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ResearchReport

Common-Law Marriage in Connecticut and Other States

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Issue

Are common-law marriages recognized in Connecticut? (This report updates OLR Report 2013-R-0264.)

Summary

A common-law marriage takes legal effect, without a license or ceremony, when a couple live together, intend to be married, and present themselves to others as spouses (Black's Law Dictionary, 2nd Edition). Under federal law, it is seen as a marriage between two individuals free to marry, who consider themselves married, live together as spouses, and meet other state-specific requirements.

Most states, including Connecticut, require a marriage license and solemnization by ceremony for a marriage to be considered valid. Therefore, most states do not allow common-law marriages today. Connecticut does not expressly address the validity of common-law marriage in statute, but the state Supreme Court has ruled that they are not valid marriages. However, a common-law marriage validly entered into in another state will be recognized in Connecticut if it was valid under the other state's law and not expressly prohibited by Connecticut statute.

A minority of states allow common-law marriages (Kansas, Montana, Oklahoma, Rhode Island, South Carolina, Texas, and Utah). Some states have abolished it, but still recognize any common-law marriage that was entered into before a specified date (Alabama, Colorado, Florida, Georgia, Idaho, Indiana, Ohio, and Pennsylvania). Three jurisdictions (The District of Columbia, Iowa, and

New Hampshire) recognize common law marriages for limited purposes. Iowa recognizes common-law marriages for the purpose of establishing support liability, while New Hampshire recognizes them for probate purposes. (This is summarized in Table 1 below.) The District of Columbia specifically allows parties to an alleged marriage to bring an action to affirm the marriage when its validity is denied by the other party. If proven, the court must decree the marriage to be valid (D.C. Code § 16-921).

Federal Law

Under federal law, a common-law marriage is one considered valid under certain states' laws, even if there was no formal ceremony. Generally, a common-law marriage is one between two persons free to marry, who consider themselves married, and live together as man and wife. However, in order to receive federal recognition, the common-law marriage must also comply with any state requirements.

Federal law specifies the following as the preferred evidence of a common-law marriage:

1. if both the husband and wife are alive, their signed statements and those of two blood relatives;
2. if either the husband or wife is dead, the signed statements of the one who is alive and those of two blood relatives of the deceased person; or
3. if both the husband and wife are dead, the signed statements of one blood relative of each.

If a person cannot provide the preferred evidence, they must explain why and offer other convincing evidence of the marriage. If a person provides evidence that satisfactorily proves the marriage, he or she cannot be required to supply statements from blood relatives or other persons (20 CFR § 404.726).

Connecticut Law

Under Connecticut statutes, generally no one can get married (1) unless eligible to be married (e.g., not party to another marriage); (2) without a marriage license certified by the registrar; and (3) without a marriage ceremony that is conducted by and in the physical presence of someone authorized to solemnize marriages (CGS § 46b-24).

Additionally, the Connecticut Supreme Court has ruled that "Connecticut does not presently recognize, as valid marriages, living arrangements or informal commitments entered into in this state and loosely categorized as common law marriages" (see *McAnerney v. McAnerney*, 165 Conn.

277 (1973)). This was reaffirmed in *Boland v. Catalano* (202 Conn. 333 (1987)) where the court ruled that common-law marriages supposedly formed within Connecticut are not accorded validity and the rights and obligations provided by a valid marriage. Common-law marriages formed in other states may be recognized (see below).

For additional information, the Connecticut Judicial Branch's Law Library's report on cohabitation law and this report that covers common law marriage.

Common-law marriages that meet another state's common-law marriage requirements will generally be recognized in Connecticut if it is not expressly prohibited by Connecticut statute (e.g., the prohibition of marriage between certain relations or those involving minors) (CGS § 46b-28a).

Other States' Laws

Table 1 below provides a summary of the state statutes that recognize common-law marriages, including states that allow only those established before a certain date to be recognized. Rhode Island also recognizes common-law marriage through case law, but does not have a statute that explicitly addresses it (*Smith v. Smith*, 966 A.2d 109, 114 (R.I. 2009)).

Table 1: Other States' Laws Recognizing Common-law Marriages and Their Restrictions

State (Statute)	Summary
Alabama (Ala. Code § 30-1-20)	• Common-law marriages may not be entered into in the state on or after January 1, 2017. • An otherwise valid common-law marriage entered into before January 1, 2017, continues to be valid in this state.
Colorado (Colo. Rev. Stat. § 14-2-109.5)	• Common-law marriages entered into on or after September 1, 2006, are invalid unless, at the time it is entered into, (1) each party is at least age 18 and (2) the marriage is not prohibited by law.
Florida (Fla. Stat. § 741.211)	• Common-law marriages entered into after January 1, 1968, are invalid. • This does not affect any marriage which, though otherwise defective, was entered into by the party asserting the marriage in good faith and in substantial compliance with the laws on marriage.
Georgia (Ga. Code. § 19-3-1.1)	• Common-law marriages may not be entered into in the state on or after January 1, 1997. • Those entered into prior to that date are recognized in the state.

Table 1 (continued)

State (Statute)	Summary
Idaho (Idaho Code § 32-201)	• Lack of license does not invalidate marriage contracts in effect prior to January 1, 1996, created by consenting parties through a mutual assumption of marital rights, duties, or obligations.
Indiana (Ind. Code § 31-11-8-5)	• A marriage is void if it is a common-law marriage that was entered into after January 1, 1958.
Iowa (Iowa Code § 252A.3(8))	• For the purpose of establishing support liability, a man or woman who was or is held out as the person's spouse by a person by virtue of a common-law marriage is deemed the person's legitimate spouse.
Kansas (Kan. Stat. § 23-2502)	• A common-law marriage contract cannot be recognized if any party is under age 18.
Montana (Mont. Code § 40-1-403)	• No restriction.
New Hampshire (N.H. Rev. Stat. § 457:39)	• Common-law marriage is recognized only for probate purposes. • Persons cohabiting and acknowledging each other as husband and wife, and generally reputed to be such, for the period of three years, must be deemed to have been legally married after one of them dies.
Ohio (Ohio Rev. Code § 3105.12)	• On and after October 10, 1991, common-law marriages are prohibited in this state. • Common-law marriages remain valid on or after October 10, 1991, if they (1) occurred before that date (or on or after that date in another state), (2) were not terminated, and (3) are not otherwise invalid under Ohio marriage laws.
Oklahoma (Okla. Stat. tit. 43 §§ 1 & 130)	• Marriage is a personal relationship arising out of a civil contract to which the consent of parties that are legally competent of contracting and entering into it is necessary, and the marriage relation must only be entered into, maintained, or abrogated as provided by law. • Reputation of the marriage may be received as evidence of the marriage.
Pennsylvania (23 Pa. Stat. § 1103)	• Common-law marriages contracted after January 1, 2005, are invalid. • Common-law marriages otherwise lawful and contracted on or before January 1, 2005, may not be construed as invalid.
South Carolina (S.C. Code. § 20-1-100, et al.)	• A common-law marriage entered into by a person under the age of 16 is void (S.C. Code. § 20-1-100). • Matrimonial contracts require a license (S.C. Code. § 20-1-210). • A marriage contracted without a license may not be rendered illegal (S.C. Code. § 20-1-360).

Table 1 (continued)

State (Statute)	Summary
Texas (Tex. Fam. Code §§ 1.101 & 2.401)	• Every marriage entered into in this state is presumed to be valid unless expressly made void or voidable and annulled under the laws on dissolution of marriage (Tex. Fam. Code § 1.101). • In a judicial, administrative, or other proceeding, an informal marriage of a man and woman may be proved by evidence that they (1) signed a declaration of their marriage as specified in the law or (2) agreed to be married and after the agreement they lived together in this state as husband and wife and represented to others that they were married (there is a rebuttable presumption that the parties did not enter into a marriage agreement if the proceeding to prove the marriage does not start within two years of the parties separating and ceasing living together) (Tex. Fam. Code § 2.401). • A person may not be a party to an informal marriage or execute a declaration of an informal marriage if he or she is under age 18 or presently married to another person who is not the other party to the informal marriage or declaration of an informal marriage, as applicable (Tex. Fam. Code § 2.401).
Utah (Utah Code § 81-2-408)	• An unsolemnized marriage is legal and valid if a court or administrative order establishes that it arises out of a contract between two individuals who (1) are of legal age and capable of giving consent; (2) are legally capable of entering a solemnized marriage under the provisions of this chapter; (3) have cohabited; (4) mutually assume marital rights, duties, and obligations; and (5) who hold themselves out as and have acquired a uniform and general reputation as spouses. • A petition for an unsolemnized marriage must be filed during the relationship described above, or within one year after the relationship terminates. • Evidence of an unsolemnized marriage may be manifested in any form and proved under the general rules of evidence.

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