

Legally binding weddings and civil unions: Finding your officiant

This chapter is for couples who plan to legally marry in the U.S. or Canada or legally establish a civil union in Vermont, Connecticut, New Jersey, or New Hampshire. All information in this chapter regarding marriage also applies to civil unions in the aforementioned states unless I note otherwise. I use the single word "marriage" instead of "marriage or civil union" so that couples who plan to register as domestic partners are not confused: this chapter's legal information on marriage *does not* apply to domestic partnership registries in any state or province.

What must happen at a wedding for it to be legally binding?

Almost anywhere you might live within the U.S. or Canada, your law will require that, in order to get married, you and your partner, an officiant, and witnesses sign a certain document on your wedding day and return the document to a government office. This document reports that a wedding took place and that therefore you and your partner are legally wed. Of course, that implies that a wedding is some sort of event attended by the people who signed the document. But regulation of what that event must include is remarkably rare. In all U.S. states but one, laws that specify what must occur during a wedding ceremony are non-existent or extremely minimal. Most Canadian provinces have minimal requirements setting forth what must occur at civil wedding ceremonies and virtually no laws specifying what constitutes a religious wedding ceremony.

For the most part, the law regards marriage as a written contract. Governments in the United States and Canada do expect you to "solemnize" your marriage contract with a wedding ceremony. But, as a general rule, you can solemnize your marriage with any event (ceremony) that you and your officiant choose.

There are, however, a few exceptions to this rule:

1. Five people must be present at a legal wedding ceremony: two partners, a civil or religious officiant, and two adult witnesses. A few jurisdictions require only one witness. A few jurisdictions allow people in exceptional circumstances to hold a wedding without one of these five people. Chances are, your law requires all five people in your case.
2. About a quarter of U.S. states require that both partners orally express consent to marry during their wedding ceremony. But these state laws do not set forth any particular phrases the partners must use to express their consent. All of these laws are extremely similar to the following Oregon statute: "In the solemnization of a marriage no particular form is required except that the parties thereto shall assent or declare in the presence of the clergy person, county clerk or judicial officer solemnizing the marriage and in the presence of at least two witnesses, that they take each other to be husband and wife" (Oregon Revised Statutes, 2003 edition, 106.150). (Note that, in this statute, "form" means something like "phrases and gestures"; it does not mean "document.")

In every ceremony in this book, both partners express their consent to marry. The "declarations" in these ceremonies are sufficient to satisfy the laws of oral consent in every U.S. state except West Virginia (and they satisfy West Virginia's laws for religious weddings, just not civil weddings; see 5).

3. The vast majority of Canadian provinces set forth one specific exchange that must take place sometime during a civil wedding. These provinces require no equivalent exchange in religious weddings. The precise exchange required in civil weddings varies from province to province, but in the vast majority of cases, it is similar to the following: "[E]ach of the parties shall declare, 'I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,' [or the equivalent French sentence] and each of the parties shall say to the other: 'I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (or husband)' [or the equivalent French sentence] after which the person solemnizing the marriage shall say, 'I, EF, by virtue of the powers vested in me by the Marriage Act, do hereby pronounce you AB and CD to be husband and wife [or the same in French]" (Marriage Act, Revised Statutes of Ontario, 1990, c. M.3).

4. A few states and provinces require that weddings take place between certain hours of the day. Québec and Prince Edward Island also restrict the locations where some civil weddings may take place.

5. West Virginia is the only U.S. state to prescribe a detailed exchange between the two partners and the officiant. This exchange is required only in civil weddings. It takes two to three minutes to perform.

6. Québec prescribes a slightly more detailed exchange between the partners and their officiant than other provinces do. Québec also requires that the officiant read certain articles of its Civil Code to the couple at some point during the ceremony. The required exchange and readings together take one to two minutes to perform.

Because specific exchanges are required only in the civil weddings of Canada and West Virginia, and because the required exchanges vary by Canadian province, I have not included any of them in this book's ceremonies. I have, however, indicated points in some weddings at which these phrases might be inserted. If your province or state requires you to exchange particular phrases during your wedding, you should make sure to exchange those phrases. But if the exchange doesn't fit naturally into your ceremony, you could say the required phrases in a back room before or after your "real" ceremony. Just warn your officiant of your plan, and make sure that your witnesses are present when you and your officiant say the magic words.

Finding an officiant: Introduction

Every ceremony in this book includes a role for an officiant. There are plenty of religious and ethnic groups that don't traditionally use officiants at weddings, perhaps the best-known being

the Religious Society of Friends (better known as Quakers). Since most of the ceremonies in this book don't grant much authority to the officiant, I might have also dispensed with the officiant's role. But many couples enjoy designating a master of ceremonies for their wedding and honoring a friend or family member with this position. Also, since an officiant must be present at a legally binding wedding (unless the wedding is celebrated in an established religious society that recognizes no officiants), I thought it only fair to give that person a speaking part. In general, you need not reserve the officiant's position for someone authoritative, charismatic, or wise. I recommend considering a number of your friends in the role before choosing someone.

"What?" you might say. "My friends aren't judges or rabbis. How can one of them officiate at my wedding?" Well, if you don't plan to get married in the eyes of the law, that's easy. You can ask any friend or family member to officiate – even a child might serve as your officiant.

If you and your partner plan to register as domestic partners in connection with your wedding, no ceremony needs to take place to complete your registration in any U.S. state, so you can still ask anyone to officiate at your wedding. At the time I'm writing, same-sex couples can register as domestic partners throughout California, Hawaii, Maine, New Jersey, Washington, Oregon, and the District of Columbia, and in certain cities and counties of other states. The legal benefits of registering vary greatly from state to state. There are similar registries available in many Canadian provinces, and some provinces require that partners solemnize their registration with a ceremony; however, same-sex marriage is legal in all of Canada.

Vermont, Connecticut, New Jersey, and New Hampshire go a step beyond the states that have domestic partnership registries. These four states allow couples to legally join in civil unions, which gives couples the same state benefits, protections, and responsibilities as married couples (but none of the federal benefits). These states do require that partners solemnize their civil unions with a ceremony. The state laws that set out who can officiate at weddings also apply to civil union ceremonies, so anyone who can officiate at a wedding in these states can officiate at a civil union, and anyone who cannot officiate at a wedding cannot officiate at a civil union.

One-day officiants

If you plan to get legally married, you might be lucky enough to live someplace where laypeople are permitted to officiate at civil wedding ceremonies. In most of the jurisdictions that allow this, the would-be officiant is required to file some paperwork and pay a small fee a few weeks or months before the wedding. Then s/he is granted a temporary title like "deputy marriage commissioner" that allows her/him to perform one wedding. Currently the U.S. states of Alaska, Massachusetts, and California, the Virginia county Fairfax County, and the Canadian province of Québec offer this option.¹ Alberta also offered this option until recently. Laws do change, so

¹Not every county in California allows a person to become a deputy marriage commissioner for a day, but an officiant who has been deputized for a day in one county of California is permitted to perform a wedding anywhere in the state.

wherever you live, check yours.

Solemnizing your own wedding

Colorado offers couples the option of solemnizing their own weddings, which means they need no officiant at all. Hooray for Colorado! And solemnizing your own wedding in Colorado requires no extra paperwork.

If you're a Colorado couple who wants to use one of the ceremonies in this book (or any other unusual ceremony that requires an officiant), I recommend that, for legal purposes, you solemnize your own wedding. This means that you sign your marriage license as the officiants and you return the license to the county recorder as an officiant would. But you should designate someone other than yourselves to perform the role of officiant in your ceremony. You might call this officiant the "master of ceremonies" – s/he will have no legal significance. If you do this, you don't have to worry about finding someone who is legally qualified to officiate at your wedding.

Your friend the minister

If you don't live in a place that grants laypeople the authority to serve as civil wedding officiants, there's still a good chance that your friend or family member can perform your wedding if you live in the United States. To officiate at your wedding, your friend will have to get ordained as a clergyperson. A few religious organizations ordain anyone for the asking – online, instantly, for free. Two such organizations that are recognized in most of the United States are the Universal Life Church, the most well-established "mail order church," and the Church of Spiritual Humanism. Unfortunately, Canada does not currently recognize either of these churches or any similar organization, but this might change soon, as ministers of the Universal Life Church are attempting to gain recognition from several provinces.

After your friend is ordained, s/he might be required to register with your state or county as a religious officiant who can perform weddings. This registration sometimes takes a good deal of paperwork. Your friend will probably have to obtain a letter or two from the religious organization, and this can take some time and pestering. Your officiant should allow as much time as possible to obtain the necessary documents and get all the paperwork processed; I recommend at least eight weeks.

If your friend is willing to get ordained and registered as a clergyperson, s/he will probably succeed in qualifying to officiate at your wedding. But you or your friend might have moral qualms about the religious organization that s/he must join for this purpose, or about joining any religious organization just for this purpose. And s/he might encounter someone in your state or county office who doesn't want to give the power of marriage to a "clergyperson" who doesn't serve a congregation on a daily basis. That said, I am one of many people who have officiated at a number of weddings by means of instant ordination. Unless your state permits anyone to

officiate at a wedding, this might be your best option.

Using a conventional officiant

You might find a more conventional officiant who is willing, even excited, to take part in your ideal ceremony. I would recommend asking civil officiants if they're interested in performing your ceremony before you ask religious officiants.² The typical religious officiant will at the very least want some of her/his religion's beliefs discussed in your ceremony, and the ceremonies in this book are complete without such references. So hand two or three civil officiants the script and see what they say.

The list of civil officials who are permitted to officiate at weddings varies greatly from place to place. It typically includes a number of judges. The list often includes marriage commissioners as well – people whose primary task it is to perform weddings. Canadian marriage commissioners are often especially willing to take on unusual ceremonies. In one state or another, a mayor, county clerk, state representative, and even a lawyer (Maine) and a notary public (Florida, Maine, South Carolina) can officiate. Check your state or provincial laws to see what civil officials are permitted to officiate where you live. It might turn out that you already know a "real" officiant.

If civil officiants balk at your unconventional wedding, contact religious officiants. Unless you want specific religious references in your wedding, talk to a clergyperson of a religion that stresses tolerance for a wide variety of beliefs, such as Unitarian Universalism. Or talk to a representative of a secular humanist organization such as the Ethical Cultural Society or the Humanist Society. In most states and in Ontario, local officials of one of these humanist organizations are treated by law as clergypeople and so can perform legally binding weddings.

Wiccan and other neo-pagan priestesses and priests are often particularly willing to perform unusual ceremonies. However, those pagans who can legally serve as officiants have usually obtained their legal standing not through their primary religious affiliations but through an organization such as Universal Life Church. If they can serve as officiants in your home state, someone you know can do the same.

If you don't find an officiant you like by these means, look online and in newspapers to see if any officiants are advertising their services. It's possible you won't find any officiants advertising in your area, because in some places this is illegal. If you do see any promising ads, try contacting the officiants who placed them. Note that some wedding authorities advise against using the services of officiants who advertise. It's true that many of these officiants depend on weddings

² If you live someplace that severely restricts the location of civil weddings, you might prefer a religious officiant. To my knowledge, only Prince Edward Island restricts the location of all civil weddings – to a "judge's chambers." Québec restricts the times and locations of civil weddings presided over by judges, but allows other officials to perform civil weddings.

for their livelihoods and that most of them are not members of reputable or well-established religious organizations. But one of these folks will probably be willing to officiate at your ideal ceremony. Just look for someone you feel good about, confirm that this person is indeed able to perform legally binding weddings, and don't agree to pay this person more than you would pay another officiant.

Holding two ceremonies

If you want to be married in an unconventional ceremony, your final option is to hold a brief legal ceremony in addition to your more meaningful one. If you make this choice, anyone you want can officiate at the ceremony you invest yourself in, because that ceremony will have no legal standing. Your legal ceremony might consist of no more than spending a few minutes at a courthouse, reciting a standard ceremony with your partner and an officiant, accompanied at most by your immediate families. In countries like England where legal restrictions on weddings have traditionally been quite rigid, it's fairly common to hold a private civil ceremony and a separate public ceremony, religious or otherwise.

Your legal questions

Direct your legal questions about officiants and about marriage in general to the office nearest you that issues marriage licenses (or the equivalent document – whatever document you're required to present to your officiant in order to be wed). The most common issuer of these licenses in the U.S. is the county clerk – but, in your state, this power might be delegated to some branch of your city, town, or village government. The name of the office that issues marriage licenses varies by Canadian province as well. Check the phone book or the internet to find your local office. Two organizations that give excellent information on same-sex marriage, civil unions, and domestic partner registries are the Human Rights Campaign (<http://www.hrc.org>) and the Alternatives to Marriage Project (<http://www.unmarried.org>).

You can also find answers to most legal questions on marriage by reading your relevant state or provincial laws. These are available in libraries as well as on the internet. If you're using the internet, just type "[your state or province] statutes" into a search engine. In the U.S., laws regarding weddings most commonly fall under the heading "Marriage" and the broader category of "Domestic Relations," "Marital and Domestic Relations," or "Family Law." Laws regarding civil unions fall under the heading "Civil Unions," within the same broad categories as marriage. In Canada, wedding laws most commonly fall under the heading "Marriage Act" or "Solemnization of Marriage Act." The laws on weddings are rarely scattered around – just look for a few consecutive pages that set forth who is permitted to marry whom, who is permitted to officiate, documentation of the wedding, and so forth.

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