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Marriage Basics for Same-Sex Couples in Wisconsin

Since the Supreme Court's refusal to hear the State's appeal of the ruling in *Wolf v. Walker* that same-sex couples in Wisconsin have the freedom to marry, the ACLU has received many questions. 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.

Background

On Monday, October 6, 2014, the United States Supreme Court refused to hear the State of Wisconsin's appeal of the lower federal court decisions in *Wolf v. Walker* – a case brought by the ACLU in February which culminated in the Court of Appeals' ruling that Wisconsin's ban on marriage for same-sex couples violates the U.S. Constitution. As a result, same-sex couples are now able to marry in Wisconsin, the State must recognize the marriages of same-sex couples who were lawfully married in other states, and the State must treat those marriages the same as the marriages of different-sex couples through access to spousal protections and benefits and the enforcement of the obligations placed on married couples. Also, after the ACLU filed a second case to protect the rights of the approximately 500 same-sex couples who married in Wisconsin during the week after the federal district court declared Wisconsin's ban unconstitutional on June 6, 2014, the State finally announced on October 13 that it will recognize those marriages.

When can same-sex couples start marrying in Wisconsin?

Right now! Since October 6, 2014, same-sex couples have been able to marry in Wisconsin.

Who can marry in Wisconsin?

Two people may marry if they are:

- 18 years old or older (or 16 years of age or older with the written consent of the person's parent, guardian or legal custodian)
- legally competent to enter into a contract
- not married to another person and not divorced more recently than 6 months prior to marrying
- not related as first cousins or closer (except that first cousins may marry if a female is 55 years of age or older or if a physician signs an affidavit that one party to the marriage is sterile)

What steps do we take to get married in Wisconsin?

Although most of the steps for getting married are uniform around the state, there are some variations from county to county, so the best source of information is usually the County Clerk's office.

Here are the basic steps:

1. Pick a date and location and find an officiant who will perform the ceremony. You will need to tell the County Clerk when you apply for a marriage license the date you will be married, the municipality in which you will be married and who will officiate.

2. Go to the County Clerk's office to apply for a marriage license. Generally, the license will only be issued six days after you apply and will be good for 30 days from the date it is issued, so plan to go to the clerk's office a few weeks before the wedding. Some counties will allow you to pay an extra fee to get the license on the same day you apply for it. The waiver fee varies, but may be as much as \$25. If one or both of you are Wisconsin residents, you must apply for the marriage license in the County in which one of you has resided for at least 30 days, but the marriage can take place anywhere in the state. If neither of you are Wisconsin residents, you must apply in the County in which the marriage ceremony will take place.

You can find contact information for all 72 County Clerks in Wisconsin at the Wisconsin County Clerks Association website: <http://www.wisconsincountyclerks.org/county-clerk-profiles>

What to bring when you go to the clerk's office:

- Both of you! Both parties to the marriage must sign the application in the clerk's office.
- Your social security numbers. (If you don't have a social security number, you can still get married, but if you have one, it must be included on the application form.)
- Certified copies of your birth certificates. If a birth certificate is "unobtainable," the clerk or a judge can accept other satisfactory documentary proof of birth.
- "Satisfactory documentary proof of identification" – most counties require a photo ID.
- For Wisconsin residents, "satisfactory documentary proof of residence". If you have a driver's license or state ID with your current address, it can also serve as proof of residence. Otherwise, you can use a utility bill, lease, bank statement or similar document with your name and current address.
- If you have been previously married, a judgment of divorce or a death certificate for the former spouse.
- The fee, which varies from county to county, but is generally between \$90-120. Many counties accept only cash payments, though some accept money orders or credit cards.
- In Wisconsin, any document not in English must be attached to a certified or notarized translation.

3. "Solemnize and contract" the marriage with a ceremony before an authorized officiating person and at least two competent adult witnesses other than the officiant. At the ceremony you must mutually declare your intent to be joined in marriage and take each other as spouses.

4. The officiant completes the marriage documents and returns them to the register of deeds in the county in which the marriage was performed within three days after the marriage.

Who may officiate a marriage in Wisconsin?

Wisconsin law authorizes the following to officiate a marriage:

- an ordained or licensed clergy member of any religion
- any judge, including federal, state, municipal judges, state reserve judges, and state court commissioners

- the parties to the marriage themselves, if doing so is in accordance with the religious customs, rules or regulations of a religion to which one of the parties belongs

Do we have to live in Wisconsin to get married in Wisconsin?

No, there is no residency requirement for marriage in the state of Wisconsin. However, if non-residents marry in Wisconsin, they must obtain a marriage license from the county in which their marriage ceremony will take place. If you and your spouse are not Wisconsin residents, states that still do not recognize marriages of same-sex couples may not recognize your Wisconsin marriage. There may be local businesses and municipalities that do.

Can we marry the day we obtain and submit our marriage license application?

There is a six-day waiting period from the date the application is signed until the license becomes effective. For a \$10 – \$25 fee, a waiver may be obtained to not wait the six-day period, but the issuance of the waiver is at the discretion of the local county clerk.

Can a house of worship, such as a church, or member of the clergy refuse to marry me and my partner?

Yes. The First Amendment's guarantee of the free exercise of religion allows religious denominations to decide who may or may not be married by their clergy or in their houses of worship.

Can the clerk's office refuse to give us a license or refuse to sign our license application because they object to marriages between same-sex couples?

No. Nothing allows a civil servant otherwise required to issue licenses for civil marriages to refuse to do so because of personal beliefs or religious objections. As government officials, they may not treat one group of applicants differently from another group solely because of personal religious objections. If you encounter a clerk's office that refuses to issue a marriage license to same-sex couples, please contact the ACLU.