

Explanation of Common Law Marriage

A. **Relevant Law:** In Georgia, a common-law marriage is established when requirements are met all at the same time [O.C.G.A. '19-3-1]. The requirements are:

1. **Parties able to marry.** To be able to contract marriage, a person must be of sound mind, be at least 16 years of age (or have parental consent or pregnant partner before 16), be unmarried, and not be marrying his or her parent or step-parent, child or stepchild, sibling or half-sibling, grandparent or grandchild, aunt, uncle, niece or nephew [O.C.G.A. '19-3-2; '19-3-3].
2. **An agreement to live together as husband and wife.** The agreement to marry must be a present agreement. If the two of you plan to marry in the future, you are **NOT** common-law married. To have a valid common-law marriage, there must be an agreement to be husband and wife immediately from the time when the mutual agreement is made [O.C.G.A. '19-3-4].
3. **The two parties living together (cohabitation).** [Case law relevant to O.C.G.A. '19-3-1].
4. **Must have been established prior to January 1, 1997 (OCGA 19-3-1.1).**

Therefore; to be common-law married, you and your common-law spouse must have been able to marry, agreed to be married, and lived together **all at the same time, prior to January 1, 1997.** Anything less is not a common-law marriage.

B. **Legal Effect of Common-Law Marriage:** A common-law marriage has the same legal effects as a ceremonial marriage. Children born of the marriage are legitimate and are the heirs of both parties. The parties have the right of inheritance from each other. Property acquired together becomes marital property. Probably most importantly, the common-law marriage must be dissolved by divorce the same as a ceremonial marriage. **There is no "common-law divorce."**

C. **Common-Law Spouse as Visitor:** To have your common-law spouse on your visitation list, you and your spouse must sign (before a notary public) the attached affidavits attesting that you are common-law married and you must return it to the intake counselor. You can see the counselor about having the affidavit notarized; your spouse can go to a bank, the courthouse, or just about any government building and find a notary public. The common-law spouse will not be added to your visitation list until the completed affidavits are on file.

You should be aware that the visitation list is usually expanded after the diagnostic period to include various relatives and other significant relationships. However, if you have a spouse, you may

not also have a boyfriend or girlfriend on the list.