



Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Phone: 617.426.1350
Website: www.glad.org

PROTECTIONS, BENEFITS, AND RESPONSIBILITIES OF MARRIAGE

Marriage confers automatic rights and responsibilities that are integral in the formation and sustenance of a family. The law recognizes marriage is an intimate and confidential relationship and an economic partnership. Marriage laws affect nearly every aspect of a married couple's lives. Some protections are available in times of vulnerability, allowing spouses to make medical decisions, visit in the hospital, and make final decisions about a loved one's remains. Other laws affect more mundane but practical needs, such as filing joint tax returns, allowing a surviving spouse to inherit property from one's spouse free from certain estate taxes, and the ability to transfer property between spouses without gift or transfer tax consequences, as well as obtaining joint health, home and auto insurance policies. Marriage also provides security for children; a child who grows up with married parents benefits from the fact that his or her parents' relationship receives the support of the law.

While gay and lesbian families can provide limited protections for themselves by creating wills, health care proxies and co-parent adoptions, there are hundreds of state and federal rights and obligations into which people simply cannot contract. In addition, this partial protection is only available to those who can afford lawyers, and as a result many gay and lesbian couples are left without even minimal security for themselves and their children. Only when the right of gay and lesbian couples to marry is recognized will these families have the level of protection that they need and deserve.

Protections of Marriage that Cannot be Replicated

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;
- 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 confidentiality of address, the right to information, and the right to make a victim impact statement are not available to a same-sex partner;
- 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.

Death -- Without Marriage:

- The surviving same-sex partner is not entitled to protections such as taking a forced share of the estate, and transition protections related to staying in the family home, receiving allowances from the estate to meet current expenses, and being allowed to drive the family car;
- Surviving lesbian and gay partners are denied automatic inheritance rights, along with spousal preference for administering the estate and taking care of a loved one's remains;

- A same-sex partner of a public employee is not entitled to pension survivor rights and accidental death benefits. In addition, partners of police officers, firefighters and prosecutors who are killed on the job do not have access to line of duty benefits;
- 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:

- Lesbian and gay couples are not entitled to legal protections upon the dissolution of their relationship, such as 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 their best interest.

The list is long, numbering hundreds of protections granted by the state and over a thousand by the federal government.

(For a more extensive, but still not exhaustive, list of the benefits and obligations of marriage see GLAD's publication, "Protections, Benefits and Obligations of Marriage Under Massachusetts and Federal Law")

Responsibilities of Marriage

The above-mentioned rights and benefits are accorded to married couples on the understanding that they will be mutually dependent and support one another throughout their time together. The law enforces these mutual obligations.

- **Duty of Support:** Married people are responsible for each other's support as well as the necessary debts of their spouses, including medical bills. In addition, when a married woman gives birth, her spouse is automatically responsible for child support.
- **Commitment to Remain Married:** Once two people marry in a civil ceremony, 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.

Why Civil Unions Are Not Enough

- The word "marriage" is one of marriage's protections: everyone knows it means you are a family. Nothing else immediately conveys that reality;
- Marriages are more likely to be respected by other states, and ultimately the federal government than some other status that has no parallel in our history. For example, a Massachusetts couple visiting relations in Florida would have a harder time getting emergency personnel to recognize a civil union than a marriage;
- When some states allow marriage, the federal government will begin to revisit the federal law that presently bars same-sex married couples from receiving protections under federal law, such as social security survivor rights, Family & Medical Leave rights, and joint tax filings; and
- The only reason a state would bother going to the trouble of creating a separate system exclusively for gay people, when it could easily fold same-sex couples into the marriage system, is to stigmatize same-sex couples and convey the message that gay people are unworthy of marriage.