



Name of Country and Jurisdiction:

## Arkansas, United States

- 1. [What forms of legally recognized relationships are available?](#)
- 2. [What are the requirements to be able to enter into the above relationships?](#)
- 3. [Differences between marriage and civil unions and how the two sets of laws interact.](#)
- 4. [What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?](#)
- 5. [When a couple comes to Arkansas, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?](#)
- 6. [How can each form of relationship be dissolved? What is the residency requirement or other link to Arkansas for an authority to grant a divorce/ dissolution?](#)



### 1. What forms of legally recognized relationships are available?



LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	Arkansas	Arkansas Family Code, Title 9, Chapter 11	Yes <sup>1</sup>

*continued on next page*

<sup>1</sup> On June 26, 2015, the United States Supreme Court issued a decision in four consolidated cases from the Sixth Circuit Court of Appeals under the name *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015), regarding same-sex marriage. The appeals arose from federal district court decisions in Michigan, Kentucky, Ohio, and Tennessee, which struck down as unconstitutional laws that denied the 14 petitioners the right to marry or refused to give full recognition to marriages lawfully performed in another state. The laws at issue in those states define marriage as a union between one man and one woman. The Sixth Circuit had reversed those decisions (in *DeBoer v. Snyder*, 772 F.3d 388 (2014)), holding that a state had no constitutional obligation to allow same-sex marriages or to recognize those performed in another state. In a 5-4 majority opinion, the U.S. Supreme Court held that the Fourteenth Amendment requires a state to license marriages between same-sex couples and to recognize lawfully performed same-sex marriages from another state. The Court held that the right to marry is protected under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Because the Court found that state laws at issue burden the liberty and abridge the equality of same-sex couples, they must be struck down.

On August 11, 2015, the United States Court of Appeals for the Eighth Circuit affirmed the judgment of the United States District Court for the Eastern District of Arkansas in *Jernigan v. Crane*, No. 4:13-CV-00410-KGB Document 45 (E.D. Ark. Nov. 25, 2014), striking down Arkansas's constitutional and statutory prohibitions on same-sex marriage. See \_\_\_\_\_, F.3d \_\_\_\_\_, No. 15-1022 (8th Cir. Aug. 11, 2015).

LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Covenant marriage, registered	Arkansas	Arkansas Family Code, Title 9, Chapter 11, Subchapter 8	Yes <sup>2</sup>

**Q**

**2. What are the requirements to be able to enter into the above relationships?**

**A**

(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	There is no residency requirement for marriage or covenant marriage in Arkansas.
Covenant marriage	

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Two persons wishing to establish a marriage in Arkansas must satisfy all of the following criteria: <ol style="list-style-type: none"> <li>1) Neither person may already be a party to a marriage;</li> <li>2) Each person must be at least 18 years of age to marry without consent. However, marriage applicants aged 16 or 17 may enter into a marriage with parental consent; and</li> <li>3) The spouses must not be related by blood or half blood (second cousins or more distantly related).</li> </ol>
Covenant marriage	In addition to the requirements for marriage, parties to a covenant marriage must: <ol style="list-style-type: none"> <li>1) Declare their intent to enter into a covenant marriage on their application for a marriage license;</li> <li>2) Undergo authorized counseling emphasizing the nature, purposes, and responsibilities of marriage, including a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce; and</li> <li>3) Submit an affidavit that they have undergone the required counseling that includes an attestation signed by the counselor.</li> </ol>

<sup>2</sup> Covenant marriage is entered into by parties who understand and agree that the marriage between them is a lifelong relationship that may be dissolved only when there has been a complete and total breach of the marital covenant.

**Q** 3. If both marriage and civil unions exist:

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

<b>A</b>	(a)–(c)	Not applicable. Arkansas does not recognize civil unions.
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**Q** 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?

<b>A</b>	FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
	Marriage	A party who is already married cannot enter into another marriage or covenant marriage in Arkansas.
	Covenant marriage	

**Q** 5. When a couple comes to Arkansas, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?

<b>A</b>	FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
	Marriage	Arkansas recognizes foreign marriages that would be valid by the laws of the state or country in which the marriage was consummated and in which the parties then actually resided.

**NOTE:** On August 11, 2015, the United States Court of Appeals for the Eighth Circuit affirmed the judgment of the United States District Court for the Eastern District of Arkansas in *Jernigan v. Crane*, No. 4:13-CV-00410-KGB Document 45 (E.D. Ark. Nov. 25, 2014), striking down Arkansas’s Section 9-11-107(b), which prohibited recognition of the out-of-state marriage of two people of the same sex.



**6. How can each form of relationship be dissolved? What is the residency requirement or other link to Arkansas for an authority to grant a divorce/ dissolution?**



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Marriage can be dissolved by annulment or divorce.</p> <p>To seek an annulment, the complainant spouse must be a resident of Arkansas. An action for an annulment may be filed in the county in which the complainant spouse resides. Annulment may be granted when either party to the marriage is incapable of consenting to any marriage, is incapable of entering into marriage due to physical causes, or when the consent of either party was obtained by force or fraud.</p> <p>An action for divorce may be filed in the county in which the complainant spouse resides or, if the complainant spouse does not reside in Arkansas, in the county in which the defendant spouse resides. A marriage may be dissolved by divorce on the following grounds:</p> <ul style="list-style-type: none"> <li>• Either spouse was at the time of the marriage and still is impotent;</li> <li>• Either spouse has been convicted of a felony or infamous crime;</li> <li>• Either spouse is addicted to habitual drunkenness for one year;</li> <li>• Either spouse is guilty of such cruel and barbarous treatment as to endanger the life of the other;</li> <li>• Either spouse offers such indignities to the other as to render his or her situation intolerable;</li> <li>• Either spouse has committed adultery, provided that the other party has not committed adultery and that there has been no collusion between the spouses;</li> <li>• When the spouses have lived separate and apart for eighteen (18) continuous months;</li> <li>• One spouse is incurably insane, as proved as required by the statute; or</li> <li>• Either spouse willfully fails to provide the other with the common necessities of life, despite the legal obligation and ability to do so.</li> </ul>

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Covenant marriage	<p>Parties to a covenant marriage must obtain authorized counseling before obtaining a divorce or judgment of judicial separation. A court may dissolve a covenant marriage: (a) if one or both spouses live in Arkansas and the grounds for dissolution occurred in Arkansas or while the matrimonial domicile was in Arkansas; or (b) if the grounds for dissolution occurred outside Arkansas while one or both spouses lived elsewhere but the spouse seeking dissolution lived in Arkansas before the grounds occurred and lives in Arkansas when the action is filed.</p> <p>A covenant marriage may be dissolved by divorce on the following grounds:</p> <ul style="list-style-type: none"> <li>• The other spouse has committed adultery;</li> <li>• The other spouse has committed a felony or other infamous crime;</li> <li>• The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses;</li> <li>• The spouses have been living separate and apart continuously for a period of two years; or</li> <li>• The spouses have been living separate and apart continuously for a period of 2.5 years from the date a judgment of judicial separation was signed, but if abuse of a child of the marriage or of one spouse is the basis upon which the judgment of judicial separation was obtained, then a divorce may be granted if the spouses have been living separate and apart for one year from the date the judgment of judicial separation was signed.</li> </ul> <p>A party to a covenant marriage may obtain a judgment of judicial separation on the following grounds:</p> <ul style="list-style-type: none"> <li>• The other spouse has committed adultery;</li> <li>• The other spouse has committed a felony and has been sentenced to death or imprisonment;</li> <li>• The other spouse has physically or sexually abused the spouse seeking the legal separation or a child of one of the spouses;</li> <li>• The spouses have been living separate and apart continuously for a period of two years;</li> <li>• The other spouse has been addicted to habitual drunkenness for one year;</li> <li>• The other spouse is guilty of such cruel and barbarous treatment as to endanger the life of the other spouse; or</li> <li>• The other spouse has offered such indignities to the spouse seeking the judicial separation as to render his or her condition intolerable.</li> </ul> <p>Judicial separation does not dissolve the bond of matrimony, and separated spouses are not free to marry others. Spouses in a covenant marriage who are judicially separated remain separated until they either reconcile or divorce.</p>

■ **Sources:**

**Statutes**

- A.C.A. § 9-11-101 through 109 (2015) (General Provisions)
- A.C.A. § 9-11-201 through 221 (2015) (License and Ceremony)
- A.C.A. § 9-11-801 through 811 (2015) (Covenant Marriage Act)
- A.C.A. § 9-12-101 through 325 (2015) (Divorce and Annulment)

**Cases**

- *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015)
- Arkansas Marriage Requirements and Laws, [Arkansas.com](http://www.arkansas.com/weddings/laws/), accessed July 27, 2014, at <http://www.arkansas.com/weddings/laws/>.