

DIOCESE OF DALLAS

Informal Marriage

Also Known as Common Law Marriage



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(Revised August 20, 2014)

Texas is one of several states that presently recognizes the Informal or “Common Law” Marriage.

To meet the requirements of a “Common Law” marriage, the following conditions are necessary according to the Texas Family Code and case Law:

1. The man and woman must agree to be married to each other;
2. After they agree to be “married,” they must reside together in Texas or in some other state which recognizes common law marriage;
3. They must hold themselves out to the public as husband and wife; and
4. Usually, if contested, some documentary proof such as a lease or contract signed by both parties or a joint income tax return, will be useful.

To establish a common law marriage, the parties either must register their marriage at the County Clerk’s office at the courthouse, as such, or be able to prove the above criteria have been met. Thus, the mere fact a couple cohabits does not automatically mean that their relationship qualifies as a “Common Law” marriage. The burden of proof of an informal marriage is on the party asserting its existence. If one party denies the common law nature of an alleged marriage, failing a certificate of its registration, it is most commonly proven by filing for a divorce in state district court and producing a decree or order resulting from that filing in which the court makes a finding that the alleged common law marriage, in fact, either existed or did not exist. Another method of proof may be available by filing for a declaratory judgment on the issue.

Failure to register a “Common Law” marriage may possibly affect a party’s eligibility for benefits, such as Social Security, etc. Consult an attorney if there are questions.

Before a Church convalidation, the couple alleging a “Common Law” or informal marriage should provide the officiating celebrant with an informal marriage registration certificate or a civil marriage license.

For any tribunal annulment procedure, including one involving either an alleged or registered “Common Law” marriage, a civil divorce decree is required. Under Texas law, one must obtain a decree of divorce upon the breakup of a “Common Law” union. Otherwise, the law will not allow the issuance of a marriage license to either party of that union to marry someone else.