

## **COMMON LAW MARRIAGE- Are We Married or Not?**

Pennsylvania was one of the last states to **abolish** common law marriage. Common law marriages contracted **prior to January 2, 2005 remain valid**. Common law marriages have been tolerated but not encouraged because they are difficult to regulate and to prove and because, like all oral contracts, they provide "a fruitful source of perjury and fraud." The proponent of a common law marriage bears a "heavy" burden and the claim of marriage is reviewed with "great scrutiny." The marriage must be established by **clear and convincing evidence**.

### **Historically**

Common law marriage existed in England until it was outlawed in the mid-eighteenth century, even though the Council of Trent had decreed in 1563 that Roman Catholic marriages would not be considered valid unless a priest was actually present. Common law marriage in the United States was a response to "the exigencies of pioneer life,"<sup>[FN11]</sup> when an official was often unavailable to perform a marriage ceremony in sparsely populated areas.

In order to establish a valid common law marriage, both capacity and intent to marry must be established. In order to have capacity to marry at common law, the parties must be of the opposite sex. They must be unmarried and must have met the minimum common law age requirement of seven years. An attempted common law marriage where either party was under the age of seven years was void ab initio at common law. Between the ages of seven and 12 years for females and seven and 14 years for males, common law marriages were voidable and could be disaffirmed by either party during the period of disability.

Common law marriage was changed by statute in Pennsylvania, and a parent or guardian of a minor under the age of 18 years may bring a declaratory judgment proceeding to have an alleged common law marriage declared void. A purported common law marriage in which one of the parties is **under 18 years of age is now void**, according to the statute, where the marriage has not been ratified by cohabitation following removal of the impediment.

### **How was a Common Law Marriage Established prior to January 2, 2005?**

A common-law marriage is established by words in the present tense, uttered for the purpose of establishing the relation of husband and wife. Words of taking or explicit performative utterances, such as "I take you to be my wife" or "I hereby marry you," are unnecessary to create a common-law marriage. No marriage is created, however, if the marital commitment is phrased in the future tense.

**Illustration:** The words, "I will take you for my wife," and the reply, "If that is the case, I will take you for my husband," failed to establish a common-law marriage contract. The words were used in the future, and not the present, tense. The statement, "You are my wife and no one else is going to have you," and the reply, "Okay, I know," did not sufficiently establish a common-law marriage because the woman's reply did not express an intention to take the man as her husband. A marriage contract existed when the man gave the woman a ring and said, "Now you have the ring, and you are my wife," and the woman replied, "That is fine. I love it." Although in form the words were mere statements by the man that a condition of marriage existed and by the woman of pleasure with that fact, in context the words indicated an agreement to marry.

Further, the parties must hold themselves out to be Husband and Wife to third parties, anticipating that such third parties be bound by their utterances. Cohabitation, the establishment of mutual bank accounts, joint deeds, joint credit cards, and joint insurance policies have all been held to be things done to establish such reliance.

## **Why did the PA Legislature get rid of Common Law Marriages?**

Except when entered into ceremonially, the existence of a marriage contract is difficult to prove because the contract typically arises in an informal setting where records are not kept. Due to problems of proof associated with establishing an intention to enter into a marriage relationship, courts have developed certain rules and presumptions.

**Reminder:** A marriage certificate, absent in the case of a common-law marriage, raises a presumption of a valid marriage.

## **How Do We Prove We are Common Law Married?**

Whether one person is legally married to another is a mixed question of fact and law. The most important criteria for determining the existence of a common-law marriage are an intention to be husband and wife and cohabitation combined with a reputation of being married. A common-law marriage requires an agreement by words in the present tense. All that is essential is proof of an agreement to enter the legal relationship of marriage at the present time. Absent a written contract or witnesses to the agreement, the marriage may be established by proof of cohabitation and reputation, declarations and conduct of the parties, and other circumstances usually accompanying the marriage relation.

## **Documentary Proof can Help-**

A variety of documents can serve as evidence of a common-law marriage, such as a life insurance policy, title to real estate, federal income tax returns, a credit card application, and a complaint for support.