

MAINE STATE LEGISLATURE

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*Names Change at Marriage
Marriage Change of Name*

19 M.R.S.A. 781

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To: Marion Perkins, Supervisor, Bureau of Vital Records
From: Joseph E. Brennan, Attorney General
Subject: Change of Surname at Marriage

This responds to your question as to whether a man who wishes to do so may assume the surname of his wife upon their marriage.

ANSWER:

We would answer in the affirmative. A man can assume the surname of his wife at marriage.

DISCUSSION:

The normal practice of the wife's assuming the husband's surname upon marriage is a matter of tradition and little else. That tradition may have developed from the old common law doctrine that upon marriage, a husband and wife, in legal contemplation, become one person, and that person was the husband. C.F. Uhl v. Oakdale Auto Co., 157 Me. 263 (1961); Allen v. Hooper, 50 Me. 371 (1862).

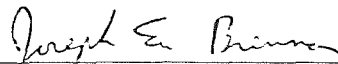
There are no Maine statutes which would require a woman to assume the surname of her husband at marriage. Likewise, there are no Maine statutes which would prohibit a man from assuming his wife's surname at marriage. In fact the general Maine statute governing name changes, 19 M.R.S.A. § 781 requires that all name changes be approved by the probate court. Of course, we may assume that tradition and long usage have developed an exception to this requirement for name changes which occur at marriage.

Maine case law is also very sparse concerning the status of a married man's or woman's name. The Court in In Re Reben, Me., 342 A.2d 688 (1975),

while not specifically addressing the issue of whether a woman takes her husband's surname by operation of law, did rule that a married woman can resume her maiden name by petitioning the Probate Court for a name change.

In practice, it is becoming more common for married women in Maine to retain their maiden names at the outset of their marriage. See, Custer v. Bonadies, 1974, 30 Conn. Sup. 385, 318 A.2d 639; Application of Halligan, 1974, 56 A.D.2d 170, 361 N.Y. S.2d 458, for authority in other jurisdictions to the effect that a married woman does have the right to retain her maiden name. It follows that if a woman has the option of assuming her husband's name or retaining her own name, then the husband also must have the same option as to whether or not to assume his wife's surname.

Therefore, town clerks and the Bureau of Vital Records must accept for filing all marriage certificates which indicate that the husband is assuming his wife's surname, or vice versa, or both are retaining their own surnames.



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