

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

85-137

Inter-Departmental Memorandum Date September 23, 1980

To George N. Whalen

Dept. Motor Vehicle Division

From Doris A. Harnett, Assistant

Dept. Attorney General

Subject Name appearing on operator's license

At our last meeting you expressed concern about the increased number of requests for hyphenated surnames on licenses and the legality of such surnames. Enclosed please find an opinion dated 4/4/78 as well as an Interdepartmental memo which both deal with the topic of surnames. Traditionally, a woman assumed her husband's surname upon marriage. This practice has become less frequent in recent years. No Maine statute requires a woman to assume her husband's surname at marriage. Likewise, there are no Maine statutes preventing a husband from assuming his wife's surname at marriage. Title 19 M.R.S.A. § 781 is the only Maine statute which deals with name changes. This statute outlines a Probate Court procedure which is used when a person changes his or her name. This procedure, however, has not been required when a woman's surname has been changed by virtue of marriage. Although there is very little Maine caselaw dealing with the topic of surnames, it appears that no court order is necessary when any person's surname changes at marriage. Since the Probate Court procedure is not necessary when a woman assumes her husband's name at marriage, we may conclude that the procedure would not be required when a man adopts his wife's surname at marriage. It follows that no Probate Court order is necessary if either or both spouses wish to adopt a hyphenated surname when they are married. Therefore, under the present state law, it appears that no court order is necessary to obtain a surname change on a license when the name is changed by marriage. The resulting surname is the legal name and should be accepted by the Department of Motor Vehicles.

You also stated that some operators were requesting that their full name appear on their licenses. 29 M.R.S.A. § 540 provides that each license shall "state the name" of the licensee. The statute makes no reference to first, middle or surnames. Since there are no other Maine statutes or cases which provide guidance in this area, interpretations as to what constitutes a "name" will naturally vary. The Motor Vehicles Division has been issuing licenses with first names, middle initials and last names and this practice has obviously developed as an administrative convenience. Since 29 M.R.S.A. § 540 states that an operator's "name" must appear on a license, a fair reading of the statute would permit a person's entire name (e.g. including a middle name rather than an initial) to appear on a license. On the other hand, your department should have the opportunity to process licenses in a

practical and efficient manner. In conclusion, I suggest that your office maintain an overall policy of issuing licenses with first names, middle initials and last names; however, persons who insist that their middle names appear should be accommodated.

  
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DORIS A. HARNETT  
Assistant Attorney General

DAH:mfe

Enclosures

# STATE OF MAINE

Inter-Departmental Memorandum Date April 12, 1974

To Peter M. Damborg, Deputy Dept. Secretary of State  
From Jon A. Lund, Attorney General Dept. Attorney General  
Subject Registration for Motor Vehicle or Voting Purposes or Obtaining  
Motor Vehicle Operator's License by Married Woman.

## SYLLABUS:

When registering to vote or registering a motor vehicle or obtaining a motor vehicle operator's license, a married woman is not required to use her husband's surname, but may use her maiden name.

## FACTS:

The Department of State requests interpretation whether 21 M.R.S.A. § 638 and 29 M.R.S.A. § 546 require a married woman to use the surname of her husband when registering to vote, or obtaining an automobile registration or motor vehicle operator's license.

## QUESTION:

Is a married woman required to use the surname of her husband when obtaining an operator's license, a motor vehicle registration or when registering to vote?

## ANSWER:

No.

## REASONS:

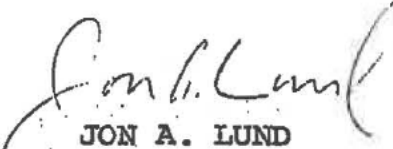
Under common law, upon marriage the identity of the wife was suspended or merged in that of the husband during coverture [See Perkins v. Blethen, 107 Me. 443 (1911)]. Consistent with this principle, it has been the custom of English speaking people for the wife to take the surname of her husband upon marriage.

On September 5, 1973, Justice Wernick of the Maine Supreme Judicial Court, writing for a unanimous court in Moulton v. Moulton, 309 A2d 224, (Me. 1973), stated that inroads had been made upon the common law fiction of husband and wife as a single legal entity. Although Moulton is limited in its holding to a procedural issue, Justice Wernick's opinion casts grave doubt upon the continued validity of the common law fiction of unity of the husband and wife:

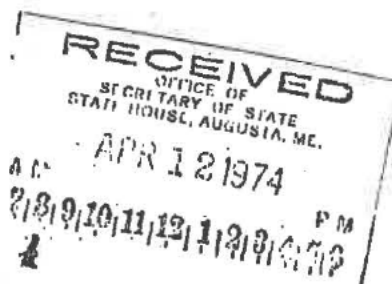
"The common law doctrine of unity in marriage has been so eroded during the years by positive legislation that in modern times the status of the spouses has been practically equalized and the unity of marriage concept remains more theory than fact." Moulton v. Moulton, Me., 309 A.2d 224, 228.

To the extent that 21 M.R.S.A. § 638 and 29 M.R.S.A. § 546 are based upon a legislative assumption that at common law a woman automatically takes the surname of her husband upon marriage, such assumption is no longer valid.

Based upon the language of the Court in Moulton, in our opinion a married woman today is an entity separate and distinct from her husband. Hence, the cited statutes do not require her to register to vote, register an automobile or apply for a motor vehicle operator's license using the surname of her husband. The appropriate public officials, in administering the cited statutes, may require proof from a married woman of her election to use her maiden name.

  
JON A. LUND  
Attorney General

JAL/jwp



JOSEPH E. BRENNAN  
ATTORNEY GENERAL



19 M.R.S.A. 781

RICHARD S. COHEN  
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DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

April 4, 1978

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).

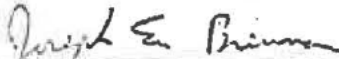
There are no Maine statutes which would require a woman to assume the surname of her husband at marriage. Likewise, there are no Maine statutes which would prohibit a man from assuming his wife's surname at marriage. In fact the general Maine statute governing name changes, 19 M.R.S.A. § 781 requires 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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JOSEPH E. BRENNAN  
Attorney General

JEB:mfe