

A GUIDE TO TEXAS “COMMON LAW” MARRIAGES

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The “common law” marriage, or as we call it in Texas, the informal marriage is an often misunderstood concept. In Texas there are two different types of marriage, a ceremonial marriage and an informal marriage. A valid ceremonial marriage requires compliance with the statutory requirements listed in the Family Code for obtaining a marriage license and participating in a marriage ceremony. An informal marriage has its own set of requirements. To have a valid informal marriage in Texas, the parties must 1) agree to be married; 2) live together in Texas as husband and wife; and 3) represent to others in Texas that they are husband and wife. Tex. Fam. Code §2.401(a)(2).

In order to have a valid informal marriage, all three of the requirements exist at the same time. *Ballesteros v. Jones*, 985 S.W.2d 485, 489 (Tex.App. – San Antonio 1998, pet. denied). So if a couple agrees to be married, but they do not tell anyone they are married, there is no informal marriage. A valid informal marriage also requires both parties to have the capacity to enter into a marriage. A party seeking to establish an informal marriage must demonstrate that she is legally capable of marriage. Capacity to enter into a valid informal marriage is similar to that of a ceremonial marriage. The parties must be 1) members of the opposite sex; 2) at least eighteen years of age; 3) not related as prohibited by Family Code §6.201; and not currently be married to someone else. See Tex. Fam. Code §§2.401(a),(c),(d) 6.201, 6.202.

An informal marriage begins when all of the statutory elements are concurrently satisfied in Texas and the parties have the capacity to marry. *Ballesteros* at 489. An informal marriage has the same legal effects as a ceremonial marriage. *Weaver v. State*, 855 S.W.2d 116. In *Weaver*, the court said that an informal marriage is given the same legal significance as a ceremonial marriage, including the privilege not to testify against the other spouse. *Id.*

A common misperception about informal marriage is that if one enters into an informal marriage, they are not required to obtain a divorce prior to entering into another marriage. This is untrue with a caveat. In order to obtain a divorce in an informal marriage, the divorce action must commence not later than one year after the date on which the relationship ended. *Mossier v. Shields*, 818 S.W.2d 752 (Tex. 1991). This caveat does not trap one in a marriage that they do not want to be in. It simply means that the person seeking the divorce cannot establish that there was ever an informal marriage, and therefore there is no cause to obtain a divorce. *Id.* A person must obtain a divorce from a valid informal marriage before they enter into another marriage. Failing to do so can open that person up to possible prosecution for bigamy. See *Hopson v. State*, 115 Tex. Crim. 260 (Tex. Crim. App. 1930). The moral of the story is that if you enter into an informal marriage and you want to marry someone else after the informal marriage ends, play it safe and obtain a divorce prior to getting remarried.