

Common-Law Marriage in Texas
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Definition: “Common law marriage” refers to a marriage formed without an actual wedding or marriage license. The legal term for it is “Marriage Without Formalities.” It is defined in Texas Family Code Chapter 2, Subchapter E, and in the case law.

Requirements: A party alleging a common-law marriage must prove three things:

1. The parties made an agreement to be married;
2. The parties represented (“held out”) to others that they are married; and
3. The parties lived together (“cohabitated”) in Texas as husband and wife, after the agreement was made.

A person under 18 cannot be a party to a common-law marriage. A party who is already married to someone else cannot be a party to a common-law marriage. People can also get married by filing a written declaration of informal marriage with the County Clerk.

Proof: Normally, the only way a party can prove an agreement to be married is by testifying that such an agreement was made. Informal marriages are rarely reduced to writing. Conversely, the only way a party can prove there was *not* an agreement to be married is to testify that the parties never made such an agreement. In most cases, when a party claims a common-law marriage, it is undisputed that the parties lived together. These disputes often focus on the third element.

The most important evidence of an informal marriage is proof the parties held themselves out to be married. This can include evidence that the wife began using the husband’s last name; proof that one or both of wore wedding rings; copies of joint tax returns; utility bills or other documents from third parties; deeds; and testimony by the parties or other people that one party introduced the other party as his or her spouse.

Despite a 1989 amendment, an agreement to be married can still be inferred based on proof that the parties held themselves out to be married. Parties can also present evidence that one party held them out to be married and the other party failed to deny it.

Time Limitations: If the parties cease to live together then two years pass, it is rebuttably presumed that they did not enter into an agreement to be married.

Consequences: This issue often arises when the party claiming a common-law marriage files a claim for divorce, and the other party disputes it. It can also arise in probate proceedings (where a person seeks a share of the estate). If a couple simply lived together, then they were only “roommates with benefits,” with no consequences. If the couple was married, then the consequences are just the same as if they got a marriage license, went to church, and got married in front of three hundred people.

This issue is important because all assets acquired by a spouse during a marriage are community property, owned jointly by both spouses. Of course in a common-law marriage each spouse can also have separate property - assets acquired as a gift, through inheritance, through intestate succession, or recovered for personal injuries other than lost wages during the marriage. In addition, spouses have some liability for each other’s debts. Finally, depending on the duration of the alleged marriage and the circumstances, one spouse may recover maintenance (alimony) from the other spouse.

The motive is usually money. One party claims they were married (to gain a share of the property acquired by the other spouse) and the other party denies they were ever married (to deny the other party a share of those assets). If there wasn’t anything to fight over, the parties would have simply gone their separate ways.

One problem with common-law marriages is establishing the date of marriage. This is not a problem with ceremonial marriages, which are documented. Since common-law marriages are undocumented, the date can be disputed. In a few cases, the parties were ceremonially married, but one party seeks to establish an informal marriage occurred at an earlier date. The reason for this is to acquire a community property share in property that was acquired by the other spouse before the ceremonial marriage.