

COMMON LAW MARRIAGE FACT SHEET

STATES THAT RECOGNIZE COMMON LAW MARRIAGE:

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)
Pennsylvania (if created before 1/1/05)
Rhode Island
South Carolina
Texas
Utah
Washington, D.C.

IN STATES THAT DO RECOGNIZE COMMON LAW MARRIAGE:

If 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 reverse). 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. Attorneys 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 STATES THAT DO NOT RECOGNIZE COMMON LAW MARRIAGE:

There is no way to form a common law marriage, no longer 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.

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 may be established if a man and woman exchange words that indicate that they intend to be married at the present time.

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 be married and (2) cohabitation.

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.

HISTORICAL JUSTIFICATIONS: England's canon law (verbal agreement). In frontier days, couples often had to travel great distances to locate a courthouse or an official to conduct a wedding ceremony. Additionally, common law marriage protected economically disadvantaged women and legitimized children. Many argue these justifications are no longer needed as most citizens have ready access to services and supports.

STATE CHALLENGES/CONCERNS: Interpreting and proving the required elements, couple agreement as to status, fraudulent claims, potential increased litigation, potential weakening of marriage as the foundation of society, inheritance, perceptions and repercussions of imposing white/middle class values, etc. Michigan and Kansas both wrestled with these concerns, ultimately making different choices (Kansas did not abolish, Michigan did).

*Much of the information on this fact sheet comes from a do-it-yourself legal guide called *Living Together: A Legal Guide for Unmarried Couples*, by attorneys Toni Ihara, Ralph Warner, and Frederick Hertz (2000). This information was compiled by The Alternatives To Marriage Project.