

If you are in a committed lesbian or gay relationship in Hawai'i, you can help protect your family.

Register as Reciprocal Beneficiaries

Here's how it works, what it means and how to do it!



The content of this brochure is provided as part of a joint community education program. For more information, or to find out how to join in the efforts to secure equal rights and legal protections for same-sex couples, contact Lambda Legal or The Center Hawai'i:

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INTRODUCTION

If you are in a committed same-sex relationship in Hawai'i, it may be important for you to register with the state as reciprocal beneficiaries.

This publication explains some of the rights and responsibilities the law provides for reciprocal beneficiaries, the legal differences between registering as reciprocal beneficiaries and getting married, who can register and how to do so.

It also answers common questions that many people have about reciprocal beneficiary status under Hawai'i law.

Please note: This publication is intended to provide general information, not legal advice. Registered reciprocal beneficiaries can still need the protections offered by wills, powers of attorney, second-parent adoptions or other legal planning. Your particular situation may require special attention that can be addressed only by consulting with an attorney.

Contact the Hawai'i State Bar Lawyer Referral Service at 808-537-9140, or call Lambda Legal's Help Desk toll-free at 1-866-542-8336 for suggestions about finding an attorney.

Hawai'i is one of the few states in the country to offer a form of legal relationship recognition for same-sex couples. While other states and municipalities offer domestic partnership registries, and a couple of states offer civil unions, Hawai'i offers a **reciprocal beneficiary** registry that gives same-sex couples the right to receive some, though not all, of the obligations and protections that married couples receive. Registration as reciprocal beneficiaries can protect you and your partner in times of family crisis and could save you thousands of dollars over the course of your relationship.

Whether the legal recognition of your relationship comes from a domestic partnership, civil union, reciprocal beneficiary status or marriage, it is important that you understand what protections your home state's laws may provide and make an informed choice about whether to acquire that status.

WHY IS IT IMPORTANT FOR COMMITTED SAME-SEX COUPLES TO REGISTER AS RECIPROCAL BENEFICIARIES?

Many lesbian and gay couples in Hawai'i celebrate religious weddings or public commitment ceremonies. Nevertheless, those in committed, same-sex relationships still are not allowed to marry in the state. As a result, lesbian and gay couples are denied access to many of the rights and responsibilities that those couples who can marry take for granted. The consequences of this inequality are often devastating. Lesbians and gay men have been prevented from seeing their partners in the hospital and excluded from decision-making when their partners were sick. If a partner was killed, the survivor's right to sue for losses was limited. The reciprocal beneficiary laws fixed a number of these wrongs. But the laws help couples **ONLY** if they register with the state as reciprocal beneficiaries.

Registering as reciprocal beneficiaries is a simple process. Without it, you and your partner run the risk of being treated legally as nothing more than roommates.

Registration can secure important rights, save money and may be the only way to protect your family from the legal tragedies that can occur in the absence of registration. Registering may not be the right step for every couple, but it is an important option for every same-sex couple to consider.

WHAT RIGHTS AND RESPONSIBILITIES DO RECIPROCAL BENEFICIARIES HAVE?

Rights in Times of Family Crisis

Hospital Visitation – Reciprocal beneficiaries in Hawai'i have the same rights as legally married spouses to visit one another in the hospital.

Medical Decision Making – Reciprocal beneficiaries have the same right as spouses to make health care decisions for each other if one becomes incapacitated.

Legal and Financial Decision Making – If someone becomes physically or mentally unable to provide for his or her personal needs or to manage his or her finances, a court can appoint a legal guardian to make those decisions. Reciprocal beneficiaries are guaranteed the right to be notified if legal proceedings are brought to appoint a guardian for a partner, to object if they believe the partner does not need a legal guardian and to have first priority to be named legal guardian if the court decides that naming a legal guardian is necessary.

Compensation if a Partner is Killed – If someone who is legally married is killed as a result of the wrongful act of another, that person’s spouse can sue those responsible for “wrongful death” to recover damages for lost financial support and companionship. Reciprocal beneficiaries are given the same legal rights to sue for these losses.

Workers’ Compensation Survivor Benefits – If one partner is killed in a work-related accident, the surviving partner may be entitled to compensation under the Hawai’i workers’ compensation plan. Reciprocal beneficiaries have the same rights under Hawai’i workers’ compensation law as married couples.

Right to Inherit Without a Will – If a reciprocal beneficiary dies without a will, the surviving partner can inherit some property and can be



granted living expenses out of the assets of the estate in the same way as a spouse. Registration, however, does not mean that you will inherit your partner's entire estate. A will is a clear expression of intent that can help all of your surviving family members by letting them know exactly how you intend your property to be distributed upon death. There is no substitute for the protection offered by a proper will, trust or other estate planning document.

Employment Benefits

Emergency Medical Leave – A reciprocal beneficiary, like a spouse, can take unpaid time off from work to care for a partner or a partner's child with a serious health condition.

Pension Benefits for State Employees – Surviving reciprocal beneficiaries of state employees are entitled to pension and death benefits through the state pension system as spouses are.

Hawai'i State Taxes, Property and Financial Benefits

Conveyance Taxes – Transfers of property between reciprocal beneficiaries are generally not subject to a conveyance tax.



Estate Taxes – Reciprocal beneficiaries have the same protections as spouses against paying Hawai'i estate taxes on money inherited from a partner.

Insurance – Reciprocal beneficiaries are entitled to the same treatment as spouses for some insurance purposes, such as shared auto insurance coverage. Although they may purchase life insurance policies on each other, written consent of the insured partner is required. Married spouses need not have written consent to purchase life insurance on each other.

Tenancy by the Entirety – Reciprocal beneficiaries can take title to real estate as “tenants by the entirety” just as married couples can, which means that each partner owns an undivided interest in the entire property and neither can sell or encumber it without the consent of the other. Tenancy by the entirety prevents a judgment creditor of one partner from enforcing a lien against jointly-held real estate.

WHAT RIGHTS AND RESPONSIBILITIES OF MARRIAGE ARE DENIED TO RECIPROCAL BENEFICIARIES?

Although registration as reciprocal beneficiaries gives couples many important protections, it is not equal to marriage and does not provide many of the most important rights and responsibilities given to different-sex couples under the marriage laws of Hawai'i, or any of the rights and duties of married spouses under federal law. The following is a short list of some of the important state rights denied to reciprocal beneficiaries:

Community Property – Married couples in Hawai'i share ownership and control of property earned by either spouse during the marriage as “community property.” This means that married spouses each own one-half of each other's earnings during the marriage, and they retain ownership of that property even upon dissolution of the marriage or the death of a spouse. Reciprocal beneficiaries do not enjoy the same protection.

Joint Adoption – The Hawai'i statutes allow married couples to adopt jointly in a single court proceeding but do not specifically provide for

joint adoption by reciprocal beneficiaries. Hawai'i's courts have allowed same-sex partners to adopt each other's children in second-parent adoption proceedings, but the law in this area is not yet confirmed in statute or published case law.

Health Insurance Benefits – Reciprocal beneficiaries are not treated the same as married couples for purposes of employment-related health insurance policies. Although employers may offer coverage for partners, many employers do not.



Joint Tax Returns – Reciprocal beneficiaries cannot file a joint Hawai'i state income tax return.

Judicial Dissolution – If reciprocal beneficiaries end their relationship, they do not have access to the same structured dissolution proceedings that married couples have upon divorce. If either or both decide to fight about property in court, they will have to do so in a civil action as if their family breakup were a business dispute, which tends to be slow and expensive.

Spousal Support – A reciprocal beneficiary does not have the right to claim spousal support (alimony) after a breakup.

Legal Privileges – Married couples are entitled to keep their

communications private and cannot be forced to testify against each other in court. Reciprocal beneficiaries do not have the same confidentiality protections.

WHO CAN REGISTER?

Any two people who both are at least 18 years old and not eligible to marry each other can register as reciprocal beneficiaries, so long as they are not married or registered as reciprocal beneficiaries with anyone else. If you are registered with someone as reciprocal beneficiaries, you must terminate that registration before you can register with a new partner. Partners need not live in Hawai'i or share a home to register as reciprocal beneficiaries. They also do not need to be a couple; blood relatives and friends who do not share a romantic relationship can register as long as Hawai'i law would bar them from marrying each other.

HOW TO REGISTER

A Registration of Reciprocal Beneficiary Relationship form is available from the Hawai'i Department of Health at the following locations:

Honolulu

Department of Health Building
Lobby Area (1st Floor)
1250 Punchbowl Street
(corner of Beretania and
Punchbowl Streets)
808-586-4533

Hilo

Governor's Liason Office
75 Aupuni Street
808-974-6262

Kailua-Kona

Governor's Liason Office
75-5722 Kuakini Highway, #215
808-327-4953

Wailuku

Governor's Liason Office
2264 Aupuni Street, #1
808-243-5796

Lihue

Governor's Liason Office
3060 Eiwa Street, #106
808-274-3100

The form also is available online at www.hawaii.gov/health/vital-records/pdf/rbr_app.pdf.

Once you and your partner have filled out the form and had your signatures notarized, send it with a cashier's check or money order for \$8.00 payable to the State Director of Finance, along with a self-addressed, stamped, legal-sized envelope to:

RBR Office

P.O. Box 591

Honolulu, HI 96809-0591

More information is posted at: www.hawaii.gov/health/vital-records/vital-records/reciprocal/index.html.

COMMON QUESTIONS AND ANSWERS

Q My partner and I married in Canada. Do we need to register as reciprocal beneficiaries in Hawai'i?

A It is unclear how the courts of Hawai'i will treat the marriages of same-sex couples from other jurisdictions. To be safe, it makes sense to register as reciprocal beneficiaries too.

Q My partner and I registered as domestic partners in California. Do we need to register in Hawai'i as well?

A It is a good idea to register with Hawai'i even if you entered into a domestic partnership (or civil union) in another state. We don't know how much respect Hawai'i will give to legal arrangements for same-sex couples from outside Hawai'i.

Q If we register as reciprocal beneficiaries in Hawai'i, will we be protected when we travel to other states?

A Unfortunately, it is unclear whether other states will respect the reciprocal beneficiary status and give reciprocal beneficiaries any legal protection as couples. It is likely that states such as California, Connecticut, Massachusetts, New Jersey and Vermont will honor reciprocal beneficiaries at least



in some circumstances, and that the states with no statewide protection for same-sex couples will give little if any respect to the Hawai'i status. Because this area of law is uncertain, it is important that committed couples have wills, durable powers of attorney and other legal documents to protect them when they travel.

Q Does registration affect the ownership of property belonging to my partner or me?

A No. Rights to property owned by either party are not altered by registering as reciprocal beneficiaries and reciprocal beneficiaries do not share community property as spouses do.

Q I'm on public assistance. Will my benefits be affected if my partner and I register as reciprocal beneficiaries?

A Maybe. The Hawai'i statutes do not appear to consider a reciprocal beneficiary's income in determining eligibility for public assistance, and reciprocal beneficiaries do not share income through community property in the same way spouses do. Still, it is possible that a state agency may take reciprocal beneficiary status into consideration when determining eligibility for benefits.

Q How do I terminate a reciprocal beneficiary relationship?

A You must prepare a notarized Termination of Reciprocal Beneficiary form and send it, along with a money order or cashier's check for the \$8.00 fee, to the RBR Office in Honolulu. The forms are available at the same offices and from the same website as the registration forms. More information is posted at www.hawaii.gov/health/vital-records/vital-records/reciprocal/index.html.

Q My reciprocal beneficiary and I broke up. Do we need to bother to notify the state?

A Yes. It is very important to terminate the reciprocal beneficiary status after a breakup. Until you have terminated the status, your former partner and you may still have rights



and responsibilities with respect to each other. For example, would you want your former partner to have the power to make medical decisions for you or to inherit your property? You also cannot enter into a new reciprocal beneficiary relationship until you have dissolved the existing one.

Q If my partner and I register as reciprocal beneficiaries and we break up, might one of us have to pay support to the other?

A Probably not. Hawai'i law does provide for some very limited duty of support between reciprocal beneficiaries if one partner is disabled, but in most cases reciprocal beneficiary status does not provide for spousal support the way marriage does.

Q My partner is an American citizen and I'm undocumented. If we register as reciprocal beneficiaries will that help me adjust my immigration status?

A No. Federal law controls immigration and, unfortunately, the federal government does not treat same-sex couples the same as different-sex couples. Even with a valid marriage from Massachusetts or another country, a same-sex spouse is ineligible to adjust his or her immigration status.

Q I'm currently in the military. Could registering as a reciprocal beneficiary create a problem for me?

A It might. Although Hawai'i law doesn't require that reciprocal beneficiaries be involved romantically, some military command staff have attempted to discharge service members who have had commitment ceremonies or who even only have purchased rings with their partners. Those seeking advice on these issues should contact Servicemembers Legal Defense Network at 202-328-3244 or visit www.sldn.org.

Q

We want to protect our family as best we can. Are there other things we should do besides registering with the state as reciprocal beneficiaries?

A

Yes. Even with registration, in most cases both partners should:

- 1 Prepare and execute written wills
- 2 Sign “Advance Directives” regarding health care decisions
- 3 Consider entering into a written agreement together setting forth how you want to handle matters if you split up
- 4 Consult with an attorney as to how best to hold your property
- 5 Talk to a lawyer about signing general powers of attorney (which allow one partner to make legal and financial decisions affecting the other under specified circumstances, such as incapacity)



If you and your partner have children and only one of you is any child’s legal parent, you both also should consult with an attorney about the possibility of obtaining a second-parent adoption or taking other steps to ensure that both of you will be recognized as the legal parents of all of your children.