OLR RESEARCH REPORT

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COMMON-LAW MARRIAGE

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You asked for (1) an overview of common-law marriage under Connecticut law, including palimony matters and (2) a summary of all states that allow common-law marriage.

SUMMARY

Generally, a common-law marriage is a relationship involving two people who (1) agree that they are married, (2) live together, and (3) present themselves as spouses.

Connecticut law does not recognize common-law marriages. But, a common-law marriage entered into in a state that recognizes such marriages will be recognized in Connecticut if it was valid under the other state's law.

Connecticut law does not address "palimony" matters (i.e. court-ordered support following the termination of nonmarital relationships).

According to the National Conference of State Legislatures (NCSL), 10 states (Alabama, Colorado, Iowa, Kansas, Montana, New Hampshire, Rhode Island, South Carolina, Texas, and Utah) and the District of Columbia recognize common-law marriages, although some impose certain restrictions. An additional five states (Georgia, Idaho, Ohio, Oklahoma, and Pennsylvania) allow only those established before a certain date to be recognized.

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ELEMENTS OF COMMON-LAW MARRIAGE

Black's Law Dictionary defines "common-law marriage" as "a positive mutual agreement, permanent and exclusive of all others, to enter into a marriage relationship, cohabitation sufficient to warrant a fulfillment of necessary relationship of man and wife, and an assumption of marital duties and obligations."

The elements of common-law marriage vary somewhat from state to state; however, the primary elements are (1) cohabitation and (2) the parties holding themselves out to the world, through their conduct, as a married couple. Such conduct includes:

1. adopting the other party's last name,

2. filing joint state or federal tax returns, or

3. referring to themselves as spouses.

CONNECTICUT LAW

Under Connecticut case law, common-law marriages are not valid (see *McAnerney v. McAnerney, 165 Conn. 277 (1973)*).

This rule of law has been reaffirmed as recently as 1987 in *Boland v. Catalano* (202 Conn. 333 (1987)) where the court ruled that "in this jurisdiction, common law marriages are not accorded validity. The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship."

OTHER STATES

Fifteen states and the District of Columbia recognize common-law marriages. In some of these states the law exists in case law rather than statute. Table 1 shows the 16 jurisdictions and any restrictions they place on common-law marriage recognition.

Table 1: States That Recognize Common Law Marriage

State	*Restriction*
Alabama	No restriction
Colorado	No restriction
District of Columbia	No restriction
Georgia	Only those formed before January 1, 1997
Idaho	Only those formed before January 1, 1996
Iowa	No restriction
Kansas	Only if both parties are at least age 18
Montana	No restriction
New Hampshire	Only for purposes of probate
Ohio	Only those formed before October 10, 1991
Oklahoma	Only those formed before November 1, 1998
Pennsylvania	Only those formed before January 1, 2005
Rhode Island	No restriction
South Carolina	No restriction
Texas	Only if registered at the county courthouse or by meeting a three-prong test showing evidence of (1) an agreement to be married; (2) cohabitation in Texas; and (3) representation to others that the parties are married.
Utah	Only if validated by a court or administrative order

Source: Common-Law Marriages: National Conference of State Legislatures (2011)

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