

Common-Law Marriage in Texas

Debunking two typical myths.

BY REBECCA ROWAN

It seems the average Texan believes certain myths and misinformation when it comes to common-law marriage in our state. To set the record straight, this article debunks two of the most typical myths about common-law marriage.

There Is No Magic Length of Time to Become Common-Law Married

Despite the myth, seven or five or three years of living together does not create a common-law marriage. No

durational requirement establishes a common-law marriage. Rather, to prove the existence of a common-law marriage, both parties must:

- (1) Agree that they are married;
- (2) Live together as husband and wife; and
- (3) “Hold out” to others that they are married (see Texas Family Code § 2.401(a)(2)).

All three conditions must exist simultaneously to establish a valid common-law marriage. Additionally, in the state of Texas, you must have the capacity to enter into the marriage. This means both parties must be at least 18, unrelated, and not currently married to someone else.

In deciding whether a common-law marriage exists, courts in Texas review the facts on a case-by-case basis. It is not unusual to see a flurry of summary judgment motions being filed when common-law marriage is at issue.

Proving a common-law marriage depends on the factual circumstances of each case. While the co-habitation requirement is straightforward, establishing the other two requirements can be a challenge. To prove an agreement of marriage, Texas caselaw states there must be evidence establishing a present, immediate, and permanent intent between the parties to have a marital relationship. An agreement to get married in the future is insufficient to establish an agreement of marriage. As such, if two people are engaged, then they cannot be common-law married.

The requirement that each party must “hold out” to others as married simply means the parties must represent to others

that they are married. Texas caselaw states that the purpose of this requirement is to ensure that there is no “secret” common-law marriage. While spoken words alone can fulfill this requirement, actions and conduct by each person are also examined. For example, introducing each other as spouses, wearing rings on ring fingers, or signing credit applications as a married couple could separately qualify as “holding out” to others as married. Filing joint tax returns, adding someone to the “family” country club membership, and even the address on Christmas card envelopes can come into play. Oftentimes, the evidence that supports the “holding out” element also supports an agreement to be married.

There Is No “Common-Law Divorce”

Common-law marriage is not a loophole to avoiding divorce. Once a common-law marriage is established, it is treated just the same as if it were a ceremonial marriage. Thus, there is no “common-law divorce.” A common-law marriage must be terminated with either a standard divorce suit (or annulment) or by the death of one of the parties. A common-law marriage does not magically dissipate if the parties physically separate.

However, even when a couple satisfies all the requirements of a common-law marriage, the parties may still not be permitted to file for divorce. There is a rebuttable presumption that no marriage exists unless a suit is commenced to prove the marriage before the second anniversary of the parties’ separation. As such, do not delay in seeking a divorce if separated from a common-law spouse.

Common-law marriage can be a tricky concept for some, and it is certainly something to be aware of if living with a significant other. **TBJ**

TRADEMARK Copyright & Patent Searches

*“Experienced Washington office
for attorneys worldwide”*

FEDERAL SERVICES & RESEARCH:

Attorney directed projects at all Federal agencies in Washington, DC, including: USDA, TTB, EPA, Customs, FDA, INS, FCC, ICC, SEC, USPTO, and many others. Face-to-face meetings with Gov’t officials, Freedom of Information Act requests, copyright deposits, document legalization @ State Dept. & Embassies, complete trademark, copyright, patent and TTAB files.

COMPREHENSIVE: U.S. Federal, State, Common Law and Design searches,
INTERNATIONAL SEARCHING

EXPERTS: Our professionals average over 25 years experience each

FAST: Normal 2-day turnaround with 24-hour and 4-hour service available

GOVERNMENT LIAISON SERVICES, INC.
200 N. Glebe Rd., Suite 321
Arlington, VA 22203

Ph: 703-524-8200, Fax: 703-525-8451

Minutes from USPTO & Washington, DC

TOLL FREE: 1-800-642-6564

www.GovernmentLiaison.com
info@GovernmentLiaison.com



REBECCA ROWAN

is a shareholder in KoonsFuller in Dallas, where she specializes in complex marital property cases, premarital and postmarital agreements, and family law appeals. She is certified in family law by the Texas Board of Legal Specialization.