

Colorado Civil Union Law

Disclaimer: This document only offers general information and is not intended to provide legal advice regarding any person's specific situation and does not create an attorney-client relationship of any kind. The area of law discussed in this document is new to Colorado and is an area of the law that is constantly evolving on a state and national level, as such there is bound to be uncertainty regarding this area. If you have specific questions, encounter difficulties with your own relationship, or need other legal advice, you are encouraged to contact an attorney that practices in this area.

The Colorado Civil Union Act passed the state legislature on March 12, 2013 and was signed by the Governor on March 21, 2013. The majority of the law goes into effect on May 1, 2013. This document answers some of the frequently asked questions about the Colorado Civil Union Act and what it means to Colorado's citizens.

WHAT IS A CIVIL UNION?

Under Colorado law, a civil union is a legally recognized relationship of two eligible people. A civil union entitles the couple to receive the same benefits and protections as a married couple, as well as subjects the couple to the same responsibilities as a married couple. In Colorado, a civil union may be entered into by both same-sex couples as well as by opposite-sex couples.

A civil union is not a marriage under Colorado law. Colorado's Constitution and the Colorado Civil Union Act define marriage as between a man and a woman.

WHEN CAN I GET A CIVIL UNION?

The civil union law goes into effect on May 1, 2013. County Clerks may issue civil union licenses only during the hours that the office of the County Clerk and Recorder is open as prescribed by law. Some County Clerks in Colorado may be planning special hours and celebrations on May 1, 2013 in honor of civil union passage. Those will be announced closer to that date.

WHO CAN ENTER INTO A CIVIL UNION?

You may enter into a civil union if:

1. Both parties are at least 18 years of age;
2. Neither party is under a guardianship, unless that party has the written consent of his or her guardian;
3. Neither person is a party to a separate civil union;
4. Neither person is married to another person; and

5. The parties are not closely related to each other through birth.

The parties are not required to be of the same gender in order to enter into a civil union, nor are they required to be Colorado residents.

HOW DO I GET A CIVIL UNION?

To enter into a civil union in Colorado you must obtain a civil union license. To obtain a license the parties must complete an application. Application forms are available at the County Clerk's office and may also be available online. Both parties must sign the application attesting to the accuracy of the facts therein, however, only one party is required to appear at the County Clerk's office to submit the application and pay the applicable fee. The fee for the license is \$27 plus an additional amount for Vital Statistics (currently the total fee would be \$30). Bring a form of identification with you, such as a birth certificate, driver's license, or other comparable identification. Additionally, if you were previously married or party to a civil union, you might also want to bring proof that you are no longer married or in a civil union, just in case the Clerk requests to see it (*i.e.* a copy of the divorce or dissolution decree, death certificate, etc.).

Upon payment of the fee and a determination that the parties meet the criteria for eligibility for a civil union, the County Clerk shall issue a civil union license and a civil union certificate form.

A civil union license is only valid for 35 days from the date of issuance, and only valid in Colorado. If the license is not used within the 35-day period, it is void and one of the parties must return it to the issuing County Clerk for cancellation.

Once you have a civil union license you must have the civil union certified. A civil union may be certified by any of the following:

1. Judge of a Court;
2. District Court Magistrate;
3. County Court Magistrate;
4. Retired Judge of a Court;
5. The parties to the civil union; or
6. In accordance with any mode of recognition of a civil union by any religious denomination or Indian Nation or Tribe.

Note that a Priest, Minister, Rabbi, or other official of a religious institution or denomination or an Indian Nation or Tribe is not required to certify a civil union in violation of his or her right to the free exercise of religion.

Within 63 days of the date on which the civil union is certified, either the person certifying the civil union or the parties to the civil union, must complete the civil union certificate and return it to the County Clerk's office that issued the License. Failure to timely return the civil union certificate will result in late fees being assessed.

Upon receipt of the civil union certificate, the County Clerk will register the civil union.

WHAT IMPACT DOES THE COLORADO CIVIL UNION ACT HAVE ON A DOMESTIC PARTNERSHIP AGREEMENT OR CIVIL CONTRACT THAT I PREVIOUSLY ENTERED INTO?

A valid Domestic Partnership Agreement or civil contract entered into by two individuals that were not married to each other, wherein the individuals set forth an agreement about the rights and responsibilities regarding matters similar to those addressed in the Colorado Marital Agreement Act, which was entered into prior to May 1, 2013, is not invalidated or otherwise affected by the Colorado Civil Union Act. If the Domestic Partnership Agreement or civil contract is made on or after May 1, 2013, and not made in contemplation of entering into a civil union it is also not invalidated or affected.

WHAT IF I HAVE ENTERED INTO A MARRIAGE, CIVIL UNION, OR REGISTERED DOMESTIC PARTNERSHIP ELSEWHERE, DO I HAVE TO ENTER INTO A CIVIL UNION IN COLORADO?

As soon as the law goes into effect in Colorado, the State of Colorado will treat any out-of-state marriage, civil union or substantially similar legal relationship that was created in another jurisdiction as a civil union. However, the civil unions law does not contain any procedure to register your civil union with the State of Colorado if you have been married or otherwise legally joined elsewhere. Thus, you will need to alert others from whom you are seeking recognition that you have civil union status.

Any previously executed designated beneficiary agreement remains in effect until one of the parties enters into a civil union. When that occurs the designated beneficiary agreement is automatically revoked.

As always, even though your relationship will be recognized as a civil union in Colorado, you should still have legal documents in place, such as wills and powers of attorney, in case you travel to states that do not recognize your legal relationship.

CAN I CHANGE MY NAME AFTER ENTERING A CIVIL UNION?

You should be able to change your name, though the complete process is not clear at this time. You need to make sure to designate the name change on your civil union certificate, assuming there is a space for this designation. You also need to make sure you obtain a certified copy of the civil union certificate, as well as possibly the application, from the County Clerk that issued the civil union license and certificate. You will then need to take those documents to the various governmental agencies and business where you wish to update your records. Additionally, you will need to change your name with the Social Security Administration before you can change your name with the Colorado Department of Motor Vehicles. To change your name with the Social Security Administration you will likely need to take the certified documents to the local Social Security office. The Social

Security Administration has previously issued guidance declaring acceptable documents for establishing a civil union, however, at this point they have not yet had occasion to address Colorado's new law. We will update this document, as more information is available. Once your name has been changed with the Social Security Administration you should be able to change your name with the Colorado Department of Motor Vehicles.

HOW DOES A CIVIL UNION IMPACT MY PARENT-CHILD RELATIONSHIP WITH NON-BIOLOGICAL CHILDREN I HAVE WITH MY PARTNER?

Any child conceived while two people are joined by a civil union is legally considered the child of both parties, just as a child conceived and born to a wife is legally considered the child of her husband. However, the second-parent adoption procedure is still a valuable tool for the non-biological parent, since not all states will otherwise recognize that parent's status.

With respect to any child already conceived or born prior to a civil union, Colorado's procedures for stepparent and/or second-parent adoption will apply. Also, a person who is a partner in a civil union is considered the stepparent of any biological child of the other partner.

WHAT RIGHTS AND RESPONSIBILITIES DO I HAVE AS A RESULT OF MY CIVIL UNION?

The Colorado Civil Union Act is intended to give parties to a civil union the same rights, benefits, protections, duties, obligations, responsibilities, and other incidents under law as are granted to or imposed upon married couples, whether derived from statute, administrative or court rule, policy, common law or any other source of law. Listed below are some of those rights and obligations, however, this list is not exhaustive:

Family Law Rights and Responsibilities:

- Responsibility for joint financial support, as well as liability for family debts;
- Ability to adopt a child of a party to a civil union (second-parent adoption);
- Children born into the civil union are presumed to be the children of both partners;
- Protections and coverage under domestic abuse and domestic violence laws, as well as victims' compensation laws, and victims and witness protection laws;
- Eligibility for family leave and/or public assistance benefits;
- Right not to testify against civil union partner;
- Application of the law of domestic relations, including but not limited to a declaration of invalidity, legal separation, dissolution, child custody, allocation of parental responsibilities, parenting time, child support, property division, maintenance and an award of attorney fees.

Medical and Death-Related Rights:

- Ability to file a claim based on wrongful death, emotional distress, loss of consortium, dram shop, or other laws;

- Application of probate laws relating to estates, wills, trusts, and intestate succession, including the ability to inherit real and personal property;
- Application of probate laws relating to guardianship and conservators, including priority for appointment;
- Survivor benefits under and inclusion in workers' compensation laws;
- Ability to insure a partner under group benefit plans and to designate a partner as a beneficiary under state employee benefit plans;
- Laws, policies, or procedures relating to emergency and nonemergency medical care and treatment and hospital visitation;
- Ability to file a complaint about the care or treatment of a partner in a nursing home;
- Rights related to declarations concerning medical treatment, proxy decision-makers and surrogate decision-makers;
- Rights concerning the disposition of the last remains of a party to a civil union and to make decisions regarding anatomical gifts;
- Dependent coverage under life insurance, health insurance policies and other insurance policies for plans issued, delivered, or renewed on or after January 1, 2014.

Other Rights and Responsibilities:

- Rights and abilities concerning transfer of real or personal property;
- Prohibitions against discrimination based upon spousal status;
- Right to be treated as a family member or as a spouse for purposes of unemployment benefits;
- Survivor benefits under local government firefighter and police pensions;
- Right to visit a partner in a correctional facility, jail, or private contract prison or in a facility providing mental health treatment;
- Right to claim homestead exemption;
- Ability to protect exempt property from attachment, execution or garnishment.

WHAT EFFECT DOES MY CIVIL UNION HAVE ON HEALTH INSURANCE, PENSION AND OTHER EMPLOYMENT-RELATED BENEFITS OFFERED BY MY EMPLOYER?

The Act provides that state government employers must provide civil union partners the same health insurance and pension benefits accorded to spouses. It also requires that civil union partners are entitled to survivor benefits under local government firefighter and police pensions.

Private employers are more challenging, with respect to health insurance and pension benefits. The challenge is due to the impact of federal laws, specifically ERISA and DOMA. The impact of the federal laws is more involved than this document is intended to address. The Colorado Civil Union Act, however, does provide that private employers must include civil union partners in their definition of dependent, for purposes of dependent coverage, with regard to life insurance and insurance coverage provided by a health coverage plan. The private employer requirement, however, does not go into effect until January 1, 2014.

With regard to the impact of ERISA and DOMA on this provision of the Act, it is important to note that there are tax consequences for covering a same-sex partner on your employer health or life insurance plan (tax consequences that heterosexual couples are not faced with). It is important to discuss the tax implications with your tax advisor before signing up for same-sex partner coverage.

Other employer benefits, such as family and medical leave benefits under state law are not impacted by DOMA and/or ERISA. The Act directs that those benefits are to be provided to civil union partners in the same manner they are provided to spouses.

WHAT RIGHTS AND RESPONSIBILITIES ARE WITHHELD UNDER CIVIL UNIONS THAT ARE GRANTED UNDER MARRIAGE?

Obtaining a civil union under Colorado law does not change the fact that the federal government will not recognize your relationship status for purposes of federal spousal rights and protections. As a result, a couple that is joined by civil union under Colorado law will still not have social security survivors' and spousal benefits, federal spousal employment benefits, the ability to file joint federal income tax returns, federal estate tax exemption benefits, spousal protections in bankruptcy and authority to sponsor a spouse to immigrate, among others.

On a related issue, parties joined in a Colorado civil union still cannot file a joint state income tax return. Colorado income tax filings are tied to the federal income tax form by requiring taxpayers to pay a percentage of their federal taxable income as their state income taxes. Thus, Colorado cannot permit a couple to file a joint state income tax return if they have not done so under federal law.

A civil union in Colorado will also not automatically be recognized in other states unless that State has affirmatively decided, legislatively, through court decisions, or through a vote of the people, to recognize same-sex marriages or civil unions performed in other states.

HOW DO I END A CIVIL UNION, OR OBTAIN A DIVORCE FROM A MARRIAGE TO A SAME-SEX SPOUSE OBTAINED IN ANOTHER STATE?

In order to end a civil union, a party must file a petition for dissolution of civil union following the same procedure married spouses follow for divorce. This means that civil union partners will be eligible for spousal maintenance and child support, as well as court assistance in allocating parental responsibilities, parenting time and property division.

Additionally, if parties to a civil union entered into in Colorado move to or reside in a state that does not recognize their relationship and/or will not grant them a dissolution, they can file for dissolution in Colorado even though neither party resides here. The drafters of the Colorado law were likely aware of the problems arising for other same-sex couples seeking a dissolution or divorce after having moved away from the state in which they were joined. The Civil Unions Act specifically includes a provision that allows Colorado courts to retain

jurisdiction of proceedings related to a civil union entered into here, even if one or both parties cease to reside in this State.

Finally, because Colorado will now recognize civil unions and same-sex marriages (as civil unions) performed in other states, there is a possibility that a party who meets Colorado's domiciliary and residency requirements may file for dissolution of a civil union or marriage entered into elsewhere, though the non-residing partner would have to consent to the jurisdiction of the Colorado courts. Note, this is an area that is still in question and there is no way to know what each individual court may do. Additionally, a person should seek legal advice as to whether other states will recognize a dissolution obtained in Colorado and the various factors that arise in such a situation.

ARE THERE ANY REASONS WHY PARTIES SHOULD NOT ENTER INTO A CIVIL UNION?

There are a few situations in which parties may decide it is not beneficial for them to enter into a civil union. However, that decision is intensely personal and the pros/cons to civil unions will vary drastically from couple to couple. Factors that may weigh against entering into a civil union include, but are not limited to, the following:

- Parties to a civil union must be mindful that although it is not marriage, it is a relationship status that brings with it numerous legal responsibilities. It is also a commitment that requires legal action to dissolve. If the parties to a civil union end their relationship but do not go through the legal dissolution procedure, then the rights and responsibilities remain, including that your ex-partner will be the person contacted for any medical decisions, will inherit your property if you pass away, will be entitled to the spousal election share of your estate even if you have made a will leaving your estate to a new partner or other individual, will be the legal presumptive parent of any child you subsequently have and vice-versa. Civil unions do not confer all of the legal rights and protections of heterosexual marriage, especially on the federal level, but parties must consider the serious legal ramifications that come into play when entering into this legal relationship.
- A civil union may affect your ability to adopt children from other countries or states in the future. There are many countries that will not approve an international adoption by LGBT couples.
- Likewise, some states will allow adoption to unmarried persons, but not LGBT persons. Thus, being a party to a civil union, or having been one in the past, could make you ineligible for adoption in those states.
- Additionally, if either party depends upon public assistance, a civil union may interfere with his or her ability to continue receiving said assistance, as their partner's income will likely be treated as joint income. However, in light of the limitations on filing taxes jointly, the exact consequences of a civil union in this situation is unclear and will likely depend on the assistance in question.
- There may also be tax considerations that influence your decision as to whether to enter into a civil union. You should consult your tax advisor regarding these concerns.

- Finally, if you are not sure the two of you will continue to live in Colorado following your civil union, then the possibility of less receptive laws in a new state of residency is something you may want to consider. A civil union will be a matter of public record in Colorado. Further, if either party wants to dissolve the civil union, they may or may not be able to do so in their new state of residency, depending on the laws of that State.

DO WE STILL NEED TO DO ESTATE PLANNING, SUCH AS MEDICAL POWERS OF ATTORNEY AND WILLS, TO PROTECT OUR RIGHTS NOW THAT WE HAVE CIVIL UNIONS?

Yes. Estate planning provides a variety of protections, which are supplemental to the protections of a civil union. It is important to understand that heterosexual couples also use these kinds of legal documents in order to protect their own interests, and that of their families. A civil union is not a substitute for proper estate planning. Further, even though Colorado is now providing legal recognition to same-sex couples through civil unions, other states continue to discriminate against LGBT couples by refusing to recognize their relationship. Thus, legal documents such as wills and powers of attorney remain crucial to protect the interests of same-sex families.

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