

Commonly Asked Questions Regarding Oregon State Agency Recognition of Legal Marriage of Same-Sex Couples from Other Jurisdictions

Q. Do same-sex couples with valid marriages from a jurisdiction outside Oregon need to notify or inform the State of Oregon about their marital status?

A. No, except when marital status is required information through the normal course of doing business with the state. Opposite-sex married couples' marital status most commonly becomes known to the State of Oregon when the couples file their taxes. Or if an individual or family applies for a state program or service, the enrollment form might ask for marital status. And just like an opposite-sex married couple, a same-sex legally married couple would check the box and supply the spouse's name if required.

Q. Do all levels of government now recognize legally valid marriages of same-sex couples from other jurisdictions? For all purposes or applications that opposite-sex marriages are recognized?

A. No. Oregon State Agencies recognize legally valid marriages of same-sex couples from other jurisdictions. For a complete list of Oregon State Agencies, visit: http://www.oregon.gov/Pages/a_to_z_listing.aspx.

There are a number of public and private sector entities that are NOT bound to do so. They are:

- 1) Local Government--cities, counties, Metro, special districts, such as Soil and Water Conservation Districts.
- 2) The Judicial Branch of Government--circuit courts, district courts (in some cases), the Oregon Tax Court, the Oregon Court of Appeals, and the Oregon Supreme Court.
- 3) Private individuals, businesses and companies in Oregon--any non-governmental entity, such as hospitals, lodging, restaurants, retailers, private employers, etc.

Q. Do same-sex couples who have a valid marriage from another jurisdiction and an Oregon Registered Domestic Partnership (ORDP) with their spouse need to "cancel" or in some way "undo" their Oregon Registered Domestic Partnership?

A. There is no requirement to do so. And there are a number of factors to weigh:

- 1) The only way to "undo" your ORDP is to go through a dissolution proceeding (basically a divorce) and there could be lawyer costs and court fees associated with that, just as there are for any divorce.
- 2) While Oregon law requires courts, local government, private businesses and employers (including hospitals) to recognize an ORDP and to grant rights, privileges and benefits associated with that designation accordingly, there is no such requirement for those entities to recognize a same-sex marriage. Keeping your ORDP could help provide protections that your marriage does not yet provide.

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3) Some other states may recognize an ORDP and not a same-sex marriage. Therefore, having a marriage AND an ORDP could provide maximum protection.

Q. What if I have a marriage (that did not used to be valid in Oregon) with one person and an ORDP with someone else?

A. You should work with a family law attorney to sort out your relationship/marital status and take the necessary action(s) to resolve it.

Q: I married someone in another jurisdiction before Oregon recognized same-sex marriages, and we are no longer together. Can I enter into a Registered Domestic Partnership with someone else in Oregon now?

A: No. You will need to dissolve the prior marriage before entering into a new Registered Domestic Partnership here.

Q. If my employer pays for health insurance for my partner, does having a legally recognized marriage affect my taxes?

A. Yes. If you are married, you will no longer be taxed on the “imputed income” related to the value of the health insurance premiums.

This only impacts the small subset of employers that pay for health care for non-employee spouses. There is no requirement that an employer do so. It does not impact employees who choose to add their spouse and pay the premiums themselves.

Q. My spouse and I were married in Canada several years ago. We have two minor children. We have separated and need to go through a divorce proceeding in Oregon. We do not have an Oregon Registered Domestic Partnership. How will Oregon courts treat our marital status, and how will that impact child custody and real property matters?

A. This is an open and complex legal question. You should talk to a lawyer familiar with same-sex dissolutions and discuss your options.

Q. I tried to file for divorce from my spouse in an Oregon Court, and the case was dismissed. I was told that they can't dissolve my marriage because Oregon Courts do not recognize marriage between two people of the same gender. What do I do now?

A. First, consult with an attorney who is experienced in dissolutions between same-sex couples. As mentioned above, this is a very complex area right now and the

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answer may depend on how long you've lived in Oregon, whether you are also Registered Domestic Partners, etc.

Q. My wife is pregnant. When our child is born, do I still need to do a second-parent adoption if we have a marriage (recognized by the State of Oregon) in order to also be recognized as our child's legal mother?

A. No, you should not need to do this for the purposes of Oregon law, no matter whether you are married or in an RDP. Oregon law allows the birth mother's registered domestic partner or spouse to be added to the birth certificate without an adoption.

However, please be aware other states may not recognize your parental status. Second parent adoption provides a court order that will generally override a state law prohibiting recognition of a same-sex relationship

Q: My husband and I are expecting a child, who is being carried by a surrogate. Do we need to do a second-parent adoption?

A: *[Awaiting DOJ confirmation] Yes. If one of you is the biological father, you may acknowledge paternity at the time of birth, or afterwards. The non-biological father(s) will have to adopt when the surrogate terminates her parental rights. The paperwork can be prepared before the birth, so that the process is streamlined.*

Q. I didn't see an option to change my name when we married in another state. How do I legally change my last name, and what documents will I need to show the DMV to get them to issue a new driver license for me?

A. This depends on where you were married. Some jurisdictions allow couples to declare an intention to make a legal change of middle, last, or hyphenated name when filing the paperwork to get married. Couples married in this type of jurisdiction can get a new of driver's license through the Oregon DMV by showing them the supporting documentation—marriage license or legal record of marriage (not the commemorative one suitable for framing).

Unfortunately, if you were unable to change your name (or simply did not choose to do so at the time) through the marriage application or license, you will have to go through the formal name change process in Oregon. Information on how to do this can be found at: http://www.osbar.org/public/legalinfo/1137_NameChanges.htm