

ESTATE PLANNING advantage

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Not So Common Knowledge about COMMON LAW MARRIAGE

Only ten states in the country recognize common law marriage, and Alabama happens to be one of them. Cohabitation of non-married partners and couples who have previously divorced each other is becoming more pervasive. Yet, most people are either unaware or misinformed about how one enters into a legally recognized marital relationship without the traditional formalities of a ceremony or license.

Legal historian, Otto E. Koegel, aptly described common law marriage as a "marriage which does not depend for its validity upon any religious or civil ceremony but is created by the consent of the parties as any other contract."

In addition to having the capacity to be married (i.e. being of proper age and not otherwise married), basic requirements for entering a common law marriage in Alabama are: (1) an exchange of consent between two people; (2) cohabitation; and (3) a holding out publicly of living together as husband and wife. Some indications that a couple holds itself out as husband and wife include: using a common last name, filing a joint tax return, having a joint bank account, and telling people in the community they are married. Contrary to popular belief, there is no specific length of time required to establish a common law marriage, and no particular words are necessary to show the parties' present agreement to marry. Additionally, proof of actual words of consent are not required; an agreement may be inferred from circumstances. Thus, it is possible for a common law marriage to be inferred and legally recognized, even when one or both of the parties (or more commonly, their respective families) are not aware such a marital relationship even existed.

In Alabama, once a common law marriage has been established, the status of the two individuals is forever changed – they are deemed married. Therefore, the only methods for dissolving their marital relationship are through divorce or annulment. Common law marriage partners and ceremonially-married couples are subject to the same divorce laws because Alabama treats both forms of marriage the same. An Alabama

court may divide a common law couple's property and award alimony. Additionally, among other things, common law married couples may file a joint income tax return, claim each other on family health insurance plans, assert inheritance claims against the deceased spouse's estate and receive spousal benefits under the Alabama Workers' Compensation Act.

While these legal outcomes may be appropriate for a couple who intends to be married under common law, an individual who does not expect or desire these consequences must take precautions to protect against a claim of common law marriage.

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In addition to obtaining a premarital agreement (most commonly referred to as a pre-nuptial agreement), a couple may consider entering into a cohabitation agreement. This type of agreement is just like any other contract, and can specify that although the two parties intend to live together, share property and enjoy certain spousal privileges, they do not intend to be married. Parties may also desire to specify what should happen to shared property in the event of the death of one or both parties, or in the event that the parties decide not to remain together. Such an agreement can help to avoid future conflicts, as well as protect against unintended legal consequences that can significantly affect the individuals involved and their sometimes unsuspecting families.



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