



Gay & Lesbian Advocates & Defenders

## Protections, Benefits and Responsibilities of Marriage



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*Many same-sex couples see marriage as a personal commitment and loving partnership and want to accept the legal rights and responsibilities that go along with the responsibilities they have already assumed for each other and, in some cases, their children. But committed same-sex couples are denied marriage rights across the board. Approximately **588 Connecticut laws** use marital status as a factor<sup>1</sup>. Marriage is also a gateway to approximately 1,138 protections and responsibilities provided by the federal government<sup>2</sup>, including the ability to share social security and pension benefits, to transfer property within the marital relationship without gift tax consequences, and to be treated as a family for tax purposes. Marriage also conveys a unique legal status recognized by governments and private entities around the world.*

*When the government denies rights like those identified below, it hurts families who need those rights, and advantages no one. Gay and lesbian families need the same legal protections, the same legal framework, the same responsibilities, and the same status as other families. Ending marriage discrimination is the only way to do that.*

### Examples of Legal Protections of Marriage In Connecticut

#### Medical/Health/Illness – Without Marriage:

- Lesbian and gay couples are not automatically entitled to medical decision-making powers and hospital visitation rights when his/her partner falls ill;
- Same-sex partners are not entitled to family medical and bereavement leaves from employers;
- Lesbian and gay couples lack access to family health and auto insurance policies.
- Same-sex partners residing in the same Connecticut nursing home do not have the right to share a room even though married residents have that right unless medically contraindicated.
- A same-sex partner of a worker injured or killed is not entitled to dependency benefits from the worker's compensation system.
- Protections for families of crime victims, including notification of arrests and judicial proceedings, and compensation from the Office of Victim Services, are not automatically available to a same-sex partner.

#### Death – Without Marriage:

- Surviving lesbian and gay partners are denied inheritance rights in the absence of a written will, as well as an automatic spousal preference for administering the estate, and the automatic right to taking care of a loved one's remains. The law protects spouses who die without wills.
- Even with a will, the surviving same-sex partner is not entitled to protections such as taking a statutory share of the estate, and transition protections related to staying in the family home or receiving allowances from the estate to meet current expenses.

- Gay men and lesbians do not have standing to bring claims of wrongful death or loss of consortium when a loved one's death results from wrongdoing.

### **Divorce – Without Marriage:**

- When a committed relationship ends, lesbian and gay couples are denied access to the divorce system, including its rules for equitable division of property based on both parties' contributions to the relationship and the possibility of partner support. If the couple has children, there is no automatic system for deciding on adequate child support as well as custody and visitation based on the children's best interests.

## **Responsibilities of Marriage**

Marriage laws also reinforce the obligations of mutual dependence and support of a committed couple. Without marriage same-sex couples do not have those obligations, including:

- **Duty of Support:** Married people are responsible for each other's support as well as the necessary debts of their spouses, including medical bills and rent payments. In addition, when a married woman gives birth, her spouse is automatically responsible for child support.
- **Commitment to Remain Married:** Once two people marry, they cannot undo their marriage without first obtaining the state's permission. The commitment to remain married, and the stability and continuity that provides for families and society, is the major reason why the government provides married couples with extensive legal, social, and economic protections.

## **What About Contracting for These Protections?**

Gay and lesbian couples simply cannot contract into the vast majority of state and federal protections and responsibilities because they are only available through a "marriage contract." The Connecticut Office of Legislative Research has expressly determined that "contracting is not an option where a legislative scheme uses marital status to define executive or judicial branch powers or eligibility for government programs."<sup>3</sup> While all families can obtain limited protections for themselves by creating wills, pursuing co-parent adoptions, and executing certain legal designations (for, among other things, an Attorney-in-fact for Health Care Decisions, a Custodian of the Body and Personal Effects Upon Death, and a Conservator for Future Incapacity), no one considers these an adequate substitute for the enormous legal and social safety net marriage provides. Finally, and most significantly, the rights available through private contracting are only available to those who can afford lawyers.

## **Why Civil Unions Are Not Enough**

- **Civil unions do not provide the same protections as marriage.** Civil unions do not provide access to the 1,138 federal protections and benefits available under marriage. Civil unions also have not been recognized by any other state except Vermont. It is not fair to deny the full protections of marriage to same-sex couples who take on all of the responsibilities and obligations of marriage for each other and their children.
- **Civil unions create second-class citizens.** Civil unions create second-class citizens by treating gay and lesbian citizens differently from others. Consistent with the declaration of one state's highest court, civil unions are discriminatory: "separate is seldom, if ever, equal."<sup>4</sup> All loving and committed couples should be treated the same way.

<sup>1</sup> See Connecticut General Assembly Office of Legislative Research, Report 2001-R-0606, *Connecticut Laws Involving Marital Status*, Feb. 5, 2002, at <http://www.cga.state.ct.us/2001/rpt/olr/htm/2001-r-0606.htm>.

<sup>2</sup> Congressional Budget Office, *The Potential Budgetary Impact of Recognizing Same-Sex Marriages*, Jun. 21, 2004, at <http://www.cbo.gov/showdoc.cfm?index=5559&sequence=0>.

<sup>3</sup> See Connecticut General Assembly Office of Legislative Research, Report 2002-R-0144, *Contracting For Rights/Responsibilities Associated with Marriage*, Feb. 7, 2002, at <http://www.cga.state.ct.us/2002/rpt/2002->

[R-0144.htm](#).

<sup>4</sup> See *Opinion of the Justices to the Senate*, 802 N.E.2d 565, 569, 440 Mass. 1201, 1206 (2004).

'Freedom to Marry Rings' image upper right © H. Mitchell.

***Gay & Lesbian Advocates & Defenders (GLAD) is New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression.***

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