



Name of Country and Jurisdiction:
Virginia, 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 Virginia, 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 Virginia 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	Virginia	Code of Virginia, Title 20 (Domestic Relations)	Yes

NOTE: On February 13, 2014, a federal trial court held in a case titled *Bostic v. Rainey* that the prohibitions on same-sex marriage and civil unions contained in the Virginia state constitution and statutes violated the Equal Protection Clause of the United States Constitution. That decision was affirmed by the U.S. Court of Appeals for the Fourth Circuit on July 28, 2014, and the United States Supreme Court declined to hear any further appeal on October 6, 2014. Marriage licenses have since been issued to same-sex couples, and same-sex couples have married in Virginia.

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 for marriage in Virginia.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	In Virginia, family members may not marry one another. People who are currently married may not enter into a second marriage. Va. Code Ann. § 20-38.1. People under the age of 18 may not marry without parental consent. Va. Code Ann. § 20-49. People under the age of 16 may not marry without parental consent and a doctor's certificate stating that the female is pregnant. Va. Code Ann. § 20-48.

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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.).

(a)–(c)	Not applicable. Civil unions are not recognized in Virginia.
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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	People who are already married may not enter into a new marriage before ending the existing marriage. Marriages between ancestors and descendants, whether by blood or adoption, and marriages between uncles and nieces and between aunts and nephews, whether by half or whole blood, are prohibited. Va. Code Ann. § 20-38.1.

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5. When a couple comes to Virginia, 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	<p>Marriages from other jurisdictions will be recognized as valid so long as the parties to the marriage would have been eligible for a valid marriage in the State of Virginia. This includes common-law marriages formed out of state, even though Virginia does not recognize common-law marriages that are formed in the state.</p> <p>Same-sex relationships in other jurisdictions are recognized in Virginia as of October 6, 2014.</p>

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

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	A court can grant a divorce if at least one spouse has been a resident of the state for six months before starting the divorce proceedings. Va. Code Ann. § 20-97.

Sources:

- Va. Code Ann. §§ 20-38.1; 20-45.1–45.3; 20-97.
- Va. Const. art. I, § 15-A.
- *Obergefell v. Hodges*, 576 U.S. _____ (2015)
- *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va. 2014) (finding Virginia’s constitutional and legal prohibitions on same-sex relationships unconstitutional), *aff’d*, *Bostic v. Schaefer*, 2014 U.S. App. LEXIS 14298 (4th Cir. July 28, 2014).
- *Bostic v. Schaefer*, No. 14-1167 (4th Cir. Oct. 6, 2014) (mandating judgment of court from July 28, 2014).

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Legal Recognition of Same-Sex Relationships

- Virginia State Bar, *Marriage in Virginia*, available at <http://www.vsb.org/site/publications/marriage-in-virginia>.
- Virginia Governor's Office, Department of Health, *Marriage Requirements*, available at http://www.vdh.state.va.us/vital_records/marry.htm.
- http://www.washingtonpost.com/local/virginia-politics/same-sex-marriages-in-virginia-can-begin-almost-immediately/2014/10/06/97ceab2e-4d69-11e4-aa5e-7153e466a02d_story.html.
- <http://www.scotusblog.com/2014/10/todays-orders-same-sex-marriage-petitions-denied/>.

