

I'm Getting Married **AND I'M LGBTQIA+** **WHAT DO** **I DO NOW?**

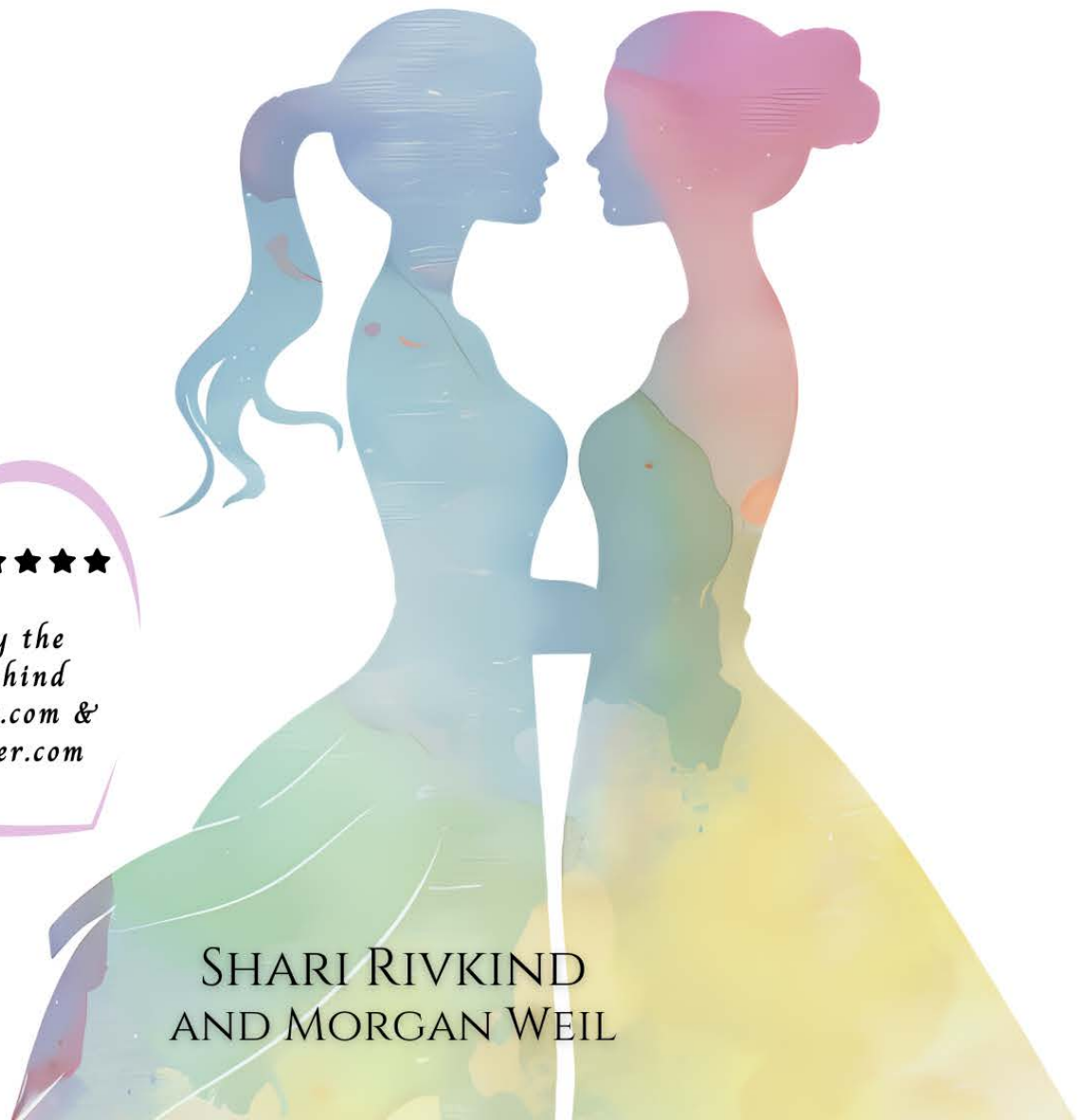
Legal Rights and Guidance on Getting Married, Entering
Domestic Partnerships or Civil Unions, and Family Planning



★★★★★

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Legal Rights and Guidance on Getting Married, Entering
Domestic Partnerships or Civil Unions, and Family Planning

Shari Rivkind and Morgan Weil

DEDICATION

This book is dedicated to the LGBTQIA+ community, all those who have fought for recognition, equality, and the right to live openly and with dignity and all those who have worked hard towards having the law reflect the truth that love is love, and every person deserves justice, safety, and the freedom to be exactly who they are.

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ACKNOWLEDGMENTS

This book is rooted in both personal reflection and professional commitment. I am deeply grateful to my father, who instilled in me an insatiable desire to understand the world—and the law—not as abstract concepts, but in terms of their real meaning for people. He lived by a firm belief in doing what was good, right, and fair, and his example continues to guide me.

Growing up in the 1960s, the concept of being gay was virtually invisible—unspoken, and hidden. Even into my high school years, it remained something people concealed, and I believe many did not understand. Over the years, I've had the privilege of knowing and/or representing many LGBTQIA+ family members, clients, and friends—individuals who have challenged, shaped, and ultimately helped form my beliefs. They have shown me how profoundly the law affects their lives and how vital equal protection is to their dignity and well-being.

I have long recognized that being gay often meant facing greater hardships: barriers to family building, legal inequality, discrimination, and even violence. While I've always strived to be fair-minded, time and experience have expanded my perspective. I now fully believe that LGBTQIA+ individuals deserve to be treated equally, not as an exception, but as a matter of justice and basic human rights.

That belief, grounded in fairness and the rule of law, led me to write this book. I wanted to create a resource for the LGBTQIA+ community that clearly lays out the laws that impact their lives, so they can truly understand their rights and the options available to them. This book is a tribute to that belief, and to all those who continue to fight for fairness, inclusion, and equality under the law.

Finally, I want to extend heartfelt thanks to Morgan Weil for her invaluable help in shaping this book, offering insight into what matters, suggesting meaningful topics, and contributing the fresh perspective of a younger generation. Her guidance and editing have been instrumental throughout this process.

Shari Rivkind

As a young intern with Cox Media Group, I reported from the steps of the United States Supreme Court on the day oral arguments were heard in the case challenging the Defense of Marriage Act. I stood among the crowds as history stirred—watching couples cry, cheer, and hold each other tightly,

hopeful that their love would finally be acknowledged by the law. That day opened my eyes to the deep and simple truth that all loving couples deserve the same rights, dignity, and recognition, no matter their sexual orientation. It was a moment that shaped my future.

Now, as an attorney and a newlywed, I know just how meaningful—and how legally complicated—marriage can be. It's not just about the celebration. It's about building a life together, navigating the future hand in hand, and knowing your love is protected.

This book is dedicated to every couple who has ever dreamed of that future—and to the many who fought to make it possible.

Morgan Weil

INTRODUCTION

When we wrote our first book, *I'm Getting Married What Do I Do Now*, we made it a point to acknowledge the unique legal considerations of the LGBTQIA+ community:

Also, on a special note. We at The Rivkind Law Firm and Bridelawyer.com™ are dedicated to supporting the needs of the LGBTQIA+ (Lesbian, Gay, Bi-Sexual, and Transgender) community. While references herein are to brides, grooms, and marriage, and references may be to traditional gender roles, it is to simplify the text. Much of what is stated herein equally applies to civil unions, domestic partnerships, and men and women in both NY and NJ. It is important to realize that couples in same-sex marriages, civil unions, or domestic partnerships often have very special issues that face them and that these legal relations have different legal ramifications, which differ from state to state.

Same sex marriages began to be recognized by the federal government starting after the June 2013 decision in *U.S. v. Windsor*. By October of 2013, same sex marriages became legal in New Jersey. By June 2015, all 50 states were required to recognize same sex marriage. This complicated area of law with its special provisions and rapid changes requires its own book to properly address it and as of the publishing of this book we are working on it!

Well, the time is here! Welcome to *I'm Getting Married and I'm LGBTQIA+ What Do I Do Now*! This book is not a simple revision of our original guide, but rather one that addresses the unique legal and financial considerations LGBTQIA+ couples face when planning a wedding or commitment ceremony and building a future together. If you're looking for an in-depth breakdown of how to navigate wedding vendors and all the nitty-gritty of wedding or commitment ceremony planning, we've got you covered—but in our first book. So, if you haven't grabbed a copy of that yet, now's a great time!

Okay, you've found your perfect partner, and now you're thinking about marriage or other legal commitment—congratulations! But before you say, “I do,” it's crucial to understand your options. You may want to go directly to one chapter or even read this book straight through. Just remember, that certain chapters are supplemented by others.

First, we address marriage equality and whether same sex marriage is here to stay. Then we turn to breaking down the differences between domestic partnerships, civil unions, and marriage so you can decide which legal framework best suits your needs. Yet, beyond the basics addressed in our Chapter 2, different legal rights regarding finances, immigration and the military (Chapters 16, 17, and 18) may also affect your decision, so make sure to read those chapters before making any decisions.

While it's not the most romantic topic, we'll also discuss what happens if a domestic partnership, civil union, or marriage needs to be dissolved, not only because you may be in one form and need or want to dissolve it before you enter another but also because understanding what is involved is essential.

Next, we'll cover cohabitation agreements: Do you have one? Will it still be valid after marriage? Should you create or update one before the big day? If you're signing contracts with vendors or making financial commitments before your wedding, we'll help you understand your liability in case plans change.

Regardless of whether you have a cohabitation agreement or not, we'll discuss prenuptial and civil union agreements. We'll discuss their benefits and how they can protect you and your partner. From there, we'll move on to how to handle vendors and their contracts, and what you should know before signing on the dotted line.

Then we'll get into wedding planning mode. What is a LGBTQIA+ wedding? It's what you want your wedding to be! We'll talk about handling traditions and give some ideas on making your own new ones. It's hard to put on a wedding or celebration without vendors so we'll fill you in on your legal rights and how to find great vendors to work with and what to insist they put in their contracts to protect you.

Once the wedding is planned, we'll guide you through the next steps: marriage licenses, name changes, special honeymoon considerations, and buying or leasing a home together. We'll cover planning for children through adoption and surrogacy. We'll also cover essential estate planning tools like wills, trusts, and medical directives to ensure your rights are protected throughout your marriage or union.

We'll fill you in on rights of partners regarding finances, health benefits and social security, immigration and the military and how the different legal forms will affect your rights and we'll really look at those benefits to help you determine if they should influence your decision of which form to choose.

Last, but certainly not least we address some special legal considerations facing transgender and intersex individuals.

This book is here to empower you with the legal knowledge you need for a successful union and a secure future. So, let's get started—your journey to "happily ever after" begins now!

PART 1: MARRIAGE EQUALITY—WHERE DO WE
STAND?

1. COULD MARRIAGE EQUALITY GO AWAY?

In recent years—especially after the overturning in *Dobbs v. Jackson Women’s Health Organization* of *Roe v. Wade* in 2022 (Supreme Court decisions regarding abortion) there’s been growing anxiety in the LGBTQIA+ community: if a Supreme Court decision allowing legalized abortion for over 50 years can be overturned, could marriage equality be reversed, too?

These authors truly believe that it is unlikely. We’ll try not to be too overly legal here, but these authors truly believe that the media – on both sides of the aisle - often confuses the public on what really happens regarding legal cases. We think it’s important to understand the legal facts, so you can make your own determination of what happened in each of these Supreme Court decisions and whether they serve as a basis of concern for the LGBTQIA+ community.

As of 2025, same-sex marriage is legally recognized in all 50 U.S. states due to the U.S. Supreme Court’s 2015 landmark decision in *Obergefell v. Hodges*, which decided that the United States Constitution guarantees the right to marry for same-sex couples. This decision rendered any state-level bans on same-sex marriage unconstitutional.

Surprisingly, some states still have statutory or constitutional bans on the books! As of 2025, 26 states have constitutional amendments banning same-sex marriage, and 30 states have statutes that do the same. While they can’t be enforced, they are just – sitting there!

The history behind this decision is quite interesting. In 1996, President Clinton signed the **Defense of Marriage Act (DOMA)** into law.

DOMA had two key provisions:

- **Section 2** allowed states to refuse to recognize same-sex marriages performed in other states.
- **Section 3** defined marriage for federal purposes as “a legal union between one man and one woman.”

In *United States v. Windsor* (2013), the Supreme Court ruled that Section 3—the federal definition of marriage—was unconstitutional. However, the Court did not address Section 2, which allowed states to ignore same-sex marriages from other states.

That changed with *Obergefell* in which the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. This effectively invalidated the remainder of DOMA rendering Section 2 of DOMA unenforceable, even though it wasn’t formally repealed at that point.

Then, in December 2022, Congress passed **The Respect for Marriage Act**, which repealed DOMA and required all states and U.S. territories to recognize legal marriages performed in other states,

including same-sex marriages. This law is widely seen as adding an extra layer of protection for same-sex marriage rights.

With that background in mind, let's explore the legal possibilities, current realities, and protections surrounding the future of same-sex marriage—no panic, just the facts.

First, What *Was* the Obergefell Decision?

In *Obergefell*, the Supreme Court ruled in a 5–4 decision that same-sex couples have a fundamental right to marry under the U.S. Constitution, specifically under the 14th Amendment's guarantees of due process and equal protection. Before *Obergefell*, same-sex marriage was legal in some states and banned in others.

This decision:

- Required **all** states to issue marriage licenses to same-sex couples and
- Forced states to recognize same-sex marriages performed in other states.

Can The Supreme Court Overturn *Obergefell*?

Yes, technically, the Court could overturn it. Here's how:

- The Constitution doesn't explicitly say anything about marriage—same-sex or otherwise.
- The *Obergefell* ruling was based on interpretation of the 14th Amendment.
- Because it was decided by judicial interpretation, a future Court could re-interpret that same amendment differently—just like it did with *Roe v. Wade*.

Part of people's fear regarding *Obergefell* being overturned is due to the fact that Justice Clarence Thomas, in his 2022 concurrence in *Dobbs* (the case that overturned *Roe*) said that the Court should reconsider “all of this Court's substantive due process precedents,” explicitly naming *Obergefell*. However, this comment does not mean that the Court will reconsider them. The implications regarding abortion and same sex rights are very different.

Why It's Unlikely the Supreme Court Would Overturn Obergefell

1. Public Opinion Strongly Favors Marriage Equality

As of 2025, a majority of Americans support same-sex marriage. The Court is often hesitant to overturn rulings when public support is so overwhelmingly in one direction, yet this doesn't always hold true.

2. Legal Precedent

The Supreme Court typically gives great weight to prior decisions—especially ones that have been reaffirmed over time. Overturning a case like *Obergefell*, which has been in place for nearly a decade and reshaped thousands of families’ legal lives, would cause massive disruption—something the Court generally tries to avoid.

3. The Respect for Marriage Act

Passed in 2022, this federal law requires all states to recognize same-sex marriages performed in other states, even if the state bans same-sex marriage itself. So even if *Obergefell* were overturned, this act offers a key backstop of protection, though it does not force states to issue same-sex marriage licenses.

People do worry though, believing that *Roe* was overturned despite public sentiment and that the current court makeup is largely considered conservative, making it a possibility that it would overturn *Obergefell*. These authors do not believe it is likely though due to the reasoning put forth in *Obergefell* itself. Unlike *Roe*, the *Obergefell* decision was based upon the fundamental nature of marriage and equal equality – issues previously decided by the court in *Loving v. Virginia* regarding interracial marriage.

Roe was overturned by *Dobbs*, and the key reason was that The Court believed *Roe* was wrongly decided in the first instance. The majority opinion in *Dobbs*, written by Justice Samuel Alito, held that *Roe* and *Planned Parenthood v. Casey* (A 1992 U.S. Supreme Court case that reaffirmed the constitutional right to have an abortion but also allowed states to impose certain restrictions.) were both wrongly decided because:

“The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.”

As such, the right to abortion is not “deeply rooted in the nation’s history and traditions” (a phrase that forms the test for determining whether something is an enumerated right).

The majority noted that in 1868, the time of the 14th Amendment, most states banned abortion so it wasn’t part of the nation’s historical understanding of “liberty”. The Court also criticized *Roe* for creating a “trimester framework” and striking down state laws — saying that went beyond what The Court was entitled to do.

Obergefell is entirely different. The Court's majority opinion, written by Justice Anthony Kennedy, explains the decision using the language of the Fourteenth Amendment, particularly its Due Process and Equal Protection clauses:

"The fundamental liberties protected by the Fourteenth Amendment's Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."

and:

"The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity."

The Court found that:

1. Marriage is a fundamental right under the Due Process Clause.
2. Denying same-sex couples that right violates the Equal Protection Clause.

Specifically, the Court noted the following factors:

1. Due Process Clause — Fundamental Right to Marry

The Court found that marriage is a fundamental liberty, protected by the Due Process Clause of the Fourteenth Amendment. This wasn't new; the Court had said so before in cases like *Loving v. Virginia* (interracial marriage) and *Zablocki v. Redhail* (marriage and child support).

Kennedy wrote:

"The fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment."

So, the question was not whether same-sex couples could create a new right, but whether they could access **an existing fundamental right** equally.

2. Equal Protection Clause — No Unequal Treatment

The Equal Protection Clause requires the law to treat similarly situated people alike. Denying same-sex couples the right to marry, the Court said, meant they were being treated unequally under the law for no justifiable reason: "The Constitution grants them that right."

3. The Four Principles of Marriage

Justice Kennedy laid out **four principles** that show why marriage is a fundamental right and why denying it to same-sex couples is unconstitutional:

- **Individual Autonomy** – The right to choose who to marry is a personal decision.
- **Two-Person Union** – Marriage is a committed relationship with deep meaning.
- **Safeguards Children and Families** – Legal recognition protects kids in same-sex families.
- **Foundation of Society** – Marriage is a building block of society and law. Justice Kennedy said, “Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions.”

4. What the Court Ultimately Held:

- Same-sex couples have a constitutional right to marry.
- States must license marriages between same-sex couples.
- States must recognize same-sex marriages lawfully performed in other states.

So twice before *Obergefell*, the Court has found that marriage is a fundamental right. Combine that with the Equal Protection Clause, which requires the law to treat similarly situated people alike, and *Obergefell* is on firm legal standing. There’s no overreaching. There’s no new finding of a right that is not in the Constitution. Put simply, *Roe* is a very different case from *Obergefell* and truly has no impact on it!

In fact, the last time the court overturned one of its previous rulings only supports not reversing *Obergefell*. In ***Brown v. Board of Education*** (1954), the Court overturned ***Plessy v. Ferguson*** (1896). *Plessy v. Ferguson* had upheld the constitutionality of racial segregation, saying that “separate but equal” facilities for black and white people were okay under the Constitution.

That decision legalized segregation in public schools, transportation, and more for nearly 60 years. In *Brown*, The Court unanimously ruled that segregation in public schools is unconstitutional, because “separate but equal” is inherently unequal, violating the Equal Protection Clause of the Fourteenth Amendment. The Court changed its mind because evidence showed the psychological harm of segregation, it acknowledged that racial segregation stigmatized black children, and the Equal Protection Clause was reinterpreted to mean true equality, not just technical or formal equality.

So, just like in *Brown*, separate but equal (civil unions, for example in lieu of marriage) for same sex couples is not true equality. Simply put, it is very unlikely that The Court would reverse the law.

Could Congress Overturn *Obergefell*?

No, not directly. Congress can't overturn a Supreme Court decision on a constitutional right. Here's why:

- Supreme Court rulings on constitutional rights override federal and state laws.
- Congress can't pass a law saying "same-sex marriage is no longer legal" if that right is protected by the Constitution as interpreted by The Supreme Court of The United States.

Could Congress Do *Anything* About It?

Yes. Congress can, by passing laws protecting LGBTQIA+ rights, as it did in the **Respect for Marriage Act (RFMA)** in 2022. This Act:

- Requires all states to recognize same-sex marriages legally performed in other states
- Repealed the 1996 Defense of Marriage Act (DOMA), which banned federal recognition of same-sex marriage

Keep in mind, RFMA does not require states to issue new same-sex marriage licenses if *Obergefell* is overturned. That means states could potentially stop performing same-sex marriages but still have to recognize ones performed elsewhere.

So, Congress cannot:

- Ban same-sex marriage across the U.S.
- Overturn a constitutional ruling.

Could a Constitutional Amendment Overturn *Obergefell*?

Yes, but it's incredibly unlikely. A constitutional amendment is the only way to permanently remove a right guaranteed by the Constitution—here's how hard it is:

To pass a constitutional amendment:

1. **$\frac{2}{3}$ of both the House and Senate** must approve it
2. Then **$\frac{3}{4}$ of state legislatures (38 states)** must ratify it.

This is unlikely, especially in a country where a majority now supports marriage equality. So, while it's technically possible, it's politically nearly impossible.

What Happens If *Obergefell* Is Overturned?

If the Court were to reverse the decision, here's what could happen:

- The right to marry would no longer be federally guaranteed
- Each state would decide whether to allow or ban same-sex marriage
- States with pre-*Obergefell* bans on the books could try to enforce them again (though some have repealed these laws)
- Couples in those states might have to travel to marry—or face legal limbo

What Can LGBTQIA+ Couples Do to Protect Themselves if They Are Concerned?

1. **Know your state's laws:** Does your state still have a ban “on the books”? Some states never removed them after 2015.
2. **Get married now** (if you're planning to): Existing marriages would still be recognized under the Respect for Marriage Act, even if future marriages aren't allowed in your state.
3. **Get legal documents in place:**
 - Medical power of attorney
 - Durable power of attorney
 - Will and living will
 - Parentage/adoption protections if you have kids

Knowledge is power, and now you can decide if you need to be concerned!

2. SO YOU WANT TO MAKE IT LEGAL? LET'S TALK DOMESTIC PARTNERSHIPS, CIVIL UNIONS, AND MARRIAGE

Okay, you've decided you want to formalize your commitment. Congratulations! What do you choose? A domestic partnership, a civil union or marriage? We hear these words thrown around, but there are real legal differences between them, and they may not all be available in the state where you live.

Are you stuck with the laws of your state? No! You can get married, form a civil union or a domestic partnership in another state, but that does not mean that your state will honor it! Let's examine the differences between the three forms so that you can determine what is right for you!

- A marriage is a legally recognized union that provides full rights and benefits at both the state and federal levels, including tax benefits, Social Security benefits, immigration rights, and inheritance protections.
- A civil union is a legal relationship available in some states, including New Jersey, that offers state-level rights similar to marriage, such as health benefits, inheritance rights, and medical decision-making, but lacks federal recognition.
- A domestic partnership is a more limited legal status that typically provides fewer benefits, often restricted to local or employer-based rights such as hospital visitation and healthcare access, and is not recognized federally or uniformly across the states.

Not all 50 states are required to recognize civil unions or domestic partnerships created in another state, especially if they don't have their own civil union or domestic partnership laws. Recognition of civil unions and domestic partnerships is a state-by-state issue, and states without a civil union statute generally do not have to honor one created in another state.

Marriages, regardless of gender, are protected nationwide due to the U.S. Supreme Court's ruling in *Obergefell v. Hodges* (2015), which requires all states to recognize same-sex and opposite-sex marriages performed in other states. Yet, civil unions and domestic partnerships are not federally protected, and states can decide whether or not to recognize them.

This means states that do not have civil union or domestic partnership laws are not obligated to:

- Grant legal rights or benefits to civil union partners from another state.
- Recognize civil union status for inheritance, healthcare, or tax purposes.
- Treat civil union partners the same as spouses for family law purposes (e.g., divorce, custody).

What Happens If You Are In A Civil Union Or Domestic Partnership And Move To A State That Does Not Recognize Them?

If you are in a civil union or domestic partnership and move to a state that does not recognize them, you may:

- Lose access to rights, including medical decision-making, hospital visitation, or inheritance, unless you take additional legal steps such as executing a power of attorney or a will.
- Be unable to dissolve the civil union unless you return to the state where it was formed or to another state that recognizes and can dissolve it.

So, keep in mind that while you can always change the form, usually by legally dissolving the form you are in and then going through the process for the next one, there are legal steps you will need to take – and they may be complicated!

A Quick History Lesson – and Why It Matters

Let's take New Jersey as an example. Before New Jersey legalized same-sex marriage in 2013, and before marriage equality became the law of the land in 2015, LGBTQIA+ couples had limited options for legal recognition. In 2004, New Jersey introduced domestic partnerships, which granted basic rights like hospital visitation and some inheritance benefits. Then, in 2007, civil unions became available, offering same-sex couples nearly all state-level rights of marriage but without federal recognition. This meant no Social Security benefits, no joint federal tax filing, and some legal uncertainties.

When marriage equality finally became law, civil unions and domestic partnerships became far less common in New Jersey and in other states that offered them, though in New Jersey, they remain available for those who prefer an alternative to marriage for personal, financial, or legal reasons.

New York took a different approach, never offering civil unions but allowing domestic partnerships with limited rights. When same-sex marriage became legal in New York in 2011, domestic partnerships largely fell out of use, though they are still available in certain cities and counties, including New York City.

Across the United States, laws vary. Some states still allow civil unions or domestic partnerships, while others have discontinued them after legalizing same-sex marriage. In most cases, marriage provides the most comprehensive legal protections, but these alternative options still exist for those who prefer them.

Now let's take all three forms – domestic partnerships, civil unions, and marriages, and using New Jersey and New York as examples go through what the different pros and cons are of each and how you go about forming them.

Domestic Partnerships

Domestic partnerships offer an alternative to marriage, providing legal recognition and certain rights to couples who choose not to marry. While the specifics vary by jurisdiction, domestic partnerships generally grant partners rights related to healthcare decisions, hospital visitation, and inheritance. These rights are often very limited. We'll look at the rights provided by New York and New Jersey. For other states, the easiest way to determine if the state has domestic partnerships and how to form one is to search the internet for the county (Louisiana calls its counties "parishes" while Alaska uses "boroughs") and "domestic partnership" and look for a ".gov" site and usually that will bring up the county's site with all the information you need!

Domestic Partnerships in New Jersey

In New Jersey, domestic partnerships are governed by **the Domestic Partnership Act**, which was enacted in 2004 and amended in 2007.

What You Need to Qualify:

- Both partners must be at least 18 years old. (Same-sex couples are eligible but so are opposite-sex couples where both individuals are 62 years of age or older.)
- You must share a common residence.
- You must be jointly responsible for each other's welfare and basic living expenses, as evidenced by joint financial arrangements or joint ownership of real or personal property.
- You must not be married, in a civil union, or in another domestic partnership.
- You must not be related to each other by blood or affinity up to and including the fourth degree of consanguinity.

- You must have chosen to share each other's lives in a committed relationship of mutual caring.
- You must not have terminated a previous domestic partnership within the last 180 days, unless the prior partner has died.

What Are The Benefits?

Healthcare Rights

- **Hospital visitation:** Registered domestic partners are entitled to visit each other in the hospital and make medical decisions if one partner becomes incapacitated.
- **Health insurance coverage:** State and many local government employers must offer health benefits to a domestic partner. Some private employers in New Jersey also offer domestic partner health benefit coverage, though it's not mandatory.

Tax and Financial Benefits

- **State income tax benefits:** Domestic partners can file jointly on state income tax returns.
- **Inheritance tax exemption:** A domestic partner is treated similarly to a spouse for New Jersey inheritance tax, meaning transfers of property upon death are exempt from the tax.
- **Limited right to inherit without a will:** A surviving domestic partner may inherit from a partner who dies intestate (without a will), though rights are more limited than for spouses.

Legal Protections

- **Rights related to property and finances:** Partners can jointly own property, and they're protected by laws governing the division of jointly owned property if the partnership ends.
- **Wrongful death and workers' compensation benefits:** A domestic partner may be eligible for death benefits if the other partner dies due to negligence or a workplace incident.
- **Healthcare and pension rights:** State pensions and retirement benefits may extend to a domestic partner if the employee elects coverage.

Funeral and End-of-Life Decisions

- A domestic partner has the legal authority to make funeral and disposition decisions, just as a spouse would.

What Benefits Are Not Included

Federal recognition is not granted, so partners do not qualify for:

- Federal tax benefits (e.g., joint federal tax filing),
- Social Security spousal or survivor benefits, or
- Immigration sponsorship.

How do you form a Domestic Partnership in New Jersey?

To form a domestic partnership in New Jersey, follow these steps:

1. **Prepare Required Documents:** Each partner must provide valid identification that establishes name, age, date of birth, and proof of residency. Acceptable documents include:
 - Certified copy of a birth certificate.
 - Driver's license or state-issued identification card.
 - Military identification.
 - Passport.
 - Utility bills, lease agreements, or tax records to establish residency.
2. **Complete the Affidavit:** Obtain and complete the Affidavit of Domestic Partnership. Both partners must sign it in the presence of a notary public.
3. **File the Affidavit:** Submit the signed and notarized affidavit to the Local Registrar of Vital Statistics in any New Jersey municipality. The filing fee is \$28.
4. **Obtain the Certificate:** After filing, the Local Registrar will issue a Certificate of Domestic Partnership. This certificate serves as proof of the registered domestic partnership.

For more detailed information and to find a Local Registrar near you, search for the New Jersey Department of Health's Vital Statistics page on Domestic Partnerships. You'll click on your county and be brought to a page that lists all the cities and towns with the registrar's name, address, and phone number.

Domestic Partnerships in New York

New York recognizes domestic partnerships, though the specific rights and benefits can vary depending on the locality. In New York City, for example, registered domestic partners have rights to hospital visitation and can make medical decisions for each other. They may also be eligible for health insurance coverage through employers. However, domestic partners do not automatically inherit assets from each other unless specified in a will, and they are not entitled to the same federal benefits as married couples.

What You Need to Qualify:

To be eligible to register a domestic partnership in New York City, both partners must:

- Be at least 18 years old.
- Be residents of New York City, or at least one partner must be employed by the City of New York.
- Not be married or in another domestic partnership (current or within the last six months).
- Not be closely related by blood, such that marriage would be prohibited under New York law.
- Be in a close, committed, and financially interdependent relationship, and have lived together continuously.
- Be either a same-sex or opposite-sex couple.

How to Register

Visit the Office of the City Clerk - To make an appointment, visit the NYC City Clerk's official website.

Both partners must appear in person at a City Clerk's office.

- **Bring Valid ID** - Acceptable forms of identification include:
 - Driver's license
 - Passport
 - Birth certificate (with photo ID)
 - U.S. military ID
 - Sign the Affidavit of Domestic Partnership
- **Pay the Fee** - The registration fee is \$35, payable by credit card or money order.
- **Receive Your Certificate** - Once processed, you'll be issued a Certificate of Domestic Partnership, which serves as your official proof.

Domestic Partnerships vs. Marriage

The big difference between domestic partnerships and marriage is the legal recognition and benefits. While domestic partnerships provide certain rights, they are generally not recognized at the federal level. In contrast, marriage provides both state and federal rights and responsibilities, including tax benefits, inheritance rights, and access to federal health and retirement benefits.

Prenuptial Agreements for Domestic Partners

Domestic partners can enter into agreements similar to prenuptial agreements. These agreements can help clarify asset division and support obligations in the event of the separation or dissolution of

the partnership. However, the enforceability and recognition of such agreements can vary by state, and it's advisable for partners to consult legal counsel to ensure their agreements are valid and comprehensive.

Domestic Partnerships Internationally

Internationally, the recognition and rights associated with domestic partnerships vary widely. In some countries, domestic partnerships are recognized and provide similar rights to marriage, including tax benefits and inheritance rights. For example, in Canada, common-law couples are recognized and entitled to many of the same rights as married couples. Conversely, in countries like Bermuda, domestic partnerships may offer fewer rights and protections, particularly for same-sex couples.

To sum it up, domestic partnerships provide an alternative to marriage with certain legal rights and benefits. Yet, these rights vary significantly depending on the jurisdiction, and partners should consider legal agreements to protect their interests.

Civil Unions

Civil unions have played an important role towards equal rights for same sex couples before marriage equality became the law of the land. But even with same-sex marriage now legal nationwide, civil unions still exist in some states like New Jersey, while others like New York have chosen not to offer them. So, what exactly are civil unions, how do they differ from marriages and domestic partnerships, and what legal benefits do they offer? Let's look!

What Is a Civil Union?

A civil union is a legal relationship between two people that grants most of the same rights and responsibilities as marriage under state law but **does not offer federal recognition**. Civil unions were initially created as a compromise before same-sex marriage was legalized nationwide, offering legal protections without using the term "marriage."

Civil Unions in New Jersey

New Jersey does offer civil unions, and they remain an option even after the state legalized same-sex marriage in 2013. Civil unions in New Jersey are available to same-sex couples only. Opposite-sex couples must pursue marriage or a domestic partnership instead.

How to Enter a Civil Union in New Jersey:

- **Eligibility:**
 - Both partners must be 18 or older (or have parental consent if 16-17).
 - Neither partner can be currently married, in a civil union, or domestic partnership with someone else.
 - You must be a same-sex couple.
- **Process:** (Similar to a marriage)
 - Apply in person at any local Registrar's office.
 - Provide proof of identity and residency.
 - Pay a **\$28 fee**.
 - There is a **72-hour waiting period**, similar to a marriage license.
 - Have the civil union solemnized by an authorized officiant who will then file the license so that a certificate will be issued.

Benefits of Civil Unions in New Jersey:

Civil union partners in New Jersey receive all the same rights, benefits, and responsibilities as married couples under state law, including:

- State income tax benefits
- Health insurance coverage from state employers
- Inheritance and property rights
- Hospital visitation and medical decision-making
- Adoption and parental rights

However, **civil unions are not recognized by the federal government.** This means you:

- Cannot file joint federal taxes
- Do not qualify for Social Security spousal benefits
- May not have their union recognized in other states
- Cannot sponsor a partner for U.S. immigration

Civil Unions in New York

New York does not offer civil unions. When marriage equality was legalized in the state in 2011, lawmakers chose not to have a civil union system. Instead, couples in New York have two main legal options:

1. **Marriage** – Fully recognized under both state and federal law.
2. **Domestic Partnership** – Recognized primarily at the city or local level (e.g., NYC), offering more limited benefits.

Why Would You Want to Enter into a Civil Union Rather Than a Marriage?

While civil unions and marriage in New Jersey offer almost identical rights at the state level, there are a few reasons someone might choose a civil union over marriage. These include:

1. Philosophical or Personal Beliefs

Some couples—especially those who fought for marriage equality—may feel that marriage is a religious or patriarchal institution they don't want to be part of. A civil union can provide legal recognition without the social or cultural baggage that they associate with marriage.

2. Federal Benefit Considerations

Marriage is recognized by the federal government, meaning it affects:

- Federal taxes
- Social Security

- Immigration
- Medicare/Medicaid eligibility

Some couples may intentionally avoid federal recognition for financial or legal reasons. For example:

- A partner receiving income-based benefits might see them reduced or eliminated if they marry and must report joint income.
- A couple may want to avoid the marriage penalty on federal taxes if their combined incomes push them into a higher bracket.
- One partner might be receiving benefits (such as social security) due to a deceased former spouse, which they might lose.

3. Legal Simplicity or Exit Strategy

While dissolving a civil union still requires a legal process similar to divorce, some couples believe it may be less complicated or emotionally loaded than a divorce proceeding. Also, since civil unions aren't federally recognized, there may be fewer layers of law involved in the event of a breakup, though that's not always the case!

4. Existing Civil Union or Domestic Partnership

Couples who entered into a civil union before marriage was legalized in New Jersey in 2013 might choose to simply keep their civil union rather than convert it to a marriage, especially if it suits their needs and they're happy with the legal benefits.

Next up, let's take a look at marriage and how it differs!

Marriage

Marriage is the most widely recognized and legally powerful relationship status in the United States and around the world. It not only represents a personal and emotional commitment but also carries with it a broad set of legal, financial, and social benefits, many of which are simply not available through civil unions or domestic partnerships.

Here's a detailed look at how to form a legal marriage and what benefits it offers compared to other relationship statuses.

How to Form a Legal Marriage

The process to get legally married in the U.S. is fairly straightforward and regulated by individual states, but here are the common steps:

1. Obtain a Marriage License

- Apply at a county or city clerk's office.
- Both parties must appear in person with valid ID (e.g., driver's license, birth certificate, passport).
- Some states have a waiting period (e.g., 72 hours in New Jersey).
- You may need to pay a fee (usually between \$25 and \$100).

2. Meet Legal Requirements

- Must be at least 18 years old (or have parental/judicial consent if younger).
- Cannot be closely related by blood.
- Must not already be married or in another legal union.

3. Have a Ceremony

- A wedding ceremony must be performed by a person legally authorized to do so (for example, a judge, religious officiant, or civil celebrant).
- In most states, witnesses are required.

4. File the Marriage Certificate

- After the ceremony, the signed marriage license is filed by the officiant with the appropriate government office to make the marriage official.
- A certified copy of the marriage certificate serves as proof for legal and administrative purposes.

Benefits of Marriage Over Civil Unions and Domestic Partnerships

Marriage offers a broad and comprehensive set of state and federal benefits that civil unions and domestic partnerships do not. These include:

Federal Recognition

- **Tax benefits:** The ability to file jointly, access to standard deductions, and estate tax exemptions.
- **Social Security:** Spousal and survivor benefits.
- **Immigration:** Ability to sponsor a spouse for a green card or citizenship.
- **Medicare and Medicaid:** Spouses may be eligible for coverage or savings based on marital status.
- **Veteran and military benefits:** Pensions, housing, and survivor rights.

Civil unions and domestic partnerships are not recognized by the federal government, so they do not confer any of these benefits.

Medical and End-of-Life Rights

- **Automatic rights** to make medical decisions for a spouse.
- **Hospital visitation rights** and access to medical records under HIPAA.
- **Priority in guardianship and end-of-life decisions.**

Civil unions may offer these rights at the state level only, and domestic partnerships often require additional documentation to establish decision-making authority.

Financial and Property Rights

- **Joint ownership** of property with rights of survivorship.
- **Inheritance without a will:** In most states, a spouse automatically inherits property if the other dies without a will.
- **Marital property rights** in divorce: Equitable distribution of assets, spousal support, etc.

Domestic partners and civil union partners may not enjoy these protections uniformly or may need legal agreements, such as wills or powers of attorney, to secure them.

Parental Rights

- **Presumption of parentage:** The spouse of a biological parent is typically presumed to be the legal parent.
- **Simplified adoption processes** for married couples.
- **Rights in child custody and decision-making.**

Domestic partners and civil union partners often must go through formal adoption processes to obtain parental rights.

Legal Recognition

- Marriage is recognized across all 50 states and by the federal government.
- Civil unions and domestic partnerships may not be recognized outside the state where they were entered.
- If you move, your marriage—and the rights that come with it—travels with you.

Divorce and Legal Protections

- Legal marriage offers a structured process for dissolution, with court protections for asset division, alimony, and child custody.
- Civil unions may have similar processes in some states, but domestic partnerships often lack clear legal guidance for separation, creating potential complications.

Changing Relationship Status

As this area is ever changing and people's desires change, a big area of concern is what's involved in going from one form to another. Does your old status automatically end? Do you have to take legal steps to dissolve it first? Let's go through the different scenarios one by one. Again, there are variations from state to state.

Note that in this chapter, we'll just address the generalities of going from one form to the other. In our next chapter, we'll address exactly how you go about actually dissolving domestic partnerships and civil unions.

New Jersey

Scenario 1: Moving from a Domestic Partnership to a Civil Union

If you are currently in a domestic partnership and want to enter into a civil union, you must first dissolve your domestic partnership. New Jersey does not allow someone to be in both a domestic partnership and a civil union at the same time.

How to Make the Transition:

1. Dissolve the Domestic Partnership:

- File a request to terminate your domestic partnership.

- This process is done through the Superior Court of New Jersey unless the dissolution qualifies for a simplified termination (such as both parties agreeing and not having significant property or financial entanglements).

2. Apply for a Civil Union License:

- Once the domestic partnership is officially dissolved, apply for a civil union license.
- There is a 72-hour waiting period before the license is issued.

3. Have a Civil Union Ceremony:

- The civil union must be performed by an authorized officiant within six months of receiving the license.
- After the ceremony, the civil union certificate serves as proof of your new legal status.

Scenario 2: Moving from a Domestic Partnership to Marriage

If you are in a domestic partnership and want to get married to the same person, you do not have to dissolve the domestic partnership first.

How to Make the Transition:

1. Apply for a Marriage License:

- You and your partner must apply at a local registrar's office and wait 72 hours before the license is issued.

2. Get Married:

- The marriage ceremony must be performed by an authorized officiant.
- Once the ceremony is completed, you receive a marriage certificate.

3. What Happens to the Domestic Partnership?

- Unlike with civil unions, you do not need to formally dissolve the domestic partnership—it automatically ends once you are legally married.

Scenario 3: Moving from a Civil Union to Marriage

If you are in a civil union and want to get married, New Jersey does not require you to dissolve the civil union first if you are marrying the same person. Instead, the civil union automatically merges into the marriage once you are legally wed.

How to Make the Transition:

1. Apply for a Marriage License:

- You and your partner must apply for a marriage license at a local registrar's office.
- There is a 72-hour waiting period before the license is issued.

2. Get Married:

- A legal marriage ceremony must be performed by an authorized officiant.
- Once the ceremony is completed, you receive a marriage certificate.

3. What Happens to the Civil Union?

- Your civil union does not need to be separately dissolved. It automatically converts into a marriage once the wedding is legally performed.

New York

Remember, in New York, they do not have civil unions, so we're talking solely about moving from a domestic partnership to a marriage.

Scenario 1: Moving from a Domestic Partnership to Marriage

If you are in a domestic partnership in New York and want to get married to the same person, **you** do not need to dissolve your domestic partnership first, but your marriage does not automatically terminate it either.

How to Make the Transition:

1. Apply for a Marriage License:

- You and your partner must apply for a marriage license at a City Clerk's office.
- There is a 24-hour waiting period before the license is valid.

2. Get Married:

- A legal marriage ceremony must be performed by an authorized officiant.
- After the ceremony, you will receive a marriage certificate.

3. What Happens to the Domestic Partnership?

- Your domestic partnership does not automatically end when you get married—you must file paperwork to formally terminate it.
- If you do not dissolve it, you may still be considered in a domestic partnership for certain legal or financial matters.

How to End a Domestic Partnership in New York After Marriage:

- In New York City, you must file a Termination Statement at the City Clerk's office. This involves filing a simple statement, not an actual court process with a hearing.
- If you registered in another city or county, check with the local government office for the termination process.

Things To Think About:

- If your domestic partnership provided health or financial benefits, transitioning to marriage may change eligibility for those benefits.
- Unlike in New Jersey, where a marriage **automatically dissolves** a domestic partnership, in New York, you must **actively file to terminate** it.

Scenario 2: Moving from a Civil Union to Marriage

Unlike New Jersey, **New York does not have civil unions**. If you were in a civil union from another state and moved to New York, your rights may vary.

- If your civil union was performed in another state, New York may recognize certain legal aspects of it, but it does not have a process to convert it into a marriage.
- If you want to marry in New York and are in a civil union from another state, check the laws of the state where your civil union was performed to determine if it must be dissolved first.

The Laws in Other States

Across the U.S., the laws on domestic partnerships and civil unions vary widely, and so do the rules for transitioning between them. Some states, like California, Oregon, and Nevada, still offer domestic partnerships with significant legal benefits, often similar to marriage, and allow partners to easily convert their domestic partnership into a marriage through a simple administrative process. Others, like Colorado, Illinois, and Hawaii, maintain civil unions that provide nearly all state-level marital rights but not full federal recognition. In many of these states, couples in civil unions can

choose to either remain in their union or convert it into a marriage, sometimes automatically and sometimes by applying for a marriage license.

Many states that once had these alternatives, such as Vermont, New Hampshire, and Connecticut, phased them out after legalizing same-sex marriage, often automatically converting existing unions into marriages unless couples took action to dissolve them. Meanwhile, states like Texas and Florida never established civil unions or statewide domestic partnerships, though certain cities and counties offer local domestic partnership registries.

The process for transitioning between them varies: some states require dissolving the existing partnership or union before marrying, while others streamline the process with a conversion option.

Since this is a rapidly evolving area of law, state-specific rules may change by the time this book is published, so it's always a good idea to check on your state's current laws before making any decisions!

ABOUT THE AUTHORS

Shari Rivkind has been practicing law since 1987 and is licensed in the State of New Jersey. A graduate of Boston University School of Law, she returned to her home state to begin what has become a long and varied legal career. In 2007, she founded The Rivkind Law Firm. Known for her deep commitment to her clients and her ability to master any area of law she takes on, Ms. Rivkind has represented individuals from all walks of life in matters ranging from divorces and estate planning to contract negotiation and litigation.

Her passion for making the law accessible led her to coauthor *I'm Getting Married What Do I Do Now?* where she immediately recognized the need for a comprehensive guide specifically addressing the legal issues facing the LGBTQIA+ community. Through her work with Bridelawyer.com™ and Groomlawyer.com™, Ms. Rivkind regularly assists couples of all identities with prenuptial and postnuptial agreements, civil union agreements, wills, living trusts, cohabitation agreements, and vendor contract negotiations.

She also represents wedding vendors and lectures to wedding vendors about compliance with anti-discrimination laws and fostering inclusivity in their businesses. She is also often a speaker, teaching attorneys how to properly draft contracts and advise clients in accordance with anti-discrimination regulations.

Morgan Weil is a graduate of the Elisabeth Haub School of Law at Pace University and is licensed in both New Jersey and New York. During law school, she interned with the New York Legal Assistance Group (NYLAG), where she helped low-income individuals from all walks of life with powers of attorney, medical directives, and wills. She then worked at a Manhattan law firm specializing in estate planning, frequently appearing in New York surrogate's courts on behalf of clients with complex estates.

After graduation, Ms. Weil joined The Rivkind Law Firm with a focus on wills and trusts. While planning her own wedding—and watching friends do the same—she saw a growing need for legal

guidance tailored to the wedding process. She expanded her practice to include prenuptial agreements, vendor contract reviews, and legal counseling for couples preparing for marriage. This inspired her to launch both Bridelawyer.com™ and Groomlawyer.com™, practice departments devoted to helping couples navigate the legal aspects of getting married.

Ms. Weil has coauthored two books with Ms. Rivkind: *I'm Getting Married, What Do I Do Now?* and *I'm Married, What Do I Do Now?* She also speaks regularly to attorneys, vendors, and community organizations, and is a passionate advocate for LGBTQIA+ rights.