

On December 1<sup>st</sup>, 2010, the Illinois Senate approved the Illinois Religious Freedom Protection and Civil Union Act, after the Illinois House's approval the previous day. With the Governor's signature on February 1, 2011, the Civil Union Act became the law of Illinois effective June 1, 2011, and the extensive and crucially important state law protections available by joining in a civil union or by marrying outside of Illinois became available to Illinois same-sex couples. The following Guide to Civil Unions will help you learn about this important legislation.

In June 2013, the U.S. Supreme Court in the case of *United States v. Windsor* overturned Section 3 of the Defense of Marriage Act ("DOMA")—the law that prohibited the federal government from providing spousal protections and obligations to same-sex couples. In that case, the ACLU successfully persuaded the Court that DOMA violated the rights of same-sex couples to equal protection. As a result, all of the federal spousal protections and obligations are now available to same-sex married couples in states where their marriages are recognized. However, those benefits are largely unavailable to couples in civil unions. Some, but not all of those benefits, are available to same-sex couples who legally marry outside of Illinois but now live in Illinois. It is therefore important for same-sex couples to consider the importance of federal spousal protections before they make a decision about entering a civil union.

Questions about how this law relates to your specific situation may require you to consult a lawyer. If you read this Guide and still have questions about why you have been unable to obtain a civil union or why your civil union is not being treated the same as a marriage, then contact us:

**By Phone:** (312) 201-9740  
(800) 572-1092 (inside Illinois only)

**By Fax:** (312) 201-9760

**By Post:** ACLU of Illinois Intake Department  
180 N. Michigan Ave., Suite 2300  
Chicago, IL 60601

**Online intake form:** [For LGBT/HIV cases only.](#)

## CIVIL UNION BASICS

### What is a civil union?

In Illinois, a civil union is a legal relationship between two people—either of the same or different sex—providing all of the legal obligations, responsibilities, protections and benefits that Illinois law grants to married couples. But a civil union is not a marriage; and even with the overturning of the Defense of Marriage Act (“DOMA”), a civil union does not provide the great bulk of *federal* protections or responsibilities to couples who enter into one. Further, a civil union will be recognized for state law purposes only in certain other states, not by all states. To learn more about the availability of federal protections for same-sex couples, see <https://www.aclu.org/lgbt-rights/after-doma-what-it-means-you>.

Download a copy of the Illinois Religious Freedom Protection and Civil Union Act from <http://www.ilga.gov/legislation/96/SB/PDF/09600SB1716lv.pdf>.

### What rights and responsibilities will couples have if they get a civil union?

Couples who enter into a civil union in Illinois have every obligation and protection provided *by Illinois law* to married couples. These obligations, responsibilities, protections, and benefits may be found in Illinois statutes, administrative rules, policies, court decisions (common law), or any other source of state law. They include:

- The ability to own property jointly, including the presumption that the property obtained by either partner after joining in a civil union is owned jointly;
- Certain protections against losing your joint property to creditors;
- The right to make decisions about one another’s medical care if either of you is unconscious or otherwise unable to make those decisions;
- Rights to keep private your conversations and to avoid testifying against one another;
- The right to court-supervised distribution of property if you and your partner break up;
- The right to share the same nursing home room;
- Pension protections for surviving partners of teachers, police officers, and firefighters, and those other state, county, and municipal employees whose pension benefits pass to their spouses at death;
- Workers’ compensation benefits for partners of employees who are accidentally injured or killed at work;
- The ability to recover for your partner’s wrongful death;
- Intestacy rights to ensure that your surviving partner will receive some or all of your property if you die without a will.

**Can I access the rights and responsibilities of a civil union by marrying in a state or country where same-sex couples can marry? What if I have a civil union or domestic partnership from another state?**

Illinois recognizes *as a civil union* any marriage between persons of the same sex, civil union, or another “substantially similar” legal relationship (other than common law marriage) which was legally entered into in another state. For example, some states (such as Nevada and Oregon) allow same-sex couples to enter “domestic partnerships” which provide those couples the same rights, benefits, and responsibilities as marriage. Such domestic partnerships are substantially similar to a civil union, even if the name used is different, so they will be recognized as a civil union in Illinois.

You do not need to go through the process of receiving a license and certifying the union in order to have the protections provided by a civil union.

Because a marriage from a state that allows same-sex couples provides you with both the *state law* benefits of marriage as well as many *federal law* spousal protections, it may be a better option for same-sex couples who are able and willing to leave the state to marry.

## MARRIAGE AND CIVIL UNIONS

### **How is a civil union different from marriage?**

Same-sex couples who enter a civil union in Illinois will *not* have the great bulk of the *federal* spousal protections and responsibilities that are available through marriage. These include federal veterans' spousal benefits, immigration rights associated with marriage, federal spousal employment benefits, the right to file joint federal tax returns, exemptions from income tax on your partner's health benefits, the federal exemption from inheritance tax, and many other federal protections. One benefit that may be available to same-sex couples in civil unions is Social Security, and the Social Security Administration is now processing retirement spousal claims for same-sex couples, including those in civil unions. If you believe you are entitled to such benefits, you should apply as soon as possible since the date you file can affect the amount of benefits you receive. See <http://www.ssa.gov/same-sex-couples>.

Also, most other states will not recognize the legal status of your civil union, even though they would recognize the Illinois marriage of a different-sex couple. This means that when you travel or if you move to another state or country, your union may not be recognized. As a result, you should consider taking certain precautions before you travel, such as executing health care and financial powers of attorney and carrying those with you.

Finally, civil unions represent, for many people, a second-class status when compared to marriage. Civil marriage is a widely recognized and respected social structure for two people who have committed to build their life together. Civil unions are not universally understood. It is doubtful that they will be given the same level of respect as marriage in Illinois and elsewhere. What is already clear is that different-sex couples get to choose whether to enter a civil marriage or a civil union; same-sex couples are given only the civil union option.

### **Will my partner and I have more rights if we get married in Iowa or another state or country that allows same-sex couples to marry than if we enter a civil union in Illinois?**

Yes. If you are a same-sex couple, the State of Illinois will recognize your marriage as a civil union and give you all the protections and responsibilities described above. But it won't consider you married. However, now that the Defense of Marriage Act ("DOMA") has been overturned, the federal government will recognize your out-of-state marriage—so long as it was legal where celebrated—for purposes of certain important federal obligations and benefits, including immigration, federal pension benefits, federal spousal health care benefits, Medicare, Social Security benefits, active duty military benefits, and federal income tax purposes. Until marriage is legal here in Illinois, the federal government will not, however, recognize your out-of-state marriage for purposes of veterans' benefits and family medical leave. As to the other more than 1000 benefits, there is no sure answer.

If you are a resident of Illinois, it may be easier to dissolve a civil union in Illinois than trying to dissolve a marriage in another state.

### **What is the Defense of Marriage Act (“DOMA”)?**

DOMA is the federal law that prohibited the federal government from recognizing marriages of same-sex couples for purposes of federal protections and obligations. In *United States v. Windsor*, the U.S. Supreme Court struck down Section 3 of DOMA, so that the marriages of same-sex couples must now be treated the same by the federal government as those of different-sex couples. The ACLU represented Edie Windsor in the lawsuit that led to this historic victory. To learn more about her case, see <https://www.aclu.org/lgbt-rights/windsor-v-united-states-thea-edie-doma>. To learn more about what the end of DOMA means for you, see <https://www.aclu.org/lgbt-rights/after-doma-what-it-means-you>.

### **What if my partner and I really want to get married in Illinois? Should we wait for marriage to be legal in Illinois? And if we enter a civil union, will that prevent us from marrying?**

Whether to marry outside Illinois or join in an Illinois civil union is a personal choice, but not taking advantage of the important protections offered by civil unions—either by marrying where same-sex couples may do so or entering a civil union in Illinois—may leave you and your partner at risk in certain important ways. For example, the civil union status will guarantee that you will be able to make medical decisions for your partner if he or she is unconscious even if you are unable to show the hospital staff an executed power of attorney.

Also, it is very unlikely that entering a civil union now would prevent you from marrying when doing so becomes legal in Illinois in the future. In Vermont, New Hampshire, and Connecticut where civil unions were available prior to marriage, couples who had already joined in a civil union were able to marry once same-sex couples were able to marry. The marriage bill pending in the Illinois General Assembly would allow you to marry even if you already have a civil union. However, marrying outside of Illinois would likely prevent you from marrying in Illinois.

### **What if I would like to have a civil union in Illinois even though I married elsewhere?**

Couples who are already married or joined in a civil union or similar relationship cannot enter into a new civil union in Illinois. That is the same law that applies to different-sex couples—once they marry in another state, they don’t remarry here. Because Illinois will recognize your marriage, civil union, or comprehensive domestic partnership as a civil union, you don’t need to enter into a new Illinois civil union; you’re already in one. If you are unsure whether your existing legal relationship is “substantially similar” to a civil union, then you may want to seek advice from a lawyer.

**Once we have a civil union in Illinois, can we get married in a state or country that allows lesbian, gay, and bisexual couples to marry?**

It depends on the law of that state or country. Entering into multiple civil unions or marriages in different states or countries could create problems down the road if you decide to dissolve your legal relationship.

## **ENTERING INTO A CIVIL UNION**

### **Who can get a civil union?**

Two people can enter a civil union if they are:

- at least 18 years old;
- not in a civil union, marriage, or another substantially similar legal relationship;
- not closely related to each other (for example, not a sibling, descendent, aunt, uncle, or cousin).

### **Are civil unions just for same-sex couples?**

No. Any couple, whether they are of the same or different sex, can enter a civil union. Some different-sex couples may decide to enter a civil union instead of a marriage because of the impact of marriage on certain private pension or health insurance benefits.

### **When did civil unions become available in Illinois?**

June 1, 2011.

### **How can my partner and I enter a civil union in Illinois?**

First, you must fill out an application and present it to the county clerk, with any applicable fees. Once the county clerk ensures that you are qualified for a civil union, he or she will issue a license and a certificate for a civil union. The license becomes effective the next day and expires after 60 days.

Once you receive the license and certificate, the civil union must be certified. A civil union may be certified by a judge, a retired judge, a county clerk in counties with more than 2,000,000 inhabitants, by public officials who may solemnize marriages, or by an officiant in accordance with any religious denomination, Indian Nation or Tribe or Native Group. Religious organizations are *not* required to officiate at a civil union, but they may do so if they wish. The person who officiates over your civil union must complete the certificate and return it to the county clerk within 10 days.

### **Can we enter a civil union in Illinois even though we don't live there?**

Yes. But prior to issuing a civil union license, the county clerk will verify—through affidavits or other means—that you are not prohibited from entering into such a legal relationship by the laws of your home state.

**If I already registered as a domestic partner with my city or my employer, do I have to do anything else?**

Yes! To get the benefits of a civil union, you will need to take the steps described above.



## **CIVIL UNIONS AND PARENTAL RIGHTS**

### **How does a civil union affect parental rights?**

To be sure that both partners in a civil union have legally enforceable parental rights to your children, the partner who is neither a biological nor an adoptive parent should enter into a second-parent adoption. This is the only way to be certain that both parents' legal relationships with your children are recognized in Illinois, by the federal government, and outside of Illinois when you are traveling or if you move.

The protections offered you and your partner by a civil union, such as pension and inheritance protections, may benefit your children, and there may be other ways in which entering into a civil union will help your children. But to protect your parental relationship, you must make sure that both you and your partner are related as a biological or an adoptive parent to your child. If your parental rights are challenged—whether or not you and your partner have entered into a civil union—please contact the ACLU of Illinois.

## **DISSOLVING A CIVIL UNION**

### **Can civil unions be dissolved?**

Yes. The dissolution of a civil union in Illinois happens under the same laws applicable to marriage dissolution. That means the courts are available to resolve disputes about division of property, child custody and visitation, and other issues that commonly arise when marriages break up.

### **What if I live in another state when I want to dissolve my Illinois civil union?**

By entering into an Illinois civil union, you agree that the Illinois courts have authority over your relationship. That means that you can dissolve your civil union through the Illinois court system even if one or both of you no longer live in Illinois when you break up (and even if you never lived in Illinois in the first place).

## **PROTECTING YOUR RIGHTS**

### **Are there reasons why I should not get a civil union?**

A civil union will have many of the rights and responsibilities of marriage. People may decide not to enter a civil union for the same reasons that people choose not to get married, including disqualification from state public assistance programs based on joint income.

Same-sex couples have other considerations too. For example:

- Entering a civil union might create complications for people with certain immigration statuses and an out-of-state marriage could be a better option for you than an Illinois civil union. It is important that you consult an immigration lawyer before you decide whether to enter a civil union or marriage. See the FAQs for Binational Couples prepared by Immigration Equality: <http://immigrationequality.org/issues/couples-and-families/faqs-for-binational-couples>.
- If you are adopting a child from a state or country which allows single parent adoptions, but forbids adoptions by lesbians, gay men, or same-sex couples, a civil union may complicate the adoption or even prevent it from going forward.

If you have questions about any of these situations, you should consult a lawyer.

### **If my partner and I decide to enter into a civil union, is there anything else we should do to protect our relationship?**

In addition to executing powers of attorney and, if you have children, obtaining a second-parent adoption to protect both of your parental relationships, you should seek legal advice about additional precautions you may need to take. Laws regarding same-sex couples are changing rapidly and will continue to do so. Those changes may affect your legal rights in Illinois and in other states and countries where you may travel or live in the future.

### **I am having trouble getting a license for a civil union before my county clerk. What should I do?**

The law requires county clerks to take certain steps in formalizing civil unions. If your local county clerk is refusing to issue licenses and certificates, contact us:

**By Phone:** (312) 201-9740  
(800) 572-1092 (inside Illinois only)

**By Fax:** (312) 201-9760

**By Post:** ACLU of Illinois Intake Department

180 N. Michigan Ave., Suite 2300  
Chicago, IL 60601

**Online intake form:** [For LGBT/HIV cases only.](#)

This set of questions and answers is for educational purposes only and is not intended to serve as legal advice. For specific answers to your individual situation, please see an attorney.