



Cohabitation

©2009 eNotes.com, Inc. or its Licensors. Please see [copyright information](#) at the end of this document.

- [Background](#)
- [Unmarried Cohabitation Compared with Marriage](#)
- [Recognition of Domestic Partners](#)
- [Common Law Marriages](#)
- [Contracts Between Unmarried Cohabitants](#)
- [State and Local Provisions Regarding Cohabitation](#)
- [Additional Resources](#)
- [Organizations](#)

Background

The law has not traditionally looked favorably upon individuals living together outside marriage. However, the law in this area has changed considerably in the past 40 years, and [COHABITATION](#) has increased dramatically. In 1970, about 530,000 couples reportedly lived together outside marriage. This number increased to 1.6 million in 1980, 2.9 million in 1990, 4.2 million in 1998, and 5.5 million in 2000.

In some respects, unmarried cohabitation can be beneficial from a legal standpoint. Unmarried partners may define the terms of their relationship without being bound by marriage laws that can restrict the marriage relationship. When a relationship ends, unmarried cohabitants need not follow strict procedures to [DISSOLVE](#) the living arrangement. Moreover, unmarried couples can avoid the so-called "marriage tax" in the Internal Revenue Code that provides a greater tax rate for unmarried couples than it does for two unmarried individuals (notwithstanding efforts to eliminate this [PENALTY](#)).

On the other hand, unmarried cohabitants do not enjoy the same rights as married individuals, particularly with respect to property acquired during a relationship. Marital property laws do not apply to unmarried couples, even in long-term relationships. Moreover, laws regarding distribution of property of one spouse to another at death do not apply to unmarried couples. Children of unmarried couples have traditionally not been afforded the same rights as children of married couples, though most of these laws have now been revised to avoid unfairness towards offspring.

A fairly recent trend among both heterosexual and homosexual couples who live together is to enter into contracts that provide rights to both parties that are similar to rights enjoyed by married couples. In fact, many [FAMILY LAW](#) experts now recommend that unmarried cohabitants enter into such arrangements. Further changes in the laws may also afford greater rights to unmarried partners who live together. However, such arrangements may be invalid in some states, particularly where the contract is based on the sexual relationship of the parties.

Unmarried Cohabitation Compared with Marriage

Family laws related to marriage simply do not apply to unmarried couples. More specifically, marriage creates a legal status between two individuals that gives rise to certain rights to both parties and to the union

Encyclopedia of Everyday Law: Cohabitation

generally. Unmarried cohabitants do not enjoy this status and do not enjoy many of the rights afforded to married couples. Thus, if a couple is married for two years, and a spouse dies, the other spouse is most likely entitled to receive property, insurance benefits, death benefits, etc., from the other spouse's estate. If an unmarried couple lives together for 20 years, and one partner dies, the other is not guaranteed any property or benefits.

Though many groups support legal reforms providing protection to unmarried cohabitants that would be analogous to laws governing marriage, very few such laws exist today. Unmarried cohabitants need to know what laws do exist in their state and cities and know what their options are regarding contractual agreements that may provide themselves rights that are analogous to marital rights.

Criminal Statutes

Laws prohibiting cohabitation and sexual relations outside marriage were very common until about the 1970s. Though most of these laws have been repealed or are no longer enforced, they still exist in some state statutes. Eight states still have laws prohibiting cohabitation, which is usually defined as two individuals living together as husband and wife without being legally married. Nine states prohibit fornication, which is usually defined as consensual sexual intercourse outside marriage. More than 15 states prohibit [SODOMY](#), which includes any "unnatural" sexual activity, such as anal or oral sex. Several of these statutes apply specifically to homosexual activity.

While most of these criminal laws are clearly antiquated, they are sometimes enforced. In the United States Supreme Court case of *Bowers v. Hardwick* in 1986, the court upheld the enforcement of a criminal [STATUTE](#) prohibiting sodomy between two homosexual men. Criminal statutes proscribing private sexual activity do not violate the federal constitution under *Bowers*, though some state courts have held that similar statutes are unconstitutional under the relevant state constitutions.

Legal Status and Discrimination

A person living as an unmarried cohabitant with another might face some form of [DISCRIMINATION](#). For example, an employer may expressly forbid employees from living together outside marriage and may terminate the employment of an employee who does cohabit with someone else outside marriage. Such discrimination in employment is not generally forbidden, either under federal law or under the laws of most states. Some state cases have, however, upheld the rights of individuals' cohabiting outside wedlock.

Acquisition of Property

Marital and [COMMUNITY PROPERTY](#) laws govern the ownership of property acquired during a marriage. The characterization of property acquired by unmarried cohabitants is less clear. Some property acquired by unmarried couples may be owned jointly, but it may be difficult to divide such property when the relationship ends. Similarly, if one partner has debt problems, a [CREDITOR](#) may seek to attach property owned jointly by both partners as if the partner owing the debt solely owned the property. Problems such as these are even more complicated if one partner dies without a will, since the surviving partner has no right to the other partner's property unless the property is devised to the surviving partner.

Children

Children born out of wedlock have not traditionally enjoyed the same legal protections as children born in wedlock. Such children were historically referred to as "bastards" in a legal context. Though many restrictions on illegitimate children have been repealed, legitimate (or legitimated) children still enjoy some rights that frustrate illegitimate children. This discrepancy is particularly clear with respect to [INHERITANCE](#). In most

states, a child born in wedlock does not need to establish [PATERNITY](#) to recover from the father. However, a child born out of wedlock generally must establish paternity before he or she can recover from the father.

Adoption

State laws have traditionally prevented unmarried couples from adopting children. Though some states have begun permitting unmarried couples to adopt, these couples still face difficulties. Married couples, on the other hand, are permitted to adopt and are usually preferred over unmarried individuals.

Eligibility for Benefits

Recent changes of policy by insurance companies permit unmarried couples to purchase life insurance policies on the life of the other partner or jointly purchase homeowners' insurance on a house owned by both partners. However, an unmarried couple will often have more trouble jointly obtaining automobile insurance covering an automobile owned by both partners. Similarly, unmarried couples continue to face serious problems with respect to health insurance family coverage paid or co-paid by an employer. A recent trend among some states, municipalities, and private employers is to extend benefits to registered "domestic partners."

Recognition of Domestic Partners

Several states and municipalities have adopted a system whereby unmarried cohabitants (heterosexual or homosexual) may register as "domestic partners." Other states and municipalities permit domestic partners to recover benefits. These classifications provide some rights that are analogous to marital rights, though these rights are certainly limited. The greatest benefit in registering as domestic partners is that each partner enjoys insurance coverage, family leave, and retirement benefits similar to married couples, though these rights are considerably more restricted than rights afforded to married couples. However, these rights are not generally recognized outside the [JURISDICTION](#) that permits registration of domestic partners.

Common Law Marriages

A minority of states continues to recognize [COMMON LAW](#), or informal, marriages. Such a marriage requires more than mere cohabitation between a man and a woman. The couple generally must agree to enter into a marital arrangement, must cohabit with one another, and must hold themselves out as husband and wife to others. Parties that enter into such marriages enjoy the same rights as couples married in a formal ceremony, including rights related to insurance and other benefits, property distribution on [DISSOLUTION](#) of the marriage, and distribution of property upon the death of one spouse.

Proof that the marriage exists is often the most difficult aspect of a common law marriage, and this issue often arises after the relationship has ended either in death or [DIVORCE](#). For example, the question of whether a common law marriage exists may arise after one of the partners in a relationship dies and the other seeks to prove that the partners were informally married to receive property through the other partner's estate. Similarly, when a relationship ends, a partner may seek to prove that an informal marriage exists in order to seek property distribution under marital or community property laws.

Though a minority of states recognizes common law marriages, all states will recognize the validity of a common law marriage if it is recognized in the state where the parties reside, agreed to be married, and hold themselves out as husband and wife. Common law marriages apply only to partners who are members of the

opposite sex.

Contracts Between Unmarried Cohabitants

Validity

Unmarried cohabitants can provide rights to one another that are analogous to rights granted to married couples by entering into a contract or contracts with one another. The validity of such agreements was the subject of the well-publicized case of *Marvin v. Marvin* in the California Supreme Court. In this case, the court held that an express or implied agreement between a couple living together outside wedlock to share income in consideration of companionship could be legally enforceable. The majority of states now recognizes these agreements, though many require that the agreement be in writing. Only a small number of recent cases have held that contracts between unmarried cohabitants are unenforceable.

When an agreement expressly includes consideration of sexual services provided by one of the parties, a court is more likely to find the contract unenforceable. For example, if one partner agrees to share his or her income in return for the other partner's love and companionship, a court may find that the contract implicates meretricious sexual activity and refuses to enforce the contract. Proving an oral agreement or an implied contract between unmarried cohabitants is also difficult, and several courts have refused to recognize such an agreement due to lack of proof.

Provisions of Written Cohabitation Agreements

Written cohabitation agreements usually involve financial and property arrangements. Parties can provide arrangements analogous to community or marital property laws or can provide other arrangements that are more favorable to the couple. Parties should consult with a lawyer prior to entering into such an agreement to ensure that the provisions are enforceable.

Wills and Durable Power of Attorney for Health Care

Nothing prevents unmarried cohabitants from leaving estate property to the other partner upon death in a will. Alternatively, [INTESTATE SUCCESSION](#) laws may not provide that any of the property will pass from one cohabitant to another, since [INTESTACY](#) laws are limited to marital and other family relationships. A fellow cohabitant might be able to get a share of the intestate's estate by arguing that the parties entered into a financial or property-sharing arrangement, though such claims are often difficult to prove. A will is generally the best method to ensure that a partner's property is given to the person he or she designates.

Another complicated situation can arise if one co-habitant is disabled and requires a [GUARDIAN](#). To ensure that one partner is named guardian or is otherwise able to make decisions for the other partner, the parties can prepare a document providing durable [POWER OF ATTORNEY](#) to the other partner. Under this arrangement, the person granted durable power of attorney could make healthcare decisions for the disabled person. Similarly, a party can draft a [LIVING WILL](#) (also called a healthcare directive) that dictates the wishes of the party regarding life-prolonging treatments.

State and Local Provisions Regarding Cohabitation

Sixteen states recognize common law marriages, though several of these states have repealed their laws and only recognize these marriages entered into prior to a certain date. Several states and municipalities now

Encyclopedia of Everyday Law: Cohabitation

recognize domestic relations rights, providing a registry, extension of benefits, or both. Unmarried cohabitants should check with the state and local laws in their jurisdictions to determine what rights may be available to them.

ALABAMA: The state recognizes common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

ALASKA: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

ARIZONA: The state does not recognize common law marriages. The cities of Phoenix and Tucson extend benefits to domestic partners.

ARKANSAS: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

CALIFORNIA: The state does not recognize common law marriages. The following cities and counties extend benefits to domestic partners: Alameda County, Berkeley, Laguna Beach, Los Angeles, Los Angeles County, Marin County, Oakland, Petaluma, Sacramento, San Diego, San Francisco, San Francisco County, San Mateo County, Santa Cruz, Santa Cruz County, Ventura County, West Hollywood. The following cities and counties offer domestic partner registries: Arcata, Berkeley, Cathedral City, Davis, Laguna Beach, Long Beach, Los Angeles, Los Angeles County, Oakland, Palo Alto, Sacramento, San Francisco, Santa Barbara County, and West Hollywood.

COLORADO: The state recognizes common law marriages. The city of Denver extends benefits to domestic partners and provides a domestic partner registry.

CONNECTICUT: The state does not recognize common law marriages. The state extends benefits to domestic partners. The city of Hartford extends benefits to domestic partners and provides a domestic partner registry.

DELAWARE: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

FLORIDA: The state does not recognize common law marriages. Broward County extends benefits to domestic partners and provides a domestic partner registry. The city of West Palm Beach extends benefits to domestic partners.

GEORGIA: The state recognizes common law marriages entered into before January 1, 1997. The city of Atlanta extends benefits to domestic partners and provides a domestic partner registry.

HAWAII: The state does not recognize common law marriages. The state extends benefits to domestic partners and provides a domestic partner registry.

IDAHO: The state recognizes common law marriages entered into before January 1, 1996. Neither the state nor any municipality in the state provides specific rights to domestic partners.

ILLINOIS: The state does not recognize common law marriages. The city of Chicago and Cook County extend benefits to domestic partners. The city of Oak Park extends benefits to domestic partners and provides a domestic partner registry.

Encyclopedia of Everyday Law: Cohabitation

INDIANA: The state does not recognize common law marriages. The city of Bloomington extends benefits to domestic partners.

IOWA: The state recognizes common law marriages. The city of Iowa City extends benefits to domestic partners and provides a domestic partner registry.

KANSAS: The state recognizes common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

KENTUCKY: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

LOUISIANA: The state does not recognize common law marriages. The city of New Orleans extends benefits to domestic partners.

MAINE: The state does not recognize common law marriages. The city of Portland extends benefits to domestic partners and provides a domestic partner registry.

MARYLAND: The state does not recognize common law marriages. The cities of Baltimore and Takoma Park and Montgomery County extend benefits to domestic partners.

MASSACHUSETTS: The state does not recognize common law marriages. The following cities extend benefits to domestic partners: Boston, Brewster, Brookline, Nantucket, Provincetown, and Springfield. The following cities provide domestic partner registries: Boston, Brewster, Brookline, Cambridge, Nantucket, and Northampton.

MICHIGAN: The state does not recognize common law marriages. The cities of Kalamazoo, Washtenaw County, and Wayne County extend benefits to domestic partners. The cities of Ann Arbor and East Lansing extend benefits to domestic partners and provide a domestic partner registry.

MINNESOTA: The state does not recognize common law marriages. The city of Minneapolis extends benefits to domestic partners and provides a domestic partner registry.

MISSISSIPPI: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

MISSOURI: The state does not recognize common law marriages. The city of St. Louis provides a domestic partner registry.

MONTANA: The state recognizes common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

NEBRASKA: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

NEVADA: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

NEW HAMPSHIRE: The state recognizes common law marriages but only for inheritance purposes. Neither the state nor any municipality in the state provides specific rights to domestic partners.

Encyclopedia of Everyday Law: Cohabitation

NEW JERSEY: The state does not recognize common law marriages. The city of Delaware extends benefits to domestic partners.

NEW MEXICO: The state does not recognize common law marriages. The city of Albuquerque extends benefits to domestic partners.

NEW YORK: The state does not recognize common law marriages. The following cities and counties extend benefits to domestic partners: Brighton, Eastchester, Ithaca, New York City, Rochester, and Westchester County. The following cities provide domestic partner registries: Albany, Ithaca, New York City, and Rochester.

NORTH CAROLINA: The state does not recognize common law marriages. The city of Chapel Hill extends benefits to domestic partners and provides a domestic partner registry. The city of Carrboro also provides a domestic partner registry.

NORTH DAKOTA: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

OHIO: The state recognizes common law marriages entered into prior to October 10, 1991. Neither the state nor any municipality in the state provides specific rights to domestic partners.

OKLAHOMA: The state recognizes common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

OREGON: The state does not recognize common law marriages. The state extends benefits to domestic partners. The city of Portland and Multnomah County extend benefits to domestic partners. The city of Ashland provides a domestic partner registry.

PENNSYLVANIA: The state recognizes common law marriages. The city of Philadelphia extends benefits to domestic partners.

RHODE ISLAND: The state recognizes common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

SOUTH CAROLINA: The state recognizes common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

TENNESSEE: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

TEXAS: The state recognizes common law marriages. Travis County extends benefits to domestic partners.

UTAH: The state recognizes common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

VERMONT: The state is the first to recognize "civil unions," which extends rights to homosexual partners that are similar to rights granted to married couples. The state also extends benefits to domestic partners. The state does not recognize common law marriages.

VIRGINIA: The state does not recognize common law marriages. Arlington County extends benefits to domestic partners.

Encyclopedia of Everyday Law: Cohabitation

WASHINGTON: The state does not recognize common law marriages. The state extends benefits to domestic partners. The cities of Olympia and Tumwater and King County extend benefits to domestic partners. The city of Lacey provides a domestic partner registry. The city of Seattle extends benefits to domestic partners and provides a domestic partner registry.

WEST VIRGINIA: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

WISCONSIN: The state does not recognize common law marriages. The city of Madison extends benefits to domestic partners and provides a domestic partner registry. The city of Sherwood Hills Village and Dane County extend benefits to domestic relations. The city of Milwaukee provides a domestic partner registry.

WYOMING: The state does not recognize common law marriages. Neither the state nor any municipality in the state provides specific rights to domestic partners.

Additional Resources

Cohabitation: Law, Practice, and Precedent, Second Edition. Wood, Helen, Denzil Lush, and David Bishop, 2001.

Family Law in a Nutshell. Krause, Harry D., West Publishing, 1995.

The Living Together Kit: A Legal Guide to Unmarried Couples, Ninth Edition. Ihara, Toni, Ralph Warner and Frederick Hertz, Nolo Press, 1999.

Understanding Family Law, Second Edition. DeWitt, John, Gregory, Peter N. Swisher, and Sheryl L. Wolf, LexisNexis, 2001.

Unmarried Couples and the Law. Douthwaite, Graham, Allen Smith Company, 1979.

Organizations

Alternatives to Marriage Project

P.O. Box 991010

Boston, MA 02199 USA

Phone: (781) 793-0296

Fax: (781) 394-6625

URL: <http://www.unmarried.org/>

E-Mail: atmp@unmarried.org

American Association for Single People (AASP)

415 E. Harvard Street

Suite 204

Glendale, CA 91205 USA

Phone: (818) 242-5100

URL: <http://www.singlesrights.com>

E-Mail: unmarried@earthlink.net

Primary Contact: Thomas F. Coleman, Executive Director

Focus on the Family

Colorado Springs, CO 80995 USA

Phone: (719) 531-3328

Fax: (719) 531-3424

URL: <http://www.family.org/>

Lambda Legal Defense and Education Fund

120 Wall Street, Suite 1500

New York, NY 10005-3904 USA

Phone: (212) 809-8585

Fax: (212) 809-0055

URL: <http://www.lambdalegal.org>

Copyright Notice

©2009 eNotes.com, Inc.

ALL RIGHTS RESERVED.

No part of this work covered by the copyright hereon may be reproduced or used in any form or by any means graphic, electronic, or mechanical, including photocopying, recording, taping, Web distribution or information storage retrieval systems without the written permission of the publisher.

For complete copyright information, please see the online version of this work:

<http://www.enotes.com/everyday-law-encyclopedia>