

Common Law Marriage: Did You Accidentally Get Married?

By Amy A. Edwards

Common law marriages are based on an agreement between the parties, without any paperwork or a formal ceremony performed by a person vested with authority to perform marriages. In my practice, I have met a number of people who believed they were "common law married" in North Carolina. Some people have the mistaken notion that if a couple lives together for some period of time, then the relationship is magically transformed into a legally valid marriage. Each state has laws that list the specific requirements of a marriage. North Carolina is one of many states that does not permit common law marriage. A couple might have lived together for many years and even held themselves out as "husband and wife" but unless they have undergone the legal requirements of marriage, they were not legally married in this state. No doubt this is great news to some clients, who thought they "accidentally" got married, but bad news to others. And speaking of accidental marriage, much to the dismay of some of those same people, there is no accidental divorce (*i.e.*, common law divorce).

What About Common Law Marriage From Other States?

There are U.S. states that recognize common law marriage. Some of those states are Western states that historically had to make a "do it yourself" marriage available to residents because there was such a small population that ministers or magistrates did not live in a town or close to one. Most of the settlers living in the Western U.S. did not want to "live in sin" without the benefit of marriage, so common law marriage in the United States was born. If a couple is validly married in another state that recognizes common law marriage, only then will North Carolina give their marriage decree full faith and credit, recognizing it as a valid marriage.

What is Required For a Valid Marriage?

If you do decide to tie the knot in North Carolina, the spouses must "take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other." Both husband and wife must be at least 18 years old. No one younger than age 14 can legally marry, and minors ages 14 to 18 may marry only in limited circumstances, including pregnancy. NC Gen. Stat. §51.

A valid marriage requires the ceremony to be made in the presence of a person with authority to marry individuals. That person must officially declare them to be married in the presence of two witnesses. The person with that authority may be an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate. Another person of authority may be designated "in accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe." A person who performs the marriage without a marriage license, or fails to sign and return the license to the Register of Deeds within ten days of the marriage shall be guilty of a Class 1 misdemeanor, and pay a \$200.00

fine. A license is only valid for 60 days and must be signed by the person who performed the marriage. In Pitt County, applicants can apply for a marriage license online. <http://regdeeds.pittcountync.gov/marriageapplication>

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