Common-Law Marriage in Texas

Debunking two typical myths.

BY **REBECCA ROWAN**

It seems the average Texan believes certain myths and misinformation when it comes to common-law marriage in our state. To set the record straight, this article debunks two of the most typical myths about common-law marriage.

There Is No Magic Length of Time to Become Common-Law Married

Despite the myth, seven or five or three years of living together does not create a common-law marriage. No durational requirement establishes a common-law marriage. Rather, to prove the existence of a common-law marriage, both parties must:

(1) Agree that they are married;
(2) Live together as husband and wife; and
(3) "Hold out" to others that they are married (*see* Texas Family Code § 2.401(a)(2)).

All three conditions must exist simultaneously to establish a valid common-law marriage. Additionally, in the state of Texas, you must have the capacity to enter into the marriage. This means both parties must be at least 18, unrelated, and not currently married to someone else.

In deciding whether a common-law marriage exists, courts in Texas review the facts on a case-by-case basis. It is not unusual to see a flurry of summary judgment motions being filed when common-law marriage is at issue.

Proving a common-law marriage depends on the factual circumstances of each case. While the co-habitation requirement is straightforward, establishing the other two requirements can be a challenge. To prove an agreement of marriage, Texas caselaw states there must be evidence establishing a present, immediate, and permanent intent between the parties to have a marital relationship. An agreement to get married in the future is insufficient to establish an agreement of marriage. As such, if two people are engaged, then they cannot be common-law married.

The requirement that each party must "hold out" to others as married simply means the parties must represent to others that they are married. Texas caselaw states that the purpose of this requirement is to ensure that there is no "secret" common-law marriage. While spoken words alone can fulfill this requirement, actions and conduct by each person are also examined. For example, introducing each other as spouses, wearing rings on ring fingers, or signing credit applications as a married couple could separately qualify as "holding out" to others as married. Filing joint tax returns, adding someone to the "family" country club membership, and even the address on Christmas card envelopes can come into play. Oftentimes, the evidence that supports the "holding out" element also supports an agreement to be married.

There Is No "Common-Law Divorce"

Common-law marriage is not a loophole to avoiding divorce. Once a common-law marriage is established, it is treated just the same as if it were a ceremonial marriage. Thus, there is no "common-law divorce." A common-law marriage must be terminated with either a standard divorce suit (or annulment) or by the death of one of the parties. A common-law marriage does not magically dissipate if the parties physically separate.

However, even when a couple satisfies all the requirements of a common-law marriage, the parties may still not be permitted to file for divorce. There is a rebuttable presumption that no marriage exists unless a suit is commenced to prove the marriage before the second anniversary of the parties' separation. As such, do not delay in seeking a divorce if separated from a common-law spouse.

Common-law marriage can be a tricky concept for some, and it is certainly something to be aware of if living with a significant other. **TBJ**

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RE: "THE POWER OF WORDS," JULY 2019, P. 498

Thanks for writing this excellent piece. The courtrooms of Texas will be more literate if your bar association members all read it!

LEE POLLOCK
Trustee and Advisor to the Board
The International Churchill Society
Washington, D.C.

RE: "DEVELOPING TALENT," JULY 2019, P. 510

I feel that the article "Developing Talent: Why are women attorneys leaving the practice of law at a point when they should be advancing in their careers?" by Belinda May Arambula misses a vital and important view on this question.

Many of us are not leaving law—we are leaving the *traditional* practice of law. There is a fundamental difference. I practiced in the firm setting for 14 years before calling it quits. My leaving had nothing to do with the reasons Ms. Arambula set forth in her article for why women leave. I left because I finally accepted that I did not enjoy private practice at all.

I ended up transitioning—as many women do—to working for the government. I even took a pay cut and lost some benefits. Yet, I'm still practicing. I am employed as an attorney and am required to maintain my bar membership for my job. So, when I read in the article that I am considered part of "[t]he remainder [who] obtain employment in government, nonprofit, or other professions" and am therefore no longer considered to be practicing, I was more than a little disappointed.

Some of this falls squarely on the American Bar Association that apparently considers women in the courts (i.e., judges), corporations, or private firms—the *traditional practice* areas—to be the only ones "practicing" law. Yet, some also falls on anyone else who defines practicing law so narrowly.

There are numerous reasons why women leave private practice and work for the government or a nonprofit. Most oftentimes, it is directly related to the lighter work load, the freedom to enjoy the intellectual practice of the law without the drudgery of billing and client relations, and the job security. I also think the failure of law schools to teach actual legal skills and business management means that many women who want to hang out their own shingle feel compelled to start off with a firm to get grounded and ultimately get so jaded by the practice and the politics that they throw up their hands and leave.

The ultimate problem is that the traditional practice model requires those who participate to give almost more of themselves than possible and for many women, that price is simply too steep!

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Author's Response:

Your response and decision to leave a private practice and transition to government work is consistent with what the statistics show: There is a grand exodus from where women start their legal practice to where they later transition to. If the choice is as you say for "lighter workloads and the freedom to enjoy the intellectual practice of law without the drudgery of billing and client relations" I am not sure that private firms can address those concerns as they do seem inherent in the modern practice. However, if women are leaving for other reasons that I articulated such as lack of mentorship or the absence of alternative schedules, perhaps there is room for upper management to make accommodations in an effort to keep those who desire to remain in private practice regardless of, or in some instances because of, the workload and client relations.

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