



Name of Country and Jurisdiction:
Montana, 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 Montana, 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 Montana for an authority to grant a divorce/ dissolution?

Q

1. What forms of legally recognized relationships are available?

A

LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	Montana	Uniform Marriage and Divorce Act, Mont. Code Ann. § 40-1-101 to -107 (2013).	Yes ¹

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¹ On November 19, 2014, a federal district court judge declared that Montana’s laws banning the marriage of same-sex couples violated the U.S. Constitution. *Rolando v. Fox*, CV 14-40-GF-BMM (D. Mont. Nov. 19, 2014). The district court’s decision was based in part on the Ninth Circuit’s decision invalidating similar bans in Idaho and Nevada. See *Latta v. Otter and Sevcik v. Sandoval*, 2014 U.S. App. LEXIS 191152 (9th Cir. Oct. 7, 2014). The State of Montana appealed that decision.

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.

LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Common-law marriage, unregistered	Montana	Uniform Marriage and Divorce Act, Mont. Code Ann. § 40-1-403 (2013), and common law.	Unclear ²
Putative spouse, not registered	Montana	Uniform Marriage and Divorce Act, Mont. Code Ann. § 40-1-404 (2013).	Unclear ²

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, registered	No legal residency requirement.
Marriage, Common Law	Unclear, as there is no legal authority on point.
Putative Spouse	Unclear, as there is no legal authority on point.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>For a valid marriage, parties cannot be married to someone else, must apply for a marriage license and with that application must provide proof of identity and age. For a woman under 50 years of age, she must present proof of a Rubella blood test or a doctor's statement regarding sterilization, unless both parties to the marriage sign an informed consent. Generally a party must be 18 years old, but a person between the ages of 16 and 18 may be married with parental consent, two sessions of mandatory counseling and judicial approval.</p> <p>Marriage licenses will not be issued when applicants are under the influence of intoxicating liquor or a narcotic drug.</p> <p>Parties cannot enter into marriage under the following circumstances:</p> <ul style="list-style-type: none"> a) prior to the dissolution of an earlier marriage of one of the parties; b) if a marriage is between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins; c) if a marriage is between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood;

² It remains to be seen how the *Obergefell* decision will be applied to unregistered common-law marriages and putative spouses.

Marriage, Common Law	A common-law marriage is established when a couple: 1) is competent to enter into a marriage, 2) mutually consents and agrees to a common law marriage, and 3) cohabits and is reputed in the community to be spouses. Competency for purposes of common law is the same as for registered marriage, i.e., necessary age, not already married, and not related by blood to a certain degree.
Putative Spouse	A putative spouse is a person who has cohabited with another person in the good faith belief that they are married, but to whom the person is not actually legally married. A putative spouse acquires all the rights conferred upon a legal spouse.

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.).

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(a)–(c)	Not applicable because there are no civil unions in Montana.
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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, registered	If you are already married, you cannot marry again. See also the response to Question 2(ii), above.
Marriage, Common Law	If you are already married, you cannot enter into a common law marriage.
Putative Spouse	None.

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Montana recognizes marriages from other states. Following the <i>Obergefell</i> decision, Montana must recognize same-sex couples legally married in another state.
Marriage, Common Law	Montana recognizes common law marriages from other states that recognize common law marriages.
Putative Spouse	A putative spouse will be recognized if living in the state of Montana.

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	A court can grant a divorce if it finds that the marriage is irretrievably broken, e.g., (i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or (ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage. A suit for divorce cannot be maintained unless one spouse has been domiciled in the state or stationed in Montana as a member of the armed services for at least 90 days preceding the filing of the action.
Marriage, common law	Same procedures and requirements for a divorce of a registered marriage apply.
Putative Spouse	The status of putative spouse allows the court to apportion property, maintenance and support rights following a declaration of invalidity of the marriage.

Sources:

- Mont. Const. art. XIII, § 7 (2013).
- Mont. Code Ann. § 40-1-101 to -407 (2013).
- *Obergefell v. Hodges*, 576 U.S. ____ (2015).
- *Rolando v. Fox*, CV 14-40-GF-BMM (D. Mont. Nov. 19, 2014).
- *Snetsinger v. Mont. Univ. Sys.*, 104 P.3d 445 (Mont. 2004).
- *Latta v. Otter and Sevcik v. Sandoval*, 2014 U.S. App. LEXIS 191152 (9th Cir. Oct. 7, 2014).
- http://courts.mt.gov/library/topic/common_law_marriage

