

Common Law Marriage

What is common law marriage? A common law (or informal) marriage is a legal marriage without a ceremony or other formalities. It is created only if certain specific legal requirements are met. Proving a common law marriage does NOT depend on how long you have been living together or whether you have children together. Once proven, a common law marriage has no “lesser status.” It is as legally valid as a formal marriage. If you want to prove a common law marriage, you have to show that *all* of the following have been met:

You must show that you and your partner:

- are not already married, informally or formally, to anyone else at the time the marriage was created, AND
- both you and your partner were at least 18 years of age when the marriage was created; and
- you agreed to be married, AND
- afterward, lived in Texas as a married couple, and
- represented to others that you are married (“holding out” to others).

Declaration of informal marriage: If you agree, you and your partner can sign a ‘Declaration of Informal Marriage’ with the county clerk. Once signed, the Declaration is valid proof of marriage and you are considered married for all legal purposes. The Declaration form is available from the county clerk.

When is it important to prove a common law marriage? Proving the existence of a common law marriage can be important when a relationship is ending (divorce) and in determining inheritance rights.

- Divorce – Under Texas law, all property acquired during a marriage (formal or common law) is *community property*. If a common law marriage is proven, community property is divided the same as if the parties were formally married. It doesn’t matter which spouse made the purchase or whose name is on the title. Debts accumulated during a common law marriage are also divided between the spouses. If no common law marriage is proven, there is no marital property or debts to divide. As single people, the parties will keep their personal property and property titled to them, and will remain individually responsible for their debts. Proving a common law marriage can affect whether partners who end their relationship can split property and liabilities between them.
- Inheritance – If married formally or at common law, a spouse is entitled to inherit from the other spouse if the other spouse (decedent) died without a will (died intestate). If a person can prove that they were married to the decedent at common law, they might be able to claim a share of the decedent’s estate.

How do I prove that we *agreed to be married and represented to others that we were married*? It does not depend on one particular fact. The court can infer an agreement to be married and holding out to others by proof that you lived together, told others that you were married, used your partner’s last name, filed joint tax returns as spouses or as a married person filing separately, signed leases or other documents as spouses, made joint purchases, included your partner on your health insurance, made your partner the beneficiary of a life insurance policy, made joint loan applications or agreements, applied for public benefits and listed your partner as “spouse,” and having children together. Introducing your partner as your spouse on a single occasion might not be enough by itself, but it may be if coupled with other evidence suggesting that you acted like a married couple and that others thought you were married.

How long do I have to prove we were married at common law after we separate? If you are separated for *more than two years* and have not taken any action to end the marriage (such as filing for divorce), the law presumes that you and your partner never intended to be married. It makes it harder for you to prove a common law marriage existed if you wait for more than two years after you separate before taking action.

Can same-sex couples be married at common law? Yes. Everything above applies to same-sex couples. You must have lived in Texas after you agreed to be married. You can’t establish a common law marriage if you and your partner did not live in Texas after agreeing to be married.