

COMMON LAW MARRIAGE IN MONTANA

Q: What is a common law marriage?

A: A common law marriage is a legally binding marriage that is formed without a license or solemnization (i.e., a formal ceremony). A common law marriage is treated the same as any other marriage.

Q: How do I form a common law marriage?

A: A common law marriage is formed when four conditions are met. First, the potential husband and wife are competent to be married. Second, the marital agreement is entered into by mutual consent. Third, there is cohabitation. Fourth, the couple has held themselves out to the public as husband and wife.

Q: Who is competent to be married?

A: Montana law sets out the requirements for competency, but the most common difficulties would be age (one party is too young), an existing marriage, or that the parties are of the same sex.

Q: How are common law marriages ended?

A: A common law marriage is ended the same as any other marriage: by divorce. For more information on divorce see the JAG handout "Divorce in Montana".

Q: How are common law marriages recorded?

A: A common law marriage is not required to be recorded. However, to better deal with various bureaucracies and organizations such as the Social Security Administration and banks, parties to a common law marriage can file a Declaration of Marriage without Solemnization with the clerk of the local district court. This would serve as the official record of the marriage.

Resources

Montana Courts, Common Law Marriage is recognized in the State of Montana,
http://courts.mt.gov/library/topic/common_law_marriage.mcp

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This handout is meant for informational purposes only and does not substitute for the advice of a competent attorney. The discussion of divorce in Montana is only a brief overview. Laws can and do change. If you would like to speak to an attorney, please call the Malmstrom Legal Office at 731-2878.