



Name of Country and Jurisdiction:

District of Columbia, 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 the District of Columbia, 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 the District of Columbia 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	District of Columbia	Religious Freedom and Civil Marriage Equality Amendment Act. D.C. Code § 46-401.	Yes
Domestic partnership, registered	District of Columbia	Health Care Benefits Expansion Act. D.C. Code § 32-702(a).	Yes
Common-law marriage, not registered	District of Columbia	<i>Robinson v. Evans</i> , 554 A.2d 332 (D.C. Ct. App. 1989).	Uncertain ¹

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

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¹ There appears to be no case law holding that a same-sex couple can have a common-law marriage, but if the couple otherwise meets the requirements, such a conclusion is likely, given the Religious Freedom & Civil Marriage Equality Amendment Act.

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 are no residency requirements for marriage in the District of Columbia.
Domestic partnership	Domestic partners must share the same permanent residence to register the relationship, but there is no requirement for them to live in the District of Columbia. See D.C. Mayor's Office, Department of Health, <i>Domestic Partnership</i> , available at http://doh.dc.gov/service/domestic-partnership ; D.C. Mun. Regs. tit. 29, § 29-8004.
Common-law marriage	For a court to find a common-law marriage, the couple must share the same residence. There is otherwise no requirement for them to live in the District of Columbia. <i>Hoage v. Murch Bros. Const. Co.</i> , 50 F.3d 983 (D.C. Ct. App. 1931).

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	There are no substantive requirements, except that those being married must be at least 18 (or 16 or 17 with consent of parents). Marriages with certain persons related by blood or marriage, as well as marriages where a previous marriage has not been terminated, are considered void. D.C. Code §§ 46-401.01; 46-403.
Domestic partnership	In the District of Columbia, domestic partners must file a declaration with the mayor of their intent to form a partnership and must affirm that they are at least 18, are competent to contract, are the sole domestic partner of the other person, and are not married. D.C. Code § 32-702(a). The mayor may examine any applicant under oath before accepting the application. D.C. Code § 32-702(b).
Common-law marriage	In the District of Columbia, a common-law marriage is formed when two people live together after an agreement that they will live as a married couple. <i>Hoage v. Murch Bros. Const. Co.</i> , 50 F.3d 983 (D.C. Ct. App. 1931).

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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)	There are no significant differences in eligibility for marriage and domestic partnerships. Both forms of union are open to same-sex and opposite-sex couples.
(b)	Domestic partners may marry one another, thereby ending the domestic partnership and forming a marriage. D.C. Code § 32-702(e)(3).
(c)	Since 2009, no major differences have existed between marriage and domestic partnerships. ²

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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	Persons who are already married may not enter into a second marriage, although domestic partners may marry one another. D.C. Code §§ 46-401.01; 32-702.
Domestic partnership	People wishing to enter a domestic partnership may not be married, nor can they be in a domestic partnership with anyone else. D.C. Code § 32-702(a).
Common-law marriage	People who are already married may not enter into a common-law marriage. <i>Robinson v. Evans</i> , 554 A.2d 332 (D.C. Ct. App. 1989).

² Note that domestic partners do not have the same rights under federal law that married spouses have, and this may affect taxes, pensions, benefits, and immigration, among other things.

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5. When a couple comes to the District of Columbia, 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	A marriage entered in another jurisdiction is recognized if the marriage was valid in that jurisdiction and meets the requirements to form a marriage in the District of Columbia. D.C. Code § 46-405.01.
Domestic partnership	A domestic partnership or other substantially similar relationship entered in another jurisdiction is recognized automatically if the D.C. Mayor's Office certifies that jurisdiction. Currently, the District automatically recognizes domestic partnerships from 10 U.S. states and 16 foreign states. D.C. Mun. Regs. tit. 29, § 29-8001.6.
Common-law marriage	A common-law marriage entered in another jurisdiction is recognized if it would have been recognized as valid in that jurisdiction. See, e.g., <i>Bansda v. Wheeler (In re Ekekwe)</i> , 995 A.2d 189, 198 (D.C. App. 2010) ("The validity of a marriage is to be determined by the law of the jurisdiction where the marriage occurred.") (citing <i>De Liedkerke v. De Liedkerke</i> , 635 A.2d 339 (D.C. 1993)).

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

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Divorce is granted by the Superior Court of the District of Columbia—Family Division. Divorce may be granted if there is mutual voluntary separation without cohabitation for six months before the proceeding or if the parties have lived separately or apart, even under the same roof, for one year. D.C. Code § 16-904.</p> <p>Ordinarily, a court can grant a divorce only if at least one of the persons was a resident of the District of Columbia for at least six months before the divorce proceeding. D.C. Code § 16-902(a).</p> <p>If a same-sex couple is seeking the dissolution of a marriage performed in the District and the couple currently resides in a jurisdiction that does not grant divorce to same-sex couples, then no residence within the District is required. D.C. Code § 16-902(b).</p>

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Domestic partnership	<p>A person can terminate a domestic partnership by filing a notice of termination with the mayor and serving the statement on the other domestic partner. The relationship will not end until six months after the notice has been filed. D.C. Code § 32-702(d)(1); (e)(1).</p> <p>If a domestic partner moved out or stopped contacting the other partner at least six months previously, then the abandoned partner may file a notice of termination with the mayor that will end the relationship immediately. D.C. Code § 32-702(d)(2); (e)(2).</p>
Common-law marriage	<p>Common-law marriage is terminated in the same fashion as legal marriages. See http://www.legalmatch.com/law-library/article/common-law-marriage-and-divorce.html; see also <i>Todd v. Todd</i>, 171 F.2d 143 (D.C. App. 1948) (affirming judicial decree of common-law divorce where evidence of cohabitation in the District was presented).</p>

■ Sources:

- D.C. Code §§ 16-902, 16-904, 32-702, 46-401, 46-401.01, 46-403, 46-405.01.
- D.C. Mun. Regs. tit. 29, §§ 29-8001, 29-8004.
- *Obergefell v. Hodges*, 576 U.S. _____ (2015).
- *Robinson v. Evans*, 554 A.2d 332 (D.C. Ct. App. 1989) (defining elements of common-law marriage in the District of Columbia).
- *Hoage v. Murch Bros. Const. Co.*, 50 F.3d 983 (D.C. Ct. App. 1931) (defining elements of common-law marriage in the District of Columbia).
- *Todd v. Todd*, 171 F.2d 143 (D.C. App. 1948) (affirming judicial decree of common-law divorce where evidence of cohabitation in the District was presented).
- *Bansda v. Wheeler (In re Ekekwe)*, 995 A.2d 189, 198 (D.C. App. 2010).
- D.C. Mayor's Office, Department of Health, *Domestic Partnership*, available at <http://doh.dc.gov/service/domestic-partnership>.
- Freedom to Marry, *District of Columbia*, available at <http://www.freedomtomarry.org/states/entry/c/district-of-columbia>.
- The LGBT Bar, *District of Columbia*, available at <http://lgbtbar.org/blog/tax-regulations/district-columbia/>.
- Legal Match, *Common-Law Marriage and Divorce*, available at <http://www.legalmatch.com/law-library/article/common-law-marriage-and-divorce.html>.