Common Law Marriages

What are common law marriages?

A common myth is that if you live with someone for seven years, then you automatically create a common law marriage. This is actually not true in any state. Common law marriage occurs when a couple lives together for a certain number of years (one year in most states), holds themselves out as husband and wife, and intends to be married. Once a common law marriage is formed, that couple is treated legally the same way that traditional married couples are treated. This means that if the couple intends to no longer be married, they must file for divorce.

Only a certain number of states recognize common law marriage. Because all states recognize opposite-sex marriages created in other states, however, if you and your spouse have a common law marriage in a state that recognizes common law marriages and you move to a state that does not recognize common law marriages, you are still legally married in that new state. At this time, only opposite-sex couples can legally engage in common law marriages.

Under the common law marriage doctrine, you are considered legally married, despite not having a marriage license, a ceremony, or a marriage certificate, if you meet specific requirements listed in the statutes of the jurisdiction where you live. The benefits of common law marriage include the right to inherit upon the death of one spouse and the right to spousal support and an equitable division of property should the marriage terminate.

The jurisdictions that recognize common law marriage and the requirements of each are listed below. In addition, various other states will recognize a common law marriage if it
was valid in one of these states and meets these requirements, even though those states do not themselves have statutes providing for common law marriages.

Which states recognize common law marriages?

- Alabama
- Colorado
- District of Columbia
- Georgia (if created before January 1, 1997)
- Idaho (if created before January 1, 1996)
- Iowa
- Kansas
- Montana
- New Hampshire (for inheritance purposes only)
- Ohio (if created before October 10, 1991)
- Oklahoma
- Pennsylvania (if created before January 1, 2005)
- Rhode Island
- South Carolina
- Texas
- Utah

Be sure to check the family law in your state.

Does my common law marriage legally change my last name?

No, not automatically. Anyone can change their name, however, as long as the name change is for a legitimate, non-fraudulent purpose. If you'd like to change your name, simply begin using your new name consistently and change it for all of your accounts, memberships, and identification documents. Most private entities respect name changes via mere usage. With the threat of identity theft and fraud, however, fewer and fewer companies are willing to change your name without legal documentation of your name change.

When married through traditional marriage, you are given marriage records that suffice as proof of your new name. People married via common law marriages, however, do not have marriage records. In this case, you will need a court order documenting your name change. This documentation is helpful for proving to private entities, like banks, that you
legally changed your name, but it is required by government entities to change things like your state issued I.D., passport, and social security card.

**How do I get a common law divorce?**

Technically, there is no such thing as a common law divorce. If you are in a legally-recognized common law marriage and you wish to end the relationship, you must obtain a regular divorce just like any other ceremonially married couple. Many spouses hire divorce attorneys, since you will need to have the court decide on things like child support and custody, spousal support, and property division.

If you were married by common law marriage and move to a state that does not recognize common law marriages, you will still have to obtain a legal divorce in that state, just as if you were ceremonially married. This is because of the fact that all states recognize opposite-sex marriages from other states, including common law marriages. When you move to another state, you are still married, and must obtain a legal divorce if you choose to end the marriage.

**Common Law Marriage States**

- **Alabama.** In this state, the parties must agree to be husband and wife, they must have the mental capacity to marry, they must agree to be married at the present time, and they must represent to the public that they are married in order for a common law marriage to exist.

- **Colorado.** In order for a common law marriage to exist in Colorado, the relationship must be proven by the cohabitation of the common law spouses and their reputation for being married.

- **District of Columbia.** In the District, a common law marriage is established by the parties' explicit intent to be married and by their cohabitation.

- **Iowa.** A common law marriage is established in Iowa by the parties' intent and agreement to be married, their continuous cohabitation, and their public declarations that they are husband and wife.

- **Kansas.** In Kansas, the man and woman must have the mental capacity to marry, they must agree to be married at the present time, and they must represent to the public that they are married in order for a common law marriage to exist.
• **New Hampshire.** This state recognizes common law marriages only upon the death of one of the spouses. In other words, common law marriages are recognized in New Hampshire for inheritance purposes only.

• **Montana.** In Montana, the parties must have the capacity to consent to marriage, they must agree to be married, they must cohabitate, and they must have a reputation of being married.

• **Oklahoma.** The parties must be competent, agree to enter into a marriage relationship, and cohabitate in order to be considered as having a common law marriage.

• **Pennsylvania.** A common law marriage is established in Pennsylvania by the exchanging of words between a man and a woman indicating an intent to be married at the present time.

• **Rhode Island.** In Rhode Island, a common law marriage exists if a man and woman have a serious intent to be married and engage in conduct that leads to a reasonable belief by others in the community that they are married.

• **South Carolina.** In this state, if a man and woman intend for others to believe they are married, a common law marriage may be established.

• **Texas.** If a man and woman in Texas sign a form provided by the county clerk, agree to be married, cohabitate, and represent to others that they are married, a common law marriage exists.

• **Utah.** Utah does not recognize common law marriage, however courts can retroactively approve the marriage of couples without ceremony if the couple is of age and legally able to consent to marriage, have lived together, treated each other as spouses and hold themselves out as married.