Name of Country and Jurisdiction:

Delaware, 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 Delaware, 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 Delaware for an authority to grant a divorce/ dissolution?

Q 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	Delaware	13 Del. Code § 129.	Yes

NOTE: Delaware's Civil Union and Equality Act of 2011 created legal recognition of same-sex civil unions solemnized after January 1, 2012. 13 Del. Code § 201. Effective July 1, 2013, Delaware eliminated civil unions and for one year permitted Delaware civil unions to be converted to marriages with or without an additional ceremony (so long as the civil union had not already been dissolved or annulled, and if there was no legal proceeding for dissolution or annulment pending). Effective July 1, 2014, all remaining civil unions automatically became marriages by law. *See* 13 Del. Code § 218.

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.

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

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(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	There is no residency requirement in Delaware.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	• Both parties must appear together before the issuing officer before any marriage license shall be issued. 13 Del. Code § 120. • Both parties must be at least 18 years of age to marry, except with court permission. 13 Del. Code § 123. • Close relatives cannot marry. A person cannot marry his or her parent, child, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, or first cousin. • If a person was previously married, or party to a civil union, domestic partnership, or similar legal union, a final divorce or similar decree or order from a judge is required in order to obtain a marriage license. • If a person is on probation or parole, the court or other institution must consent in writing to the application for a marriage license. 13 Del. Code. § 101.

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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.).

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(a)–(c)	Not applicable. In Delaware, all civil unions were converted to marriages no later than July 1, 2014. 13 Del. Code § 218. Effective July 1, 2013, all marriages, whether between same-sex or opposite-sex partners, are treated equally under the law for all purposes. 13 Del. Code § 129, § 218.

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

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Someone who has previously been married or party to a civil union, domestic partnership, or similar legal union cannot marry a second spouse unless the prior marriage or other legal union has been terminated. 13 Del. Code § 101(b).

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

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage outside Delaware	A marriage performed elsewhere is recognized in Delaware unless the spouses are relatives (e.g., first cousins) who could not marry in Delaware. 13 Del. Code § 101(d).
Civil union outside Delaware	A civil union or similar legally recognized relationship between same-sex partners that was established in another place will be treated as a marriage in Delaware if: • The civil union was validly entered into in such other place; • The spouses are not close relatives who could not marry in Delaware (e.g., first cousins); and • Under the law of the place where it was established, the civil union provides the same obligations and duties as a marriage. 13 Del. Code § 101(e).

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

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Divorce or annulment	• The Delaware Family Court decides all proceedings for divorce or annulment of all marriages (including all proceedings for divorce and annulment of same-sex marriages solemnized in Delaware or civil unions converted to marriage under Delaware law) if either: (a) both parties live in Delaware; or (b) one party has lived in Delaware (or, if he or she is a member of the armed forces, has been stationed there) for at least six months before the divorce or annulment proceedings were filed. 13 Del. Code § 1504. • In addition, even if neither spouse lives in Delaware, the Delaware Family Court can decide divorce or annulment proceedings for same-sex couples who were married (or whose civil union was converted to a marriage) in Delaware if either spouse lives in a place where the courts will not decide the divorce or annulment of same-sex marriages. 13 Del. Code § 1504.

Sources:

- 13 Del. Code §§ 101, 120, 123, 129, 201, 218.
- Civil Union and Equality Act of 2011, 13 Del. Code § 201 (effective July 1, 2013).
- 13 Del. Code § 1504 (divorce/annulment).
- *Obergefell v. Hodges*, 576 U.S. _____ (2015).
- http://www.delcode.delaware.gov.
- http://www.delaware.gov/topics/marriage.shtml.