



Name of Country and Jurisdiction:

New Jersey, 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 New Jersey, 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 New Jersey 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	New Jersey	New Jersey marriage law was extended to same-sex couples in <i>Garden State Equality v. Dow</i> .	Yes
Civil union, registered	New Jersey	Civil Union Act	Yes, civil unions are available only to same-sex couples (not opposite-sex couples).
Domestic partnership, registered	New Jersey	Domestic Partnership Act	Yes, available to both same-sex and opposite-sex couples.

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 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. The Supreme Court's decision did not have an effect on the status of same-sex relationship rights in this state.

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	There is no residency requirement for marriage in New Jersey.
Civil union	There is no residency requirement for a civil union in New Jersey.
Domestic partnership	There is no residency requirement to establish a domestic partnership in New Jersey. However, if the common residence (which is a requirement under New Jersey civil union law) is not in New Jersey, then at least one of the parties to the civil union must be a member of a New Jersey state-administered retirement system.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Two persons wishing to establish a marriage in New Jersey must satisfy all of the following criteria: <ol style="list-style-type: none"> Neither person may already be a party to a civil union, domestic partnership, or marriage with another individual in New Jersey or recognized by New Jersey; and Each person must be at least 18 years of age to marry without consent. However, marriage applicants aged 16 or 17 may enter into a marriage with parental consent. Applicants under the age of 16 must obtain parental consent and have the consent approved in writing by any judge of the Superior Court, Chancery Division, Family Part.
Civil union	Two persons wishing to establish a civil union in New Jersey must satisfy all of the following criteria: <ol style="list-style-type: none"> Neither person may already be a party to a civil union, domestic partnership, or marriage with another individual in New Jersey or recognized by New Jersey; The persons must be of the same sex; and Each person must be at least 18 years of age to enter a civil union without consent. Civil union applicants aged 16 or 17 may enter into a civil union with parental consent. Applicants under the age of 16 must obtain parental consent and have the consent approved in writing by any judge of the Superior Court, Chancery Division, Family Part.

continued on next page



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Domestic partnership	<p>Two persons wishing to establish a domestic partnership in New Jersey may be same-sex or opposite-sex couples who satisfy all of the following criteria:</p> <ol style="list-style-type: none"> 1. Both persons are 62 years of age or older; 2. Share a common residence in New Jersey or any other jurisdiction, provided that at least one of the applicants is a member of a New Jersey state-administered retirement system; 3. Both persons are jointly responsible for each other's common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property; 4. Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership; 5. Neither person may be party to a marriage or civil union recognized by New Jersey law or a member of a domestic partnership with another individual; 6. Not be related to each other by blood or affinity, up to and including the fourth degree of consanguinity (individuals who are first cousins or more distantly related); 7. Chose to share each other's lives in a committed relationship of mutual caring; 8. Have not legally terminated another domestic partnership within the last 180 days, except when the previous partnership ended due to the death of the other partner.

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)	A civil union is available only to same-sex couples, whereas marriage is available to all couples.
(b)	A couple in a civil union may enter into a marriage. The civil union will remain intact and on file with the state after the couple is married. However, if a person in a civil union wishes to marry someone other than his or her civil union partner, then that person must dissolve that civil union before he or she can enter into marriage with someone else.
(c)	Marriages and civil unions are given the same treatment under New Jersey tax, pension, insurance, health benefit, adoption, succession, spousal support, and next-of-kin laws.

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 already in a New Jersey-recognized marriage, domestic partnership, or civil union with another person, you cannot marry.</p> <p>A person in a civil union or domestic partnership can marry his or her same partner without having to terminate the prior arrangement.</p>
Civil union	<p>If you are already in a New Jersey-recognized civil union, marriage, or domestic partnership with another person, you cannot enter into another civil union.</p>
Domestic partnership	<p>You may not form a domestic partnership if you are already a party to a marriage or civil union recognized by New Jersey law or a member of a domestic partnership with another individual.</p>

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>New Jersey will recognize any out-of-state marriage, so long as it is “consistent with the laws and public policy of New Jersey.” Marriages that fall into this category are valid in New Jersey, and couples need not enter into a separate marriage in New Jersey.</p>
Civil union	<p>Civil unions that are validly entered into under the laws of another jurisdiction are recognized under New Jersey law.</p>
Domestic partnership	<p>Since New Jersey domestic partnership requires that the place of joint residence be in New Jersey or that one of the parties be a member of a New Jersey state-administered retirement system, it is likely that individuals moving to New Jersey who have formed a domestic partnership in another state will not be eligible to form such a partnership in New Jersey. If couples do meet the criteria to form a domestic partnership in New Jersey, they may file an Affidavit of Domestic Partnership at a New Jersey local registrar’s office.</p> <p>However, depending on the nature of the other state’s domestic partnership law, the relationship may be recognized as something different under New Jersey law. For instance, a California domestic partnership will likely be recognized as a civil union in New Jersey.</p>

Q

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

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	A person can obtain a divorce decree by filing a complaint with the Superior Court of New Jersey. The Superior Court has jurisdiction over all divorce matters so long as one party to the marriage was a resident of New Jersey for at least the year prior to the date on which the cause of action commenced (i.e., when the divorce complaint filed with the Superior Court). If adultery is the grounds for divorce, the one-year residency requirement does not apply.
Civil union	The dissolution of civil unions follows the same procedure and jurisdictional requirements as divorce. However, it should be noted that “irreconcilable differences,” grounds for divorce under New Jersey law where a party claims that differences caused the breakdown of the marriage for a period of six months such that there is no reasonable prospect of reconciliation, is not included as grounds for dissolution of a civil union in New Jersey.
Domestic partnership	In order to end a domestic partnership, a party must file a request for termination with the Superior Court of the State of New Jersey.

Sources:

Statutes:

- N.J. Stat. § 2A:34-2
- N.J. Stat. § 2A:34-2.1
- N.J. Stat. § 2A:34-8
- N.J. Stat. § 2A:34-10
- N.J. Stat. § 37:1-1
- N.J. Stat. § 37:1-2
- N.J. Stat. § 37:1-6
- N.J. Stat. § 37:1-30
- N.J. Stat. § 37:1-31
- N.J. Stat. § 37:1-34

Cases

- *Obergefell v. Hodges*, 576 U.S. ____ (2015).
- *Garden State Equality v. Dow*, 79 A.3d 479 (N.J. Super. Ct. Law Div. 2013) (denying the state’s motion to stay a trial court’s decision which had mandated that New Jersey marriage law be applied to same-sex couples).

Administrative Sources

- *Domestic Partnership*, State of New Jersey Department of Health, available at <http://www.state.nj.us/health/vital/dp2.shtml> (last visited Sept. 15, 2015).
- *Frequently Asked Questions: Same-Sex Marriage*, State of New Jersey Department of Health, available at <http://www.state.nj.us/health/vital/faq.shtml#ssm> (last visited Sept. 15, 2015).
- *How to Apply for a Marriage License*, State of New Jersey Department of Health, available at http://www.state.nj.us/health/vital/marriage_apply.shtml (last visited Sept. 15, 2015).
- New Jersey Office of the Attorney General, Department of Law and Public Safety, Formal Opinion No. 3-2007 (2007), available at <http://www.nj.gov/oag/newsreleases07/ag-formal-opinion-2.16.07.pdf>.

continued on next page





Other

- *Civil Unions for Same-Sex Couples in the State of New Jersey*, Lambda Legal, available at <http://www.lambdalegal.org/publications/nj-civil-unions-faq> (last visited Sept. 15, 2015).
- *Frequently Asked Questions about New Jersey Civil Unions: A Practical Guide for Same-Sex Couples*, ACLU, available at https://www.aclu.org/lgbt-rights_hiv-aids/frequently-asked-questions-about-new-jersey-civil-unions-practical-guide-same-s (last visited Sept. 15, 2015).