



Name of Country and Jurisdiction:  
**California, 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 California, 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 California 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	California	Cal. Fam. Code § 300 et seq. (2014); <i>Obergefell v. Hodges</i> , 576 U.S. _____ (2015)	Yes <sup>1</sup>

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<sup>1</sup> See "Recent Developments" section. Same-sex marriages have been recognized in California since *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).

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 (6th Cir. 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.

As a result of the Court's decision in *Obergefell*, valid same-sex marriages performed in California must now be recognized in states where same-sex marriage was not previously legal.

LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Domestic partnership, registered	California	Cal. Fam. Code § 297 et seq. (2014)	Yes <sup>2</sup>

**Q**

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

**A**

(i) Geographic requirements:

California law does not require a geographic link to the state in order to register a marriage (opposite-sex or same-sex) or domestic partnership. However, the declaration of domestic partnership requires consent to the jurisdiction of the Superior Courts of California for any dispute that may arise from the agreement. See Cal. Fam. Code § 298 (c)(3).

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	(1) Consent (court order or guardian permission if under age 18); (2) issuance of a license; and (3) solemnization. Cal. Fam. Code §§ 300–302.
Domestic partnership	(1) Consent (with same requirements as marriage if under age 18); (2) filing of a Declaration of Domestic Partnership; (3) not being currently married to or in another domestic partnership with someone else; and (4) not related by blood “in a way that would prevent them from being married to each other in this state.” <sup>3</sup> Cal. Fam. Code § 297(b); 297.1.  <b>Note</b> that a Confidential Declaration of Domestic Partnership, in which the permanent record of the relationship is not open to the general public, may also be entered into in California. The same eligibility requirements apply, but additionally, the couple must aver that they have been living together as domestic partners. Cal. Fam. Code § 298.7.

<sup>2</sup> Legislation was passed on June 30, 2014 (and signed into law on July 7, 2014) that amended the California Family Code to replace “husband,” “man,” “woman,” or “wife” with “spouse” or “persons” in accordance with *In Re Marriage Cases* and *Hollingsworth v. Perry*, which collectively found that limiting marriage to opposite-sex couples was unconstitutional and that proponents of Proposition 8, which amended the state constitution after that ruling, did not have standing to appeal a ruling that Proposition 8 itself was unconstitutional.

This change became effective on January 1, 2015. See *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015).

A California domestic partnership is **not** available for opposite-sex couples unless one or both are over 62 years old. Cal. Fam. Code § 297 (4)(B). No age restriction applies to same-sex couples.

<sup>3</sup> California law voids marriages that are between ancestors and descendants, between brothers and sisters of any blood relation, and between aunts/uncles and nieces/nephews. Cal. Fam. Code § 2200.

**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)

Marriage	There are no differences in eligibility between same-sex and opposite-sex couples. Cal. Fam. Code §§ 300–302.
Domestic partnership	Only same-sex couples (and opposite-sex couples in which at least one partner is over the age of 62) are eligible to register for domestic partnerships. Cal. Fam. Code § 297(b)(4)(B).

(b)

For same-sex couples, there is no restriction on entering into both a marriage and a domestic partnership in California, as long as it is with the same person. The U.S. Supreme Court’s decision in *Obergefell* has not affected the availability of domestic partnerships or the relationship between domestic partnerships and registered marriage.

(c)

Under California law, domestic partners, including former and surviving domestic partners, have the same rights, protections, and benefits (and obligations and duties) as married spouses. Cal. Fam. Code § 297.5. This explicitly includes rights with respect to children, adoption, and nondiscrimination. Cal. Fam. Code § 297.5. The employment regulations of the California Family Rights Act, Cal. Gov. Code §§ 12945.2 and 19702.3 (CFRA), were amended effective July 1, 2015, to expand the definition of “spouse” to include same-sex spouses and registered domestic partners. This amendment brought the CFRA into line with its federal counterpart, the Family and Medical Leave Act, which was extended to same-sex spouses in March 2015.

However, note that domestic partners do **not** have the same rights under federal law as married spouses, and this may affect taxes, pensions, benefits, and immigration, among other things. The differences in rights and obligations under federal law are beyond the scope of this survey.

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>If you are currently married to or in a domestic partnership with a different person you cannot marry. Cal. Fam. Code §§ 298.5(c); 2201. Also, certain blood relations will void a marriage. Cal. Fam. Code § 2200.</p> <p>There is no prohibition against a same-sex couple being both married <b>and</b> in a registered domestic partnership in California.</p>
Domestic partnership	<p>If you are currently married to or have a domestic partnership with a different person, you cannot enter into a domestic partnership. Cal. Fam. Code § 297(b)(1). Domestic partnerships are also subject to the same blood relations disqualifications as marriage. Cal. Fam. Code §§ 297(b); 2200.</p>

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Yes. Legal same-sex marriages from other states and countries are recognized as marriages in California.<sup>4</sup></p>
Domestic partnership	<p>Yes, <b>if</b> rights and privileges from that legal relationship are substantially similar in scope to those provided in California.<sup>5</sup> Cal. Fam. Code § 299.2.</p>

<sup>4</sup> Under *Obergefell*, all states must now recognize legal marriages of same-sex couples performed in other states.

<sup>5</sup> What is considered to be “substantially equivalent” to California domestic partnership rights is not defined by the statute and appears to have not yet been interpreted by courts. Informational sources suggest (without citation) that civil unions and domestic partnerships from New Jersey, Illinois, Hawaii, Colorado, and the United Kingdom, for example, are substantially equivalent, but weaker recognition, such as in Wisconsin, would not qualify.



**Q**

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

**A**

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Same-sex marriages and opposite-sex marriages are dissolved in the same manner in California: by petitioning the California Superior Court in the county in which the parties reside. Cal. Fam. Code § 2000 <i>et seq.</i></p> <p>Ordinarily, one must meet the residency requirements to dissolve a marriage in California. One of the parties must have lived in California for at least six months and in the county in which the parties plan to file for the last three months. Cal. Fam. Code § 2320(a). <i>Presumably, this applies to same-sex marriages entered into in other states.</i></p> <p>However, same-sex couples who (1) were married in California but (2) currently reside in a jurisdiction that does not recognize their marriage can petition the court to dissolve their marriage without meeting residency requirements by filing in the California county where the marriage was entered. Cal. Fam. Code § 2320(b). Although <i>Obergefell</i>, which requires all states to recognize valid same-sex marriages, effectively mooted § 2320(b) to a significant degree, the provision's applicability is not limited to situations involving nonrecognition by states. <i>Id.</i> § 2320(b)(1)(B) (applies to California marriages where “[n]either party to the marriage resides in a <i>jurisdiction</i> that will dissolve the marriage” (emphasis added)).</p>

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Domestic partnership	<p>(1) Under certain conditions, domestic partners may dissolve their partnership by jointly filing a Notice of Termination of Domestic Partnership with the California Secretary of State, which prevents them from having to go through court procedure. To do so, the domestic partners must meet the following requirements:</p> <ul style="list-style-type: none"> <li>• Both concede to the termination;</li> <li>• Not have been registered as domestic partners for more than 5 years;</li> <li>• Not have children born to them before or during the domestic partnership, or be currently pregnant;</li> <li>• Not have adopted any children during the domestic partnership;</li> <li>• Not own any part of land or buildings;</li> <li>• Not rent any land or buildings (except the residence of at least one of the partners, assuming the lease does not include a purchase option that will end within one year of the termination);</li> <li>• Not counting auto loans, do not have community obligations exceeding \$6,000; and</li> <li>• Not counting loans and automobiles, do not have community property exceeding \$40,000.</li> </ul> <p>In addition, the domestic partners must prepare and sign a property settlement prior to filing the Notice that states how community property and/or obligations will be divided (or denies any have been accumulated); and must consent to money or support from the other partner except what is included in the aforementioned agreement. See Cal. Fam. Code § 299.</p> <p>If the above requirements are met, the domestic partnership will automatically terminate in 6 months (as long as not revoked by one of the partners during that time). Cal. Fam. Code § 299(b). It will be treated as if the parties had petitioned the court for an entry of a judgment of dissolution. <i>Id.</i></p> <p>(2) If the requirements for Notice are inapplicable, a petition must be filed with the California Superior Court. This is the same process to dissolve a marriage, either same-sex or opposite-sex. Cal. Fam. Code § 299(d). Note that parties who are both registered as domestic partners and married may petition the court to dissolve both in a single proceeding. Cal. Fam. Code § 299(e).</p> <p>Where the parties currently reside in a state that does not recognize their domestic partnership, the parties may also file for dissolution or termination of a California domestic partnership without meeting the residency requirements. Cal. Fam. Code § 299(d). Domestic partners or equivalents who entered their unions in other states must meet the residency requirements of married couples petitioning for dissolution.</p>

■ Sources:

- Cal. Fam. Code §§ 297–310; 2000 *et seq.*
- SB 1306
- *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015)

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## Legal Recognition of Same-Sex Relationships

- <http://www.latimes.com/local/political/la-me-pc-leno-marriage-bill-20140707-story.html>
- [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB1306](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1306)
- <http://www.lambdalegal.org/publications/california-marriage-faq#14>
- <http://www.sos.ca.gov/dpregistry/forms/sf-dp2.pdf>

