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Family Law Update

Family Law Myths: The Common Law Marriage

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If you ask someone the definition of common law marriage, you will most likely hear that a man and a woman who live together for seven years have a common law marriage. In Pennsylvania, this is not the true definition, yet for some inexplicable reason, this misconception persists. And because of it, many couples who choose to live together find themselves in the unintended circumstance of being married under Pennsylvania law, even after just a short while. This can be a surprise for couples who part ways and later find themselves in family court.

Most of our states have eliminated common law marriage because of the fear that it gives rise to the commission of various frauds. Pennsylvania, however, remains one of the last strongholds of common law marriage.

In Pennsylvania there are two kinds of marriages: (1) ceremonial; and (2) common law. A ceremonial marriage arises from a wedding performed by a religious or civil authority with the customary formality. Wedding services conducted by clergy, judges and ship captains are ceremonial marriages. A common law marriage is a marriage by express agreement of the parties without ceremony, and usually without witnesses, with words uttered by the man and woman with the intent of becoming husband and wife.

These words must be *verba de praesenti*, which means words spoken in the present tense with the present intent of becoming husband and wife. For example, the man and woman who say to each other in the privacy of their kitchen one evening, "I hereby take you as my husband/wife," enter a valid common law marriage if that is what they truly intended.

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But unmarried men and women who live together should not present themselves as husband and wife unless that is what they intend their relationship to be. Otherwise, they may possibly find themselves being sued in the Family Division for divorce.

(This of course assumes that there are no impediments to the marriage such as one party already being married.) Speaking such words is one way to create a common law marriage, but it is not the only way, and this is where the trouble begins.

A presumption of common law marriage also arises from certain conduct even without *verba de praesenti*. The presumption is based upon circumstantial evidence such as continuous cohabitation and a broad, general reputation as husband and wife. For example, if a couple lives together and holds themselves out as husband and wife, they may be considered married in Pennsylvania. They may hold themselves out as husband and wife by filing a joint tax return, by jointly titling real property as “husband and wife”, by naming each other as husband or wife beneficiaries on life insurance policies and retirement benefits, by naming each other as husband and wife for health insurance coverage and by generally referring to each other as husband and wife in the community.

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The relationship of marriage gives rise to legal obligations between spouses, such as the obligation for a spouse to pay support under certain circumstances. Marriage also vests in each spouse a share in the parties’ marital property, which may include IRA’s, pensions, 401K’s, bank accounts and other assets. If the cohabiting couple experiences a breakup and one of them files a divorce complaint, it will be up to the court to decide if they are in fact married. If they are, then the court will have jurisdiction to redistribute their assets. This can all be avoided by steering clear of conduct which may give rise to the presumption of a marriage.

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The information contained in Family Law Update is not meant to provide opinions or advice on specific legal matters. If you would like to consult with me on a specific issue, please call.

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