**COMMON LAW MARRIAGE INSTRUCTOR LESSON PLAN TIME REQUIRED: 3.25 HOURS**

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| LESSON DESCRIPTION | |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. | |
| **TMS #** | 1197946 |
| **PREREQUISITES** | Prior to this lesson, the Veteran Service Representatives (VSRs) should have 24 months of VSR experience. Trainees should also have completed VSR Challenge. |
| **TIME REQUIRED** | 3.25 hour |
| **MATERIALS/ TRAINING AIDS** | Lesson materials:   * Common Law Marriage PowerPoint Presentation * Common Law Marriage Trainee Handouts |
| **TRAINING AREA/TOOLS** | The following are required to ensure the trainees are able to meet the lesson objectives:   * Classroom or private area suitable for participatory discussions * Seating, writing materials, and writing surfaces for trainee note taking and participation * Handouts, which include a practical exercise * Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials * Computer with PowerPoint software to present the lesson material   Trainees require access to the following tools:   * VA LMS to complete the assessment |

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| **PRE-PLANNING** | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session. * Become familiar with the content of the trainee handouts and their association to the Lesson Plan. * Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson. * Ensure that there are copies of all handouts before the training session. * When required, reserve the training room. * Arrange for equipment such as flip charts, an overhead projector, and any other equipment (as needed). * Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson. * This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins. |
| **TRAINING DAY** | * Arrive as early as possible to ensure access to the facility and computers. * Become familiar with the location of restrooms and other facilities that the trainees will require. * Test the computer and projector to ensure they are working properly. * Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly. * Make sure that a whiteboard or flip chart and the associated markers are available. * The instructor completes a roll call attendance sheet or provides a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers. |

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| INTRODUCTION TO COMMON LAW MARRIAGE | |
| **INSTRUCTOR INTRODUCTION** | Complete the following:  Introduce yourself   * Orient learners to the facilities * Ensure that all learners have the required handouts |
| **TIME REQUIRED** | 15 minutes |
| **PURPOSE OF LESSON**  *Explain the following:* | This lesson is intended to increase the trainees understanding of marriage relationships for VA purposes in order to determine requirements for a Common Law Marriage decision. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * Legal requirements * Development and decision |
| **LESSON OBJECTIVES**  *Discuss the following:*  *Slide 2*  *Handout 2*  *Explain the following:* | In order to accomplish the purpose of this lesson, the VSR will be required to accomplish the following lesson objectives.  The VSR will be able to:   * 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.   Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed. |

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| **MOTIVATION** | VAOPGCPREC 58-91 requires the applicant know if there is a “legal impediment” to the common law marriage. The following case is a good example.  A widow applied for the death pension benefits of her deceased Veteran spouse. Her application provided all the required information (her full name, Social Security Number, Date of birth, date of marriage, income as none, and no children). However, a marriage license was lacking and she indicated that she had always used her maiden name. She stated that although they never had a formal wedding they had met 10 years ago, fallen in love, and lived together as husband and wife.  Typical Common Law Marriage Problem - the state they choose to live in recognized common law marriage. Review of the Veteran’s claim folder revealed he was in receipt of non-service-connected pension at a single Veteran rate. He had no dependents and zero income.  The VSR set up development by asking for the standard evidence. VA Forms 21-4170 and 21-4171 were sent. The widow complied with all documents requested. She provided a statement wherein she stated they lived a happy life together. Inpatient hospitalization at the local VAMC was the only time they were not together. She had no income the entire period her and the Veteran lived together as she stated she was the homemaker of the relationship.  She provided an apartment lease and utility bills in both names as well as a bank letter showing a joint checking account. She also provided a handwritten letter indicating she did not know the local laws pertaining to their marriage. She stated that during the last month of the Veteran’s life, they had a civil ceremony in City Hall so she could have his name.  The state in which they resided recognized common law marriage for individuals that lived together for 7 consecutive years and held themselves out to the public as married.  The VSR prepared the Decision and held the claimant and the Veteran were married by virtue of common law marriage.  This lesson is designed to provide you with the knowledge, skills, and abilities to understand the issues related to Common Law Marriage, the knowledge to properly develop the claim, and to render fair and impartial decisions based on the law and the facts and evidence presented. | | |
| **STAR ERROR CODE(S)** | The Systematic Technical Accuracy Review (STAR) Program reviews cases and considers them either “accurate” or “in error” for the purpose of measuring technical accuracy.  Common errors will include whether   * the issue of whether common law marriage was addressed * all necessary development was completed * the final determination listed and discussed pertinent evidence, the basis of the determination was explained, and required signatures acquired * the notification of the determination was correct, sent, and included all necessary information and appeal rights.     The STAR code errors are as follows:  A2, B2, C1, E1, E2, FI, F2, F3, F4, and G1 | | |
| **REFERENCES**  *Slide 3*  *Handout 3* | | Explain where these references are located in the workplace.   [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, Section 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 |

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| TOPIC 1: LEGAL REQUIREMENTS | |
| **INTRODUCTION** | This topic will allow the trainee to gain a basis of understanding for common law marriage’s definitive characteristics and legal significance. |
| **TIME REQUIRED** | 45 minutes |
| **OBJECTIVES/ TEACHING POINTS** | Topic objectives:   * Distinguish the characteristics that constitute the concept of a common law marriage. * Interpret the legal requirements to establish a common law marriage.   The following topic teaching points support the topic objectives:   * Common law marriage characteristics * Criteria of a Valid Marriage * Established in jurisdiction * Legal requirements * Evidence of legal requirements * Agreement between the parties * Cohabitation * Holding out to the public as married * Documentation * Affidavits/certified documents * Supplemental evidence |
| **Common Law Marriage Characteristics**  *Slide 4*  *Handout 4* | 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 in this case, 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**  *Slide 5*  *Handout 4* | Basic criteria for a Valid Marriage includes:   * 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 includes:   * Prior marriages were terminated * Record of date and place any prior marriages ended * Record of social security number of spouse * Record of date of birth of spouse |
|  | Refer trainees to [38 CFR 3.1(j)](http://www.ecfr.gov/cgi-bin/text-idx?SID=56148ef4ce03b0811b3150d085311bcf&mc=true&node=pt38.1.3&rgn=div5#se38.1.3_11) for additional information regarding valid marriage. |
| **Established in Jurisdiction**  *Slide 6*  *Handout 4* | Once a Common Law Marriage is established in a jurisdiction recognizing such marriages, the marriage:   * Is 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 * Will continue to be valid even if the parties move to a jurisdiction that does not recognize common law marriages | |
| **Legal Requirements**  *Slide 7*  *Handout 4* | 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**  *Slide 8*  *Handout 5* | 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**  *Slide 9*  *Handout 5* | The agreement between the parties 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**  *Slide 10*  *Handout 5* | The parties actually lived together for some period of time. | |

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| **Holding Out to the Public as Married**  *Slide 11*  *Handout 5* | The parties represented themselves to members of the community as spouses. It is not necessary 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. |
|  | **NOTE:** Inform the trainees that affidavits, certified statements, and documentation should be considered when making a decision under “holding out to the public as married.” |
| **Documentation**  *Slide 12*  *Handout 5* | 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 |
| **Affidavits/Certified Statements**  *Slide 13*  *Handout 6* | 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**  *Slide 14*  *Handout 6* | 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 |

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| **EXERCISE**  *Handout 13* | Refer trainees to Attachment B: Exercise - Legal Requirements. Allow the trainees 10 minutes to answer the questions and then discuss the correct answers. |

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| TOPIC 2: DEVELOPMENT AND DECISION | |
| **INTRODUCTION** | This topic will build information presented in Topic 1 and will allow the trainee to interpret the circumstances, identify evidence and determine a course of action for resolution of a common law marriage issue. |
| **TIME REQUIRED** | 45 minutes |
| **OBJECTIVES/ TEACHING POINTS** | Topic objectives:   * 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.   The following topic teaching points support the topic objectives:   * Common law marriages by location * Common law marriage not recognized – live veterans * Common law marriage not recognized – surviving spouse * When to develop for a common law marriage * How to develop for a common law marriage * Establishing a common law marriage against the claimant's will * Making a decision * Required decision: favorable or unfavorable |
| **Common Law Marriages by Location**  *Slide 15*  *Handout 7* | The table located in [M21-1, Part III, Subpart iii, Chapter 5, Section 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, Section C.4.a](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?portalid=554400000001034). |
| **Common Law Marriage Not Recognized – Live Veterans**  *Slide 16*  *Handout 7* | 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. |

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| **Common Law Marriages Not Recognized – Surviving Spouse**  *Slide 17*  *Handout 8* | | 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 [M21-1, Part III, Subpart iii, Chapter 5, Section C.5.c](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#16). 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)](https://www.law.cornell.edu/uscode/text/38/103).  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**  *Slide 18*  *Handout 9* | | 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**  *Slides 19-20*  *Handout 9* | Per [M21-1, Part III, Subpart iii, Chapter 5, Section 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. |   Explain that until the Veterans Benefits Management System (VBMS) is equipped with dependency development letters, to use Modern Award Processing-Development (MAP-D) to send a development letter to the Veteran or claimant requesting the above evidence. Use VBMS once it is equipped with dependency development letter functions.  **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**  *Slide 21*  *Handout 10* | 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. | | |
| *Slide 22* | 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. | | |
| *Slide 23* | 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 is received that a common law marriage exists, and * Establishing the marriage would adversely affect entitlement to benefits, and * Evaluate the evidence received.   Prepare an administrative decision to recognize or reject a common law marriage on the merits. | | |
| **Making a Decision**  *Slides 24-25*  *Handout 11* | | 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, Chapter 1, Section A.3](http://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014216/M21-1-Part-III-Subpart-v-Chapter-1-Section-A-General-Information)  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. |

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| **Required Decision: Favorable or Unfavorable**  *Slides 26-27* | 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. |

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| *Check comprehension*  *Handout 14* | Ask the trainees 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?   **Response:** M21-1, Part III, Subpart iii, Chapter 5, Section C.3.a   1. What is the procedure for a live case, where the parties only lived in jurisdictions that have not recognized common law marriages since the time they began cohabitation?   **Response:** Complete an administrative decision in accordance with M21-1, Part III, Subpart iii, Chapter 5, Section C.5.a and deny the claim.   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?   **Response:**   * 1. Develop for evidence to establish the common law marriage (includes surviving spouse's statement).   2. Determine whether claimant was without knowledge of the impediment.   3. Conduct a full inquiry, if necessary   4. Weigh evidence both as to value in providing proof and credibility.   5. Ensure all requirements are satisfied.  1. When do you develop to establish a common law marriage?   **Response:** If the claimant alleges a common law marriage, or is unable to establish a claimed ceremonial marriage and evidence that parties lived together in a jurisdiction recognizing common law marriages.   1. How do you determine whether a common law marriage exists when disavowed by the claimant?   **Response:**   * Request a field examination, if necessary * Initiate complete development if   + Evidence is received that a common law marriage exists, and   + Establishing the marriage would adversely affect entitlement to benefits, and * Evaluate the evidence received. * Prepare an administrative decision. |
| **EXERCISE**  *Handout 14* | Refer trainees to Attachment C: Exercise - Development and Decision. Allow the trainees 10 minutes to answer the questions and then discuss the correct answers. |

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| PRACTICAL EXERCISE | |
| **TIME REQUIRED** | 45 minutes |
| **EXERCISE**  *Handout 15* | Explain to the trainees that this exercise will require them to answer questions as well as interpret circumstances and factual evidence to determine a common law marriage administrative decision.  Review the correct responses to the exercise and discuss any incorrect responses.  Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |

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| LESSON REVIEW, ASSESSMENT, AND WRAP-UP | |
| **INTRODUCTION**  *Discuss the following:* | The Common Law Marriage lesson is complete.  Review each lesson objective and ask the trainees for any questions or comments. |
| **TIME REQUIRED** | 45 minutes |
| **LESSON OBJECTIVES** | You have completed the Common Law Marriage lesson.  The trainee should be able to:   * 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. |
| **ASSESSMENT** | The assessment will allow the participants to demonstrate their understanding of the information presented in this lesson.  Allow the trainees 30 minutes to complete the online assessment. |