



Name of Country and Jurisdiction:

Massachusetts, 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 Massachusetts, 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 Massachusetts 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	Massachusetts	M.A. Const. Pt. 1, Art 1. <i>Goodridge v. Dep't of Pub. Health</i> , 440 Mass. 309 (2003).	Yes

NOTE: 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.

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> • Both parties must be: <ol style="list-style-type: none"> 1) 18 years of age to marry without consent; parties under 18 must have court or parental permission; 2) Not married to another, and 3) Not closely related by blood or marriage. (See GLAD Answers, <i>How to Get Married in Massachusetts</i>, June 2014, at 3–4.) • As of 2008, parties may marry in Massachusetts without residing in, or expressing an intent to reside in, Massachusetts. 2008 Mass. ALS 216, § 1 (repealing M.G.L. ch. 207, § 11). • In Massachusetts, parties must have a marriage ceremony in Massachusetts within the 60 days following the issuance of a marriage license. M.G.L. ch. 207, § 28.

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.).

A

(a)–(c)	Not applicable. Massachusetts does not grant civil unions.
---------	--

Q

4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> One cannot marry a close relative. M.G.L. ch. 207, §§ 1-2. One cannot marry if he or she is already married to another. M.G.L. ch. 207, § 4. But if one party entered the marriage in good faith (i.e., the party believed that the previous marriage had ended through divorce or the spouse's death, or the party did not know about the earlier marriage), the parties will be considered "legally married" if they continue to live together as spouses after the earlier marriage is ended through divorce or the former spouse's death. M.G.L. ch. 207, § 6.
<i>De facto</i>	Not applicable. Massachusetts does not recognize common law marriage. <i>Heistand v. Heistand</i> , 384 Mass. 20, 24 (1981).

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> If parties residing in, or intending to reside in, Massachusetts get married in another jurisdiction, but such a marriage would be prohibited under Massachusetts law, the marriage is "null and void for all purposes" in Massachusetts. M.G.L. ch. 207, § 10. Otherwise foreign marriages are recognized. See GLAD Answers, <i>How to Get Married in Massachusetts</i>, June 2014, at 16; see also <i>Elia-Warnken v. Elia</i>, 463 Mass. 29, 32-33 (2012) (treating a foreign civil union as a marriage under Massachusetts law).
Civil union	A foreign formed civil union is recognized as a marriage under Massachusetts law. <i>Elia-Warnken v. Elia</i> , 463 Mass. 29, 32-33 (2012).

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	A court can grant a divorce provided that the parties lived together as spouses in Massachusetts at some time. M.G.L. ch. 208, § 4. Additionally, the cause for divorce must have occurred in Massachusetts, unless the parties lived together as spouses in Massachusetts before the cause occurred, and one of them lived in Massachusetts at the time the cause occurred. <i>Id.</i>



■ Sources:

Legislation

- M.A. Const. Pt. 1, Art. 1.
- M.G.L. ch. 207, §§ 1–2.
- M.G.L. ch. 207, § 4.
- M.G.L. ch. 207, § 6.
- M.G.L. ch. 207, § 10.
- M.G.L. ch. 207, § 28.
- M.G.L. ch. 208, § 4.
- 2008 Mass. ALS 216, § 1 (repealing M.G.L. ch. 207, § 11).

Cases

- *Obergefell v. Hodges*, 576 U.S. ____ (2015).
- *Elia-Warnken v. Elia*, 463 Mass. 29, 32–33 (2012).
- *Opinions of the Justices to the Senate*, 440 Mass. 1201, 1209–10 (2004).
- *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309 (2003).
- *Heistand v. Heistand*, 384 Mass. 20, 24 (1981).

Secondary Sources

- GLAD Answers, *How to Get Married in Massachusetts*, June 2014, available at <http://www.glad.org/uploads/docs/publications/how-to-get-married-ma.pdf>.