

Common Law Marriage

Some states allow couple to be considered married without any solemnization of licensing.

Elements:

- 1) Couple of must live together for a significant period of time.
- 2) The couple must act in a manner that connotes to the World that they are married.
- 3) The couple must intend to be married.

Couples who are married via common law marriages have the exact same rights and responsibilities as do couples who have valid marriages.

Under the “full faith and credit” rule, states will recognize as married couples that had common law marriages in other states.

Important Principle: Courts do not like to rule that couples who lived together for decades were never married and will use common law marriage to avoid that kind of ruling wherever possible.

Same Sex Marriage

Prefatory note: The Supreme Court has ruled that the due process clause of the 14th Amendment prevents states from criminalizing homosexual sex between consenting adults. Lawrence v. Texas (2003).

This does NOT automatically impact same sex marriage, BUT:

Supreme Court decision in 2015 (Obergefell v. Hodges) ruled that prohibiting same sex couples from getting married was unconstitutional under:

- Due Process Clause
- Equal Protection Clause

In isolated cases, some state or local officials have defied the decision. But it is now the law of the United States that same sex couple have the same rights to marry as heterosexual couples.

Same Sex Marriage – Steps Against

Federal “Defense of Marriage Act” (DOMA):

This specifically tells the states that they do not have to recognize the same sex marriages of other states. This act has little effect, because:

- 1) The Full Faith and Credit Clause probably doesn't require states to recognize those marriages anyway; and
 - 2) If the Full Faith and Credit Clause did force states to recognize those marriages, the DOMA would be unconstitutional!
- Many states have enacted state laws or even state constitutional amendments to prevent same sex marriages from being recognized.
 - There is even a movement for a federal constitutional amendment, but that is a long, long way from being passed and was rejected by Congress this year.

QUIZ TIME!