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## Legal Issues For Non-Massachusetts Same-Sex Couples Who Married In Massachusetts Prior To July 31, 2008

(Updated December 22, 2011)

Prior to July 31, 2008, there was a law in effect in Massachusetts, the so-called “1913 law,” that prevented most out-of-state same-sex couples from marrying in Massachusetts **UNLESS** both members of the couple expressed an intent to reside in Massachusetts on the Mass. Notice of Intention of Marriage (the marriage application form couples initially complete at the city or town clerk’s office). For out-of-state couples who did marry in Massachusetts **between May 17, 2004 and July 31, 2008**, here is some important information about the status of your marriage. You will need to know the answers to four questions:

1. When did you get married in Massachusetts (#2 on the Certificate of Marriage)?
2. What city or town issued your Certificate of Marriage?
3. What did you list as your state of residence (#6 and #14 on the Certificate of Marriage)?
4. Did you indicate an intent to reside in Massachusetts (#6A and #14A on the Mass. Notice of Intention of Marriage)?

If you do not know the answers to any of these questions (i.e. if you do not have a copy of your Certificate of Marriage or don’t remember how you answered #6A or #14A on the Mass. Notice of Intention of Marriage), then contact the Town or City Clerk where you applied for your marriage certificate. If you don’t remember the city or town that issued your Certificate of Marriage, you can contact the Massachusetts Registry of Vital Records and Statistics at 617-740-2600.

### **IN THE “NO NEWS IS GOOD NEWS” CATEGORY**

**First**, there is **NO NEWS** if you married in Massachusetts *after July 31, 2008*. Everyone from anywhere has been free to come to Massachusetts to marry since July 31, 2008 (provided you meet the Massachusetts’ marriage requirements for age and how closely you can be related by blood or marriage). **You have a wholly valid Massachusetts marriage.**

**Second**, there is also **NO NEWS** if: (1) you married at any time in Massachusetts while a resident of **RHODE ISLAND, NEW MEXICO or THE NORTHERN MARIANA ISLANDS**; **OR** (2) as a **NEW YORK** resident, you married in Massachusetts between May 17, 2004 and July 6, 2006; **OR** (3) as a **CALIFORNIA** resident, you married in Massachusetts between June 15, 2008 and July 31, 2008. If you fall in *any of these 3 categories*, you were absolutely free to come to Massachusetts and marry, **AND you have a wholly valid Massachusetts marriage.**

**Third**, there is also **NO NEWS** if: (1) you were not a resident of Massachusetts when you married in Massachusetts; (2) you indicated on the Mass. Notice of Intention of Marriage that you intended to reside in Massachusetts; and (3) you followed through on that intent and moved to Massachusetts. If you *meet these 3 conditions*, you were absolutely free to come to Massachusetts and marry, **AND you have a wholly valid Massachusetts marriage.**

## **NOW FOR THE “NEW NEWS” CATEGORIES**

**CATEGORY #1** If you resided in any of the following 14 states when you married in Massachusetts – **ARIZONA, ARKANSAS, DELAWARE, INDIANA, KANSAS, KENTUCKY, MAINE, MINNESOTA, MISSISSIPPI, OHIO, SOUTH CAROLINA, TENNESSEE, TEXAS OR UTAH** – and you declared that state of residence on the Mass. Notice of Intention of Marriage **AND did NOT indicate an intent to reside in Massachusetts, then YOU DID NOT ACTUALLY SUCCEED IN CONTRACTING A MARRIAGE OF ANY KIND IN MASSACHUSETTS.** The legal term for this is “void ab initio,” meaning that, in the eyes of the law, you never married.

**Therefore, if you intend to be married to the person you thought you had already married in Massachusetts, you need to marry him or her again.**

And the Commonwealth of Massachusetts will now allow you to do just that. (Of course, you could also choose to marry in another place that allows same-sex couples to marry – such as IOWA, CONNECTICUT, VERMONT, NEW HAMPSHIRE or THE DISTRICT OF COLUMBIA.)

However, if you wish to marry in Massachusetts, *you need to follow some very specific directives:*

(1) You should plan to file a new Mass. Notice of Intention of Marriage at the same Clerk’s Office in the City or Town in Massachusetts in which you previously filed your Mass. Notice of Intention of Marriage. (If you go to a different City or Town Clerk, you will need to bring with you a **certified copy** of that prior Mass. Notice of Intention of Marriage from the prior City or Town Clerk.)

(2) The reason for this is that the Clerk will need to verify that: (a) you married between May 17, 2004 and July 31, 2008; (b) you indicated at the time that you resided in one of the 14 states identified above; and (c) you intended to continue to reside in one of those 14 states. **YOU MUST SATISFY ALL OF THESE THREE CONDITIONS.** (If you think there could be any doubt that the Notice of Intention does not clearly verify points (b) and (c), you should bring with you any other evidence you believe would be helpful to the Clerk in resolving those questions.)

(3) The Mass. Notice of Intention of Marriage you will file is a newly modified form (see <http://www.glad.org/uploads/docs/publications/intention-of-marriage-form.pdf>). Question 7A asks the “Status of last marriage,” and you both would check the box for “Void under former G.L. c. 207/§11.” The Notice then requests “please provide clerk with evidence.” As noted in (1) above, if you have gone to the same Clerk’s office, that office can check its own records for the evidence from your prior Notice of Intention of Marriage. If you are at a different Clerk’s office, it is your responsibility to bring the main evidence, which would be a certified copy of the prior Notice of Intention of Marriage you filed in that other City or Town.

(4) At that point, assuming the Clerk's Office is satisfied that you qualify, the process will be exactly the same as your prior experience in Massachusetts. For example, you must wait 3 days to receive your marriage license or obtain a court-ordered waiver of the waiting period.

**If, on the other hand, you wish to marry some person other than the person you believed you had previously married in Massachusetts, you can also do that.**

Again, because in the eyes of Massachusetts you never actually contracted a marriage of any kind, you are free to marry anyone anywhere that it is legally possible, including Massachusetts – provided there is no other impediment to your intended marriage.

If you wish to marry a different person in Massachusetts, *you do need to follow some very specific directives:*

(1) You must follow directives (1) and (2) above.

(2) When you fill out the Mass. Notice of Intention of Marriage, you would fill out Question 7A exactly as noted in directive (3) above. However, the prior Notice of Intention is going to involve you and a person different than the person now presenting with you to obtain a marriage license. The Clerk needs to know that the other party to that last “marriage” – the absent party – consents to the voiding of the prior Mass. Marriage Certificate because of the Mass. 1913 law.

(3) As a result, you need to bring with you to the Clerk's Office a notarized “Affidavit of Consent to Void a Marriage under former G.L. c. 207, §11” executed by the person you believed you had previously married in Massachusetts. You can find a sample Affidavit that can be used here: <http://www.glad.org/uploads/docs/publications/sample-affidavit-to-void-marriage.pdf>.

(4) Of course, the person you now intend to marry in Massachusetts must be present at the Clerk's office to fill out his/her part of the Mass. Notice of Intention of Marriage and must be free to marry and qualified to marry under Massachusetts law.

(5) At that point, assuming the Clerk's Office is satisfied that you both qualify, the process will be exactly the same as your prior experience in Massachusetts. For example, you must wait 3 days to receive your marriage license or obtain a court-ordered waiver of the waiting period.

**CATEGORY #2** If you married in Massachusetts between May 17, 2004 and July 31, 2008 and lived: (a) in the ***DISTRICT OF COLUMBIA***; or (b) a ***territory*** of the United States ***other than THE NORTHERN MARIANA ISLANDS***; or (c) a ***state other than RHODE ISLAND, NEW MEXICO, ARIZONA, ARKANSAS, DELAWARE, INDIANA, KANSAS, KENTUCKY, MAINE, MINNESOTA, MISSISSIPPI, OHIO, SOUTH CAROLINA, TENNESSEE, TEXAS OR UTAH,***

**OR**

if you married in Massachusetts between July 6, 2006 and July 31, 2008 and lived in ***NEW YORK,***

**OR**

if you married in Massachusetts between May 17, 2004 and June 15, 2008 and lived in ***CALIFORNIA,***

## **AND**

you declared the District of Columbia or your state or territory as your place of residence on the Mass. Notice of Intention of Marriage and did NOT indicate an intent to reside in Massachusetts, then your Massachusetts marriage is only presumed to be valid and could be challenged and declared void (principally by one of the parties to the marriage).

The legal term for this is that your marriage is “voidable.” This has been variously described as a “cloud on the marriage” or as a “technical defect in the marriage.” Although it may never be a cause of a problem for your marriage, it nonetheless does exist and **MASSACHUSETTS WILL NOW LET YOU CURE THIS “CLOUD” OR “DEFECT.”** See the section below, **“Curing Any Defect In Your Massachusetts Marriage By Remarrying In Massachusetts.”**

**CATEGORY #3** If you married in Massachusetts prior to July 31, 2008 and resided in any locale where same-sex couples were not allowed to marry, *and you indicated an intent to reside in Massachusetts on the Mass. Notice of Intention of Marriage but have not followed through and moved to Massachusetts*, as in Category #2 above, your marriage is “voidable” and has a “technical defect” which you can now cure if you so desire. See the next section, **“Curing Any Defect In Your Massachusetts Marriage By Remarrying In Massachusetts.”**

## **CURING ANY DEFECT IN YOUR MASSACHUSETTS MARRIAGE BY REMARRYING IN MASSACHUSETTS (FOR MARRIAGES IN EITHER CATEGORY #2 OR CATEGORY #3).**

### *A New Massachusetts Policy*

The Commonwealth of Massachusetts has adopted a new policy to allow couples married in Massachusetts to “remarry.” (Couples who fall within Category #1 above cannot “remarry” because, by law, they were never actually married in the first place. Those couples are free to “marry” in Massachusetts or anywhere else that same-sex couples can marry.) In order to remarry the same person you previously married:

- the couple must have married in Massachusetts, having a Mass. Certificate of Marriage and a Mass. Notice of Intention of Marriage on file in a Mass. City or Town Clerk’s Office;
- the couple must be currently still married to each other – not having been divorced and not having had their marriage annulled or voided by a court.

If you have a “voidable” marriage and meet the criteria above, by remarrying you can remove any question about the validity of your marriage. Although you might be able to “perfect” the defect in your marriage by marrying someplace other than Massachusetts (e.g. Connecticut, Vermont or the District of Columbia—both New Hampshire and Iowa do NOT allow a married couple to remarry), remarrying in another state may raise additional questions about the validity of your Massachusetts marriage and about when your marriage began, and as a practical matter the town clerks in those states may not allow you to remarry. If you choose to remarry in Massachusetts, Massachusetts will view the start of your marriage to be the date on the original marriage certificate.

### ***What is the process for remarrying in Massachusetts?***

If you wish to remarry in Massachusetts, ***you need to follow some very specific directives:***

- (1) You should plan to file the new form, the Mass. “Notice of Intention to Remarry” at the same Clerk’s Office in the City or Town in Massachusetts in which you previously filed your Mass. Notice of Intention of Marriage. (If you go to a different City or Town Clerk, you will need to obtain and bring with you ***certified copies*** of your prior Mass. Notice of Intention of Marriage and of your Certificate of Marriage from the prior City or Town Clerk. If you return to the same Clerk’s Office, they will have your records on file and available for review.) Even if returning to the same Clerk’s Office, it would be wise to bring your existing Mass. Certificate of Marriage with you.
- (2) The reason for this is that the Clerk will need to verify that you actually married in Massachusetts.
- (3) The Mass. Notice of Intention of Remarry that you will file is a completely new form (see <http://www.glad.org/uploads/docs/publications/intention-to-remarry-form.pdf>). Question 7A asks the “STATUS OF CURRENT MARRIAGE,” and you both need to be able to check all three boxes in Question 7A: “Never divorced”; “Never annulled by court order”; and “Never voided by court order or by operation of law at time of marriage.” As to this very last point – “never voided by operation of law at time of marriage” – you can check this box UNLESS, when you married in Massachusetts, you lived in ARIZONA, ARKANSAS, DELAWARE, INDIANA, KANSAS, KENTUCKY, MAINE, MINNESOTA, MISSISSIPPI, OHIO, SOUTH CAROLINA, TENNESSEE, TEXAS OR UTAH ***and*** you indicated you would continue to reside in one of those states.
- (4) At that point, assuming the Clerk’s Office is satisfied that you qualify, the process will be exactly the same as your prior experience in Massachusetts, with one exception. There is no 3-day waiting period to receive your license to remarry.

### ***What happens if we choose not to remarry?***

Nothing. As far as Massachusetts is concerned, you have a valid marriage unless a court says otherwise. Most often, it is the parties to the marriage itself who can ask a court to dissolve or annul a “voidable” marriage. If one spouse dies before the marriage is annulled or invalidated by a court, the death would typically end any opportunity to have the marriage annulled or declared void. Third parties, like private employers, relatives or creditors, generally cannot ask a court to annul or invalidate the marriage in this situation. If you have questions about the vulnerability of your existing Massachusetts marriage in your current state of residence, you should consult an attorney.

### ***How will states outside Massachusetts treat a marriage entered in Massachusetts?***

Consistent with its own laws and constitution, each state holds the power to decide whether to recognize, in whole or in part, a marriage legally celebrated in another state. This is true for valid marriages, as well as “voidable” ones. The longstanding legal tradition has been that states respect marriages legally celebrated in other jurisdictions. Currently, Massachusetts, Connecticut, Vermont, New Hampshire, Iowa, and the District of Columbia (and probably New York and

Maryland) will fully respect the marriage of a same-sex couple. Other states may recognize the marriage for certain purposes and not others.

Unfortunately, many states – as well as the federal government through the Defense of Marriage Act (DOMA) – have enacted discriminatory marriage laws and constitutional provisions that address, in a negative fashion, the recognition of the marriages of same-sex couples. Just because your home state may refuse to provide you a particular spousal benefit does not mean that your marriage will be disrespected for all purposes under your state’s laws or that your marriage is invalid under Massachusetts law. Also, many employers, communities and businesses may respect the marriages of same-sex couples even where the home state may not.

**FOR INFORMATION ABOUT THE PROCESS FOR MARRYING IN MASSACHUSETTS, SEE GLAD’S PUBLICATION: “*How to Get Married in Massachusetts*” at <http://www.glad.org/uploads/docs/publications/how-to-get-married-ma.pdf>.**

**?QUESTIONS?**

**Contact GLAD’s Legal InfoLine at 800-455-GLAD (4523).**