

The Legal Fiction of Common Law Marriage

Article by: Johnette Duff

During a radio-talk show appearance, a caller told me about his unfortunate brush with the legal fiction of common-law marriage. He had been living with a woman for several weeks when he came home one evening to find the woman, his TV and assorted other property missing. He called the police, who mistakenly informed him that the woman was his common-law wife and so they couldn't help him.

What qualifies as a common-law marriage? Take your pick:

Leaving too many clothes at your girlfriend's house?

Living together six months

Living together seven years?

Chances are you picked the third answer, but all three responses are equally wrong. A common misconception is that the length of cohabitation creates common-law status. This is not true.

Three elements are necessary and none relate to a time-frame. A couple must

Live together

Agree between themselves to be married

Represent themselves as married (also called "holding-out.")

The agreement in the second element does not have to be written; it can be implied by the behavior of the parties. Signing leases as husband and wife or filing joint income tax returns are examples of the proof used to imply a common-law marriage.

In the example above, the police, as are most people, were woefully misinformed.

Alabama, Colorado, Georgia, Idaho, Iowa, Kansas, Montana, New Hampshire, Oklahoma, Rhode Island, South Carolina, Texas, Utah and D.C. recognize common-law marriages. Ohio repealed its recognition in 1992. Pennsylvania has just now abolished it. Other states may recognize an informal marriage if it was originally contracted within one of these states.

In the past, common-law marriage was often seen on the lower socio-economic rungs of the ladder. However, celebrities often make the news with claims by their live-ins of this status.

If you are concerned about your own status, contact an attorney in your state for more information. **About The Author**

Johnette Duff is a Matrimonial Attorney licensed to practice in the state of Texas. She is the author of "The Spousal Equivalent Handbook", "The Marriage Handbook" and "Love After 50": the complete legal and financial guide. She has helped thousands of individuals build successful relationships.

info@loveandthelaw.com