

Entering into a Hawai'i Civil Union: Here's how it works, what it means and how to do it!

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Please note: This brochure provides general information, not legal advice. Entering a civil union will be a major step because the law provides all spousal rights and obligations under Hawai'i law to civil union partners. Yet, you may still need wills, powers of attorney, second-parent adoptions, and other legal documents to protect you, especially when traveling. You should consult an attorney about your needs. Long-term couples and those with significant property especially should get advice about possible tax consequences and ways to protect pre-civil union property if you wish.

When do the rights and responsibilities for civil union partners take effect?

The Hawai'i civil union law will take effect January 1, 2012, and civil union partners will have access to the full range of state law rights and responsibilities when they enter into their civil union. Rights and responsibilities related to Hawai'i state tax laws will apply to taxable years beginning after December 31, 2011.

Who will be able to enter a civil union?

A same-sex or different-sex couple will be able to enter a civil union if:

- Both partners are at least 18 years old;
- Neither is a partner in another civil union, a spouse in a marriage, or in a reciprocal beneficiary relationship;
- The partners are not close relatives; and
- A partner under supervision of a conservator or guardian has that person's consent.

Will a same-sex couple's marriage, civil union, or registered domestic partnership from another state be recognized as a civil union in Hawai'i?

The law provides that "all unions" couples have entered in other jurisdictions that are not recognized as marriages in Hawai'i shall be treated as civil unions, as long as those unions were validly entered, the couple meets the requirements for a Hawai'i civil union, and the

union can be documented. For example, if a same-sex couple entered a valid marriage in Massachusetts, meets Hawai'i's civil union requirements, and can document their marriage, they will be recognized as civil union partners in Hawai'i.

Because the law is still developing, we expect further guidance in the future about the out-of-state unions recognized as civil unions in Hawai'i. When in doubt, consult an attorney.

How do couples enter a civil union?

The Department of Health will make available an online registration system after midnight on January 1, 2012. The agency has also prepared an information page with detailed guidelines on how to obtain your license. To view this site, visit <http://hawaii.gov/health/vital-records/vital-records/civilunion/index.html>.

Couples must obtain a license from an authorized civil union agent. The online application system should provide applicants with a list of registered agents. Within 30 days after the license is issued, a judge, retired judge or clergy person must solemnize the couple's union.

Note: If a same-sex couple registered as reciprocal beneficiaries wishes to enter a Hawai'i civil union, or to have an out-of-state union recognized as a civil union in Hawai'i, they must first terminate their Hawaii reciprocal beneficiary relationship. If the termination occurred within 30 days of applying for a civil union license, proof of termination must be presented to an authorized civil union agent.

How do couples terminate their Hawai'i reciprocal beneficiary relationship?

Guidelines on how to terminate your RB are available at <http://hawaii.gov/health/vital-records/vital-records/civilunion/health/vital-records/vital-records/reciprocal/index.html>.

Currently, terminating a reciprocal beneficiary relationship must be done by mail. It is important to note that mailing in your Declaration of Termination form does not complete the termination. The state health director must sign a Certificate of Termination before the relationship status is terminated.

To help minimize any gap in protections between terminating a reciprocal beneficiary relationship and entering a civil union, the Honolulu office of the Department of Health now offers the option of telephone or email notification for in-person pick-up of the Certificate of Termination. These options are indicated at the bottom of the Declaration of Termination form.

What rights and obligations will civil union partners have in Hawai'i?

Family Law Rights and Responsibilities

- Duties of joint financial support and liability for family debts during the relationship;
- Access to step-parent and joint adoption;
- Legal presumption that both partners are parents of children born into the civil union – *but adoption is still important, especially for interstate travel*;
- Dissolution of the civil union in family court, including access to equitable division of the relationship assets and debts;
- Right to seek financial support upon breakup;
- Access to custody, visitation and support orders concerning children upon breakup;
- Protection under domestic violence and crime victim laws.

Medical and Death-Related Rights

- Hospital visitation, medical decision-making;
- Priority to administer deceased partner's estate, and to authorize anatomical gifts and release of medical records, and to make funeral arrangements;
- Right to seek money damages for partner's wrongful death, lost financial support and companionship;
- Right to inherit in the absence of a will;
- Same protection spouses receive against duty to repay public medical costs upon death of partner; and
- For State employees, partner health insurance and other family benefits.

Other Rights and Responsibilities

- Right to file joint state income tax returns, and state tax exemption regarding value of partner health insurance;
- Right to hold real property in "tenancy by the entirety" (which offers some protection against creditors);
- Some workplace benefits, including sick leave to care for ill partner, and where work injury causes death, funeral and burial expenses, and death benefits;
- Equal treatment as spouses under state insurance laws, unless they conflict with federal law;
- Right not to testify against civil union partner;
- All state law rights and responsibilities spouses receive through marriage, including many others too numerous to list here.

What rights and responsibilities of marriage will NOT be given to civil union partners?

- All federal rights and responsibilities, including the ability to file joint federal income tax returns; exemption from income tax on domestic partner health insurance; social security survivors' and spousal benefits; exemption from inheritance tax; spousal protections in bankruptcy; federal veterans' spousal benefits; immigration rights; and
- Automatic legal status in most other states.

When might a couple be advised NOT to enter a civil union?

- If they wish to adopt from a state or country that may not approve adoptions by lesbians, gay men, same-sex couples or unmarried different-sex couples;
- If either depends on public assistance;
- If either is a foreign national without permanent legal status in the U.S.;
- If either or both do not want the state law rights and mutual responsibilities the new law will provide civil union partners, or are concerned about the open questions about how state law will interact with federal laws that do not recognize same-sex couples or unmarried different-sex couples.

Will couples get these new rights if they just register as domestic partners with an employer or as reciprocal beneficiaries with the State?

No. Couples who have registered with an employer for domestic partner benefits and/or as reciprocal beneficiaries with the State of Hawai'i will not be protected under the new law unless they enter a civil union.

This brochure is brought to you by Lambda Legal, and the ACLU of Hawai'i and Equality Hawai'i. For legal information or help finding a lawyer, contact Lambda Legal or the ACLU of Hawai'i. To work on bringing marriage equality to Hawai'i, contact Equality Hawai'i at info@equalityhawaii.org.

Civil union partners will receive all spousal rights and duties under Hawai'i law. But civil unions still do NOT equal marriage. True equality for same-sex couples requires marriage equality. Get involved and help end anti-gay discrimination in civil marriage!



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