

What's It Really Mean? - Legal Consequences of Civil Union

BY DAVID L. CHAMBERS

Most heterosexual couples who marry have only the barest idea of the legal consequences. So if you and your partner enter a civil union without knowing the law, you will be in the same position most straight folks have always been. Like them, you will be joining together as an expression of love and commitment. That's a fine, time-honored idea.

On the other hand, if you're interested in fine print, this guide summarizes the legal consequences for folks living in Vermont.

More than 300 Vermont laws treat married persons differently than single persons, and all will now apply to Vermonters who enter civil unions. Most are unlikely ever to be significant to you in daily life. One Vermont statute, for example, disqualifies a person whose spouse has a financial interest in a pharmacy from serving as a member of the state Board of Pharmacists. Many others are similarly obscure.

Still, some laws are of considerable importance and are summarized below. The most important point to understand is that while some provide major benefits, others impose major responsibilities. You should also understand that they will be available and imposed on you while you live in Vermont, but may not travel with you if you move away.

While in Vermont

Many of the legal benefits and responsibilities have a grim flavor. They are mostly about sickness, death, financial matters, and divorce – but they're important details that can make large differences in stressful situations.

Benefits first: Vermont's nondiscrimination law not only offers protection against discrimination based on sexual orientation. It also protects against discrimination based on marital or civil-union status. (Of course, an employer hostile to you because of your sexual orientation or your civil union will often disguise reasons for firing or refusing to

promote you.)

When spouses buy a home together, they are permitted to acquire it as "tenants by the entirety," which shields the house from being sold for the individual debts of one of the spouses.

When you enter a civil union, your spouse becomes the person empowered to make important medical and financial decisions on your behalf if you become incapacitated, unless you designate someone else in a written "power of attorney." Without a civil union or power of attorney, a close biological relative will be your default decision-maker.

Under Vermont law, a partner in a civil union may take leave from work to care for a seriously ill spouse.

If a civil union spouse dies without writing a will, the surviving spouse receives at least half of the deceased spouse's property – all of it if there is very little. When the deceased has failed to write a will, the survivor will also decide on burial, cremation, and organ donation.

Vermont Workers Compensation law provides that upon death of a worker in a work-related accident, the surviving spouse is entitled to burial expenses and to compensation until death, remarriage, or reaching age 62.

If a spouse is killed by another person (such as in an automobile accident) because of that other person's negligence or willfulness, the surviving spouse can sue and collect for financial harms suffered due to loss of the spouse.

Now for the responsibilities. As in marriage, some may seem a benefit to one spouse and a burden to the other.

If one or both of you want a legal end to your civil union, you cannot just "split" informally. You must file papers, pay court fees, and secure a dissolution. In short, you must divorce.

As part of the dissolution, unless you have a prior agreement otherwise, the court may divide, in the manner it decides fair, property either spouse acquired during the marriage, without regard to who paid for it. The court may require one spouse to pay alimony for support of the

other. If, at the time of entering the civil union, one or both partners want to keep some assets separate or avoid the obligation to pay alimony, they should consider consulting an attorney about a prenuptial agreement.

Vermont law establishes a right of a surviving spouse to one-third of the deceased spouse's property, even if a will directs that property to someone else. This is known as the "forced share."

Beginning in 2001, Vermont's income tax laws will permit persons in a civil union to file a joint return. Couples in which both partners work full-time may find that they pay higher Vermont taxes in total after being married or entering a civil union than as single individuals.

Federal laws

Federal law confers some important benefits on married couples, but no federal benefits will be available to those who enter civil unions, Vermont residents or not.

A partner in a civil union will not, for example, be eligible for Social Security survivor benefits on the death of their spouse. Nor will a partner who is a foreign national be eligible for the preferential immigration treatment given to foreign opposite-sex spouses.

This exclusion from federal benefits has two sources. First, federal laws that confer benefits apply by their terms only to those who are "married" – which doesn't cover civil unions. Second, even if Vermont's legislature had called gay partnerships "marriage," the repressive 1996 Defense of Marriage Act provides that federal laws relating to married persons shall be read as applying to opposite-sex relationships only.

Crossing state lines

When heterosexual couples who marry and live in Vermont move to another state, the new state treats them as validly married for all purposes. They do not have to remarry under the other state's laws. If they establish residence in the other state and then split up, they can secure a divorce in the new state.

It is much less clear how a

couple in a civil union will be treated when they travel or move – at least until the day when other states have civil-union or marriage statutes for same-sex couples.


For now, Vermont's civil unions will raise novel statutory and constitutional issues in other states. We can hope that some states will treat Vermont civil-union couples just like married couples, but the courts and agencies of most states may well initially refuse to regard a civil union as a legally significant relationship. If they do refuse, constitutional arguments can be made against that refusal – although it's uncertain whether such arguments would prevail.

Thus, at this point, you should assume that civil unions celebrated in Vermont will have no legal effect in other states. That's an important drawback to remember. It can have effects when you visit another state and even more if you move.

If a spouse in a heterosexual couple married in Vermont is killed by a reckless driver in an automobile accident while on vacation in Ohio (or any other state), the surviving spouse may bring a lawsuit under that state's wrongful death statute and collect damages. On the other hand, if a person who entered a civil union is killed in Ohio in the same sort of accident, the surviving spouse may be unable to prevail in a similar lawsuit.

In the same way, if the couple who enters a civil union in Vermont decides to move permanently to Ohio, they may find that Ohio refuses to recognize their union for tax or inheritance laws or any of the other state benefits of marriage. An especially difficult problem may arise in divorce. Ohio may refuse to give civil union couples access to courts to obtain a divorce, and Vermont will refuse to grant a dissolution to the same couple unless at least one spouse re-establishes residency here for a year. Thus, if a Vermont couple moves to another state, neither partner may have access to a court to help resolve a property dispute between the partners as they separate.

Given these limits, is a Vermont couple wise to enter a civil union? Absolutely. If you're in love and the ceremony, recognition, and benefits are important to you, do it. You simply need to recognize the variety of consequences that will apply to you, a few of which may seem like burdens. And you need to recognize that, after a civil union, you and your partner will be no better off under federal laws bearing on marriage, and may well be no better off under laws of other states. Only in Vermont will you be certain of equal treatment under the law. ▼


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