



Name of Country and Jurisdiction:

West Virginia, 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 West Virginia, 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 West Virginia 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	West Virginia	W. Va. Code § 48-2-101 et seq. (general marriage law), § 48-3-101 et seq. (annulment law), § 48-5-101 et seq. (divorce law); <i>Obergefell v. Hodges</i> , 576 U.S. _____ (2015).	Yes

NOTE: On October 6, 2014, the United States Supreme Court declined to hear an appeal of a decision of the Court of Appeals for the Fourth Circuit, which includes West Virginia, that held laws banning same-sex marriage to be unconstitutional. In light of the finality of the Fourth Circuit decision, on October 9, 2014, the governor and attorney general of West Virginia dropped their defense of West Virginia's prohibition of same-sex marriage (W. Va. Code § 48-2-104, 603). County clerks immediately began issuing marriage licenses to same-sex couples.

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

continued on next page

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

(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	No residential restriction. If one or both parties to the marriage are residents, they may apply for a marriage license in the county in which they reside. If both parties are nonresidents, they may apply for a license in any county.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>West Virginia imposes the following requirements for parties to a marriage:</p> <ul style="list-style-type: none"> • Each party must be at least 18 (or at least 16 with parental consent or under 16 with parental consent and a court order). • The parties must not be related by blood or marriage (parents, grandparents, children, siblings, aunts, uncles, cousins). Note, however, that this prohibition does not extend to adoptive cousins. <p>Parties seeking to enter a marriage must apply for a license with the clerk of the county commission. If one or both applicants is under age 18, the clerk must generally wait two days after application to issue the license. Parties must supply their Social Security numbers, though a legal alien may supply a visa number or a number equivalent to a United States Social Security number.</p> <p>The marriage license is valid for 60 days following its date of issuance; in order to be legally valid, the marriage must be solemnized during this 60-day period. Whoever solemnizes the marriage must endorse the license and return it to the issuing clerk. The clerk will then register the marriage in the county records.</p>

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, since West Virginia recognizes only marriages, not 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	A marriage that is solemnized when either party is simultaneously married to another person (and that other marriage has not ended in death, annulment, or divorce) is voidable.

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Marriages performed in another state that are valid under the laws of that other state are generally recognized as valid in West Virginia.</p> <p>Moreover, where one or both parties to an out-of-state marriage are residents of West Virginia, they may file their out-of-state marriage certificate with the clerk of the commission of the husband’s county if he is a West Virginia resident or otherwise of the wife’s county.</p> <p>Although West Virginia Code section 48-2-603 expressly forbids recognition of out-of-state same-sex marriages, under the <i>Obergefell</i> decision these marriages are now entitled to full recognition in all states.</p>



Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>West Virginia's family and circuit courts have concurrent jurisdiction over divorce proceedings, with family courts holding the primary authority.</p> <p>For marriages solemnized in West Virginia, at least one party must be a resident of West Virginia at the time of the divorce filing. For marriages solemnized in another jurisdiction, at least one party must have been a resident of West Virginia for the one-year period immediately preceding the divorce filing.</p> <p>The following are grounds for divorce in West Virginia: (1) irreconcilable differences; (2) voluntary separation; (3) cruel or inhuman treatment; (4) adultery (defined as sex between a married person and someone other than his/her spouse); (5) felony conviction; (6) permanent insanity; (7) habitual drunkenness or drug addiction; (8) desertion for at least six months; or (9) abuse/neglect of a child.</p> <p>A marriage may be annulled where it is voidable for one of the following reasons: (1) a party was bound to a prior marriage; (2) the parties had an impermissible familial relationship; (3) the marriage was solemnized while a party was mentally incompetent, had an STD, was impotent, was underage, or had been convicted of a felony without informing the other party; or (4) the marriage was solemnized while the wife was pregnant with another man's child and the husband did not know.</p> <p>There is no statutory authorization for the dissolution of a same-sex union solemnized out of state. However, at least one West Virginia circuit court has granted such a dissolution for a couple who had solemnized their civil union in Vermont (<i>In re the Marriage of Misty Gorman and Sherry Gump</i>).</p>

Sources:

- West Virginia Code section 48-2-101 and following (general marriage law), section 48-2-603 and following (out-of-state proceedings not given effect in West Virginia), section 48-3-101 and following (annulment law), section 48-5-101 and following (divorce law).
- *Obergefell v. Hodges*, 576 U.S. ____ (2015).
- *State v. Austin*, 234 S.E.2d 657 (W. Va. 1977) (marriage of minors).
- West Virginia Personal Income Tax Forms & Instructions (2013), available at <http://www.state.wv.us/taxrev/forms/2013/it140/forms-and-instructions.pdf>.
- Mark Momjian, *The Out-of-State Dissolution of Civil Unions*, Same Sex Partnership Law Rep. (Am. Lawyer Media/Law Journal Newsletters, New York, N.Y.), Mar. 2005.