

# Common Law Marriage - It May Be More Involved Than What You Think

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## Overview

A minority of states along with the District of Columbia recognizes common-law marriages. But, even in these states, it's not enough to just simply live together for a certain amount of time. That's a common misconception.

Common law marriage – it's the topic of today's post.

## Background

Whether a couple is in a common law marriage can be an important issue when it comes to inheritance rights, spousal rights in land, and liabilities for a spouse's debts, among other issues. That makes it important to know the requirements for a common law marriage. One common requirement of a common law marriage in the state's that recognize the concept is that the couple must hold themselves out to the public as married persons. There are various ways that can be done, including using the same last names and filing joint tax returns. Each state that recognizes common-law marriage sets forth certain tests that must be followed to establish the relationship.

## Kansas Cases

The issue of whether a common law marriage existed has been litigated in two recent Kansas cases. These cases follow another Kansas case on the issue in 2010.

***In re Marriage of Dyche, No. 97,639, 2008 Kan. Unpub. LEXIS 508 (Kan. Ct. App. Aug. 8, 2008); related proceeding at Beat v. United States, 742 F. Supp. 2d 1227 (D. Kan. Aug. 2010), recon. den., No. 08-1267-JTM, 2010 U.S. Dist. LEXIS 114139 (D. Kan. Oct. 26, 2010); further opinion at No. 08-1267-JTM, 2011 U.S. Dist. LEXIS 40501 (D. Kan. Apr. 12, 2011).***

In Kansas, a couple must satisfy three requirements to be in a common law marriage – 1) they must have the capacity to marry; 2) they must agree to be married and represent to the public that they are married. The first two tests typically aren't difficult to establish, but the third one – a public representation of the marital relationship – is more difficult.

In this case, a Kansas farmer died in 2001, leaving his entire multi-million-dollar estate to his partner (Theresa Beat) who claimed she was the decedent's common-law wife. They had been in a "relationship" for over twenty years beginning at a time that they were both married to other persons. She was named the executor and claimed a 100 percent marital deduction on the decedent's federal estate return and Kansas inheritance tax returns for the entire value of the estate. That wiped out tax at both the federal and state levels. But both the IRS and the Kansas Department of Revenue



(KDOR) disagreed with her characterization as the decedent's common-law wife. If she was not the decedent's spouse at the time of his death, then the estate could not claim any marital deduction with the result that a substantial amount of tax would be due at both the federal and state levels – with interest and penalties.

In 2005, the “widow” filed a motion with the county trial court, seeking a determination that she was the common-law wife of the decedent. She claimed that they had been “married” for 20 years, had a monogamous relationship and held themselves out in the community as being married. She stated that she even wore his ring for most of the “marriage.” There was no question that they had the capacity to marry after they each were divorced from their respective spouses and the statutory waiting period for a subsequent marriage had expired. But the IRS and KDOR claimed that they had substantial evidence that there was no valid common-law marriage. Also, the KDOR pointed out that the “wife” failed to exhaust administrative remedies by prematurely filing suit with the trial court. The KDOR claimed it had primary jurisdiction to determine marital deduction issues. The IRS also intervened and got the case removed to federal court. The court granted the IRS' motion to dismiss for a lack of subject matter jurisdiction because the court determined that it did not yet have the authority to rule on the “wife's” pre-enforcement allegations for her failure to exhaust administrative remedies. The court remanded the case to the local trial court for a determination of all other issues.

In July 2006, the “widow” submitted 165 paragraphs of “uncontroverted facts” asserting her status as common-law wife. She also submitted a wealth of affidavits, deposition testimony and other exhibits to prove her status as a common-law wife. The court found several “facts” compelling, including the exchange of rings. Additionally, the decedent's daughters referred to the “wife” as their stepmother, the community considered them a couple, the decedent referred to her as his “old-lady,” and he also identified her as “next of kin” on several important documents. The couple established a successful farming business in which they worked together every day. There was additional evidence presented indicating that the couple even went on a “honeymoon” in Hutchinson, Kansas, where the couple agreed to be common-law married at a restaurant and he “carried her over the threshold” of their motel room. But, she couldn't the specific date of the “honeymoon.”

The IRS and KDOR moved for dismissal of the case alleging that the couple identified themselves as “single” on several land deeds, filed separate income tax returns, and filed for social security benefits as single individuals. The decedent's ex-wife also testified that she rarely heard her ex-husband refer to his new friend as his “wife” and that the rings were never referred to as wedding bands. Additionally, the decedent intentionally prepared his will as a single person and indicated on his children's application for college aid that he was unmarried.

In a procedural determination, the trial court struck her “affidavit of uncontroverted facts” as not having been properly submitted. On motions of the state and federal government for summary judgment, the court set forth 138 factual findings based upon their assessment of the pleadings and other evidence. The court granted the motions, stating that the parties put “different spins on the same set of facts.” The court stated that there were not enough “controverted” facts for the case to proceed to trial.



The trial court set forth the three essential elements to establish a common-law marriage in Kansas – (1) the parties must have the capacity to marry; (2) the parties must mutually agree to be presently married; and (3) the parties must mutually hold themselves out to the public as husband and wife. The trial court stated that her evidence was purely subjective and there was not enough verifiable evidence that the couple had established a common-law marriage. The court concluded that the parties did have the capacity to marry, but there was no mutual agreement to marry. The only direct evidence of an agreement to marry was her testimony regarding the Hutchinson “honeymoon.” However, there was no supporting evidence offered to establish that the couple really had a “present agreement” to marry. As to the third element, the trial court found that the parties never signed any documents representing that they were a married couple. Probably the most damaging evidence cited by the IRS and KDOR was that the decedent executed his will as a single person and refused to refer to her as his wife. Despite his attorney’s suggestions that they formalize the marriage, the decedent indicated that he left the plaintiff with enough assets to cover any estate tax or inheritance liability. The court went so far as to state the “widow” completely failed to prove a common-law marriage.

On appeal, the appellate court disagreed with the trial court’s granting of the motion for summary judgment in favor of IRS and KDOR. They found that there was a “considerable amount of evidence” that should have been weighed by the judge or a jury. In essence, the appellate court held that the determination of the existence of a common-law marriage was a fact question to be determined by a jury. One of these “problems” with the trial court’s determination was that there was (according to the appellate court) ample evidence to suggest that the couple held themselves out as a married couple. The appellate court went on to state that even though a couple never tells any member of his or her family or the public that they are actually married, that does not necessarily preclude a common-law marriage in Kansas. The appellate court believed that there were other factual indications that the couple held themselves out to the public as husband and wife.

Finally, the appellate court determined that the trial court improperly weighed the evidence in favor of the KDOR and IRS. The appellate court determined that the trial court utilized “objective” evidence and, as such, improperly “weighed” the evidence during the summary judgment motions. In the appellate court’s view, a weighing of the evidence should only have taken place during a trial. On remand, the sole issue before the trial court was whether the couple had established a common-law marriage. The matter of an estate tax refund was not ripe because the decedent’s estate had not yet filed a claim for refund.

On the later tax refund action back in federal court, the court was unimpressed by the “widow’s” arguments. Indeed, the court noted that a rational factfinder could conclude that no common-law marriage existed and that the evidence supporting a common-law marriage was so lacking that her estate tax refund claim could be considered fraudulent. The court noted that the decedent and the “widow” went to great lengths to conceal their relationship from family and neighbors. The court also determined that the doctrine of consistency should be applied – for over two decades they represented themselves to the IRS on their federal tax returns that they were *not* married. Accordingly, the court denied her motion for a refund of estate tax based on the marital deduction.



But, at a later trial in the federal court on the issue of whether a common-law marriage existed, the jury determined that a common law marriage *had been established*. The IRS had claimed that she owed \$1.4 million in estate tax, another \$1 million for fraud and \$434,000 in interest associated with tax liabilities. On further review, the court allowed the deduction for interest expense and ordered a refund of interest on an assessed fraud penalty.

***In re Common-Law Marriage of Heidkamp, No. 125,617, 2023 Kan. LEXIS 13 (Kan. Sup. Ct. Mar. 31, 2023)***

In this case, the plaintiff sought a judicial confirmation that she had been in a common law marriage with her husband at the time of his death. She based this assertion on the belief that a common law marriage existed after they had lived together for seven years. The trial court confirmed that a common-law marriage existed based on the facts that the parties had the legal capacity to marry, mutually agreed that they were married, conducted themselves as if they were married, and held themselves out to the public as a married couple. They lived together; paid all of their utilities under the same name; made joint charitable contributions; had a joint savings account; owned multiple pieces of real estate together; were listed as each other's beneficiaries on IRA accounts; called each other "husband" and "wife" at family events and in social settings; and attended medical appointments as a married couple. The plaintiff appealed due to the U.S. Supreme Court's ruling in *Commissioner v. Estate of Bosch*, 387 U.S. 456 (U.S. 1967), where the Supreme Court held that the IRS and federal courts are not bound by lower state court decisions. The Kansas Supreme Court considered all the evidence presented at the trial court and affirmed the trial court's findings.

***In re Estate of Gray, No. 124,085, 2023 Kan. App. Unpub. LEXIS 153 (Kan. Ct. App. Mar. 31, 2023)***

In this case, the decedent died unexpectedly and intestate. He had been living in Kansas for several months where he was taking care of his mother's affairs following her death. Prior to that, he had lived in Texas for five years with a woman he was not married to. He had inherited a home in Kansas from his mother and his death certificate listed his Kansas home as his residence and his marital status as "never married." The decedent did have a biological son. Eight months after his death, the woman in Texas executed a deed purporting to sell the home to another man in Texas and his company, claiming to have been the decedent's surviving common-law wife and sole heir. Her name was not on the title to the house. The sale price was indicated as \$10,000 while a private appraiser had valued the home at \$30,000. Five months later, the court-appointed administrator sold the home for \$30,000, subject to the probate court's approval. The administrator also filed a motion with the probate court to set aside the prior deed as invalid because the woman had no legal interest in the home.

At an evidentiary hearing, no witnesses were aware that the decedent was married at the time of death. The decedent's son did not believe that his father was married and testified that another woman who was purportedly his father's girlfriend sent him money periodically. While the woman alleging to be the decedent's common-law wife produced letters the decedent had written to her as his "wife" and received mail in her name at their Texas residence, they never had a formal wedding ceremony even though she claimed that they had planned to get married when he returned from Kansas. She also had a life insurance policy that named her daughter as the primary beneficiary and



the decedent (designated as her fiancé) as the contingent beneficiary. In addition, shortly before his death, the decedent opened a bank account in his name only and designated the pay-on-death beneficiary as the administrator of his mother's estate. He also listed his Kansas house as his home address for the account. The couple also never filed joint tax returns, and he was not on the title to her Texas house.

The trial court determined that there was no common-law marriage, and that the administrator had the authority to sell the decedent's home. The trial court also found that the buyer was not a bona fide purchaser and that even if he were, the sale had to be first authorized by the probate court and a title company had so informed the buyer.

The appellate court affirmed on all points. The couple did not have any present agreement to marry – a required element of a common-law marriage in both Texas and Kansas. The appellate court noted that a present agreement meant an intent to *be* married, rather than an intent to *get* married. The appellate court also pointed out that Kansas law (K.S.A. §59-2305(b)) requires that a private sale of a decedent's real estate must be 75 percent or more of the appraised value. As such, the sale for one-third of the appraised value was impermissible.

## Conclusion

Common-law married is recognized by statute in some states (CO, IA, KS, MT, NH, SC, TX and UT), is recognized by caselaw in RI and OK, and is grandfathered in other states if it was established before a certain date (PA, OH, IN, GA, FL, AL). However, the requirements for legally establishing a common-law marriage differ among the states that recognize the concept. In any event, the cases discussed above point out that not formalizing the marital relationship can lead to substantial legal issues and disrupt what might otherwise have been a desired disposition of property at death.

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