

An Overview of Marriage



Marriage, and the process of planning a wedding, can be a wonderful thing. While there are many guides available to help you plan a wedding, this is a guide to help you plan some of the legal and financial responsibilities that go along with getting married.

We hope this guidebook will provide a valuable first step in finding clarity and relief for your legal concerns. If you have additional questions after reading this document, your ARAG® legal plan can help. If you have ideas on how to improve this document, please share them with us at Service@ARAGlegal.com.

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Sincerely,

ARAG Customer Care Team

Table of Contents

Glossary	4
The Decision to Get Married	6
What You Need to Get Legally Married	8
Prenuptial Agreements	9
Different Forms of Unions	15
Changing Your Name	19
Let Us Help You	20
Preparing to Meet Your Attorney	23
Resources for More Information	25
Checklists	26

Glossary

Civil Union. A relationship between a couple that is legally recognized by a governmental authority and has many of the rights and responsibilities of marriage.

Common Law Marriage. A marriage created when two people live together for a significant period of time (not defined in any state), hold themselves out as a married couple, and intend to be married.

Community property. A community property state is one in which all property acquired by a husband and wife during their marriage becomes joint property even if it was acquired in the name of only one partner.

Domestic Partnership. A relationship between two individuals who live together and share a common domestic life but are not joined by marriage nor a civil union.

Marital property. Marital property is all property acquired during marriage and is considered to be jointly owned.

Marriage certificate. A document that proves you are married. Most states require both spouses, along with the person who officiated and one or two witnesses, to sign the marriage certificate; often this is done just after the ceremony.

Marriage license. A document that authorizes you to get married.

Marriage. The legal union of two people, who are joined together after they obtain a marriage license from their state and take part in a ceremony

Prenuptial agreement. A prenuptial agreement is a written contract created by two people before they are married. It typically lists the property each person owns, their debt and what each person's property rights and responsibilities will be after marriage.

Post-marital agreement. Similar to a prenuptial agreement, this written contract is completed after marriage.

The Decision to Get Married

Getting married and planning a wedding come with many exciting decisions. Where to hold the ceremony. Where to go on a honeymoon. What kind of reception to have. In the flurry of all you're doing, it's important to remember that the lifetime commitment you're making is also a legal contract.

While you are accepting several rights and benefits, you are also taking on specific legal and financial responsibilities. Here are some of the questions you and your future spouse may want to consider as you prepare for marriage:

- ✓ How will we manage our assets? What will be combined and what will be kept separate?
- ✓ Will we use the same or separate bank accounts and credit cards?
- ✓ What is our new budget and how will we pay bills?
- ✓ How will we manage any debt either of us has as an individual?
- ✓ Should we sign a prenuptial agreement?
- ✓ How will we provide financial support for any children of prior relationships?
- ✓ How do we intend to share income and property acquired during the marriage?

Planning for the Future

While discussing finances can seem rather dull and unnecessary, remember that a conversation about your finances is essentially a conversation about your future. Now is also the time to ask what your plans are. Do you want to buy a house? Have children? Travel? Take time to discuss some of the following questions as well:

- ✓ What financial goals do we want to work toward?
- ✓ Do we need new furniture or other items that we'll buy and own together?
- ✓ Do we want to save to buy a house?
- ✓ What are our plans for having children?
- ✓ How will we fund our retirement plans?
- ✓ What plans do we want to put in place for the future?

What You Need to Get Legally Married

Marriage requirements

What you'll need to get married varies by state, but generally you and your future spouse need to be:

- ✓ At least the age of consent (age 18 in most states, although sometimes you may marry younger with parents' consent)
- ✓ Not too closely related
- ✓ Of reasonable mental capacity—that is, you understand what you're doing and what consequences your actions may have
- ✓ Unmarried to anyone else

Some states also require a blood test. All states require a marriage license and marriage certificate.

Marriage license

This is the document that authorizes you to get married. Depending on the laws of your state, you may apply for a marriage certificate in the county or town where you intend to be married. Generally, you'll pay a small fee and the license is issued in a few days. Some states require a waiting period between getting the license and getting married. Most licenses also expire after a period of time, from 30 days to up to a year.

Marriage certificate

This is the document that proves you are married. Most states require both spouses, along with the person who officiated and one or two witnesses, to sign the marriage certificate; often this is done just after the ceremony.

Prenuptial Agreements

A prenuptial agreement is a written contract created by two people before they are married. It typically lists the property each person owns, their debt and what each person's property rights and responsibilities will be after marriage.

Why you may want one

Proponents of prenuptial agreements use these documents to do the following:

- ✔ Protect each person's separate property and debt
- ✔ Support an estate plan, especially if children from prior relationships are involved
- ✔ Define what is marital property and what is community property
- ✔ Reduce conflicts and save money in case of divorce
- ✔ Establish procedures and ground rules for future decisions

In addition, people have also used prenuptial agreements to address common issues such as:

- ✔ Whether to file joint or separate income tax returns
- ✔ Who will pay the household bills and how
- ✔ Whether to have joint bank accounts and, if so, how to manage them
- ✔ How to manage specific purchases such as buying a house or starting a business
- ✔ Whether to have joint or individual credit cards
- ✔ How to set aside money for savings
- ✔ How to put each other through college or professional school

- ✓ Whether a surviving spouse will be provided for in an estate plan or with life insurance coverage
- ✓ How to settle any future disagreements—for example, through a mediator or private arbitrator.

While creating a prenuptial agreement may seem contrary to the act of getting married (“Why should we decide how to split things at divorce when we’re planning a lifetime commitment?”), having an open conversation about money and property can actually build your relationship. Even if you don’t sign a written agreement, being able to talk about finances can ensure you’re both on common ground.

Why you may not want one

A prenuptial agreement may not be a matter of “not at all,” but simply a matter of “not now.” If you have a certain idea of how you want your engagement and wedding planning to go, and the discussion of property, finances and possibility of divorce takes away from this time in your life, you may not want to do a prenuptial agreement – or agree to do one later (known as a post-marital agreement.)

In addition, state laws may protect you without a prenuptial agreement. Depending on where you live, your state laws regarding how property is distributed at divorce may be exactly what you want and, you may not need the extra effort of doing a prenuptial agreement. It may still pay to consider any other special arrangements that are important to you.

What You Can’t Do With a Prenup

State laws determine what you can and can’t do with a prenuptial agreement, but as a general rule here are some things that you usually cannot do:

- **Restrict child support, custody or visitation rights.** No state will honor agreements limiting or giving up future child support. The same holds true of agreements limiting future custody and visitation rights. The states consider the welfare of children to be a matter of public policy and do not

enforce any private agreements that would impair a child's right to be supported or to have a relationship with a parent in the future.

- **Give up the right to alimony**, in a few states. A handful of states limit the ability to give up rights to alimony if you get divorced. Check with your state laws for what applies in your situation.
- **Make rules about nonfinancial matters.** For practical reasons, keep personal agreements such as who has responsibility for household chores or agreements about having and raising children out of this agreement.

What to keep in mind

If you decide you want to do a prenuptial agreement, it's best to start by agreeing on the essential terms that are important to both of you. Put these in a written document so that you are both clear – and the attorneys can see clearly what you're trying to accomplish.

Then, you should each select an attorney to help with the agreement. The laws surrounding marriage and prenuptial agreements are complex and vary by state. Having attorneys who are experienced in these arrangements will ensure you are getting the best representation. Having separate attorneys ensures that you've created an agreement you each understand and doesn't leave either of you feeling that the other made all the decisions.

Seven Questions to Ask When Remarrying

Unlike a first marriage, remarriage can be a bit trickier from a financial perspective. Here are a few questions you may want to ask before heading to the altar:

- Is either person currently receiving alimony or Social Security from the previous marriage? Many times alimony ends if the person remarries and sometimes even if the person cohabitates. Social Security also becomes subject to change when remarrying.
- How will remarrying affect college financial aid for your child? Qualifying calculations may include income of either parent's current spouse.
- What is each person's credit and debt history? While each person has an individual credit report, joint credit obligations show up on both credit reports. Even if your fiancée is fiscally responsible, his or her credit report may reflect an ex-spouse who overextended joint accounts. While not irreparable, it may impact when and how you can buy a home or get a loan with your new partner.
- What income and assets does each person bring to the marriage? If significantly different, is each person comfortable with what the other contributes to the financial picture?
- What is each person's individual attitude toward money based on upbringing and life experience?
- How will paying the bills and planning for the future be managed? Will accounts be combined or left separate? Many financial experts advise having both separate and shared banking accounts. Not only does this allow for some independence and keep financial matters related to children from a previous marriage separate, it hedges against potential downsides.
- Will you create a prenuptial agreement? Creating one clarifies who owns assets and debts if the marriage ends, but it also ensures certain financial issues are discussed before the marriage begins.





Different Forms of Unions

Marriage is one form of union and the one with the clearest interpretation of the legal rights and responsibilities that come with it. All recognized forms of union in the United States are created by state law (generally statutory and sometimes judicial). The most common forms of unions include the following:

Civil Marriage

A civil marriage is "... a legal status established through a license issued by a state government granting legal rights and imposing legal obligations on the two married persons ... [licensees] may marry in a civil ceremony, religious ceremony or both ... These marriages are recognized by the federal government (under the Defense of Marriage Act (DOMA)) for all federal law purposes."¹

Each state has a law defining who may (and may not) enter into a civil marriage, how to obtain a civil marriage license and the process for performing the civil marriage ceremony.

When a state's laws speak of "married persons" or "spouses" or "surviving spouses" they generally include people involved in civil marriages. In states that recognize same-sex marriage equivalents (i.e., civil unions or domestic partnerships), some or all of the law for civil marriage partners will apply to partners in those same-sex equivalents. Consult the specific state laws to understand the extent to which the rules apply equally.

Civil Union

A civil union is "... a legal mechanism, sanctioned by the civil authorities, intended to grant same-gender couples legal status somewhat similar to civil marriage ..."¹ There must be a statute in the state that authorizes civil unions and specifies who is eligible to enter into a civil union, how they are created and their legal effect.

Common Law Marriage

A common law marriage is one in which the couple has made “a positive mutual agreement, permanent and exclusive of all others, to enter into a marriage relationship, holding themselves out as husband and wife, and the assumption of marital duties and obligations.”²

Most states don’t permit the formation of common law marriages; however, a handful of states do permit them. A few states recognize them but only for limited purposes.

Cohabitation

Cohabitation occurs when two persons, generally of different genders, live together as a couple under the same roof, without any formal or informal sanction for their relationship. No state recognizes simply living together as a legally recognized family; however it may be a factor considered in common law marriages.

Domestic Partnership

A domestic partnership is “... a relationship between two individuals, often but not necessarily, of the same gender, who live together and mutually support each other as spouses but who are not legally joined in a civil marriage or a civil union....”¹

There must be a statute in the state that authorizes domestic partnerships, specifies who is eligible to register as domestic partners, and specifies the legal effects of the relationship.

Because state laws vary, check your state laws to see how your state handles the legal status, rights, and benefits of specific family relationships. Online access for state statutes can be found at your state legislature’s website.

Same-Sex Marriage, Civil Unions, and Domestic Partnerships

If you are in a same-sex marriage, you are now entitled to many federal benefits under the recent U.S. Supreme Court case, *U.S. v. Windsor*. However, the rules for eligibility will vary by federal agency.

Many federal agencies look to where the marriage was performed to determine whether same-sex married couples are eligible for benefits. If you have a marriage, you will qualify for immigration status and federal employee benefits (if either of you works for the federal government), even if you live in a non-recognition state. The same goes for the IRS and eligibility for federal tax benefits. In August 2013, the U.S. Department of Treasury ruled that all same-sex couples that are legally married in any U.S. state, the District of Columbia, a U.S. territory or a foreign country will be recognized as married under all federal tax provisions where marriage is a factor. The Treasury Department further clarified that federal recognition for tax purposes applies whether a same-sex married couple lives in a jurisdiction that recognizes same-sex marriage (such as California) or a non-recognition jurisdiction (such as Texas).

Some federal agencies, such as the Social Security Administration, because of current statutory terms only recognize marriages that are valid in the state of domicile (where the couple lives) for the purposes of granting federal benefits. This means if you're in a same-sex marriage, but you live in a non-recognition state, you may not be found eligible for Social Security benefits on your spouse's work record. If you live in one of the jurisdictions that recognizes same-sex marriage, you will qualify for benefits. This rule also applies to Medicaid and Supplemental Security Income, Medicare and benefits under the Family Medical Leave Act. Nevertheless, if you would otherwise qualify for those benefits the agencies have encouraged filing since benefits could relate back to the filing date if the laws or the laws interpretations change.

If you are in a domestic partnership or civil union in any of the states that offer those relationship options, none of the benefits of marriage under federal law will apply to you, because the federal government does not recognize these same-sex relationships as equivalent to the marriage requirement specified in the federal laws. For example, you may not file joint federal income tax returns with your partner, even if your state allows you to file your state tax returns jointly. And other federal benefits, such as Social Security death benefits and COBRA continuation insurance coverage, may not apply.

Litigation, legislation, and administrative rulings continue to make the landscape of same-sex marriage very fluid. As a result, you should check for current developments and policy in your state or in regard to marital status benefits and protections for same-sex marriage.



Changing Your Name

If one of you wants to use the other person's name upon marriage simply begin to use that name. Use the new name consistently, and be sure to change your name on all of your identification, accounts, and important documents. To change some of your identification papers – your Social Security card and driver's license, for example – you'll need a certified copy of your marriage certificate, which you should receive within a few weeks after the marriage ceremony.

Additional questions to consider

After marriage you may also want to consider some of the following decisions:

- ✔ Will one of you add the other to your health insurance policy?
- ✔ Do you need to update beneficiaries on bank accounts, retirement plans, securities, and life insurance policies?
- ✔ Do you need to create or update your estate planning documents such as you Will, trusts, powers of attorney and living wills?
- ✔ Will you adopt your spouse's children?

Let us help you

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List and attach any documents or background information you think will be helpful in the first meeting with an attorney.

Resources for More Information

The following were used as resources in developing this guidebook and provide additional resources:

SupportinaSplit.com

Social Security.gov, "What Every Woman Should Know."

<http://www.ssa.gov/pubs/EN-05-10127.pdf>

1. Burda, Joan. Gay, Lesbian and Transgender Clients: a Lawyer's Guide, p.16. (American Bar Association, 2008).
2. Black's Law Dictionary, Revised Fourth Edition, 1968.

Checklists

Six Legal Documents to Update Now

Updating documents and named advisors is important because so often the spouse is the named emergency contact, (or the contact most state laws would default to). A current point-person needs to be named for decisions relating to minor children, health and finances. In addition to the following legal documents, you may want to update beneficiary information in your life insurance policies, 401(k) plans, and others.

Update these six legal documents:

- Standby Guardian – Appoints a temporary guardian for minor children.
- Health Care Proxy – Appoints a person for healthcare related decisions.
- Living Will – Indicates end of life related healthcare wishes (in the case of a vegetative state).
- Funeral Directive – Indicates funeral related arrangements and appoints a person responsible for enacting the plan.
- Durable Power of Attorney – Appoints an agent for financial related decisions.
- Will or Trust– Describes how property and assets will be distributed.

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