

COMMON LAW MARRIAGE IN TEXAS

By Attorney Michael H. Wald

There are many misconceptions held today about what a common law marriage is in Texas. Most Texans are aware that informal marriages have long been recognized in the Lone Star state, but are not sure what facts establish whether or not a marriage truly exists.

Once it is proved that an informal marriage exists, the parties involved have the same legal status and face the same legal consequences associated with a ceremonial marriage.

Unlike a ceremonial marriage, an informal marriage arises when "competent parties" agree to be husband and wife and then maintain a marital relationship. "Competent" means that the two parties must be of proper age and lack of kinship to their spouse, etc. In other words, the parties must have the same personal prerequisites as the parties to a statutory ceremonial marriage.

To have an informal marriage in Texas, the parties either must have agreed to be married, and after the agreement have lived together in Texas as husband and wife and represented to others that they were married, or (2) declared an informal marriage by execution of a form provided by the County Clerk. Both parties must provide all information required on the form, be administered an oath, and sign the declaration at the County Clerk's office.

Let's examine the requirement of the first manner of establishing the existence of an informal marriage:

- (1) a present agreement or intention to be husband and wife;
- (2) living together as husband and wife; and
- (3) a "holding out" to the public as husband and wife ("holding out" refers to the couple's

representation to the community of their marital status).

All three elements must be present at the same time.

The first element may be implied from evidence which establishes the second and third elements of the marriage. The second element, living together as husband and wife, involves more than sexual relations with one another. The couple must live together under the same roof and maintain a household. Living together may also be shown by the fact that children were born, joint bank accounts were established, joint tax returns were filed, etc. The element of living together is provided by a combination of factors that involve the couple's behavior in demonstrating that they regard themselves as being married.

The final element, and the most important, is the test of whether or not the couple held themselves out to the public as being married. Under the Texas case decisions, there can be no secret common law marriages. Since a holding out requires that the general public know of the marriage, it must be proved through the testimony of those who would logically be aware of the relationship, such as family, friends and co-workers. Holding out may be demonstrated by the couple's common practice of introducing themselves as husband and wife, the wife using the husband's name, the couple's general reputation in the community, etc.

An informal marriage may be terminated only upon death, divorce or annulment. There is no such thing as common law divorce. The rules governing the division of marital property upon dissolution under the Texas Family Code are the same for both informal and ceremonial marriages.

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