



NATIONAL CENTER FOR LESBIAN RIGHTS

**Dissolving Civil Unions and Domestic Partnerships for
Couples Who Live in Non-Recognition States:
A Guide For Attorneys**

BACKGROUND

As with other couples, some same-sex couples break up and decide to divorce. If they are married, in a civil union or domestic partnership, or a combination of these unions, a court must end their legal union. Now that all U.S. states must recognize marriages between same-sex spouses, separated spouses can legally end their marriages no matter where they live. However, many same-sex couples who are in civil unions or registered domestic partnerships may not be able to dissolve these unions if their home state does not currently recognize their union.

It is very important for separated couples to end all of their legal unions through a court proceeding to ensure that their legal union has ended and they have ended their legal responsibilities to each other. Being unable to dissolve a civil union or domestic partnership leads to many legal challenges for these couples. First, they continue to be recognized as being in a civil union or registered domestic partnership in many states, so if they travel in or move to these states, their union will be recognized in those states, where they will continue to have the same rights and responsibilities of married spouses. For example, if a couple in a civil union who is separated lives in Ohio and one of them is in an accident while traveling in Vermont, his or her ex-partner may be the only one who is able to make medical decisions for him or her. Second, the partners will be unable to marry or enter a union with a new partner: in those states that recognize the first union, their second marriage or union will be void and they could even be subject to criminal bigamy charges. Finally, the law is constantly changing and if the state where

they live begins recognizing their other union, they will suddenly have all the rights and responsibilities of marriage in their home state.¹

In recognition of this problem, a number of jurisdictions have passed laws allowing courts to take jurisdiction, under certain circumstances, over dissolution proceedings for non-resident same-sex couples who have entered into a civil union or registered domestic partnership in that state. **This publication outlines those laws for couples who entered into a civil union or registered domestic partnership in California, Colorado, Delaware, Hawaii, Illinois, Oregon, or Vermont and now live elsewhere.** For other couples who cannot dissolve their unions in the state where they live, there may be creative solutions to end their relationships. Please contact NCLR for technical assistance and more information.

Note that some jurisdictions automatically converted civil unions or domestic partnerships into marriages as of a certain date. Couples who entered civil unions or domestic partnerships in those states are now married and should be able to divorce in their home state because every state should recognize that marriage. For information about which states recognize civil unions, domestic partnerships, and other unions between same-sex couples, and which states have converted civil unions or domestic partnerships into marriages, see [Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples Within the United States](#).

IMPORTANT NOTE: Same-sex couples often have more than one recognized relationship status,² and when they separate, it is very important to dissolve all these statuses. Dissolving one status does not automatically dissolve the others unless it is included in the order. Depending on the circumstances, a court may be able to dissolve marriages, registered domestic partnerships, and civil unions in one proceeding. Other relationship statuses, such as limited domestic partnerships, reciprocal beneficiaries, and designated beneficiaries, should also be terminated, but typically only require filing a form with the appropriate state or local agency.

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¹ If they meet the requirements that would legally recognize them as separated in their home state, they may cease to accrue property rights to each other as of the date of separation, but other legal issues may still remain.

² For example, California expressly allows couples to be registered domestic partners and married to each other. Cal. Fam. Code § 297(b)(1).

STATES THAT ALLOW NON-RESIDENT SAME-SEX COUPLES TO DIVORCE

I. California (Registered Domestic Partnership)

Couples residing outside California may dissolve their California registered domestic partnership, which has all the rights and responsibilities of a marriage under California law,³ in a California court. When a couple enters into a registered domestic partnership in California, they consent to California courts' jurisdiction over their registered domestic partnership even if neither partner resides in the state.⁴

II. Colorado (Civil Union)

In general, Colorado requires at least one spouse or civil union partner to have been domiciled in Colorado for ninety-one days prior to filing for divorce.⁵ However, any person who enters into a civil union in Colorado consents to the jurisdiction of the Colorado courts for the purpose of any action relating to the civil union (such as dissolution), even if one or both of the parties to the civil union no longer lives in Colorado.⁶

III. Hawaii (Civil Union)

In general, Hawaii requires that one civil union partner have been domiciled or been physically present in the state for at least six months prior to applying for a divorce.⁷ However, where a couple entered into a civil union in Hawaii, and neither partner lives in a jurisdiction that will

³ Cal. Fam. Code § 297.5(a) ("Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.").

⁴ Cal. Fam. Code § 299(d) (" . . . in accordance with the consent acknowledged by domestic partners in the Declaration of Domestic Partnership form, proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed."). See also Cal. Fam. Code § 2320(b).

⁵ C.R.S.A. § 14-10-106.

⁶ C.R.S.A. § 14-15-115 ("(1) Any person who enters into a civil union in Colorado consents to the jurisdiction of the courts of Colorado for the purpose of any action relating to a civil union even if one or both parties cease to reside in this state.(2) The district court has jurisdiction over all proceedings relating to the dissolution of a civil union, legal separation of a civil union, or the declaration of invalidity of a civil union, regardless of the jurisdiction where the civil union was entered into. The court shall follow the procedures specified in article 10 of this title, including the same domicile requirements for a dissolution, legal separation, or declaration of invalidity for such proceedings.(3) A proceeding relating to the dissolution of a civil union, legal separation of a civil union, or the declaration of invalidity of a civil union may be held in the county where the petitioner or respondent resides or where the parties' civil union certificate was issued; except that process may be directed to any county in the state. A respondent's objection to venue is waived if not made within such time as the respondent's response is due.").

⁷ Haw. Rev. Stat. § 580-1(a)

divorce them because their civil union is not recognized there, they may divorce in Hawaii.⁸ Couples must commence a divorce action of this kind in the circuit where the civil union was solemnized.⁹ NOTE: If a couple entered into a civil union or reciprocal beneficiary relationship, and subsequently marry each other in Hawaii, that marriage dissolves the earlier civil union or reciprocal beneficiary relationship.¹⁰

IV. Illinois (Marriage and Civil Union)

In general, Illinois requires that one spouse be a resident of the state for at least 90 days prior to petitioning for dissolution of a marriage.¹¹ When partners enter into a civil union in Illinois, however, they consent to Illinois courts' jurisdiction over any action relating to the civil union even if neither partner resides in the state.¹²

V. Oregon (Registered Domestic Partnership only)

In general, Oregon requires that one spouse be a resident of the state at the time a petition for dissolution of marriage is filed if the marriage was entered in Oregon, or a resident for at least six months if the marriage was entered elsewhere.¹³ However, when a couple enters into a registered domestic partnership in Oregon, they consent to Oregon courts' jurisdiction over a dissolution of their registered domestic partnership even if they both no longer reside in the state.¹⁴ If both parties no longer reside in Oregon, the petition for dissolution of the registered domestic partnership may be filed in the county where either the petitioner or the respondent last resided.¹⁵ Registered domestic partnerships have all the rights and responsibilities of marriage under Oregon law.¹⁶

⁸ S.B. 1, 27th Leg., 2nd Sp. Sess. (2013) to be codified at Haw. Rev. Stat. § 580-1(b)

⁹ S.B. 1, 27th Leg., 2nd Sp. Sess. (2013) to be codified at Haw. Rev. Stat. § 580-1(c)

¹⁰ S.B. 1, 27th Leg., 2nd Sp. Sess. (2013) to be codified at Haw. Rev. Stat. § 572-A(b)

¹¹ 750 ILCS 5/401(a).

¹² "Any person who enters into a civil union in Illinois consents to the jurisdiction of the courts of Illinois for the purpose of any action relating to a civil union even if one or both parties cease to reside in this State. . . ." 750 ILCS 75/45.

¹³ Or. Rev. Stat. § 107.075.

¹⁴ Or. Rev. Stat. § 106.325(4) ("Each individual signing a Declaration of Domestic Partnership consents to the jurisdiction of the circuit courts of Oregon for the purpose of an action to obtain a judgment of dissolution or annulment of the domestic partnership, for legal separation of the partners in the domestic partnership or for any other proceeding related to the partners' rights and obligations, even if one or both partners cease to reside in, or to maintain a domicile in, this state.").

¹⁵ *Id.* ("...a petition for dissolution or annulment of the domestic partnership, for legal separation of the partners in the domestic partnership or for any other proceeding related to the partners' rights and obligations may be filed in the county in which either the petitioner or respondent last resided.")

¹⁶ Or. Rev. Stat. § 106.340.

VI. Vermont (Civil Union)

Non-resident civil union partners may dissolve their civil union in Vermont if 1) they entered a civil union in Vermont, 2) neither partner resides in a state which will allow them to dissolve their union, 3) the couple has no minor children of the civil union, 4) neither partner has a protective order against the other, and 5) the parties file a stipulation that resolves all issues in the dissolution and contains all the statutorily required elements.¹⁷ The complaint must be filed in the county where the civil union certificate was filed.¹⁸

¹⁷ Vt. Stat. Ann. tit. 15, § 1206(b) states:

... a complaint for civil union dissolution may be filed in the family division of superior court in the county in which the civil union certificate was filed by parties who are not residents of Vermont provided all of the following criteria are met:

- (1) The civil union of the parties was established in Vermont.
- (2) Neither party's state of legal residence recognizes the couple's Vermont civil union for purposes of dissolution.
- (3) There are no minor children who were born or adopted during the civil union.
- (4) The parties file a stipulation together with a complaint that resolves all issues in the dissolution action. The stipulation shall be signed by both parties and shall include the following terms:
 - (A) An agreement that the terms and conditions of the stipulation may be incorporated into a final order of dissolution.
 - (B) The facts upon which the court may base a decree of dissolution of a civil union and that bring the matter before the court's jurisdiction.
 - (C) An acknowledgment that: (i) each party understands that if he or she wishes to litigate any issue related to the dissolution before a Vermont court, one of the parties must meet the residency requirement set forth in section 592 of this title. (ii) neither party is the subject of an abuse prevention order in a proceeding between the parties. (iii) there are no minor children who were born or adopted during the civil union. (iv) neither party's state of legal residence recognizes the couple's Vermont civil union for purposes of dissolution. (v) each party has entered into the stipulation freely and voluntarily. (vi) the parties have exchanged all financial information, including income, assets, and liabilities.

¹⁸ *Id.*