



LAW OFFICE OF
BRYAN FAGAN
— PLLC —



COMMON LAW DIVORCE IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

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INTRODUCTION

Thank you for downloading our special report: about Common Law Divorce, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

HOUSTON, TX, COMMON LAW DIVORCE

LET OUR EXPERIENCED FAMILY LAW ATTORNEYS HELP

Texas is one of the few states that still recognize common law marriage, which is a union entered into without ceremony or license. Once established, a common law marriage is just as valid and binding as a formal wedding and marriage, which is why those who are in such a partnership must go through divorce proceedings if they would like to be legally separated from each other.

FILING FOR A COMMON LAW DIVORCE

Typically, the less you shared together, the easier getting a divorce will be. For example, children, property, and debt will both complicate the process of separation. Texas offers couples the option of getting "regular" divorces to address these issues. The steps are very similar to the average divorce; however, you must first determine whether you really do have a common law marriage, also known as an informal marriage.

If you and your spouse remain apart for 2 years without taking any legal action to end the marriage, the law presumes a marriage never existed. However, this presumption is rebuttable if evidence is presented.

Another option, if you only have children and no property or debts, you can file what Texas calls a Suit Affecting the Parent-Child Relationship, which can resolve the issues of custody, parenting time, and child support.

Filing for a Common Law Divorce

- A declaration of marriage was signed by the couple and registered with a county clerk
- The couple agreed to be married and lived together as spouses, representing to others that they were married
- Neither of the spouses was underage
- Neither of the spouses was married to another person

To file for divorce, you can download a petition for divorce from your Texas county website. Complete the appropriate petition, which will ask you to tell the court about your children, property, and debts. When the form asks you for your date of marriage, enter the date when you and your spouse began living together as spouses and note your marriage is informal. File your petition with the district court in the county where you have lived, or your spouse has lived, for at least 3 months. Ask the clerk for a citation. A citation is a 1-page document informing your husband or wife you have filed for divorce and how long he or she has to respond to your petition. Serve your spouse with the citation and a copy of your filed petition. You can hire a private process server to deliver it to your partner, or ask a sheriff or constable in your county to do it for you. If you use a private process server, he or she will return an affidavit of service to you, which you will have to file with the court.

HELPFUL RESOURCES

- Am I Married? - Marital Status in Texas
- Non-Marital Conjugal Cohabitation Agreements for the Unmarried Couple in Texas
- Common Law Marriage in Texas



LET US HELP YOU THROUGH THIS

Filing for divorce can sometimes be quick and simple if your spouse agrees with your submitted petition. However, if he or she does not agree, you will likely need to enter into negotiations or even litigation with them. If this is the case, don't hesitate to give our skilled Houston, TX, family law attorneys a call. The Law Office of Bryan Fagan, PLLC has years of experience helping people with various family law matters. We understand that this may be an extremely stressful situation for you and your family. Let us see how we can best assist you in your case.

AM I MARRIED? - MARITAL STATUS IN TEXAS

"Am I married?" Seems like a simple question, right? Sometimes however the answer to this question is not always easy. Recently wrote an article "Common Law Marriage and Texas Divorce Guide."

In that article, I discussed meeting with a man who was bewildered that he had been sued for divorce. When I asked him about his case he plopped down an original petition for divorce and said, "I want to know how I am married?"

In this article, we discuss are going to delve a little more into common law marriage but are going to discuss some other times when the answer to question to "am I married?" may not always be clear.

VOID AND VOIDABLE MARRIAGE

A void marriage is a marriage that never existed. A voidable exists until the courts have annulled it.

VOID

Two ways that a marriage is void in Texas are:

- ☑ Where one party is already married to a different person.
- ☑ The other is under Texas Family Code 6.201 in which the parties are too closely related to each other.

ANNULMENT

The statutory grounds for annulling a marriage in Texas include:

- ☑ Marriage Under the Age of 14;
- ☑ Marriage Under the Age of 18;
- ☑ Under Influence of Alcohol or Drugs;
- ☑ Fraud & Duress;
- ☑ Impotency;
- ☑ Mental Incapacity;
- ☑ Concealment—one of the spouses hid something significant from the other;

VOIDABLE – 30 DAY WAITING PERIOD

Not all states do not require a divorced person to wait before remarrying, Texas does have a 30 day waiting period after a divorce.

If someone decides not to wait the entire thirty day period and remarries too early, the new marriage is "voidable" and may be challenged for a period of time.

BIGAMY

An adult is only able to be married to one person at a time all other marriages are void. the Texas Family Code holds that the first marriage is the only valid marriage. Any marriage entered into by a person after the first valid marriage is void by definition.

The consequence of remaining in a relationship while an earlier marriage is still valid means:



- ☑ you will not have any of the rights or duties to the spouse so long as the earlier marriage is valid.
- ☑ That means no spousal privilege, no tax benefits for filing as a married couple, no statutory authority to make life-and-death decisions and no right to death benefits.
- ☑ Instead, legal spouse will retain those rights.

The second marriage that is void can be made valid if the first marriage ends due to death or divorce- if the parties to the second marriage represent themselves as married and live together. That second marriage becomes a common law marriage which begins on the date the earlier marriage is dissolved.

PUTATIVE MARRIAGE

A "Putative Marriages," is a marriage that is entered into in good faith by one spouse but that is invalid because of an unknown obstruction to the person claiming to be a spouse.

The "putative marriage doctrine" is used in Texas courts to correct an injustice which might otherwise occur if a marriage is believed to be valid by one or both parties, but is deemed void.

Texas case law suggests that the most common impediment is the existence of a prior marriage of one party to a third party.

Putative marriage exists most commonly arises in two circumstances:

- ☑ as a result of a divorce proceeding where one spouse challenges the validity of the marriage; and
- ☑ as a result of the death of a spouse where a putative spouse and a legal spouse claim survivorship rights in the estate of the decedent.

As such the doctrine works as a protective mechanism for innocent persons. The critical distinction is that the marriage itself is not rendered valid, rather, the doctrine allows the innocent party certain property rights in the estate created during the relationship.

A putative spouse has all the rights, incidents and privileges pertaining to a legally valid marriage, including the right to an equitable division of all property acquired during the relationship in:

- ☑ a suit for divorce or
- ☑ in a suit to declare a marriage void.

PALIMONY

Palimony is not a legal concept. Rather, it is a popular term used to describe the division of property or periodic support payments paid to one partner in an unmarried couple by the other after the couple breaks up.

The Texas Family Code does not provide for "palimony." This means you cannot gain rights under the Texas Family Code because you lived with someone absent a valid marriage.

However, it is possible to draft an agreement which might provide for some of the things that could be obtained with a valid marriage.

The Texas Business Code, allows parties to enter agreements in consideration of "nonmarital conjugal cohabitation". To be enforceable, these contracts or agreements must be:

- ☑ in writing and
- ☑ signed by those who are affected by the agreement.

The Texas Legislature specifically stated that this provision was enacted to curb the number of palimony cases entering the family courts.



SAME SEX MARRIAGE

On June 26, 2015 the United States Supreme Court issued its ruling in Obergefell v. Hodges, legalizing same-sex marriage in every state of the Union. As I have discussed in other articles Texas is a common-law marriage state.

One of the big questions among Texas Family Law attorneys since the Obergefell v. Hodges ruling is "What does this mean for same-sex couples who met statutory requirements before the legalization of same-sex marriage in Texas?"

When I attended the Advanced Family Law Conference in 2016 this was one of the big questions however at the time everyone was agreed there was no case law to give us guidance. It was hoped that some cases pending before the Texas Supreme Court would help to clarify matters once they were ruled on.

NON-MARITAL CONJUGAL COHABITATION AGREEMENTS FOR THE UNMARRIED COUPLE IN TEXAS

Over the past 6 months, I have met with several potential clients who decided to make some major financial decisions with their boyfriend or girlfriend and unfortunately the relationship did not work out.

In one case I met with a lady who she and her boyfriend had purchased a house and had a child together. Both were named on the deed. In that case, the boyfriend was refusing to help support the child or contribute to any bills related to the house. He was very happy letting his girlfriend support him while he sat at home playing video games. The woman I met with wanted out and wanted to get some orders regarding the child.

In another case a woman again purchased a house with her boyfriend, however, in that case, she was not listed on the deed but had contributed a large amount of money to the house. In this case, he kicked her out of the house and told her not to come back and that she would not see a penny of the money she had paid to the purchase of the house.

In both cases, I hoped that there would be enough evidence to support a claim of common law marriage. If there was a common-law marriage that would be the easiest way to untangle the couple from each other financially and otherwise. Unfortunately, aside from them having lived together, there was no other evidence. Both women were adamant in that they had never intended to be married and had never held out to anyone that they were married.

This was disappointing because it meant that things would be more complicated and expensive if we were going to be able to help. Her situation is one the reasons divorce exists. However, divorce is not available to unmarried couples.

In the first scenario, we would be able to help get orders in place in regards to the child. The woman was also protected because she was on the deed however we would have to bring a separate lawsuit in regards to that property. In the second scenario, the woman might be out of luck all together we would have to dig in deeper to see what we could do.

WHAT RIGHTS DO UNMARRIED COUPLES HAVE?

Both women wanted to know doesn't living together provide them with any sort of rights or protection? In short, the answer is no.

This is especially true with respect to property acquired during a relationship. Marital property laws and other family laws were designed to protect married couples and do not apply to unmarried couples. This is true no matter how long the relationship was.

Palimony is not a legal concept. Rather, it is a popular term used to describe the division of property or periodic support payments paid to one partner in an unmarried couple by the other after the couple breaks up.



CAN AN UNMARRIED COUPLE ESTABLISH RIGHTS AS A COUPLE?

However, it is possible to draft an agreement which might provide for some of the things that could be obtained with a valid marriage.

The Texas Family Code Section 1.08 states that:

“A promise or agreement made on consideration of marriage or nonmarital conjugal cohabitation is not enforceable unless the promise or agreement or a memorandum of the promise or agreement is in writing and signed by the person obligated by the promise or agreement.”

The Texas Business Code, allows parties to enter agreements in consideration of "nonmarital conjugal cohabitation". To be enforceable, these contracts or agreements must be:

- in writing and
- signed by those who are affected by the agreement.

The Texas Legislature specifically stated that this provision was enacted to curb the number of palimony cases entering the family courts.

Oral agreements will likely not be upheld. At least one court has held that an oral agreement is not enforceable, *Zaremba v. Cilburn*.

WHY A COHABITATION AGREEMENT MAYBE A GOOD IDEA

As illustrated in the two examples I gave above when you are living with someone else and are NOT planning to be married sometimes lines blur and the couple starts making financial decisions as if they were married.

Then if the relationship does not work out the couple is left with questions regarding who is responsible for any joint debts and who owns the assets. If not careful someone might be significantly hurt financially.

The problem is partly because the characterization of property acquired by unmarried cohabitants is less clear than that of married couples. Married couple's ownership of property is governed by marital and community property laws.

Under community property laws it does not matter whose name is on the property in most cases it is still owned by both parties in the marital relationship. This is not true for an unmarried couple.

One solution is a written cohabitation agreement that is signed and meets all the formalities of a regular contract. A cohabitation agreement allows an unmarried couple to legally spell out their rights and obligations toward each other.

Cohabitation agreements can be useful when:

- one of the parties dies
- if the cohabitants decide to end their relationship
- in governing the affairs of the couple while living together

Generally, a cohabitation can be used to:

- State the couple is not married and should not be considered married
- How expenses are to be paid
- Who is responsible for what during the living arrangement?
- Who pays the lease or the mortgage?
- Will the couple share any financial accounts such as a joint checking account?
- Identifies assets and debts, and who owns them



WHAT ABOUT MEDICAL DECISIONS AND ESTATE PLANNING?

Couples also sometimes have concerns regarding estate planning and medical care. Generally, someone who lives with another is not considered an heir under the law and they do not have any rights to make medical decisions the way a legal spouse would.

If this is a concern, then you may want to consider in addition to a cohabitation agreement obtaining:

- estate planning and
- power of attorneys

COMMON LAW MARRIAGE IN TEXAS

The State of Texas is among those States that does recognize common law marriages. There is a legal standard that the relationship has to meet in order to be considered a common law marriage, however.

The Houston divorce attorneys with the Law Office of Bryan Fagan, PLLC have met with potential clients on many occasions where they were asked by a prospective client about this subject. You may be someone in a similar position to those prospective clients.

Maybe you've been served with divorce papers when you didn't even think you were married in the first place. Where can you go from here? Read on to find out more about common law marriage and its status in Texas.

WALKING THROUGH THE LEGAL REQUIREMENTS TO HAVE A VALID COMMON LAW MARRIAGE IN TEXAS

Marriage seems, at first glance, to be a pretty cut and dry subject. Either you are, or you aren't, married. Most folks don't forget about a marriage ceremony and taking the vows associated with such a ceremony. Common law marriage is a much looser concept and is one that a couple can essentially fall into if they're not paying attention.

In a consultation with a potential client, a woman asked one of our attorneys what it took to be common law married in Texas. The reason she was curious to find out was because she had just been served with divorce papers on the day before by a man she considered to be her live-in boyfriend.

Our attorney asked the woman if she and this man had lived together. She answered that yes, they had. Our attorney next asked the prospective client whether or not she and her "husband" had ever held each out as being married to another person.

Yes, was her response. Finally, she was asked if she agreed to be married to this man. To that question she said a resounding, "No". What did this mean for the fate of the "marriage"?

The Texas Family Code contains the statutory requirements for being common law married in Texas. Common law marriage is known as an Informal Marriage in Texas, but we can consider this institution under the more familiar of the two terms. Section 2.401 of the Texas Family Code holds that a common law marriage is one in which no formal marriage ceremony was held, no marriage license was obtained and the parties had:

- agreed to be married
- live together in Texas as husband and wife
- hold themselves out to others in Texas as husband and wife

Let's break down each of these requirements one by one.





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WE'RE HERE FOR YOU

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

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