

Do Same Sex Partners in a Civil Union Have to Be “Re-Married”?

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Dear Ask the Attorney:

Four years ago my partner and I were joined in a Civil Union in New Jersey. Now that the state is legally recognizing same sex marriages do we have to be “remarried” to be afforded the benefits under the new law or will the state recognize the Civil Union as a Marriage?

Thank you,

NH

Our guest blogger today is Matthew S. Coleman, Esq., an associate with our family and matrimonial law department. Mr. Coleman concentrates his practice in all areas of family law including divorce, child custody, LGBT issues including the dissolution of civil unions, and appellate work.

Dear NH:

Thank you for your question and congratulations on your union. As New Jersey civil union partners, you are currently entitled to enjoy all the rights and responsibilities of opposite sex married couples that exist under New Jersey law. However, in the last few months, there have been a number of landmark court decisions which discuss your rights as a same-sex couple in New Jersey.

In June, the United States Supreme Court struck down a section of the federal Defense of Marriage Act which prohibited same-sex couples who were legally married in their home state from receiving federal benefits. There are estimated to be more than 1,000 federal benefits and protections that can

now be afforded to same-sex married couples, including insurance coverage to same-sex spouses for federal employees, immigration rights for same-sex relationships, the right to social security benefits based upon your marriage to your partner, and the ability to file federal income taxes jointly, name only a few.

However, the Supreme Court was clear that these rights were to be extended to married same-sex couples, which were not recognized in New Jersey until this week. Civil unions are not recognized by the federal government.

The recent New Jersey Superior Court decision held that civil unions do not afford same-sex couples the same rights and privileges as opposite-sex married couples. The New Jersey Court ordered that same-sex couples must be allowed to marry in order to receive equal protection under the law, in other words to receive federal benefits. The Court stated that officials were to begin issuing marriage licenses to same-sex couples. The State of New Jersey initially appealed this decision, but after its request to put a hold on the issuance of same-sex marriage licenses while the New Jersey Supreme Court decided the issue was denied, the appeal was withdrawn. As of October 21, 2013, marriage licenses have been issued to same-sex couples and many same sex couples have married this week.

One thing the New Jersey Court decision did not do is invalidate or convert civil unions. Those couples who entered into a civil union remain in that status. The civil union statute was not altered in any way, so couples wishing to enter into or remain in their civil unions have the option to do so at this time. Your civil union should not affect your ability to enter into a marriage in New Jersey (provided that you are seeking to marry the same partner with whom you are in a civil union).

If you are currently in a civil union and you wish to take advantage of the many federal benefits afforded to opposite-sex married couples, such as social security, tax benefits, and immigration rights, you will have to marry your partner. The process of obtaining a marriage license in New Jersey is similar to the application process you would have gone through when you entered your civil union. After you obtain the license, you will have 30 days to hold a marriage ceremony. It is a great opportunity to reaffirm and celebrate your relationship.

There may be unforeseen issues with having both a civil union and a marriage, however. For instance, should there come a day that you choose to end your relationship, there may be some additional hurdles in dissolving both a civil union and marriage. Every family's circumstances are different, and the ways in which New Jersey is dealing with these recent developments affecting same-sex couples is continuing to evolve. Marriage, for any couple, is one of the most important decisions they can make. It is important to discuss your questions with experienced professionals who can advise you on your particular circumstances.

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