

Marriage and Transgender People



Legal Information &

Referral: 206-621-7691

Toll-Free: 1-866-259-7720

Web: www.legalvoice.org

Many couples want to know what the law is regarding marriage when one spouse is transgender. This isn't a simple question to answer because different states have taken different approaches to this issue. Generally speaking, the law says that the validity of a marriage is determined by the couple's status at the time the marriage is performed. Therefore, as long as a couple was legally entitled to marry when they entered into the marriage, they remain married until death or divorce.

Since December 6, 2012, Washington State has allowed couples to marry without regard to their gender. As a result, the transgender status of one spouse (or both spouses) should not be a barrier to marriage in Washington State.

However, most states continue to refuse to recognize marriages of same-sex couples. In addition, the federal "Defense of Marriage Act" (DOMA) currently prohibits the federal government from recognizing marriages of same-sex couples.

This memo is NOT legal advice. This information is a general overview of the law. Talk to a lawyer for advice about your case, if possible.

What does this mean for a couple if one or both spouses are transgender? It means that transgender individuals may marry in Washington regardless of their gender or the gender of their spouse. This also means that if the spouses were of different genders at the time of their marriage, the marriage should remain valid in Washington even if one spouse later transitions to become the same sex as his or her spouse. But if both spouses are the same gender when they marry, their marriage in Washington might not be recognized in other states or by the federal government.

Practically speaking, the *legal validity* of a marriage involving a transgender spouse is an unsettled issue in many states. Although most states permit a transgender person to marry a person of the other gender, some states have taken the hard line view that gender is fixed at birth and that reassignment surgery cannot change that fact. So, for example, a court in Texas invalidated a 7-year marriage between a transgender woman and her deceased husband. As part of a wrongful death suit, the court held that a person's

legal sex is genetically fixed at birth and that the wife was legally male, despite her female anatomy and appearance and despite the fact that she had lived as a woman for most of her life. Tragically, this decision left the wife without any of the rights or protections of a legal spouse – not only the ability to bring a wrongful death action, but the right to inherit and to obtain her husband’s social security and retirement benefits.

Other states have held that marriages involving a transgender spouse are valid. In California, for example, the courts have legally recognized the post-operative sex of a transgender person. It is important to note, however, that in some cases, courts have required the transgender individual to offer extensive medical evidence to prove his/her new legal gender. But as long as someone has fully transitioned and has taken the necessary steps to have his/her new gender legally recognized, the validity of the marriage should not be questioned.

If you are a transgender individual, you need to be aware that you and your spouse could find yourself in a situation where you have to defend the validity of your marriage. To protect yourself, it’s important to prepare and sign basic legal documents such as wills, health care directives, and powers of attorney. These documents can protect you and your spouse, in case anyone challenges the validity of your marriage. These documents can ensure that others honor your wishes and that your spouse can inherit your estate and make medical decisions on your behalf.

Related Publications available online or by phone from Legal Voice:

- *Basic Estate Planning for Unmarried Couples*
- *Questions and Answers: Marriage for Same-Sex Couples in Washington*
- *Questions and Answers: Washington’s Domestic Partnership Law*

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