



Name of Country and Jurisdiction:

South Carolina, 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 South Carolina, 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 South Carolina for an authority to grant a divorce/dissolution?
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1. What forms of legally recognized relationships are available?

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LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	South Carolina	South Carolina Code Title 20 S.C. Const. art. XVII, § 15. <i>Obergefell v. Hodges</i> , 576 U.S. _____ (2015). <i>Condon v. Haley</i> , 21 F. Supp. 2d 572 (D.S.C. 2014).	Yes ¹
Common-law marriage, unregistered	South Carolina	S.C. Code § 20-1-360, case law (see, e.g., <i>Callen v. Callen</i> , 365 S.C. 618, 624 S.E.2d 59 (2005)).	Yes

¹ 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 November 12, 2014, in *Condon v. Haley*, 21 F. Supp. 2d 572 (D.S.C. 2014), a federal trial court held that the provisions of the South Carolina state constitution and statutes that prohibit same-sex marriage violate the federal Constitution. The court based its decision on a recent decision of the Court of Appeals for the Fourth Circuit, which includes South Carolina, that similar provisions in Virginia were unconstitutional, *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014). The trial court stayed its decision until November 20, 2014. The defendant officials of the State of South Carolina sought extensions of the stay in the Fourth Circuit and in the United States Supreme Court, which were denied. Media reports indicate that marriage licenses began being issued to same-sex couples in South Carolina on November 20, 2014. The defendant state officials have appealed the trial court's ruling to the Fourth Circuit. The appeal has been consolidated with a similar case, *Bradacs v. Haley*, which sought legal recognition in South Carolina of same-sex marriages legally performed elsewhere. On July 16, 2015, the South Carolina attorney general moved to voluntarily dismiss the appeal, stating that "the State of South Carolina no longer has any legal basis upon which to defend the State's constitutional amendment limiting marriage to the union of one man and one woman." The appeal was dismissed on July 20, 2015.



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

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>The couple must file a written application to obtain a marriage license, which asks for a full name, Social Security number, age, and place of residence for each party. The license will not expire and the fee varies by county.</p> <p>There is a waiting period, which varies by county, before the license may be picked up and the marriage ceremony can take place (e.g., 24 hours).</p> <p>You must be 18 years or older to be married without consent and must provide identification to verify age. However, if you are under 18 but at least 16, you can get married if you file a birth certificate and the appearance and consent of a parent or legal guardian of the minor. Alternatively, an unmarried female and a male under 18 years may get married without the consent of the male's parents if the female is pregnant or has borne a child from the male, as long as written consent to the marriage is given by one of the female's parents.</p> <p>The spouses do not need to be residents of South Carolina to be married in the state; however, the license is valid only for marriages performed in the state.</p> <p>Proof of divorce is not required; however, all marriages contracted while either of the parties has a former wife or husband living shall be void.</p> <p>Only ministers of the Gospel, Jewish rabbis, officers authorized to administer oaths in this state, and the chief or spiritual leader of a Native American Indian entity recognized by the South Carolina Commission for Minority Affairs pursuant to Section 1-31-40 are authorized to administer a marriage ceremony in South Carolina.</p> <p>If the prospective spouses complete six hours of pre-marital counseling from a member of their designated clergy, they will receive a one-time \$50.00 income tax credit.</p>
Common-law marriage	<p>The parties must have the capacity to marry; i.e., they must have the mental capacity, they may not be closely related to the other party, and they must be over the age of 16.</p> <p>The facts and circumstances must show an intention on the part of both parties to enter into a marriage contract, which does not necessarily have to be written. This marriage can be inferred from community recognition and reputation to show intent; the couple does not necessarily have to "hold themselves out" to the community as married.</p>

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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: registered marriage and common-law marriage have the same effect. Civil unions are not recognized in South Carolina.
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Q 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?

A	FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
	Marriage (registered and common-law)	<p>All marriages contracted while either of the parties has a former wife or husband living shall be void. This rule does not apply to a person whose husband or wife has been absent for the space of seven years, where the person does not know whether the other is still alive.</p> <p>Nor does it apply to any person who is divorced or has had his or her previous marriage declared void by the sentence of a competent court.</p>

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

A	FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
	Marriage	South Carolina recognizes opposite-sex marriages performed in other states. Under the <i>Obergefell</i> decision, full recognition must now be given to same-sex marriages.

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

A	FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
	Marriage (registered and common-law)	<p>A court can grant a divorce if there has been adultery, desertion for a period of one year, physical cruelty, or habitual drunkenness or narcotics use, or if the parties have lived separately for at least one year.</p> <p>If both parties live in South Carolina, the plaintiff must have been resident for at least three months. If only one party lives in South Carolina, either must have been a resident for at least one year.</p> <p>Note: There is no common-law divorce, so common-law marriages must be dissolved in the same way as registered marriages.</p>

■ Sources:

- S.C. Const. art. XVII, § 15.
- S.C. Code Ann. tit. 20, §§ 1 and 3.
- 58 S.C. L. Rev. 555.
- *Obergefell v. Hodges*, 576 U.S. _____ (2015).
- *Condon v. Haley, Bleckley v. Wilson, and Bradacs v. Haley*, appeals consolidated at case number 14-2241, Court of Appeals for the Fourth Circuit.
- *Callen v. Callen*, 365 S.C. 618, 624 S.E.2d 59 (2005).
- *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014).
- <http://lgbtbar.org/blog/tax-regulations/south-carolina/>.
- <http://www.hrc.org/laws-and-legislation/entry/south-carolina-adoption-law>.
- <http://www.sctax.org/NR/rdonlyres/EFB2ADDB-503F-4504-B2E6-868FAACC14FA/0/RR141.pdf>.
- <http://www.sciway.net/facts/marriagelicense.html>.