

Common Law Marriage Fact Sheet

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Note: You can download a version of the text below in Adobe Acrobat format.

THE MYTH: There is a common misperception that if you live together for a certain length of time (seven years is what many people believe), you are common-law married. This is not true anywhere in the United States.

STATES THAT RECOGNIZE COMMON LAW MARRIAGE:

Only a few states recognize common law marriages:

Alabama

Colorado

Georgia (if created before 1/1/97)

Idaho (if created before 1/1/96)

Iowa

Kansas

Montana

New Hampshire (for inheritance purposes only)

Ohio (if created before 10/10/91)

Oklahoma (possibly only if created before 11/1/98. Oklahoma's laws and court decisions may be in conflict about whether common law marriages formed in that state after 11/1/98 will be recognized.)

Pennsylvania (if created before 1/1/05)

Rhode Island

South Carolina

Texas

Utah

Washington, D.C.

IF YOU LIVE IN A STATE THAT DOES RECOGNIZE COMMON LAW MARRIAGE:

If you live in one of the above states and you "hold yourself out to be married" (by telling the community you are married, calling each other husband and wife, using the same last name, filing joint income tax returns, etc.), you can have a common law marriage (for more information on the specific requirements of each state, see next page). Common law marriage makes you a legally married couple in every way, even though you never obtained a marriage license. If you choose to end your relationship, you must get a divorce, even though you never had a wedding. Legally, common law married couples must play by all the same rules as "regular" married couples.

If you live in one of the common law states and don't want your relationship to become a common law marriage, you must be clear that it is your intention not to marry. The attorneys who wrote Living Together (additional information below) recommend an agreement in writing that both partners sign and date: "Jane Smith and John Doe agree as follows: That they've been and plan to continue living together as two free, independent beings and that neither has ever intended to enter into any form of marriage, common law or otherwise."

IF YOU LIVE IN A STATE THAT DOES NOT RECOGNIZE COMMON LAW MARRIAGE, there is no way to form a common law marriage, no matter how long you live with your partner.

There is one catch: if you spend time in a state that does recognize common law marriage, "hold yourself out as married," and then return or move to a state that doesn't recognize it, you are still married (since states all recognize marriages that occurred in other states). However, this is murky legal territory and we don't recommend experimenting with it!

STATE-BY-STATE REQUIREMENTS TO FORM A COMMON LAW MARRIAGE:*

Alabama: The requirements for a common-law marriage are: (1) capacity; (2) an agreement to be husband and wife; and (3) consummation of the marital relationship.

Colorado: A common-law marriage may be established by proving cohabitation and a reputation of being married.

Iowa: The requirements for a common-law marriage are: (1) intent and agreement to be married; (2) continuous cohabitation; and (3) public declarations that the parties are husband and wife.

Kansas: For a man and woman to form a common-law marriage, they must: (1) have the mental capacity to marry; (2) agree to be married at the present time; and (3) represent to the public that they are married.

Montana: The requirements for a common-law marriage are: (1) capacity to consent to the marriage; (2) an agreement to be married;

(3) cohabitation; and (4) a reputation of being married.

Oklahoma: To establish a common-law marriage, a man and woman must (1) be competent; (2) agree to enter into a marriage relationship; and (3) cohabit.

Pennsylvania: A common-law marriage was established if, before 1/1/2005, a man and woman exchanged words that indicated that they intended to be married at the present time and they also held themselves out to the community as married (introducing each other as husband and wife, filing joint taxes, etc.).

Rhode Island: The requirements for a common-law marriage are: (1) serious intent to be married and (2) conduct that leads to a reasonable belief in the community that the man and woman are married.

South Carolina: A common-law marriage is established if a man and woman intend for others to believe they are married.

Texas: A man and woman who want to establish a common-law marriage must sign a form provided by the county clerk. In addition, they must (1) agree to be married, (2) cohabit, and (3) represent to others that they are married.

Utah: For a common-law marriage, a man and woman must (1) be capable of giving consent and getting married; (2) cohabit; and (3) have a reputation of being husband and wife.

Washington, D.C.: The requirements for a common-law marriage are: (1) an express, present intent to D.C. be married and (2) cohabitation.

* Source: It's Legal! Legal Information Network, whose website no longer exists. The Alternatives to Marriage Project is not responsible for omissions or inaccuracies in the above information.

Much of the information on this fact sheet comes from an excellent do-it-yourself legal guide called *Living Together: A Legal Guide for Unmarried Couples*, by attorneys Toni Ihara, Ralph Warner, and Frederick Hertz (2000). You can order a copy of *Living Together* online from us Alternatives to Marriage Project. The authors of this factsheet are not attorneys. If you have additional questions about common law marriage in your state, seek the assistance of a lawyer.

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