**THE MYTH:** There is a common misperception that if you live together for a certain length of time (seven years is what many people believe), you are common‐law married. This is not true anywhere in the United States.

**STATES THAT RECOGNIZE COMMON LAW MARRIAGE:**

Only a few states recognize common law marriages:

Alabama, Colorado, Georgia (if created before 1/1/97), Idaho (if created before 1/1/96), Iowa, Kansas, Montana, New Hampshire (for inheritance purposes only), Ohio (if created before 10/10/91), Oklahoma (possibly only if created before 11/1/98. Oklahoma's laws and court decisions may be in conflict about whether common law marriages formed in that state after 11/1/98 will be recognized.) Pennsylvania (if created before 1/1/05), Rhode Island, South Carolina, Texas, Utah, Washington D.C.

IF YOU LIVE IN A STATE THAT DOES RECOGNIZE COMMON LAW MARRIAGE: If you live in one of the above states and you "hold yourself out to be married" (by telling the community you are married, calling each other husband and wife, using the same last name, filing joint income tax returns, etc.), you can have a common law marriage (for more information on the specific requirements of each state, see next page). Common law marriage makes you a legally married couple in every way, even though you never obtained a marriage license. If you choose to end your relationship, you must get a divorce, even though you never had a wedding. Legally, common law married couples must play by all the same rules as "regular" married couples.

If you live in one of the common law states and don't want your relationship to become a common law marriage, you must be clear that it is your intention not to marry. The attorneys who wrote Living Together (additional information below) recommend an agreement in writing that both partners sign and date: "Jane Smith and John Doe agree as follows: That they've been and plan to continue living together as two free, independent beings and that neither has ever intended to enter into any form of marriage, common law or otherwise."

IF YOU LIVE IN A STATE THAT DOES NOT RECOGNIZE COMMON LAW MARRIAGE, there is no way to form a common law marriage, no matter how long you live with your partner. There is one catch: if you spend time in a state that does recognize common law marriage, "hold yourself out as married," and then return or move to a state that doesn't recognize it, you are still married (since states all recognize marriages that occurred in other states). However, this is murky legal territory and we don't recommend experimenting with it!

STATE‐BY‐STATE REQUIREMENTS TO FORM A COMMON LAW MARRIAGE:\*

**Alabama:** The requirements for a common‐law marriage are: (1) capacity; (2) an agreement to be husband and wife; and (3) consummation of the marital relationship.

**Colorado:** A common‐law marriage may be established by proving cohabitation and a reputation of being married.

**Iowa:** The requirements for a common‐law marriage are: (1) intent and agreement to be married; (2) continuous cohabitation; and (3) public declarations that the parties are husband and wife.

**Kansas:** For a man and woman to form a common‐law marriage, they must: (1) have the mental capacity to marry; (2) agree to be married at the present time; and (3) represent to the public that they are married.

**Montana:** The requirements for a common‐law marriage are: (1) capacity to consent to the marriage; (2) an agreement to be married; (3) cohabitation; and (4) a reputation of being married.

**Oklahoma:** To establish a common‐law marriage, a man and woman must (1) be competent; (2) agree to enter into a marriage relationship; and (3) cohabit.

**Pennsylvania:** A common‐law marriage was established if, before 1/1/2005, a man and woman exchanged words that indicated that they intended to be married at the present time and they also held themselves out to the community as married (introducing each other as husband and wife, filing joint taxes, etc.).

**Rhode Island:** The requirements for a common‐law marriage are: (1) serious intent to be married and (2) conduct that leads to a reasonable belief in the community that the man and woman are married.

**South Carolina:** A common‐law marriage is established if a man and woman intend for others to believe they are married.

**Texas:** A man and woman who want to establish a common‐law marriage must sign a form provided by the county clerk. In addition, they must (1) agree to be married, (2) cohabit, and (3) represent to others that they are married.

**Utah:** For a common‐law marriage, a man and woman must (1) be capable of giving consent and getting married; (2) cohabit; and (3) have a reputation of being husband and wife.

**Washington, D.C.:** The requirements for a common‐law marriage are: (1) an express, present intent to D.C. be married and (2) cohabitation.

1. Explain the difference between “common law marriage” and a statutory marriage.
2. Find the requirement to create a marriage in Alabama. Does Alabama recognize common law marriages? If they do, what is required to be married at common law?
3. If a person were severely mentally handicapped and fit all other cohabitating criteria, could they have a common law marriage in South Carolina? What about in Oklahoma?
4. What states indicate that each person must be competent in order to have a common law marriage?
5. What states, if any, do not indicate that you must cohabitate in order to receive a common law marriage?
6. If you lived in Pennsylvania with your significant other and on May 5, 2005 they asked you if they could start calling you their husband/wife, would you be able to have a common law marriage? Why or why not?
7. If a couple wanted to separate, would it be better to be in a statutory marriage, common-law marriage, or would neither be easier? Why or why not?