



A Marriage License Doesn't Come with a Power of Attorney – Same-Sex Marriage Update in Colorado

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Same-Sex Marriage

- ▶ Legal in 35 States and D.C.
- ▶ St. Louis, MO allows same-sex marriage + plus MO honors other state's marriages
- ▶ In 10 states judges have issued rulings in favor of same-sex marriage that are stayed pending appeal
- ▶ 6th Circuit – reversed pro marriage rulings in KY, MI, OH and TN – likely to get to the Supreme Court
- ▶ www.freedomtomarry.org

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Same-Sex Marriage

- ▶ U.S. Supreme Court declined to hear the latest same-sex marriage appeals
- ▶ This made the 10th Circuit ruling against same-sex marriage bans the law in Colorado
- ▶ October 7th, 2014 Colorado AG instructed all 64 county clerks to begin issuing marriage licenses to same-sex couples.

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Married in a State or Country where it was Legal

A couple that was legally married in a state or Country where it was legal, is now automatically married in the eyes of Colorado and the Federal Government. You do not need to do anything.

All of the rights and obligations of marriage now apply to your marriage.

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Married in Colorado 2014 by Denver, Boulder or Pueblo Clerk - gap marriages

- ▶ Unclear at this time – 350 issued
- ▶ Should be declared valid, but clarification is probably needed from the Attorney General's office
- ▶ Did the clerk's have the legal power to issue the marriage licenses while the 10th Circuit Stay was in place
- ▶ Different Clerks doing different things – Denver will issue another license free of charge – but if you are stating that you aren't married, is that a false statement?

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Married in Colorado 2014 by Denver, Boulder or Pueblo Clerk

- ▶ Boulder County Attorney opinion – the licenses issued are valid, unconstitutional means unconstitutional, and no state court can change that
- ▶ Boulder will issue new licenses under the category of reaffirmation of vows
- ▶ Even if the original licenses were invalid (which Boulder County Attorney disputes), reaffirmation would validate them - is his opinion
- ▶ Unclear if the court could issue a ruling on these licenses that were issued
- ▶ Or maybe the Attorney General will issue his opinion on them

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Married in Colorado 2014 by Denver, Boulder or Pueblo Clerk

- ▶ Time will tell. Risks of waiting, someone dies or gets hurt and their marriage isn't recognized
- ▶ Unfortunately, I can't tell you whether to have your clients wait or not, no one knows the ramifications of all of this

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In a Civil Union

- ▶ There were two ways to enter into a Civil Union before we had same-sex marriage
 - License issued by a Colorado Clerk
 - Out of State Marriage (or substantially similar legal relationship) from another jurisdiction, before the Supreme Court ruling, was a Civil Union in Colorado

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Civil Union

- ▶ If they were married in a state or country where it was legal at the time, they are now married in Colorado, not in a Civil Union anymore.
- ▶ If they were in a Civil Union issued by a Colorado County – they are still in a Colorado Civil Union. No federal recognition as spouses
- ▶ A Civil Union license issued by a Colorado County does not turn into a marriage under current law – it remains a Civil Union

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Civil Union to Marriage

- ▶ They should be able to go to any County Clerk's office in Colorado and apply for a marriage license
- ▶ Take their Civil Union license with them
- ▶ We do not believe they would need to dissolve the Civil Union as long as they are marrying the same person – Some counties could disagree – law is not clear, call ahead to find out their procedure or rules

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Not Married or in a Civil Union

- ▶ If a same-sex couple is not in a Civil Union and never went and got married in a state where it is legal, they can now go to any of the 64 Colorado Counties and apply for a marriage license. – same exact process as opposite sex couple
- ▶ Whether to get married or not is a personal decision.

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Married to Someone Else

- ▶ If a person married another person in a same-sex marriage that was never dissolved, they are automatically in a marriage with that person if they live in Colorado
- ▶ Before they can marry someone else, or enter into a Civil Union with someone else, they need to get a divorce

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Common Law Marriage

- ▶ Colorado does recognize common law marriage
- ▶ No standard test to determine if there is a common law marriage
- ▶ Holding themselves out as married and intending to be married, but a Court makes this determination – many things they can consider
- ▶ If a couples doesn't want to be married, the should not hold themselves out as married
- ▶ If they do want to be married, go get a marriage license
- ▶ Consult a family law attorney with questions about common law marriage

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Common Law Civil Union

- ▶ Unknown whether Colorado will have common law Civil Unions
- ▶ Civil Union statute is silent as to this issue
- ▶ Could grow out of case law

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Moving Out of State

- ▶ As long as they move to a state that recognizes same-sex marriage, they will continue to have all of the state and federal benefits of marriage
- ▶ If they move to a state that does not recognize same-sex marriage, they will not have all of the federal benefits of marriage, and none of the state rights that come with marriage
- ▶ www.freedomtomarry.org has up to date information
- ▶ What if they are just visiting one of these states – unknown if they have to honor the marriage

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Children



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Second Parent Adoption – 2007 – If NO Civil Union or Marriage

- ▶ Any Person Twenty-One Years of Age or Older can Adopt – No need to be married to the sole legal parent
- ▶ Home study required
 - FBI, CBI, SAFE check, home visit, references
 - Parent training required – as of 2013

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Step-Parent Adoption

- ▶ If in a Civil Union or Married – Step-Parent Adoption instead of Second-Parent Adoption
- ▶ No home study needed
 - No parenting training
 - FBI/CBI still required
 - Hearing still required
- Out of state birth certificates still might have issues if they refuse to issue a new birth certificate

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Civil Unions and Children

- ▶ If in a Civil Union at the time the child is conceived, the responsibilities and rights of the non-biological partner to the biological partner's child are determined as if the parties were spouses.
- ▶ Presumption of parenthood for the non-biological partner
- ▶ Should you get a court order anyway?

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Marriage and Children

- ▶ If a child is born during the marriage, both spouses are presumed to be the parents
- ▶ Rebuttable presumption
- ▶ Should they get a court order anyway to insure out of state recognition?
- ▶ Can they?
- ▶ Probably some legislative clarification will be forthcoming

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Registration of Domestic Partnership

- ▶ Many couples have registered their Domestic Partnerships – Denver, Aspen, Boulder....
- ▶ No legal rights attached
- ▶ Used as proof for employers granting rights to domestic partners – State of Colorado
- ▶ This will not automatically turn into a civil union or marriage in Colorado

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We're Married, We're done. Right?

- ▶ Being married does not provide all of the protection they need
- ▶ Having a thorough estate plan in place is necessary whether a person is single, partnered, in a Civil Union or in a Marriage
- ▶ Estate planning has been done by married couples. Why?

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Medical Decisions

- ▶ Doesn't Colorado law provide that my spouse or partner in a Civil Union can make all of my medical decisions if I can't make them myself?
- ▶ NO. Colorado has a medical proxy decision maker act. If you can't act, all 'interested parties' are supposed to get together and pick the decision maker
- ▶ Spouse or Partner in a Civil Union is only one of the 'interested parties' that gets to chime in

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Healthcare Power of Attorney

- ▶ Avoids medical proxy issues
- ▶ You specifically name who makes your medical decisions (i.e. your spouse)
- ▶ Names backup agents
- ▶ Specify right to visit if not married (even if in a Civil Union)
- ▶ Out of State recognition

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Rights

- ▶ HIPAA is NOT affected by marriage– need a HIPAA Release even for a spouse
- ▶ Also releases medical records and information to your back-up powers of attorney

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Living Will – same for single, married or in a Civil Union

- ▶ You make your own decisions
- ▶ 2 Doctors in writing
- ▶ Terminal disease, injury or illness
- ▶ + Unable to receive or evaluate information for ____ days
- ▶ You direct removal of life-sustaining procedures
- ▶ You direct termination of artificial nutrition
- ▶ Legally binding on healthcare providers
- ▶ Added Persistent Vegetative State 2010 – update your living will

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Disposition of Last Remains

- ▶ Legally binding on the funeral home
- ▶ Cremate? Bury?
- ▶ Suggestions for ceremony
- ▶ Priority created by statute if no designation, nominated Personal Representative in your Will has priority over partner in a Civil Union or Spouse

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Can't my Spouse Handle my Finances if I'm Incapacitated?

- ▶ No, a spouse does not automatically have the power to sign on your behalf
- ▶ No one can access your individual bank account without a power of attorney
- ▶ No one can access your retirement plan without a power of attorney
- ▶ No one can sell your house (or your ½ if you and your spouse own it together) without a power of attorney

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Durable General Power of Attorney

- ▶ For Financial Decisions
- ▶ Appoints person you choose
- ▶ Name spouse first, so they don't have to do a conservatorship
- ▶ Names backup agents
- ▶ If Agent isn't Spouse, partner in a Civil Union, descendant or ancestor, limits on powers unless Power of Attorney states otherwise

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Will or Revocable Living Trust

- ▶ Who inherits your property?
- ▶ How do they inherit it?
- ▶ What if something happens to you and your spouse?
- ▶ Did you accidentally disinherit your side of the family?
- ▶ Who is going to administer your estate?

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Estate Planning

- ▶ Right to family allowance, exempt property upon death of partner in a Civil Union or a spouse– 2014 first \$64,000 of estate
- ▶ Can't disinherit a partner in a civil union – or a spouse, they have a right to an elective share of your estate
 - 5% per year, years 1-10+ of a civil union or marriage– up to 50%

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“Marital Agreements”

- ▶ Parties to a civil union or marriage may create agreements modifying the terms, conditions, or effects of a civil union or marriage

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Obligations

- ▶ Dissolution/declaration of invalidity, legal separation
- ▶ Maintenance (alimony) – responsible for financial support of one another – new law on this, lesser earner will get maintenance in most instances (new law 2014 using a formula to determine maintenance)
- ▶ Property Division – Equitable
- ▶ Award of attorney fees

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Federal Rights You Get from Marriage

- ▶ Immigration
- ▶ Social Security
- ▶ Military
- ▶ Justice Department
- ▶ Federal Taxes
 - Unlimited gifting
 - Unlimited marital deduction for estate taxes
 - Cost of insurance for spouse not taxable income to employee spouse
 - Funding a spousal IRA

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Tax Status

- ▶ If legally married in another state or country and reside in Colorado, must now file 2014 Colorado and Federal returns as married (and all future returns)
- ▶ If they get married in Colorado or another state before December 31, 2014, they will need to file their 2014 Colorado and Federal returns as married (and all future returns)
- ▶ Like any married couple, they can file jointly or separately, but that is not the same as filing as two single people – talk to a tax advisor

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IRAs and 401(k)'s

- ▶ **Talk to a qualified Financial Advisor**
- ▶ People with no earned income can't contribute to an IRA, but their spouse can
- ▶ A worker could fund a spousal IRA for a non-working spouse
- ▶ At death of spouse, surviving spouse can roll the IRA to his/her own IRA and delay distributions until age 70 ½
- ▶ Surviving spouse can roll deceased spouse's 401(k) to his/her own IRA
- ▶ Most Pensions and 401(k) must be left to surviving spouse absent a waiver from that spouse – if plan is ERISA plan

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Other Federal Rights after Windsor

- ▶ See Memorandum to the President – June 20, 2014
- ▶ Office of the Attorney General to President Obama
- ▶ Extensive information about the implementation of U.S. vs. Windsor by all federal agencies

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States with no Same-Sex Marriage

- ▶ At least three Federal agencies only recognize same-sex marriages if the state where the couple resides also recognizes that marriage – using place of domicile rule
- ▶ 1. Social Security
- ▶ 2. Veterans Administration
- ▶ 3. FMLA – proposed rule making is underway to fix this

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VA Benefits and Social Security

- ▶ Currently prohibited by federal statute from adopting a place of celebration rule.
- ▶ Legislative action is needed! Respect for Marriage Bill, etc.
- ▶ Those same-sex couples that don't live in one of the 35 states still aren't treated as married for VA and Social Security. (exception for SS and Civil Union partners)

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Civil Unions and the Future

- ▶ Civil Unions currently exist
- ▶ Colorado could choose to keep Civil Unions as a separate tier of legal recognition
- ▶ Colorado could decide, through legislative action, to get rid of Civil Unions
 - What would happen to current civil unions? Unknown. Convert to marriage? Stay Civil Unions?

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Same-Sex Marriage and the Future

- ▶ Can the U.S. Supreme Court later declare same-sex marriage illegal in Colorado?
- ▶ The court has not ruled on the issue, leaving states without a national answer on the constitutionality of same-sex marriage
- ▶ Challenges are likely to continue in those states that have not spoken, and those could end up back at the Supreme Court

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**Any
Questions?**

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Thank You for Joining Us....

*... and we look forward
to seeing you soon*

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Preserve Their Wealth"**

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