



ADVOCATING FOR OUR COMMUNITIES

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LEGALIZING YOUR GENDER IDENTITY:

Changing Legal Documents in California

What makes your name “legal”?

Your legal name is the identity by which you are officially known. Your birth name is a legal name because it is on your birth certificate and is used on all of your legal documents. If you want to change that name, you have two options, a “common law” name change and a “court ordered” name change.

Common Law Name Change Some people who change their name never get formal recognition of the change. They simply adopt a new name and use it over time.

If this name is used consistently for business and personal affairs, it can become your legal name through what is called a “common law” name change. This is a free method of changing your name. However, it does not create the kind of solid paper trail that a court ordered name change will.

Court Ordered Name Change A court ordered name change is one where a judge approves your request to change your name. You begin the process by picking up the proper forms, filling them out, and submitting them at the county court house. Once you pay a fee (or submit a fee waiver) you will be given a court date within six to eight weeks.

During that time, you are required to take out a small ad in the classified section of a local paper stating that you will be changing your name. Most everyone who changes their name, regardless of their reason for doing so, has to do this. In a few limited cases, a judge can waive this requirement. Judges will sometimes do this for people who need to protect their identity (often true of survivors of domestic violence) or who are unable to pay for the classified ad (can range from \$50 to \$120 in SF).

On your court date, you will appear before a judge with proof that you have taken out the ad. The judge may ask you a question or two about the name change. If all of your paperwork is in order and no one objects to your name change request, the judge will approve your request to change your name. This name is now your legal name.

What makes your gender legal?

No one knows for sure. California allows you to change the gender on your California birth certificate. Legal experts believe that this change will legally change your gender. However, as far as we know, this theory has not been tested in court. The reason you might want to try to “legalize” your gender is that some laws (marriage and child custody, mostly) might require you to be a certain gender in order to utilize them.

The process for getting your California birth certificate changed is similar to the one used to get a name change. The primary difference is that you’ll need a letter from your health care provider declaring that you have undergone “surgical treatment for the purpose of altering [your] sexual characteristics to those of the opposite sex.” [California Health and Safety Code 103425.]

What “surgical treatment” means is unclear. In most cases, a letter from your physician or surgeon documenting that you have undergone the “recommended treatment” for altering your anatomy and appearance is sufficient. This is true regardless of what kind of surgery you have had. However, a judge is allowed to ask you specific questions about your treatment and can deny your request if your treatment does not include genital surgery. From our experience, however, denial on this ground is rare. It is more probable that the judge will grant your request and ask the state to issue you a new birth certificate.

(Remember that this is only true if you have a California birth certificate. If you have a birth certificate from another state, you will need to ask the court to exercise a power called “equitable jurisdiction.” If you have questions about your specific situation, call the Transgender Law Center.)

If you were granted a court ordered name change in the past, but did not apply for a gender change at that time, you might be able to do so now with a supplemental petition. To do this, you should send a letter and the appropriate documentation from your doctor to the judge who granted your name change. Ask the judge to accept these documents as a “supplemental petition” to your original name change request. While no law says that the judge must grant your gender change under these circumstances, it is possible that your supplemental petition will be granted. If it is, you won’t need to go back to court for the gender change and you’ll save both court costs and a court appearance.

Notice to people less than 18 years of age

If you are under 18, and are not an emancipated minor, you will need to take some extra steps to do either of the above. Because of your age, a parent or legal guardian will need to apply for your name or gender change. When you pick up the forms at the courthouse be sure to pick up the additional paperwork necessary for applicants under 18.

Changing Legal Documents and Records

Birth Certificate

Once you have completed the above court procedures for changing your birth certificate, you must file an “Affidavit to Amend Record” with the California Department of Vital Records (VR).

To do this you will need to fill out form VS 24. The form can be obtained from your county Recorder’s office, your local health department, or by calling VR at (916) 557-6073. Currently the fee for getting your birth certificate changed is \$20. This includes one certified copy of the new certificate. Additional certified copies can be ordered for \$13 each.

Driver’s License and California ID

The California Department of Motor Vehicles (DMV) has created a form (DL 328) for requesting a change to your name and/or gender. You can pick up a copy of the form at any DMV location – usually at the information desk.

You do not need a court order to change your name. However, you will need a licensed California physician to document the fact that you are transgender by signing the DL 328 form. Once you have completed the form, take it back to the DMV and pay the fee. You will receive a temporary license with your new information.

Your permanent license or ID will not be issued until the DMV runs a check against your Social Security records. Therefore, in order to get your permanent license or ID, you’ll need to also update your Social Security records (see below). If you have any on-going problems with this procedure, call the main DMV office in Sacramento (916-657-4484). An analyst can assist you in dealing with local officers who may be confused or uncooperative.

Special note: if you are under 18 years of age, you will need a signature from a parent or guardian to request a name and/or gender change on your license or ID. Use form DL 44 for this signature.

Social Security

To change your name with the Social Security Administration, you will need proof of your old identity and proof of your new identity (usually your temporary drivers license or state ID). Take these materials to a social security office, fill out an SS-5 form (available online at www.ssa.gov), and request that they change your name.

While Social Security officially requires that you have already “completed,” gender reassignment surgery in order to get your gender marker changed, this policy is not universally enforced.

Passport

The procedure for having your name changed on your passport is similar to having it changed on your social security card. However, it is most easily done with a court order. Changing your gender marker, however, can be difficult. The US Passport Agency has a written policy requiring you to have had, or be scheduled to have, gender reassignment surgery to change your gender on your passport.

If you do not plan to have full genital surgery in the near future (or ever), you have a couple of options. One option is to use a passport that lists your birth-identified gender. You may get questioned about this while crossing borders. Some travelers have found that a letter from their doctor identifying them as transsexual usually satisfies any such inquiries.

Another option is to apply for the gender marker change with a physician's letter that states that you have "undergone all recommended medical treatment." While your application may be denied, many have been granted. If you have questions about how to describe your specific medical history, call TLC.

Selective Service

If you are FTM and applying for federal benefits (including educational loans), you will likely need to show proof that you were never required to register with the Selective Service.

You can get this proof by submitting a "Request for Status Information Letter." (You can download the request form off the web at <http://www.sss.gov/FSmen.htm>.) When submitting the form, you'll need to also send a copy of your original birth certificate (with female designation).

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The information in this pamphlet is not meant to substitute for advice from an attorney or appropriate agency. Because of the changing nature of the law, we cannot be responsible for any use to which it is put.

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