

SAME SEX MARRIAGE & DIVORCE



JOINT BASE ANDREWS LAW CENTER

Current as of January 2015

This handout provides a basic overview of same sex marriage and divorce for military members. This area of the law is quickly evolving and depends greatly on the legal residency of parties involved; therefore, it is essential to speak with an attorney to discuss this topic.

RECENT CHANGES

As of 3 September 2013, the Pentagon announced benefits will be extended to all married couples – regardless of gender. Same sex service members and their partners must have a marriage certificate from a jurisdiction that permits same sex marriage to qualify.

Should the service member need to travel in order to marry, the Department of Defense now allows military personnel non-chargeable leave for that purpose.

JURISDICTIONS NOT RECOGNIZING SAME SEX MARRIAGE:

(Currently, 36 states and the District of Columbia recognize same sex marriage—the following list includes the remaining states that do not)

- Alabama
- Arkansas
- Georgia
- Kentucky
- Louisiana
- Michigan
- Mississippi
- Missouri
- Nebraska
- North Dakota
- Ohio
- South Dakota
- Tennessee
- Texas

MILITARY BENEFITS FOR SAME SEX SPOUSES:

- Health care through TRICARE
- Basic allowance for housing
- Family separation allowance
- Family relocation benefits
- Military ID cards
- Commissary and exchange privileges
- Morale, welfare, and recreation programs
- Child care
- Youth programs
- Joint duty assignments
- Military & family support center programs
- Disability and death compensation
- Space-available travel on DoD aircraft
- Legal assistance
- Retirement benefits (through the Survivor Benefit Plan)

When do these benefits begin?

Benefits like TRICARE, BAH, and family separation allowance will be retroactive to the date of the Supreme Court decision. For those married after 26 June 2013, benefits begin on date of marriage.

UNIQUE LEGAL ISSUES:

Where to file for divorce?

If you marry in a marriage-equality state, but your current state does not recognize same-sex marriages, a court may be reluctant to accept your divorce case. It may say that it does not have jurisdiction to handle your divorce, in other words, the court may claim that it lacks the power to divorce you because, according to the laws of that state, you aren't married.

If that happens, you may have to travel back to the state in which you married to obtain a divorce there. However, most states have residency requirements to obtain a divorce – so this means you may have to relocate temporarily (six months to a year). First, try in your home state.

Federal Benefits

After the Defense of Marriage Act (DOMA) was struck down by the Supreme Court, same sex couples married under the law of 17 states that recognize it now qualified for federal benefits, such as taxes. Federal agencies are handling how to determine the recognition of same-sex marriages differently. For example, the Social Security Administration looks to your current state of residence; so if you live in a state that does not recognize same sex marriage, despite have a marriage certificate from one that does, the SSA will determine you are not eligible for benefits exclusive to married couples.

However, the US Department of Treasury ruled that all same sex couples legally married in any US state will be recognized under federal tax provisions. The Treasury's decision affects the following:

- Filing status
- Personal and dependency exemptions
- Standard deductions
- Employee benefits
- IRA contributions
- Earned income tax credit
- Child tax credit

Please note: these tax benefits do NOT apply to domestic partnerships or civil unions, only marriages.

SAME SEX MARRIAGE IN MARYLAND

As of 1 January 2013, Maryland's law legalizing same sex marriage went into effect. Maryland does not have a residency requirement for marriage; generally you have to obtain a marriage license which takes about 48 hours.

To file for divorce, you must file in the county in which you live, or in which the defendant lives or works. You can obtain the appropriate forms online at:

<http://www.courts.state.md.us/family/formsindex.htm/#domesticrelations>.

SAME SEX MARRIAGE IN VIRGINIA

Same sex marriage is current not recognized in the State of Virginia. However, in the spring of 2014 two lawsuits were filed on opposite sides of the issue, which may push the issue up to the Supreme Court this year. In February of 2014, Virginia's Attorney General said the ban on same sex marriage was unconstitutional and he would not defend it in court. This area of the law is rapidly developing; therefore, it is crucial to obtain the most current information if

you are living in Virginia and interested in obtaining a same sex marriage or divorce.

SAME SEX MARRIAGE IN D.C.

Same sex marriage was legalized in Washington D.C., on 18 December 2009. Marriage licenses became available in March of 2010. The legal requirements to marry as a same sex couple are exactly the same as opposite sex couples.

Washington D.C., also recently passed legislation allowing out of state same sex couples to file for divorce in the district. Normally a requirement for divorce is at least 6 months of residency in the district; however, if the couple married in the district and reside in a state that does not recognize same sex marriage, then the couple may file for divorce without a residency requirement.

DO YOU NEED A LAWYER?

Our attorneys can provide you with valuable legal assistance and advice, but cannot represent you in state court. Beyond the normal difficulties opposite sex couples face in divorce, same sex couples face several unique issues – including a rapidly changing status of the law. As a result, hiring an attorney to guide you through the process is may be beneficial. If you have children, significant assets (a home, retirement account, etc), or you and your spouse cannot come to an agreement over an important issue, you will most likely need a lawyer. Our attorneys can advise you on whether or not you should seek legal representation.

For lawyer referrals, please pick up a copy of our lawyer referral handout available for your convenience.

HELPFUL LINKS/RESOURCES:

For more specific information regarding divorce, please pick up a copy of our legal handouts devoted entirely to divorce in either Maryland, Virginia or Washington, D.C.

<http://www.defense.gov/home/features/2013/docs/Further-Guidance-on-Extending-Benefits-to-Same-Sex-Spouses-of-Military-M.pdf>

<http://www.defense.gov/news/same-sexbenefitsmemo.pdf>