

Spouse/Partner

In General

A common-law marriage is a marriage relationship created by agreement and usually cohabitation between man and a woman without religious or civil ceremony. In order to be recognized, a common law marriage must be legal in the state where the parties claiming marriage reside.

Once it has been established that common-law marriage is valid in the state where it is being claimed, the couple must provide some evidence that they have been holding themselves out as man and wife. Examples of such evidence would include:

- Joint checking or saving accounts
- Joint property ownership (car, house)
- A common surname
- Joint credit cards
- Lease or other legal papers listing the parties as man and wife.

If the preceding criteria are met, the common-law spouse may be considered to have met the definition of spouse.

When a person is either divorced or legally separated, such person loses spouse status. A common law spouse is generally a spouse for plan purposes and therefore an acceptable participant for plan purposes regardless of state law.

Range Of Definitions

The issue of spouse is troublesome. A range of spouse definitions may be examined:

- Strict - Only spouses with a legal certificate of marriage are eligible. There are plans with such definition that such creates much confusion and difficulties for all concerned. It clearly eliminates the common-law spouse which many plan sponsors do not wish eliminated.
- Middle Road - Only legal spouses are eligible. Here, the common-law spouse is covered but the range of state laws and a host of guides and test must be examined to establish who is a legal test. With multi-state plans, this definition may be a nightmare to communicate.
- Liberal - Leave the definition of spouse undefined to be determined by the plan's fiduciaries on a case –by-case basis. From a public relations point of view with the plan sponsor, this is, on balance, a positive.

Legal Review of Common Law Spouse Issue

The legal status arises where beneficiary status for a death benefit is unresolved; it frequently arises where the spouse's status as a covered dependent is involved.

For benefit plan purposes, the tax status of the plan should be examined. IRC §105(b) states that nonmarried living partners are not to be treated as spouses. It is silent on what constitutes a legal spouse, however. The reason is that by the constitution what constitutes a legal spouse is a state matter except for the District of Columbia and the territories of the United States.

To examine what constitutes a legal marriage, the state's law must be examined. States, virtually without exception and with considerable consistency set the rules of marriage dealing with such factors as age, competency, blood relationships, bigamy and licensing procedures. All states recognize ceremonial marriages: some states proscribe and recognize the so-called common law marriages.

The complexity with common law marriage is this: when John and Mary became married by common law agreement in Georgia (which legalizes such) and they move to California (which does not legalize such) are John and Mary legally married in California? The answer is yes? The logic follows that of a contract law, since marriage is a legally binding contract. That is, the law where the contract was made is followed.

For a common law marriage to be legally accepted it must meet five major tests:

- Minors cannot have a common law marriage.
- The parties must be competent, usually meaning mentally.
- They must not have close blood-ties (brother-sister, e.g.
- They must not be bigamous.
- The relationship must not be a trial arrangement.

To clearly establish that a common law marriage does, in fact, exist, there are several tests to be made:

- Entered into in good faith
- Has mutual consent
- Intention to be married
- Permanent union
- Parties have legal capacity.

These are the 15 states which recognize common law marriages:

AZ	CA	KA	OH	RI
CO	ID	MT	OK	SC
DC	IA	NH	PA	TX

These are the 37 states which do not recognized common law marriages:

AL	FL	ME	MO	NC	VT
AR	HA	MD	NB	OR	VA
AK	IL	MA	NV	PR	WA
CA	ID	MI	NJ	SD	WV
CT	KY	MN	NM	TN	WS

DE LA MS NY UT WY

Resolving the Common Law Marriage Matter

These cases must be examined:

Case A.

Common law marriage is possibly legal.
Union occurred in one of the 15 states.
Residence is in any of the 50 states.

Case B.

Common law marriage is not possible.
Union occurred in one of the 37 states.
Residence is in one of the 37 states.

With Case B, no further resolution of the relationship need be pursued. With Case A, further inquiry is needed.

Inquiry Number 1. Are the parties of age, competent, etc.?

Inquiry Number 2. Does evidence indicate that the arrangement is not of a trial nature:

- Joint tax returns
- Cohabitation
- Joint property (checking account, e.g.)
- Public perception
- Change of names
- Changed relationship with children.

Unless the claim matter is of significance, little effort is even made to resolve the difficult question of common law marriage.

Homosexual Partners

Recently, a major U.S. company announced that it would provide employee benefits and equal status to homosexual couples equal to those it provides to married employees working for the company.

Increasing numbers of employers are being asked whether their employee benefit plans provide coverage to employees' *families* or *domestic partners*. Employers must reconcile the desire of an employee to cover loved ones, plan language which is written to cover *families* and state law which may or may not recognize nontraditional unions.

The controversial issue of extending employee benefits to *domestic partners* of employees has been around for a while because of questions of continuation of benefits after termination, but only recently have employers sought to extend benefits to employees' domestic partners through amendments in plan documents.

The precedent setting *Marvin v. Marvin* case, which recognized the property rights of unmarried couples, set the stage where the advantages of marriage were becoming available to people who do not marry. Thirteen states and the District of Columbia recognize

common-law marriage. Those states are Alabama, Colorado, Georgia, Idaho, Iowa, Kansas, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Texas.

The Internal Revenue Service says that employees who elect dependent coverage for domestic partners will likely be taxed for the benefit covering a partner who is not legally their spouse or dependent.