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Benefits & Obligations of Marriage in Wisconsin

Since the Supreme Court's decision in *Wolf v. Walker*, the ACLU has received many questions about marriage in Wisconsin. Below are some answers to frequently asked questions. **Please note:** These questions and answers provide general information only and are not intended as legal advice or guidance on specific situations that individuals or couples may face. If you have questions about your specific circumstances, you may wish to consult an attorney who practices in the relevant area of law (e.g., family law, adoption, employment law, trusts & estates law, etc.). If you believe you have been discriminated against because of your sexual orientation or because you are married to a person of the same sex, you may also **contact the ACLU of Wisconsin at 414-272-4032** or through our website, **www.ACLU-WI.org**. This is not a guarantee of legal representation and you should take whatever steps are necessary to preserve your rights while we review your concerns.

What benefits and obligations go along with marriage?

Entering into a marriage gives you and your spouse the benefits, protections and obligations of marriage under state and local laws in Wisconsin. These benefits and duties are too numerous to list, but a few of them are described here.

- Spouses have an obligation of mutual responsibility and support. If one spouse fails to provide support, the other can file an action to compel it.
- Property acquired during marriage (other than property acquired by gift or inheritance) is presumptively marital property and, upon the death of one spouse, the surviving spouse retains a one-half interest in each item of marital property.
- Spouses may transfer certain real property between them without having to pay a real estate transfer fee.
- Both spouses are generally liable for the debts of the other that arise during the marriage, but there are certain protections against liens by the state on a spouse's residence for nursing home or long-term care costs and certain exemptions when property is sold to satisfy a consumer debt.
- Married couples may file joint state tax returns and may be eligible for certain state income tax exemptions that are available only to spouses.
- The value of health insurance coverage for a spouse is not considered income for state tax purposes.
- A spouse is entitled to visit an ill spouse in the hospital and obtain certain information about the spouse's medical condition.
- A spouse can sue for damages for wrongful death, lost financial support and loss of companionship.
- Spouses generally cannot be compelled to testify against one another in court.
- Group health insurers must offer a special enrollment opportunity upon marriage to allow coverage of the new spouse and the spouse's children.
- Upon dissolution by divorce, the parties are entitled to equitable division of the debts and assets of the marriage.

Will our marriage be recognized by the federal government?

Married same-sex couples living in Wisconsin have access to all the protections and responsibilities provided to different-sex couples. There are over 1,000 federal laws in which marital status is relevant. Federal marriage benefits include things such as the spousal exemption from the estate tax and exclusion of the value of health insurance coverage for a spouse from treatment as taxable income. A

person is entitled to Social Security survivors' benefits when his or her spouse dies and can use family medical leave to care for a sick spouse. A person can sponsor a foreign-born spouse for citizenship. And spouses of veterans are entitled to certain federal benefits. At the moment, however, a married same-sex couple who moves from Wisconsin to a state that does not recognize their marriage will have access to many federal rights and benefits, but not to all of them, such as social security survivor's benefits, certain Veterans Administration benefits, and the option to use family medical leave to care for a spouse.

Are there reasons why a same-sex couple may *not* want to marry?

Getting married entails making a personal and long-lasting commitment to another person. A marriage can be profoundly rewarding and brings with it many tangible benefits. However, a marriage should not be entered into lightly. Marriage carries many rights and protections, but also many duties and obligations. For some couples, marriage may even be financially disadvantageous. For example, some public benefits programs will count a spouse's income or assets in determining eligibility and certain couples may have to pay more in taxes if they are married than if they are single. Immigration status for foreign nationals may also affect whether marriage is appropriate. Also, if you are considering adopting a child from outside the United States, you may wish to find out whether that country might not approve an adoption by lesbians, gay men or a same-sex couple before marrying.

What happens to domestic partnerships in Wisconsin?

There are several forms of domestic partnership in Wisconsin, none of which are directly affected by the *Wolf* decision. The State operates a domestic partner registry that provides same-sex couples some, but nowhere close to all, of the protections of marriage, such as inheritance rights and the right to hospital visitation. A number of municipalities around the state have also passed domestic partnership ordinances that provide some additional protections. Finally, the State of Wisconsin, some municipalities, and several private employers provide health insurance and other employment benefits for the domestic partners of their employees.

If we are registered as partners in Wisconsin's domestic partner registry, can we get married to one another?

You can get married, but your domestic partnership will be automatically terminated on the date of the marriage. Wisconsin law says that "if a party to a domestic partnership enters into a marriage that is recognized as valid in this state, the domestic partnership is automatically terminated on the date of the marriage."¹ Since marriages of same-sex couples are now recognized in Wisconsin, marrying in Wisconsin or elsewhere where it is legal for same-sex couples to marry will terminate any existing domestic partnership.

If we are registered with Wisconsin's domestic partner registry, will our domestic partnership automatically be converted into a marriage?

No. If you wish to be married, you need to take the steps described above to get married in Wisconsin or get married in another jurisdiction that allows same-sex couples to marry.

We were married in another state before it was recognized in Wisconsin and are also registered as domestic partners in Wisconsin. Is that domestic partnership still valid?

The domestic partnership statute does not appear to specifically address this circumstance. Your marriage is now definitely recognized. While it is possible that your domestic partnership also will

¹ Wis. Stat. § 770.12(4)(b)

remain in effect, it is unlikely to matter to a married couple, since marriage includes all the benefits of domestic partnerships.

We are Wisconsin residents, but were married in another state before it was recognized in Wisconsin. Do we need to remarry in Wisconsin? Can we remarry, just to be sure?

No. In fact, Wisconsin law says that couples who are already married cannot get another marriage license.² The *Wolf* decision requires that marriages of same-sex couples performed in other states be recognized by Wisconsin, so you should not need to take any other steps for your marriage to be recognized.

We were married in Wisconsin between June 6 and June 13, 2014. Do we need to remarry in Wisconsin? Can we remarry, just to be sure?

No. Approximately 500 same-sex couples married in the week after federal Judge Barbara Crabb declared Wisconsin's marriage ban unconstitutional on June 6, 2014. Those marriages were legally entered into, and the State of Wisconsin has announced that it will recognize these marriages and treat them the same as marriages of different-sex couples. As explained above, marriage licenses may not be issued to people who are already lawfully married to one another.

Will a Wisconsin marriage be recognized by other states?

If you are a same-sex couple and marry in Wisconsin, then your marriage will be recognized in all the states that currently recognize the marriages of same-sex couples. In addition, even in those states where marriages of same-sex couples are not currently recognized, some private business and others may recognize your Wisconsin marriage.

We were married in Wisconsin between June 6 and June 13, 2014. We tried to do a name change with Social Security, but were refused. I thought the federal government had to recognize lawful same-sex marriages?

In the weeks after the Supreme Court rejected the appeals in *Wolf* and the State announced it was recognizing June marriages of same-sex couples, some federal agencies, including the Social Security Administration, did not immediately process requests by married same-sex couples for federal benefits and other forms of recognition, such as name changes. However, on October 26, [the federal government clarified](#) that it would recognize the June 2014 marriages as well as other marriages of same-sex couples in Wisconsin. If a federal agency previously would not recognize your marital status, we suggest you try contacting the agency again. If you continue to have problems, please contact the ACLU.

Can I be discriminated against at my place of employment for being married to someone of the same sex?

Wisconsin's Fair Employment Law prohibits employers from discriminating based on sexual orientation and marital status, so discriminatory treatment in employment, including not hiring or firing or demoting someone based on being married to a spouse of the same sex, is generally illegal.

With the exception of persons serving a ministerial function, such as clergy or others directly involved in teaching or spreading a religious body's teachings, you are protected by Wisconsin's Fair Employment Law and may be protected by other laws. If your employer discriminates against you because you are

² Wis. Stat. § 765.09(1)(a) ("No application for a marriage license may be made by persons lawfully married to each other and no marriage license may be issued to such persons.")

married to a person of the same sex, you may wish to contact the ACLU or a lawyer who represents employees in discrimination cases.

What if a business discriminates against us because we are a same-sex couple, or says that serving us is against their religion?

Religious freedom is a fundamental American value, but it doesn't give anyone the right to discriminate. Businesses in Wisconsin that serve the public may not refuse someone service because of their sexual orientation or marital status.

Does my employer have to offer spousal health insurance coverage and other employment benefits for same-sex spouses?

If your employer offers spousal health insurance (or other spousal benefits) to employees with different-sex spouses, it should offer the same insurance and benefits to employees with same-sex spouses. Federal, state, and local government employers must provide married same-sex partners the same benefits they provide to married different-sex partners. Ensuring that private employers provide same-sex couples spousal employment benefits is more complicated. Because of the complexity of this issue, we encourage you to contact **the ACLU of Wisconsin** if you are denied health insurance or pension benefits for your spouse.

Now that we are married, do we need to do anything else to protect our relationship?

That depends. We strongly encourage same-sex couples with children to ensure that both parents have a legally-recognized relationship with the children. We also encourage you to consult an attorney about whether you should take other precautions through wills or powers of attorney, for example, to protect your family, especially when your family is traveling outside of Wisconsin.