
WHAT YOU SHOULD KNOW ABOUT
COMMON LAW MARRIAGE IN TEXAS

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As more and more people get away from the traditions of formal ceremonial marriages, it becomes more important to understand when and how you could find yourself in a common-law marriage relationship.

Today more and more couples are cohabitating prior to marriage. Others choose to live together but never get married. There are many misconceptions about common-law marriage. There are many misunderstood facts about common law marriage in Texas. Knowing where the lines are drawn between unmarried and common law married can be important in knowing your rights.

10 MYTHS ABOUT COMMON LAW MARRIAGE

Many people think the following situations constitute or raise a question about a couple's marital status under common law:

Myth 1: If we live together for 6 months or more, we are common law married.

Myth 2: If we move in together at all, we are common law married.

Myth 3: If we get engaged, we are agreeing to be common law married.

Myth 4: If my girlfriend tells someone that we are married but I don't agree, then we might be common law married.

Myth 5: If my girlfriend uses my last name without my permission, then we might be common law married.

Myth 6: If we agree to get married in the future, we are common law married now.

Myth 7: If we agree to be married but never move in together, we still might be common law married.

Myth 8: If we talked about being married but never told anyone, we might be common law married.

Myth 9: If we have kids together and they have the father's last name, we are common law married.

Myth 10: If we agree to be common law married, then we can agree to be divorced the same way.

As you will see, each of these situations are merely folklore and are not examples of a common law marriage.

WHAT ARE THE RULES FOR COMMON LAW MARRIAGE IN TEXAS?

In order to meet the requirements of an informal/common-law marriage in Texas the man and woman must:

1. Agree to be married;
2. Live together as husband and wife, and
3. Represent to others in Texas that they are husband and wife, which is often referred to as "holding out" to others that you are husband and wife.

All three elements must exist at the same moment in time to establish a common-law marriage.

In addition to meeting the above requirements, you must also prove that both husband and wife have the capacity to enter into the marriage. In the state of Texas, to have the capacity to enter into a

common-law marriage, you must be members of the opposite sex, you must both be at least 18 years of age or older, you cannot be related, and you must not be currently married to someone else. If you can fulfill these requirements, then you know have the capacity to enter into a common law marriage.

Proving a common-law marriage depends on the factual circumstances of each case. In making a determination of whether or not a common-law marriage exists, courts in Texas review the facts on a case-by-case basis.

Agreement to Be Married

To establish a common-law marriage the parties must agree to be married. The case law in Texas states that there must be evidence that shows that the parties intended to have a present, immediate, and permanent marital relationship wherein they both agreed to be husband and wife. An agreement to get married at some later time in the future is not sufficient to establish an agreement to be married. If there is no written agreement to be married, your actions and the actions of the other party can be used to prove that there was an agreement to be married.

Living Together/Cohabitation

In order to establish a common-law marriage the parties must live together in Texas as husband and wife. The requirement of living together for purposes of fulfilling this element of a common-law marriage requires more than just sexual intercourse under the same roof. The case law in Texas states that in order to prove cohabitation you must be living together as husband and wife, and you must be maintaining a household and doing things that are commonly done by a husband and a wife. There is no magic number for how long you must reside together in Texas in order to fulfill this requirement.

Holding Out

In order to establish a common-law marriage the parties must represent to others in Texas that they are married. The case law in Texas states that the purpose of this requirement is that there can be no secret common-law marriage. Spoken words are not necessary to fulfill this requirement. The actions and conduct by each person may be enough to fulfill the requirement of holding out.

WHY SHOULD I CARE IF WE ARE COMMON LAW MARRIED?

If the Court makes a finding that a common-law marriage exists between you and another person, the common-law marriage has the same legal consequences as a ceremonial marriage. This means that you would have to file for divorce if and when the relationship ends just as you would if you had a ceremonial marriage. Once a common-law marriage is triggered, the husband and wife cannot “undo it” by agreeing that they are no longer married. Additionally, if a common-law marriage exists, then all property and debts accumulated during the duration of the common-law marriage that are community property are subject to division by the Court at the time of the divorce.

YOU MIGHT BE COMMON LAW MARRIED IN TEXAS IF...

The following situations have come along before the courts in Texas before and have found to be sufficient to trigger a common law marriage:

1. Filing a federal income tax return with the other person named as your spouse.
2. Obtaining an insurance policy (life, health, auto, etc.) and identifying the other party as your spouse and designating them as beneficiary.
3. Purchasing a home or other real property where the deed is signed by you and the other person as husband and wife.
4. Taking out a loan with the other person being identified as either your husband/wife.
5. Sending cards or letters to the other party that state “from your loving husband,” or “to my loving wife”.
6. Hosting or attending a party in Texas where you introduce the other person as your spouse.
7. Registering at a hotel or signing a guest book at a wedding as “Mr. and Mrs.”.
8. Having your family members refer to him as their son-in-law.
9. Introducing the other person to your colleagues, neighbors, and/or friends as your husband/wife.
10. Agreeing to live like husband and wife and be a married couple.

YOU MIGHT NOT BE COMMON LAW MARRIED IN TEXAS IF...

The following scenarios are not, standing alone, sufficient to trigger a common law marriage:

NO AGREEMENT TO BE MARRIED:

1. Holding hands and showing affection towards one another.
2. Marriage proposal and giving of an engagement ring.

3. Statements that parties were “trying out” their relationship and would later marry if everything worked out.
4. A promise by one person to the other to stay with them during illness.

NO HOLDING OUT:

5. An indication on a lease agreement or other contract that you do not have a spouse.
6. A woman stated upon being admitted to the hospital that she was single.

**NO COHABITATION/LIVING
TOGETHER:**

7. Evidence that a man and woman never spent an entire night together.
8. A man and woman never moved any personal property into the same residence.
9. A man and woman never moved in together.
10. A man and woman living in the same house but sleeping in separate beds in separate rooms.

ABOUT THE AUTHORS

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Sarah Darnell has been described by one lawyer as a “true gunslinger” for her ability to relentlessly pursue her client’s objectives, fearlessly and without intimidation. With her East Texas drawl and pure Southern charm, Ms. Darnell often takes other lawyers off-guard; but, when she comes out of the gates swinging, everyone knows she means business.

Ms. Darnell’s tenacity in pursuit of her client’s rights has been recognized by her peers. In 2010, she was named a Texas Rising Star in the area of family law by *Texas Monthly* and *Texas SuperLawyers* magazines. The Annette Stewart Inns of Court, a Dallas family law organization dedicated to promotion of ethics and professionalism among lawyers, selected Ms. Darnell for membership.

With a major in psychology and a minor in political science, Ms. Darnell graduated *cum laude* from Sam Houston State University in Huntsville, Texas. In 2006, she received her Doctor of Jurisprudence degree from the Oklahoma City University School of Law.

Ms. Darnell lives in Frisco, Texas with her husband and lifelong sweetheart Daryl. In her spare time, she enjoys relaxing on her patio while her husband makes dinner.

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Michelle May O'Neil founded the firm based on her desire to provide clients with high-quality representation in a personalized

atmosphere. The firm, originally known as The May Firm, changed its name in 2009 after Ms. O'Neil married. She has over 20 years of experience representing men, women, and children related to family law matters such as divorce, child custody, and complex property division. Described by one lawyer as "a lethal combination of sweet-and-salty", Ms. O'Neil exudes genuine compassion for her client's difficulties, yet she can be relentless when in pursuit of a client's goals.

Ms. O'Neil became a certified family law specialist by the Texas Board of Legal Specialization in 1997 and has maintained her certification since that time. Representing clients in litigation before the trial court is an important part of her practice. In addition, family law appellate matters are a niche of Ms. O'Neil's practice. Lawyers frequently consult with Ms. O'Neil on their litigation cases about specialized legal issues requiring particularized attention both at the trial court and appellate levels. One judge said of Ms. O'Neil, "She cannot be out-gunned, out-briefed, or out-lawyered!"

A noted author, Ms. O'Neil released her second book *Basics of Texas Divorce Law* in November 2010. Her first book, *All About Texas Law and Kids*, was published in September 2009 by Texas Lawyer Press. The State Bar of Texas and other providers of continuing education for attorneys frequently enlist Ms. O'Neil to provide instruction to attorneys on topics of her expertise in the family law arena. She has been honored by her peers with an "A-V" peer review rating by Martindale-Hubbell Legal Directories for the highest quality legal ability and ethical standards, as well as selected as a Barrister in the Annette Stewart Inns of Court, an organization devoted to the professionalism of the practice of law.

Ms. O'Neil shares with many of her clients the joys of having a blended family, having married her husband John in 2006, who has a 12-year old son.