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Philadelphia Legal Assistance is a non-profit organization which provides free legal advice, representation and education to the low-income residents of our community in various civil matters.

NEW COMMON LAW MARRIAGES ABOLISHED BEGINNING AFTER JANUARY 1, 2005

Last year, the issue of Common Law Marriage was in the newspapers quite a bit here in Pennsylvania after our Commonwealth Court decided that all new Common Law Marriages would be invalid. However, part of the question was whether the Commonwealth Court had the authority to do that without action from the Legislature or our Supreme Court. Now, the Pennsylvania Legislature has taken action. The Legislature passed a law, effective in December, 2004, which abolishes new Common Law Marriages in Pennsylvania. This law effects any Common Law Marriage which would begin AFTER January 1, 2005. Any Common Law Marriage which began on or before January 1, 2005 is still valid.

WHO NOW HAS A COMMON LAW MARRIAGE?

There are many misunderstandings about what Common Law Marriage is. Many people think that if a man and a woman live together for seven years they are common law married. This is not true! Common Law Marriage only continues to exist in a few states in the country and the requirements are not the same in every state. Here in Pennsylvania, there were two steps to creating a valid Common Law Marriage prior to January 1, 2005.

- First, the man and woman must state their “present intent” to be married and to accept all of the rights and responsibilities of marriage. This is a declaration to each other just like saying vows during a wedding. However, unlike a wedding, there do not need to be any witnesses to these vows and no official papers need to be prepared.



- Second, the man and woman must have “held themselves out” to the community as husband and wife. That could have meant many things such as introducing each other as “my husband” or “my wife”, filing joint taxes, adding each other to health insurance policies, etc.. Although every couple is different, these are the same things that a couple might do after they have a wedding ceremony with a Marriage License. There is no set amount of time which the couple has to “hold out” before the marriage becomes valid. Just like a couple who gets married with a license and wedding, some marriages last 30 years and some last a few weeks.

It is important to understand that a valid Common Law Marriage requires both parts. Without the first part, the “present intent” declaration or conversation, the second part of “holding out” was not sufficient to create a valid Common Law Marriage, no matter how long you held out. For example, people who say that they got engaged and then decided to be common law married until they could afford a “real wedding” were probably not really common law married at all. Also, since there are no witnesses to the “present intent” conversation, it can sometimes be difficult to prove that it happened. However, that does not mean that it is impossible to prove. Like many questions in family law cases, there is often no “hard proof” of what has gone on behind closed doors. Each side must simply testify and bring as much evidence as possible and then the Court will decide which party is the most believable.

WHAT ARE THE BENEFITS OF A COMMON LAW MARRIAGE?

The benefits to a spouse with a valid Common Law Marriage are the same as those to a spouse who had a wedding ceremony and valid License Marriage. Although they differ in how they began, one being a private declaration and the other having a license filed with the government and a ceremony with someone officiating, they are otherwise in all respects the same. These rights include tax benefits, health benefits, property rights, government benefits for spouses (such as Social Security, Worker’s Compensation, Veterans Administration), recognition of their marriage in other states, and all of the other rights that married couples have.

Common Law Marriage couples also have the responsibilities of marriage, such as the duty to financially support one’s spouse and the duty to not marry another person (either by Common Law or License). There is also no such thing as a Common Law Divorce. Couples who were common law married and who wish to end that marriage, must file a divorce with the proper court. A party is then entitled to seek division of the marital assets and debts and alimony in appropriate cases.

If you are not sure whether you have a valid Common Law Marriage which began before January 1, 2005 you might first want to see what your spouse thinks. If the two of you do not agree, you may also want to speak with a lawyer to get a legal opinion about your current marital status and any future rights and responsibilities which you may have.

Philadelphia Legal Assistance offers free legal consultations to all eligible clients in family law matters. Please feel free to contact us at the location on the reverse side to determine if you are eligible for free legal services through us or another non-profit organization. More information is available on our website at www.PhilaLegal.org ©2004.