Common Law Marriage

Trainee Handout

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Objectives

* Distinguish the characteristics that constitute the concept of a common law marriage.
* Interpret the legal requirements to establish a common law marriage.
* Understand circumstances surrounding the validity of a common law marriage based on location.
* Identify requirements to develop the evidence necessary to establish a common law marriage.
* Determine a course of action when a common law marriage issue is ready for resolution.

References

* [38 CFR 3.52](http://www.ecfr.gov/cgi-bin/text-idx?SID=45248949f8fc4d77b8cdc3740d93de0a&mc=true&node=pt38.1.3&rgn=div5#se38.1.3_152), Marriages Deemed Valid
* [38 U.S.C. 103(a)](https://www.law.cornell.edu/uscode/text/38/103), Special Provisions Relating to Marriages
* [M21-1, Part III, Subpart iii, Chapter 5, C](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000015795/M21-1-Part-III-Subpart-iii-Chapter-5-Section-C-Establishing-Common-Law-Marriages), Establishing Common Law Marriages

Topic 1: Legal Requirements

**Common Law Marriage Characteristics**

A Common Law Marriage is:

* Entered into by an agreement of the parties.
* Without registration with any governmental entity.
* Usually without a formal ceremony.

Some jurisdictions provide for registration of informal marriages, and if so, a copy of the document registering the informal marriage may be accepted to establish the marriage from the date it was registered.

**Criteria of a Valid Marriage**

Basic criteria for a Valid Marriage:

* Must be valid where the marriage took place, or
* Must be valid under the law of the place where the parties resided when the right to benefits accrued.

Additional defining criteria for a Valid Marriage:

* Prior marriages were terminated.
* Record of date and place any prior marriages began and ended.
* Record of social security number of spouse.
* Record of date of birth of spouse.

NOTE: Per VBA Letter 20-15-16, Administration of Same-Sex Spousal Benefits, in accordance with the U.S. Supreme Court decision in Obergefell v. Hodges, the marriage does not have to be between persons of the opposite sex to be valid.

**Established in Jurisdiction**

Once a Common Law Marriage is established in a jurisdiction recognizing such marriages:

* Valid in all respects; no different than a ceremonial marriage.
* Must be terminated through same means as ceremonial marriage:
	+ Divorce (standard legal divorce)
	+ Death of one of the marriage partners, or
	+ Annulment.
* Once established it will continue to be valid even if the parties move to a jurisdiction that does not recognize common law marriages.

Legal Requirements

Specific legal requirements for establishing a common law marriage vary from jurisdiction to jurisdiction. Basic elements for establishment regardless of jurisdiction include:

* Agreement between the parties to be married
* Cohabitation
* Holding out to the public as married

Evidence of Legal Requirements

It is necessary to have affidavits or certified statements of one or both of the parties to the marriage, if living, setting forth all the facts and circumstances. The facts and circumstances must include the following:

* Agreement between parties at beginning of their cohabitation.
* Period of cohabitation.
* Places and dates of residences.
* Whether children were born as a result of the relationship.

**Agreement between the Parties**

The agreement is usually explicit, but it can also be inferred from the actions of the parties.

When considering evidence, be aware that the statement of one of the parties that there was no agreement to be married is not necessarily conclusive, especially when:

* The statement is self-serving.
* There is conflicting evidence.

**Cohabitation**

The parties actually lived together for some period of time.

**Holding Out to the Public as Married**

The parties represented themselves to members of the community as spouses. It is not necessary for the parties to have used the same last name. This can be established by:

* Statements of persons in the community who knew the parties as spouses, and
* Documents which show that the parties represented themselves as married.

**Documentation**

Evidence that may prove parties held themselves out to the public as married include:

* Lease agreements
* Joint bank statements
* Utility bills
* Tax returns
* Insurance forms
* Employment records
* Other documents requiring marital status

**Affidavit/Certified Statements**

In jurisdictions where marriages other than by ceremony are recognized, affidavits or certified statements of one or both of the parties to the marriage, if living, setting forth all the facts and circumstances concerning the alleged marriage are required.

The facts and circumstances required include:

* the agreement between the parties at the beginning of their cohabitation
* the period of cohabitation
* the places and dates of residences, and
* whether children were born as a result of the relationship.

**Supplemental Evidence**

Affidavits or certified statements from two or more persons who know, as the result of personal observation, the relationship that existed between the parties of the alleged marriage, should include:

* Periods of cohabitation
* Places of residence
* Whether the parties held themselves out publicly as spouses
* Whether the parties were generally accepted as married in the communities in which they lived

Topic 2: Development and Decision

**Common Law Marriages by Location**

The table located in [M21-1, Part III, Subpart iii, Chapter 5, C.3.a](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034), provides the status of common law marriages in each state and Puerto Rico.

In order to be recognized, the marriage must have been established before the date listed in the table.

To determine the validity of common law marriages outside the U.S., follow the instructions listed in [M21-1, Part III, Subpart iii, Chapter 5, C.4.a](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034).

**Common Law Marriages Not Recognized – Live Veterans**

If the parties to a claimed common law marriage have lived only in jurisdictions that

* Do not currently recognize common law marriages, and
* have not recognized common law marriages since the time of the inception of the parties’ cohabitation,

then deny the claim based on lack of a marital relationship without submission for a legal opinion, and prepare an administrative decision.

**Common Law Marriages Not Recognized – Surviving Spouse**

In [VAOPGCPREC 58-91](http://www.va.gov/ogc/docs/1991/PREC_58-91.doc), the General Counsel held that lack of residence in a jurisdiction recognizing common law marriages is not a bar to establishing a common law marriage for a surviving spouse claimant.

If a surviving spouse does not live in a jurisdiction recognizing common law marriages, the marriage can still be "deemed valid" under [38 CFR 3.52](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_52.htm). Per [M21-1, Part III, Subpart iii, 5.C.5.c](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034), use the following steps to establish a common law marriage:

|  |  |
| --- | --- |
| Step | Action |
| 1 | * Develop for evidence to establish the common law marriage, and
* Secure the surviving spouse’s statement as to
* Whether he/she was aware that common law marriages were not recognized in the jurisdiction where the parties resided, and
* The reasons for this understanding.
 |
| 2 | Determine whether the claimant without knowledge of the impediment to the marriage based on * the statement submitted by the claimant, and
* any other evidence of record.
 |
| 3 | Conduct a full inquiry, if necessary, as required by [38 U.S.C. 103(a)](http://www.gpo.gov/fdsys/pkg/USCODE-2011-title38/pdf/USCODE-2011-title38-partI-chap1-sec103.pdf).For more information on VA’s ability to conduct an inquiry, see [VAOPGCPREC 58-91](http://www.va.gov/ogc/docs/1991/PREC_58-91.doc) and United States Court of Appeals for Veterans Claims (CAVC) decision [Colon v. Brown](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmc), No. 94-71  |
| 4 | Weigh the evidence submitted both as to its value in providing proof and credibility.  |
| 5 | Are all of the following requirements met?* It is determined that the claimant did not know of the impediment to the marriage.
* All other requirements of a deemed valid marriage are satisfied.
* All the elements of a common law marriage are present.
* **If Yes**
* Recognize the common law marriage, and
* Prepare an administrative decision
* **If No**
* Reject the alleged common law marriage, and
* Prepare an administrative decision.
 |

**When to Develop for Common Law Marriage**

Develop to establish a common law marriage if the claimant:

* Alleges a common law marriage, or
* Is unable to establish a claimed ceremonial marriage and there is evidence that the parties lived together in a jurisdiction recognizing common law marriages.

**How to Develop for Common Law Marriage**

Per [M21-1, Part III, Subpart iii, 5.C.2.b](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034), follow the table below for the necessary evidence needed.

|  |  |
| --- | --- |
| If the case being developed is a… | Then send the… |
| live case | * Veteran
* VA Form 21-4138, *Statement in Support of Claim*, to request concerning the claimed marital relationship
* Two copies of VA Form 21-4171, *Supporting Statement Regarding Marriage*, to be completed by two persons who know, as the result of personal observation, the relationship that exists or existed between the parties, and
* A request for a copy of each child’s birth certificate if children were born from the marriage, and
* Claimed spouse, VA Form 21-4170, *Statement of Marital Relationship*.
 |
| death case | The claimant* VA Form 21-4170 for completion
* Two copies of VA Form 21-4171 to be completed by two persons who know, as the result of personal observation, the relationship which existed between the parties, and
* A request for a copy of each child’s birth certificate if children were born from the marriage.
 |

Use Modern Award Processing-Development (MAP-D) to send a development letter to the Veteran or claimant requesting the above evidence. However, once the Veterans Benefits Management System (VBMS) is equipped with dependency development letters, send development letters using VBMS.

**NOTE:** Upon receipt of birth certificates, confirm that the names of both parties of the claimed common law marriage are on each birth certificate.

**Establishing a Common Law Marriage Against the Claimant's Will**

A claimant and his or her spouse may

* live together in a jurisdiction recognizing common law marriages under circumstances meeting requirements for a common law marriage, and
* Choose not to recognize or report the marriage because the spouse has income or net worth that would adversely affect entitlement to benefits.

**Important:** The marriage must be established if it, in fact, exists.

**Claimant’s Statement Refuting Common Law Marriage**

The claimant’s statement that there is no agreement to be married is one piece of evidence to consider in determining whether a common law marriage exists.

However, the statement may be contradicted by other evidence, such as evidence that the claimant held himself or herself out publicly as the spouse of the other person.

**Establishing Common Law Marriage Against Claimant’s Will**

To determine whether a common law marriage is in force when disavowed by the claimant:

* Request a field examination, if necessary.
* Initiate complete development if:
	+ Evidence indicates a common law marriage exists, and
	+ Establishing the marriage would adversely affect entitlement to benefits.
	+ Evaluate the evidence received.

Prepare an administrative decision to recognize or reject a common law marriage on the merits.

**Making a Decision**

When the issue of a common law marriage is resolved, favorably or unfavorably, prepare a two-signature administrative decision using the format in [M21-1, Part III, Subpart v, 1.A.3](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034).

The decision must:

* Clearly articulate the evidence considered
* Discuss the comparative weight assigned to each piece of evidence.
* Provide an evaluation of the credibility of the evidence, and
* Discuss the reason VA rendered that decision.

**Required Decision: Favorable or Unfavorable**

If the decision establishes a common law marriage, the issue of the decision is "deemed valid common law marriage."

Unlike some other administrative decisions, a deemed valid marriage decision **must** be made regardless of whether the outcome is favorable or unfavorable.

No administrative decision is required if the claim was denied for failure to furnish requested evidence.

**NOTE:** If the issue of common law marriage arises in conjunction with a contested claim, continuous cohabitation, or a deemed valid marriage it is permissible to use one decision to address all issues simultaneously.

Attachment A: Legal Requirements - Check Comprehension

Instructions: Match the term on the left with the correct definition or description on the right. A term may have more than one correct response.

|  |  |
| --- | --- |
| **Terms** | **Definitions/Descriptions** |
| 1. Common Law Marriage
2. Basic Legal Requirements to establish Common Law Marriage
3. Evidence of Legal Requirements
4. Holding Out to the Public as Married
5. Agreement Between the Parties
6. Cohabitation
 | 1. Agreement between parties/cohabitation/Holding out to public.
2. Affidavits or certified statements.
3. Agreement of both parties; without registration with government.
4. Statements of those who knew them as husband and wife.
5. Living together continuously.
6. Usually explicit, but it can also be inferred from the actions of the parties.
7. Usually without a formal ceremony.
 |

1. Common Law Marriage \_\_\_\_\_\_\_\_
2. Basic Legal Requirements to establish Common Law Marriage \_\_\_\_\_\_\_\_
3. Evidence of Legal Requirements \_\_\_\_\_\_\_\_
4. Holding Out to the Public as Married \_\_\_\_\_\_\_\_
5. Agreement Between the Parties \_\_\_\_\_\_\_\_
6. Cohabitation \_\_\_\_\_\_\_\_

Attachment B: Exercise - Legal Requirements

Instructions: Answer the following questions.

1. Describe the concept of a “Common Law Marriage”?

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1. What are the characteristics of common law marriages that are recognized by a governmental jurisdiction?

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1. What are the basic legal requirements for establishing a common law marriage?

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1. What should a VSR be concerned with when considering evidence of an “Agreement between Parties”?

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1. How can it be established that parties in a common law marriage represented themselves to others publically?

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Attachment C: Exercise - Development and Decision

Instructions: Answer the following questions.

1. What reference is used to determine lists the validity of a common law marriage, by location, within each of the states?

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1. What are the three forms used to develop for common law marriage for a living Veteran?

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1. What are the two forms used to develop for common law marriage in a death case?

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1. What are the steps to determine if a surviving spouse that does not live in a jurisdiction recognizing common law marriages has a "deemed valid" case?

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1. When would you initiate a complete development in determining whether a common law marriage exists when disavowed by the claimant?

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Practical Exercise

1. What are the three legal requirements for establishing a common law marriage?

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1. What happens to the validity of common law marriage established in one jurisdiction if the couple moves to a location where common law marriages are not recognized?

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1. If a claimant submitted a copy of an application for a grocery store bonus card as a document which shows that the parties represented themselves as married does this qualify as evidence? Why or why not?

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1. When is a common law marriage recognized in Arkansas?

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1. Lisa and Bart’s common law marriage began in Italy in July 1952. Would this be recognized? Why or why not?

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1. Brent, the Veteran, is filing a claim for pension and reports that he has been living with Sabrina since 1985, but does not indicate his marital status. He does not report her income or net worth, but indicates that she is employed. A review of CAPRI records lists her as his wife and a copy of his bank statement has her name on it. You review the application and process the case to grant pension benefits. After all, Brent says they are only living together.

Was this case developed correctly? Why?

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1. In Pittsburgh, Pennsylvania, in February 1999, William began living with Aurora as husband and wife. Neither individual was married before and they have been living together as spouses since 1999. A co-worker of William’s and a neighbor of the couple both submitted statements indicating that William and Aurora present to the community as husband and wife.

Is the administrative decision favorable or unfavorable and why?

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1. Sharon and Bryan met in college in Colorado. After graduation, Bryan moved to Virginia for work and three years later, after completing her military service, Sharon moved to Virginia. In March of 1987 Bryan asked Sharon to move in with him and they hold themselves out publicly as married. They lived together in Virginia until Sharon’s death in 2008. Bryan files an application for death pension and writes the following on his application:



What do you do and why?

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