

Notice of Intention of Marriage

- Implementing the Goodridge decision
- Updating clerk instructions
- Examples

1

What did the Supreme Judicial Court decide in Goodridge v. Department of Public Health?

On November 18, 2003, the Massachusetts Supreme Judicial Court ("SJC") declared that "barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution."

The SJC allowed 180 days before entry of judgment "to permit the Legislature to take such action as it may deem appropriate in light of this opinion." The 180 day stay expires on Sunday, May 16, 2004.

2

Did the legislature make any statutory changes to facilitate the implementation of Goodridge?

No. The legislature has not made any statutory changes to the marriage laws to facilitate the implementation of Goodridge.

3

Did the SJC in Goodridge set aside the marriage registration statutes found in M.G.L. c. 46 and c. 207?

No. The SJC preserved the marriage licensing statute, and refined the common-law definition of civil marriage to mean the voluntary union of two persons as spouses to the exclusion of all others.

4

Has the Massachusetts Constitution been amended?

Not yet. The Legislature passed a proposed constitutional amendment that would declare that marriage is only the union of one man and one woman, and would give two persons of the same sex the right to form a civil union if they meet the requirements set forth by law for marriage. Civil unions for same sex couples would provide entirely the same benefits, protections, rights, privileges, and obligations that are afforded to married people.

The next legislative session will have to vote on and pass the bill in order for the proposed amendment to be presented to the voters in the November, 2006 election.

5

When can clerks begin accepting Notices of Intention from applicants who intend to marry a person of the same sex?

May 17, 2004. The SJC issued its decision on November 18, 2004, but stayed the entry of judgment for 180 days. The 180th day is May 16, 2004. Because May 16 is a Sunday, clerks should be ready to implement the new law on the next business day, May 17, 2004. (G.L. c. 4, s. 9)

Starting on May 17, 2004, certificates of marriage may be issued to a person regardless of whether the person intends to marry a person of the opposite or the same sex.

6

Can a clerk refuse to issue a certificate of marriage to a person solely because that person intends to marry a person of the same sex?

No. The SJC declared that barring a person from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex would violate the Massachusetts Constitution.

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Notice of Intention of Marriage

- Certain changes have been made to the Notice of Intention form to help clerks implement the laws of the Commonwealth, including the SJC's Goodridge ruling.
- Likewise, clerk instructions have been updated to conform to all laws.

8

Is the revised Notice of Intention just for same sex couples?

No. Clerks must use this form for ALL applicants, regardless of whether the applicant wants to marry a person of the opposite sex or the same sex.

9

If my town has a large inventory of existing Notices of Intention, can I use the existing forms for opposite sex couples, and the new forms for same sex couples?

No. Clerks should use the new form for ALL applicants.

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What has not changed on the Notice of Intention?

- Date
- Name of City or Town
- Present Name
- Surname to be used After Marriage
- Date of Birth
- Occupation
- Marriage No. (1st, 2nd, etc.)
- If not 1st, Status of Last Marriage (Widowed or Divorced)
- Birthplace

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What has changed on the Notice of Intention?

- Designation of applicants
- Location of age field
- Where an applicant resides and intends to reside
- Civil unions and domestic partnerships
- Applicant's parents' names
- Applicant's sex
- Consanguinity and affinity

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Question 1: What has changed on the Notice of Intention regarding the names of the applicants?

Answer: Where the previous forms say "Bride" and "Groom", the revised forms say "Party A" and "Party B."

Example: John and Sue are filling out the notice of intention. Sue fills out the column labeled "Party A" and John fills out the column labeled "Party B," or vice versa.

Question: Which person should be "Party A" and which person should be "Party B"?

Answer: That is up to the two people involved to decide. There is no legal significance to the choice of one title or the other.

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Question 2: What has changed on the Notice of Intention regarding age?

Answer: In lines 4A & 12A, age has been moved from the margin to the body of the form.

Answer: The top part of the back of the Notice of Intention relating to age has been improved for the clerks' convenience. It now includes:

1. Check boxes for each party
2. Check boxes for judicial authorization
3. Check boxes for parental consent

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Can a clerk issue a Notice of Intention of Marriage for a person who is under 18 years of age?

Not without court authorization. The clerk shall not receive a notice of intention of marriage for a person under 18 unless there is court authorization. (G.L. c. 207, s. 25)

15

Do I have to ask for proof of age for every applicant?

No, just where the clerk has doubt regarding the legal age of an applicant.

16

What if it appears as though a person is not at least 18 years old?

As in the past, if it appears from the information in the Notice of Intention that a party is under 18 years of age, the clerk must obtain proof of age. (G.L. c. 207, s. 33A) In order of preference, the clerk may accept: (1) original or certified copy of a record of birth; (2) original or certified copy of a baptismal record; (3) passport; (4) life insurance policy; (5) employment certificate; (6) school record; (7) immigration record; (8) naturalization record; or (9) a court record. A clerk shall not receive proof of age of a lower grade unless he is satisfied that evidence of a higher grade is not readily available.

The clerk should check the applicable box on the back of the form to indicate which proof of age was accepted.

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What if it appears as though a person is not at least 18 years old, and the person does not have any proof of age?

If no documentary proof of age is available, the consent of the parent shall be sufficient. (G.L. c. 207, s. 33A) In that case, the clerk would check the applicable box on the back of the form, and would attach the notarized written parental consent.

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What if the clerk has reasonable cause to believe that a person is misrepresenting her age and is really under 18 years old?
What if a person looks as though he is under 18 years old, but is really 21 years old?

In either case, the clerk shall require documentary proof of age before issuing a certificate of marriage. The person may provide any of the documents listed earlier as proof of age.

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Question 3: What has changed on the Notice of Intention regarding a person's residence?

Answer: The information asked for in Lines 6 & 14 has not changed.

Example: Betty writes in line 6 that her residence is 123 Lois Lane, Boston, MA.

20

Question 4: What has changed on the Notice of Intention regarding where a person intends to reside?

Answer: Lines 6A & 14A now ask: "If not a Massachusetts resident, I intend to reside in: _____" This is new to the form.

21

Does a person have to be a resident of Massachusetts to get married here?

No. There is no residency requirement to get married in Massachusetts.

22

If a person does not have to be a resident of Massachusetts to get married here, why would we ask for his residence and intended residence?

M.G.L. c. 207, s. 11 (section 11) states that: "No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof shall be null and void."

The following slides address how to approach applicants who do not currently reside in Massachusetts.

23

What does section 11 really mean?

Section 11 means that if a person lives and intends to continue to live in another state or jurisdiction and cannot legally get married in that state or jurisdiction, her marriage "shall be null and void."

24

Why does section 11 matter?

Providing marriage to a couple when their marriage is “null and void” is not doing them any favor and has significant legal consequences:

- The rights of children may be seriously affected;
- The rights of spouses may be different than expected;
- These issues may not be raised for years, such as in a wrongful death action, divorce, child support action, or estate challenge.

Following the law is very much in the interest of the parties involved.

25

Why hasn't anyone focused on section 11 before now?

All applicants have previously had to swear under the pains and penalties of perjury that there were no legal impediments to marriage. Until now, Massachusetts has not had significantly broader marriage laws than other states. As a result, there was little reason to think that people were coming to Massachusetts to avoid their resident state's marriage laws.

At the present time, Massachusetts is the only state in the United States where marriage between people of the same sex is permitted by law. With this change in Massachusetts law, there may now be individuals from other states who come to Massachusetts to be married because their own state does not allow same sex marriage.

26

Isn't section 11 an anachronism that we should not have to follow?

- No, it was referenced by the SJC. In his concurring opinion, SJC Justice Greaney wrote that: "The argument, made by some in the case, that legalization of same-sex marriage in Massachusetts will be used by persons in other States as a tool to obtain recognition of a marriage in their State that is otherwise unlawful, is precluded by the provisions of G.L. c. 207, ss. 11, 12, and 13."
- The Executive function of government (Governor, Attorney General, and clerks) cannot disregard a statute until a court orders otherwise.

27

How is the word "residence" defined?

A person's residence is where she actually lives (e.g., sleeps and eats) and makes a home. The person has to have an identifiable address, and the intent to make that place her home at least for the time being. A person may have more than one home and residence at a time. For the purpose of marriage, a person may claim either home as a residence.

People can change their residence by moving to and making a commitment to live in a specific place. As soon as a person moves and makes a commitment to live and make a home in a particular place, she can apply to be married using her new address.

People simply traveling away from their home and who intend to return to their home do not change their residence.

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What does the phrase “intends to continue to reside” mean?

This phrase means that the individual has the present intention either to remain where he currently lives, or to establish a new home or residence in another state in the near future, even if a specific address or town has not been selected.

A vague intent to someday have a residence in a state is insufficient.

29

What is a clerk legally required to do before issuing a certificate of marriage (marriage license) to a person who resides and intends to continue to reside in another state?

“Before issuing a license to marry a person who resides and intends to continue to reside in another state, the officer having authority to issue the license shall satisfy himself, by requiring affidavits or otherwise, that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.” (G.L. c. 207, s. 12) (“section 12”)

30

What does section 12 mean?

A clerk has an affirmative duty to satisfy himself of three things before issuing a certificate of marriage:

- 1. Where an applicant resides;**
- 2. Where an applicant intends to continue to reside; and**
- 3. Whether there is a legal impediment to the applicant's marriage in the place where the applicant resides or intends to reside.**

31

How will a clerk know if a person who resides and intends to continue to reside in another state is prohibited from marrying in that state?

Before May 17, 2004, you will receive information about each state's legal impediments to marriage, including impediments based on age, consanguinity and affinity, and sex.

32

How may a clerk satisfy himself about where a person resides?

The clerk's responsibility regarding the applicant's residence may be satisfied by:

- some type of documentary evidence to confirm where the person resides (the back of the Notice of Intention form lists suggestions that include: a utility bill; bank or credit card statement; telephone listing; current voter registration; employment or business address; driver's license; automobile registration; copy of state or federal tax return; deed, purchase and sale, or lease for residential property; or some other document that demonstrates where a person resides); and/or
- a sworn affidavit. The Notice of Intention form, once signed by the applicants under the pains and penalties of perjury, is an affidavit.

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How may a clerk satisfy himself about where a person intends to continue to reside?

The clerk's responsibility regarding the applicant's residence may be satisfied by :

- some type of documentary evidence to confirm where the person intends to continue resides; and/or
- a sworn affidavit. The Notice of Intention form, once signed by the applicants under the pains and penalties of perjury, is an affidavit.

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How should a clerk satisfy himself that a person who resides, and intends to continue to reside, outside of Massachusetts is not prohibited from marrying?

A clerk may satisfy himself that a person who resides outside of Massachusetts is not prohibited from marrying as follows:

1. Ask the person for some type of documentary evidence to confirm where the person resides and intends to continue to reside;
2. Show the list of legal impediments for the state(s) in which the person resides or intends to continue to reside to the person; and
3. Review the list of legal impediments for the state(s) to satisfy himself that there are no legal impediments to the person marrying.

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Why ask a person to provide a document to confirm where he resides?

Marriage carries with it significant legal consequences. If two people get married but there was a legal impediment to that marriage, the marriage shall be null and void. There are serious ramifications of entering into a marriage that is null and void, not only for the two individuals involved, but also for their children.

The best way to protect the future interest and rights of both parties to a marriage and their children is to make a good faith effort to determine if there are impediments to a person's marriage where she resides and intends to continue to reside.

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What if a person does not have any type of document that confirms where he resides and intends to continue to reside?

1. If the lack of documentation means that the clerk is not able to satisfy himself that there is no legal impediment to the person's marriage, the clerk may:
 - A. Ask the person to return with documentation so that the clerk may be satisfied; or
 - B. Refuse to issue the license. (G.L. c. 207, s. 12)
2. If the clerk is satisfied by the person's oath that there is no legal impediment to marriage, the clerk may accept the oath. (G.L. c. 207, s. 12)

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If a person has more than one residence, what should she write on the Notice of Intention?

If a person has more than one residence, she may decide which residence to write on the Notice of Intention. The following examples describe people with more than one residence:

- College students who live at their parents' home during the summer, but on campus during the year;
- A person who owns homes in three different states, and divides his time between those homes throughout the year;
- A person who works and resides in one state during the week, but resides in another state on the weekends;
- A person who resides in Massachusetts during the warmer months, but resides in Florida during the colder months.

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If Scott resides outside of Massachusetts and intends to continue to reside outside of Massachusetts, can the clerk issue a license if Scott intends to marry a person of the same sex?

No, unless the state in which Scott resides and intends to continue to reside has affirmatively indicated that same sex marriage is permitted in that state. You will be provided with a list of these states, if any, by May 17.

39

If Becky lives in Massachusetts and would like to marry Sue, who lives outside of Massachusetts, can the clerk issue a certificate?

Yes, so long as Sue intends to reside in Massachusetts and there is no other legal impediment to the marriage.

40

If Jon and Tom both reside outside of Massachusetts, and Tom is admitted to medical school in Massachusetts and will begin in the fall, and both swear on the Notice of Intention that they intend to reside in Massachusetts, can the clerk issue a certificate of marriage?

Yes, because they both intend to reside in Massachusetts.

41

Who should we ask to provide a document to confirm where they reside?

The best practice is to ask everyone to provide a document to confirm where they reside, regardless of sex or state of residence.

42

What about Massachusetts residents? How should a clerk determine whether there is an impediment to marriage for a Massachusetts resident?

A clerk may determine that there are no legal impediments to marriage for a person who resides in Massachusetts as follows:

1. Ask the person for some type of documentary evidence to confirm that the person resides in Massachusetts;
2. Show the list of legal impediments for Massachusetts to the person; and
3. Review the list of legal impediments for Massachusetts to satisfy himself that there are no legal impediments to the person marrying.

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Question 5: What has changed on the Notice of Intention regarding civil unions or domestic partnership?

Answer: Lines 7B & 15B ask an applicant to indicate:
"Am/was member of Civil Union or Domestic Partnership"

Lines 7C & 15C ask: "If so, dissolved?"

Change: These are new to the form.

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What is the Notice of Intention referring to when it lists “civil union” and “domestic partnership”?

Civil unions and domestic partnerships are relationships that states create to provide certain rights, obligations, and benefits to people who either cannot, or who do not want to, marry. The Notice of Intention is referring to these types of relationships that are created by statute. It is not referring to a local ordinance or rule that may provide domestic partnership benefits, or a private company’s provision of such benefits.

45

Why is this question included on the Notice of Intention?

Some of these relationships automatically dissolve if one person or the other gets married; others of these relationships must be formally terminated before either party can marry under the laws of other states.

Because the law in Massachusetts does not currently make a civil union or domestic partnership an impediment to marriage, neither a civil union or a domestic partnership is an impediment to marriage. You will be notified if this changes in the future.

Vital records, such as the Notice of Intention, will be used by historians, demographers, public health officials, and others to look at patterns of civil unions, domestic partnerships, marriage, divorce, and dissolution.

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Question 6: What has changed on the Notice of Intention regarding an applicant's parent's name?

Answer: Lines 9 & 17 ask for: "Name mother/parent" and Lines 10 & 18 ask for: "Name father/parent"

Change: The addition of "/parent" is new.

Example: If Joe's legal parents by adoption are both men, Joe would list both fathers.

Example: If Jane's legal parents by adoption are her grandmother and aunt, Jane would list both women.

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Question 7: What has changed on the Notice of Intention with regard to a person's sex?

Answer: Lines 22 & 23 ask a person to indicate:

"Sex Male Female"

Change: This is a new addition to the form.

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Question 8: What has changed on the Notice of Intention regarding consanguinity and affinity?

Answer: In Line 24, the Notice of Intention asks whether Party A is "Related by blood or marriage to Party B," and in Line 25, asks whether Party B is "Related by blood or marriage to Party A."

Change: These are new to the form.

Example: Mary and John are both from Massachusetts and are second cousins. They should write "second cousins" in lines 24 & 25.

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How do the applicants demonstrate the lack of consanguinity or affinity?

Because information about consanguinity and affinity is not usually contained in a document, the oath is legally sufficient to demonstrate the lack of consanguinity or affinity.

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Question: How do the clerks know whether a particular type of relationship is an impediment to marriage?

Answer: You will be provided with this information for each state by May 17. In Arizona, for example, a person cannot marry a parent, child, grandparent, grandchild, or sibling (including half-sibling); an uncle cannot marry a niece; an aunt cannot marry a nephew; and first cousins cannot marry, except if both cousins are over 65 years old, or are under 65 years old and are not able to reproduce.

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Can a couple who was legally married in another state or country get married again in Massachusetts?

No. A couple who is already legally married cannot get married again unless that marriage has been terminated by death, divorce, or annulment.

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