



California Transgender Family Law:

A fact sheet for transgender spouses, partners, parents, and youth

MARRIAGE & CALIFORNIA REGISTERED DOMESTIC PARTNERSHIP (RDP)

For transgender people, determining whether you can marry or register as domestic partners can be complicated. The laws addressing transgender people are often unclear, and legal family relationships often depend on your legal gender.

IMPORTANT: It is important for all couples to complete documents that can help protect their families. This includes: creating a will, trust, or other estate plan and completing advanced health care directives.

1. Who can marry in California?

California currently only allows different-sex couples to marry. However, same-sex couples were able to marry in California between June 16 and November 4, 2008. All valid marriages entered between same-sex couples in California or elsewhere before November 5, 2008 are fully recognized under California law. Same-sex couples who validly married outside of California November 5, 2008 or later have all the rights and responsibilities of marriage under California law except for the term “marriage.”

2. Who can register as domestic partners (RDP) in California?

In California, same-sex couples or any couple where one or both partners are over age 62 can register as domestic partners. Registered Domestic Partners (RDPs) have all the rights and responsibilities of marriage under California law. However, with limited exceptions, a RDP is not currently recognized by the U.S. federal government and may not be recognized in many other states.

3. Will the federal government recognize my relationship?

Currently, with limited exceptions, the federal government does not recognize marriages between same-sex couples because of the so-called “Defense of Marriage Act” (DOMA). However, this law is currently being challenged. The federal government also—again with limited exceptions—does not recognize civil unions or registered domestic partnerships.

4. My spouse and I married as a different-sex couple, but one of us transitioned after we married. Are we still married?

Changing your gender after marriage does not invalidate your marriage. Once a couple validly marries, their marriage stays valid. The federal government should continue to recognize your marriage even if one of you later legally changes your gender. Even though your marriage is valid, however, you may face practical difficulty having your marriage respected.

5. We are a different-sex couple and one of us is transgender. Can we get married in California?

California allows transgender people to legally change their gender and marry a different-sex partner.

IMPORTANT: You should take as many steps as possible to transition before marrying. If possible, you should get a court ordered gender change and amend your birth certificate. Before marrying, we recommend that you and your intended spouse enter into a memorandum of understanding (MOU). This should include a statement that the non-transgender spouse is aware that the other spouse is transgender.

Unfortunately, not every state recognizes that a transgender person can legally change his or her gender. Some states may not recognize your marriage. It is especially important to fill out advanced healthcare directives and keep them with you when traveling.

6. One of us is not a U.S. citizen. If we get married, can we stay together in the U.S.?

If you and your spouse validly married as a different-sex couple in the place where you married, the U.S. citizen spouse may be able to sponsor the non-U.S. citizen spouse. It may be necessary for the transgender spouse to have had surgery before the marriage.

IMPORTANT: Immigration based on marriage can be complicated. We **strongly encourage** you to contact NCLR and speak with an attorney **before** getting married and/or seeking family-based immigration status through your marriage.

7. My partner and I registered as domestic partners as a same-sex couple and one of us later transitioned. Is our RDP still valid?

Transition after registering doesn't affect your RDP. If you are now a different-sex couple and you also want to marry each other, you do not need to end your RDP first. After marrying, your marriage (but not your RDP) should be recognized by the federal government.

8. My partner and I are a same-sex couple, and one of us is transgender. Can we register as domestic partners?

If you are a same-sex couple and one of you has transitioned, you can register as domestic partners. You should take as many steps as possible to transition before registering. If possible, you should get a court ordered gender change and amend your birth certificate.

PARENTING

1. Am I legally recognized as my child's parent?

Transgender people can become parents in many different ways. You could be legally recognized as a parent in California if:

- You are a biological parent.
- You have adopted your child.
- You and your spouse or domestic partner had a child together while you were married or registered.
- You have lived with your child and held yourself out to the world as your child's parent.

Parentage law is complicated. If you have questions about whether you are legally recognized as a parent, we strongly encourage you to speak to an attorney who is experienced with transgender family law.

IMPORTANT: It is not enough to have your name on your child's birth certificate. If you are not a biological or adoptive parent, it is important to have an adoption or parentage judgment from a court. Otherwise, you may not be recognized as a parent in another state, even if you would be in California.

2. Will I be able to have custody of my child if my spouse/partner and I separate?

A transgender person should not be denied custody or visitation simply because of his or her gender identity or expression. However, many courts are unfamiliar with transgender parents. It is very important to advocate for your rights as a parent from the start. Once there is a court order denying or putting restrictions on custody or visitation, it can be very difficult to change later.

3. Can I be a foster parent?

Transgender people can be foster parents. Under California law, no one can be denied services or rejected as a foster family simply for being transgender.

TRANSGENDER CHILDREN AND YOUTH

1. We have a transgender or gender non-conforming (GNC) child. What should we do?

It is very important to seek medical and mental health services for your child from practitioners who are experienced with treating and supporting transgender and GNC children. Gender Spectrum provides information and supportive services to families with transgender and GNC children, and may be able to help you find services in your area: www.genderspectrum.org.

2. Can we change our child's name and gender at school? Can we legally change our child's name?

It is important to approach your child's school early on to discuss your child's need to be referred to by his or her preferred name and gender in school. A few schools in California have policies about supporting transgender children, but most do not, so you will likely need to explain your child's needs. California public schools (or private schools that receive state funding) must respect a transgender child's gender, and must take steps to protect them from harassment.

With consent from both parents, it is possible to change a minor's name legally through the court.

IMPORTANT: You and your co-parent may not always agree on how to support your transgender or GNC child. It is very important to do whatever you can to come to an agreement together without going to court. Courts are very unfamiliar with transgender children. If you and your co-parent disagree, you should proceed cautiously and only on the advice of a doctor or therapist before allowing your child to live as a different gender.

3. What are the rights of transgender youth in foster care?

Youth in the foster care system have the right to express their gender. They can request a transfer if their foster family is not supportive. The staff at any facility should work with transgender youth to make sure that their identity is respected.

If you have questions about transgender family law, please contact:

National Center for Lesbian Rights
Helpline: 1.800.528.6257
Email: info@nclrights.org
Website: www.nclrights.org

Transgender Law Center
Main line: 877-847-1278
Email: info@transgenderlawcenter.org
Website: www.transgenderlawcenter.org

This fact sheet was adapted from a fact sheet developed by the Transgender Law Center (TLC), and is designed to answer basic legal questions related to marriage, domestic partnerships, parenting, foster care, and youth issues in California.