



Name of Country and Jurisdiction:

**Texas, 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 Texas, 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 Texas for an authority to grant a divorce/ dissolution?
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**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	Texas	Texas Family Code, tit. 1, § 2.001. [stating that a license may not be issued for same-sex marriage].  Texas Const. art. 1, § 32; <i>Obergefell v. Hodges</i> , 576 U.S. _____ (2015). <sup>2</sup>	Yes <sup>1</sup>

In an opinion dated June 28, 2015, the Texas attorney general concluded that county clerks do not have to issue licenses to same-sex couples and judges or justices of the peace do not have to marry same-sex couples if they have religious objections. The attorney general further noted that the strength of any such claim would depend on the particular facts at issue. News reports indicate that a Hood County clerk refused to grant a license to a same-sex couple, who then filed a lawsuit. The couple received a license but the lawsuit continues.

1 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.

2 In 2005, Texas adopted a constitutional amendment banning same-sex couples from receiving any legal family status (the Texas Marriage Amendment). On February 26, 2014, a district court ruled in a case titled *DeLeon v. Perry* that both the amendment and the state's refusal to recognize out-of-state same-sex marriages were unconstitutional. The effect of that ruling has been stayed pending appeal to the Fifth Circuit Court of Appeals, which held oral argument in the case on January 9, 2015. On June 26, 2015, the district court granted an emergency motion to lift the stay of the injunction. That decision was affirmed by the Court of Appeals, which instructed that final judgment be entered for the plaintiffs (and enjoining any ban on same-sex marriage) by July 17, 2015.



**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.

(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. Generally, parties must be at least 18 years old, or if younger than 18 but at least 16, can secure a license with parental consent. A party under age 16 cannot be married without a court order. However, a party who has been married before under Texas law is considered to be an adult, regardless of age. Parties must wait 72 hours after securing a license before they marry.</p> <p>Parties must affirm that they are not related as:</p> <ol style="list-style-type: none"> <li>1) ancestor or descendant, by blood or adoption;</li> <li>2) brother or sister, by blood or adoption;</li> <li>3) a parent's brother or sister, by blood or adoption;</li> <li>4) a son or daughter of a brother or sister, by blood or adoption;</li> <li>5) a current or former stepchild or stepparent; or</li> <li>6) a son or daughter of a parent's brother or sister.</li> </ol>

**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)–(c)	Not applicable. Texas does not recognize civil unions.
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**Q**

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

**A**

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	If you are already married, you cannot marry again. You also cannot get married if you have been divorced within the last 30 days, unless the couple was divorced from each other or the prohibition against remarriage has been waived.  See also the response to Question 2(ii), above.

**Q**

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

**A**

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Texas statute states that its laws apply to couples married elsewhere but domiciled in Texas.  Texas statute states that same-sex partners in a civil union or similar relationship are not spouses under the law. However, due to the <i>Obergefell</i> decision, Texas must recognize same-sex married partners as spouses.



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



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>A court can grant a divorce without proof of fault if the marriage has become insupportable and there is no reasonable expectation of reconciliation. A court also may grant a divorce in cases of (1) cruelty; (2) adultery; (3) one spouse being convicted of a felony and imprisoned unless the conviction was based on the testimony of the other spouse; (4) abandonment for at least one year; (5) spouses living apart without cohabitation for at least three years; or (6) one spouse being confined to a mental hospital.</p> <p>A suit for divorce cannot be maintained unless one spouse has been domiciled in the state for the preceding six months and has been a resident of the county of filing for the preceding 90 days. Time spent away from the state in military service or the service of the U.S. or the state (or accompanying a spouse in such service) is considered in-state residence.</p> <p>A marriage can be annulled if (1) a party was under 18 and did not secure proper consent; (2) a party was under the influence of alcohol/narcotics at the time of the marriage; (3) a party was impotent which was unknown at the time of the marriage and the parties have not voluntarily cohabitated since discovery; (4) the marriage was secured by fraud, duress or force and the parties have not voluntarily cohabitated since learning of the fraud or being released from the force/duress; (5) a party did not have the mental capacity to marry and the parties have not voluntarily cohabitated since discovery; (6) there was a concealed divorce at the time of marriage, the parties have not voluntarily cohabitated since discovery, and the annulment petition was filed within a year of the marriage; or (7) the marriage was performed prior to the expiration of the 72-hour waiting period after securing a license.</p> <p>A suit for annulment requires that the marriage have been performed in Texas, or either party is domiciled in Texas.</p>

**Sources:**

- Texas Const. art. 1, § 32.
- Tex. Fam. Code, tit. 1, § 2.001 (2014)
- Tex. Fam. Code §§ 1.103–1.104 (2014)
- Tex. Fam. Code §§ 2.004–2.005 (2014)
- Tex. Fam. Code § 2.009 (2014)
- Tex. Fam. Code §§ 2.101–2.102 (2014)
- Tex. Fam. Code § 2.204 (2014)
- Tex. Fam. Code § 3.401 (2014)
- Tex. Fam. Code §§ 6.001–6.007 (2014)
- Tex. Fam. Code § 6.102 (2014)
- Tex. Fam. Code §§ 6.105–6.109 (2014)
- Tex. Fam. Code §§ 6.201–6.202 (2014)
- Tex. Fam. Code §§ 6.205–6.206 (2014)





## Legal Recognition of Same-Sex Relationships

- Tex. Fam. Code § 6.301 (2014)
- Tex. Fam. Code § 6.303 (2014)
- Tex. Fam. Code § 6.306 (2014)
- *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015).
- OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS, Opinion No. KP-0025, 2015 Tex. AG LEXIS 21 (June 28, 2015); *Cato et al v. Lang*, Docket No. 4:15-cv-00491 (N.D. Tex. Jul 06, 2015)

