

# Common Law Marriage

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## ✓ For Income Tax Purposes:

Under Iowa Code for Revenue and Finance<sup>1</sup>, common law marriage in Iowa is legal for the purposes of filing income taxes (Administrative Rule, Chapter 39 [701]) and property tax exemptions (Administrative Rule, Chapter 73 [701]).

### Iowans may claim common law marriage status if :

- a present intent of both parties freely given to become married exists;
- both parties publicly declare themselves as common law married;
- the parties have lived together continuously and consummated the marriage (no special time limit, however); and
- both parties are legally capable of entering into a marriage relationship; that is, both are of legal age and neither is legally married to someone else at the time.

## ✓ For Birth Certificate Purposes:

For the purposes of establishing a birth certificate, however, hospital staff should avoid suggesting common law status for the mother's marital status. It is preferred that the parent enter 'No,' not married, and complete a paternity affidavit. The marital status does not appear on any part of the legal certificate that is issued as a certified copy, nor is that particular piece of information available for open viewing at the county registrar's office. Marital status is required by law to establish the birth certificate and in order to enter the legal husband's information, then used for statistics only thereafter.

Permit the parents to use the common law status only as a last resort if they strenuously object to the above. In such cases, enter 'Yes' to the marital status question on the birth worksheet. In addition, make a notation that the parents indicate 'common law' and have the informant initial and date the notation.

## ✓ For Marriage Certificate Purposes:

Only legally solemnized marriage ceremonies per the Code of Iowa, chapter 595, are registered as an Iowa vital event. Such marriages permit the parties to legally change their surname through the marriage certificate. Common law marriages are not registered in the Iowa vital records system.

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<sup>1</sup> **Adm. Rule 701—73.25 (425) Common law marriage.** A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are husband and wife, (c) continuous cohabitation together as husband and wife (this means consummation of the marriage), and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage. This rule is intended to implement Iowa Code section 425.17 [Homestead Tax Credits and Reimbursement: Definitions].