

Illinois Civil Union Act. The same jurisdictional requirements for divorce must be met, which require that one of the parties is a resident of Illinois for 90 continuous days preceding the entry of the Judgment. The procedure for dissolution of a civil union is no different from that for dissolution of a marriage, and the rights and protections are likewise the same, including, for example, the rights to division of all property acquired during the union (or foreign marriage or substantially similar legal relationship), to maintenance or spousal support (formerly known as alimony), custody, child support, attorneys fees, and the like. Parties who have entered into such relationship elsewhere should take note, as they are now potentially exposed to claims from their spouses—even where they may have long ago separated—because the law now recognizes same-sex marriages, civil unions, or substantially similar legal relationships other than common law marriage from other jurisdictions. They should seek a judgment of dissolution of the relationship.

## ESTATE PLANNING

### What can I do to give my partner some of the same benefits as if we were legally married?

There is no simple or comprehensive way in Illinois to obtain all of the rights afforded to married couples. Many employers do offer domestic partner benefits to their employees. You and your partner may hold certain property jointly with rights of survivorship. You can name your partner as a beneficiary in your life insurance, bank accounts, and other accounts. You can designate your partner in a Health Care Power of Attorney and a Power of Attorney for Property. You can use trusts and other estate planning documents to create additional protections. Because of the importance of these documents if you become incapacitated or if something should happen to you, you should not leave these matters to chance or to fill-in-the-blank forms. You should consult an attorney to be sure that both you and your partner are properly protected.

### Can my partner make medical or financial decisions for me if I cannot do so?

The Illinois Probate Act allows you to name an agent to act on your behalf if you cannot make medical or financial decisions for yourself. By executing a Health Care Power of Attorney, your partner will have the right to carry out your health care wishes if you become incapacitated. A Power of Attorney for Property will allow your partner to handle your financial matters if you are unable to do so. You should see

an attorney to discuss your specific situation and the options available to you.

## VIOLENCE

### What if I am the victim of a hate crime?

Sexual orientation is a protected category under the Illinois Hate Crimes Act. A hate crime occurs when a person “by reason of the actual or perceived” sexual orientation, “commits assault, battery, aggravated assault, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to real property, mob action or disorderly conduct.” Any hate crime is punishable with criminal prosecution and remedies, including restitution paid to the victim. Even if a crime is not charged as a hate crime, crimes committed because of a victim’s sexual orientation may be subject to greater penalties under Illinois law. You can also pursue a civil action for hate crime and seek damages, attorneys’ fees, and other relief.

### What if I am the victim of domestic violence?

The Illinois Domestic Violence Act permits a person abused or harassed by a family or household member to petition a court for an order of protection, regardless of the sexual orientation, marital status, or gender identity of the parties involved. If you are living with or even dating someone who is abusing you, you may seek protection under the Act. Conduct that will support an order of protection includes physical abuse, threats of violence, harassment at your home or workplace, financial exploitation, and stalking. An order of protection may include provisions aimed at protecting you from further harm, including requiring the abuser to stay away from you and not commit any other acts of abuse or neglect, removing the abuser from a shared residence, requiring the abuser to undergo counseling, prohibiting the abuser from possessing a firearm, and providing for the care, possession, and visitation of minor children. To obtain an order of protection, you will have to describe in writing the abuse or harassment you experienced and its impact, attend a court hearing, and possibly testify in court. In emergencies, orders of protection can be granted without the abuser being present. Illinois has created a uniform, statewide Petition for Order of Protection. Some counties, such as DuPage County, have even created an online program to file Petitions for Orders of Protection. Violations of protective orders are subject to criminal and civil penalties.

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## Consumer Legal Guide

# Your Guide to Rights of Lesbians, Gays, Bisexuals, and Transgender Persons



# RIGHTS OF LESBIANS, GAYS, BI-SEXUALS, AND TRANSGENDER PERSONS

This pamphlet briefly describes some of your rights under Illinois law. No pamphlet can tell you everything you need to know about your rights. You should contact a licensed attorney to learn about your rights under Illinois law.

## DISCRIMINATION AND EMPLOYMENT ISSUES

### Am I protected if I am discriminated against because of my sexual orientation or gender identity?

Yes. The Illinois Human Rights Act protects against discrimination in employment, housing, financial credit, public accommodations, and sexual harassment in employment and higher education. The Act prohibits discrimination based on someone's actual or perceived sexual orientation, which is defined to include heterosexuality, homosexuality, bisexuality, and gender-related identity. Claims can be filed with the Illinois Department of Human Rights. It is also a civil rights violation to retaliate against someone who files a charge of discrimination.

Some cities and counties in Illinois also have local human rights ordinances that protect from specific acts of discrimination based on sexual orientation or gender identity. In some cases, you may also be protected at work by rights in an employee handbook, by the company's non-discrimination policy, or (if you are a union member) by a collective bargaining agreement between the union and your company. Ask your human resources department or union representative for a copy of any policies or programs.

### What if I am sexually harassed at work?

You should consider seeking redress from (1) your employer and (2) the Illinois Department of Human Rights and the Equal Employment Opportunity Commission.

### Seeking Redress from Your Employer.

Many companies have established policies on sexual harassment. Look in the employee handbook or the company website or ask for a copy of the policy from the human resources department. Larger companies may have hotlines to call. Even if there is no policy in place, you should

still consider reporting the harassment. If the harassment is from a coworker, your employer may not be held responsible until it knows (or should have known) about the harassment and fails to take corrective measures. No matter whom you talk to or call, write down the date and time of each conversation or attempted call, the name of the person with whom you spoke, and what each of you said during the conversation.

### Seeking Redress from State and Federal Agencies.

The laws that protect you from sexual harassment have deadlines for filing charges with the Illinois Department of Human Rights and the Equal Employment Opportunity Commission. Depending on where you live, there may be other local government agencies that can provide additional protection. Sexual harassment is not just sexual conduct or requests for sexual favors. Unlawful sexual harassment may include harassment by your employer or coworker because you might not look or act in a way that conforms to their stereotypes of how men and women should look or act.

## MARRIAGE AND FAMILY ISSUES

### Can I marry my same-sex partner?

Illinois does not yet recognize same-sex marriage. The U.S. jurisdictions now recognizing same-sex marriages are Connecticut, Iowa, Massachusetts, New Hampshire, New York, Vermont, and Washington, D.C. Additionally, the states of Maryland and Rhode Island may recognize lawful same-sex marriages even though same-sex marriage is not yet legal in those states. Other countries recognizing same-sex marriage include Argentina, Belgium, Canada, Iceland, The Netherlands, Norway, Portugal, South Africa, Spain, Sweden, and parts of Mexico. More than twenty other countries provide for legal status analogous to marriage, such as Civil Partnerships and Civil Unions, including, but not limited to, Austria, Brazil, Colombia, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, Ireland, Liechtenstein, New Zealand, Slovenia, Switzerland, United Kingdom and Uruguay.

Several other U.S. states offer some form of civil union or domestic partnership. These states include California, Colorado, Hawaii, Maine, New Jersey, Nevada, Oregon, Washington, and Wisconsin. Rights differ in each state but include many of the rights given to couples who can marry.

Effective June 1, 2011, Illinois now permits any couple, where each party is at least eighteen years of age and without regard to gender, to obtain a Civil Union, which entitles the couple to all of the rights, benefits, burdens and obligations afforded to spouses under all of Illinois law. You need not be a resident of Illinois to enter into a civil union. As

with a marriage, you must obtain a license, by application to the County Clerk, and wait until the following day to obtain the civil union, which may be officiated by a judge, a religious official, or any other person that is empowered to officiate over a marriage.

Providing full recognition and protection, in the formation, during the intact relationship, and upon dissolution, available to married couples in Illinois, parties to a civil union are now equal to spouses under the law, and, the only difference between a marriage and a civil union in Illinois law is that parties to a civil union are not entitled to marry. This includes, for example, the rights to make medical decisions, to hospital access, to inheritance, and all other rights available to spouses to an intact marriage under Illinois law. Further, the law provides for recognition of any "same-sex marriage, civil union, or substantially similar legal relationship" other than common law marriage, entered into in another jurisdiction, for all purposes. Thus, while Illinois still will not permit same-sex couples to marry, it will permit them to obtain a civil union and recognize their union from another state. However, the rights of parties to a civil union under Illinois law may be significantly restricted or hampered by existing federal law, particularly the so-called Defense of Marriage Act (DOMA), which recognizes only marriages between one man and one woman, defines "spouse" for purposes of federal law as one of two parties to a recognized, opposite-sex marriage, and permits the states to refuse to recognize same-sex marriages from other states. This is particularly true, where over 1100 federal rights and benefits, from Social Security, to pensions, to immigration law, to name a few, are governed exclusively by federal law.

Additionally, Domestic partner registries are available in Cook County and in some cities such as Bloomington, Decatur, Oak Park, and Springfield. But registering as domestic partners under a local ordinance generally confers no legal rights. Private employers may nonetheless recognize that domestic partnership as a basis for extending health care or other employment benefits to your partner. Further, private companies (such as a health club, for example) may offer benefits to same-sex couples (such as extending the "married" membership rate to same-sex couples).

Litigation and legislative developments continue around the country, and the recognition of same-sex relationships continues to develop. Given the recognition problems from one state to another, and federal law precluding recognition for federal purposes, it continues to be important for couples to consider getting powers of attorney and other legal documents to help provide additional, and portable, legal protection for aspects of the relationship that are available.

### Can I adopt children?

Illinois allows unmarried persons—including same-sex couples—to adopt. Some persons have children from previous relationships, but adoptions are possible even

without a biological connection to the child. Cook County (through appellate case law) and DuPage County (through local court rule) specifically provide for adoption by same-sex partners. Both parties in the relationship must file the petition to adopt. When the court grants an adoption, the names of both parents (regardless of gender) will appear on the new birth certificate.

Before making the important decision to jointly adopt a child, it is critical to remember that if the relationship between the couple sours after the adoption, a biological parent will have no better rights to the child than the other adoptive parent. An adopted child is equally the child of both parents, and both parents will have the rights and responsibilities of any other parent, including custody, visitation, and child support issues heard by the court. However, Illinois will not recognize rights to a child (such as access, visitation, custody or any other right of parentage) without parentage. Where one party does not adopt, and the couple later breaks up, that person has no legal or de facto rights to the child under Illinois law. Thus, adoption, which is available throughout the state for same-sex couples, is a certain and relatively simple means to establish legal parentage. Further, judgments of adoption are guaranteed full faith and credit under the U.S. Constitution, which means they are to be recognized in every state even if the state does not recognize the relationship between the parents. And while the equation of parties to a civil union to spouses under Illinois law should entitle them to the same presumptions of parentage of a child born to or acquired during an intact civil union available to married couples this is not explicitly guaranteed under the new law, and the better advice to couples is to continue to adopt their children. This is particularly true where adoption judgments are guaranteed portability and recognition under the Full Faith and Credit Clause of the U.S. Constitution, by all states.

Some same-sex couples have considered surrogacy arrangements to bring a child into their relationship. Although surrogacy may seem ideal where a family member or close friend is willing to help, surrogacy arrangements are always complex. The Illinois Gestational Surrogacy Act does not expressly contemplate that a same-sex couple would seek a gestational surrogacy agreement, but this may not be an issue if the parties have a civil union or similarly recognized relationship. If you are considering such a surrogacy arrangement, it is crucial to speak to an attorney knowledgeable in artificial reproductive technology and surrogacy.

## WHAT HAPPENS WHEN SAME-SEX COUPLES SPLIT UP?

All civil unions, same-sex marriages or substantially similar legal relationships other than common law marriages—whether obtained in Illinois or elsewhere—are entitled to the remedy of dissolution, or divorce, under the new