities between spouses. For example, under Texas law, each spouse has a duty to support the other with necessities, which have been defined as expenses such as food, shelter, and medical services. Other obligations include liability for a spouse's debts, restrictions on your freedom to make decisions regarding property, and certain inheritance restrictions.

Can a church or member of the clergy refuse to marry my partner and me?

Yes. Although the Supreme Court's recent ruling guarantees civil recognition of your marriage, it does not and cannot require houses of worship or clergy to perform religious marriage ceremonies for same-sex couples. The First Amendment's guarantee of religious liberty protects clergy members and houses of worship from having to conduct ceremonies that are contrary to their faith beliefs. However, many religious institutions allow or even require their clergy to marry same-sex couples. If you want a religious ceremony, there are many houses of worship that will joyfully help you celebrate your marriage.

PARENTING

If I marry my partner, what is my legal relationship to his or her biological children? What about children we're parenting together?

Getting married in Texas does not automatically create parental rights for a spouse where they did not exist before. Thus, adoption is necessary in order to create parental rights for a spouse who was not the child's legal parent before marriage.

In Texas, any adult may petition to adopt a child if the child either has no parents or has one parent who consents to the adoption. Additionally, same-sex couples can jointly adopt children in Texas. In a joint adoption, the law recognizes both individuals as the parents of the child.

However, it is currently the policy of the state registrar to list only one parent on the birth certificate in the case of same-sex partners. While the Supreme Court's ruling in *Obergefell* does not address adoption, its holding stands for the proposition that all loving couples should be treated equally by the state. We believe that if you legally adopt a child with your partner, you have the right to be listed with your partner on the child's birth certificate. We are working to make that right available to lesbian, gay, and transgender Texans.

For any decisions or questions concerning adoption, you should consult a family law attorney. Before choosing a lawyer, ask about his or her experience helping lesbian-, gay-, and/or transgender-headed families.

If my partner and I get married, can an adoption or foster agency discriminate against us?

Texas law does not prohibit same-sex couples from adopting, but it also does not have laws to prohibit private adoption agencies from discriminating against same-sex couples. You should consult an attorney who specializes in helping same-sex couples adopt; he or she can direct you to an agency that does not discriminate.

If my spouse and I divorce, will I be able to see my children?

Every case is different, but your right to continued involvement in the lives of the children you and your spouse are raising together is more likely to be protected in divorce if you have a legal relationship with the children. If you are not the children's biological parent and have not legally adopted them, the court may not recognize your relationship to them, especially if your spouse does have a legal relationship and is opposed to your ongoing involvement in their lives. If this is your situation, you should consider consulting with an experienced family law attorney about how to protect your relationship to the children before you file for divorce.

Can a judge deny me custody of my children because of my sexual orientation, gender identity, or gender expression?

Texas law requires judges to make decisions about child custody, visitation, and support based upon the best interests of the child. A parent's sexual orientation, gender identity, or gender expression should not factor into the judge's analysis of the best interests of the child, but the fact is that judges have a lot of discretion to fashion orders. Some judges may rely on discredited stereotypes about our ability to parent or on personal religious beliefs about lesbian, gay and transgender people. If you have been denied access to your children because of your sexual orientation, gender identity, or gender expression, please contact us.

DISCRIMINATION

Can my employer refuse to provide my same-sex spouse with employment benefits that they give to opposite-sex spouses or refuse to recognize my marriage as valid?

With respect to benefits required by federal law such as family leave, employers cannot deny you such benefits if you are otherwise eligible for them. However, for benefits like health insurance the answer is more complicated. It depends on whether the employer is a government or private entity.

Federal, state, municipal, and local government employers are generally required by the Equal Protection Clause of the 14th Amendment of the U.S. Constitution to treat people who are similarly situated the same. Denying employees health insurance benefits on the basis of the employee's sexual orientation or gender identity would violate this important principle. If you or your spouse's government employer denies you benefits, contact the ACLU of Texas.

However, private companies or non-profits that offer health insurance through a Texas state-licensed insurance company or that offer “self-funded” ERISA-governed plans may define spousal coverage for themselves through the terms of their plans. Such employers can choose either to cover same-sex spouses, or to exclude them from spousal coverage. You should check with your employer to determine how your insurance plan defines spousal coverage. Consult with an attorney if you have any questions about your benefits.

Can an employer refuse to hire me because I’ve married my same-sex partner?

In general, no state or federal law prohibits a private employer from firing or refusing to hire you based on your sexual orientation. As a result, you are only protected from employment discrimination by a private employer if you live in a city that has enacted a municipal ordinance prohibiting such discrimination. For example, Austin, Dallas, Fort Worth, and Houston, have local laws that prohibit private employers from discriminating against their employees on the basis of their gender identity or sexual orientation. Even more cities have policies that prohibit the city from discriminating against its own employees on the basis of sexual orientation or gender identity.

If you have experienced discrimination by a private employer, consult your city’s website or contact the city government to determine whether and how you can file a complaint.

Can a private business, such as a florist or photography studio, refuse to provide a service for my wedding because I am marrying someone of the same sex?

Whether you are protected against discrimination by private business owners depends on where you live. In general, neither state nor federal law prohibits discrimination based on an individual’s sexual orientation. However, several cities in Texas have passed ordinances that provide some protection against discrimination by the owners and employees of places of public accommodation. These cities include: Austin, Dallas, Fort Worth, Houston, and San Antonio.

A place of public accommodation is a business with a physical location that is open to the public and offers goods or services for sale. For example, hotels, motels, restaurants, bars, theaters, grocery stores, and skating rinks are all generally places of public accommodation. In contrast, private clubs and facilities operated by social, fraternal, educational, civic, or religious organizations are generally not places of public accommodation and, therefore, are not covered by these ordinances.

Example: A church can legally refuse to perform your wedding ceremony.

If an owner or employee of a place of public accommodation has discriminated against you on the basis of your sexual orientation, gender identity, or gender expression, consult your city's website or contact the city government to see how you can file a complaint, or contact the ACLU of Texas.

Can I be discriminated against by my landlord because I married my partner?

Neither federal nor state law prohibits discrimination specifically on the basis of sexual orientation or gender identity. However, an LGBT person's experience with sexual orientation or gender identity discrimination may still be covered. The Fair Housing Act prohibits discrimination based on sex; this includes discrimination based on a person's failure to conform to gender stereotypes. For example, it is illegal for a landlord to refuse an apartment to a transgender person solely because he or she does not conform to traditional notions of masculinity or femininity.

If you live in HUD-assisted or insured housing, your landlord has to comply with regulations that prohibit discrimination based on sexual orientation, gender identity, and marital status. This requirement applies to housing providers that receive HUD funding and housing providers that have loans insured by the Federal Housing Administration.

Local laws may also protect you from discrimination in housing. Austin, Dallas, Fort Worth, Houston, and San Antonio, for example, all have ordinances that make it illegal to refuse to rent or sell a house to someone because of his or her sexual orientation or gender identity.

If you are denied housing because of your same-sex marriage, contact the ACLU of Texas.

What if I am discriminated against?

Whether you are protected against discrimination depends on many factors, such as who is doing the discriminating and where you live.

All government actors must abide by the Constitution, which prohibits the government from treating similarly situated people differently without a good reason. Discrimination on the basis of your marriage to a person of the same sex may violate this important principle. If an employee of state or local government discriminates against you because you have or are attempting to marry your same-sex partner, please contact the ACLU of Texas.

There is no state or federal law that prevents discrimination by most private entities on the basis of sexual orientation. However, local laws in cities such as Austin, Dallas, Fort Worth, Houston, and San Antonio may provide some protection from discrimination. If you have questions about when your rights are protected by law and when they are not, please contact the ACLU of Texas.

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