

September 5, 2016: How common-law marriage grew

There is an old saying: “If it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck.” In some states, this same principle applies to marriages. That is, if a couple live together, act like a married couple, and tell others that they are married, they may indeed be married even if they never went through a traditional marriage ceremony. This relationship is known as a “common law” marriage.

“Common law” refers to time-honored principles and rules that evolved over time and became engrained in society even though there may not be a specific law addressing the matter. These principles are then incorporated into our legal system and upheld by our courts until a legislature passes a statute that overrules a common law or a court finds that a common law violates the federal or a state constitution.

Many of our common laws came from England. Hundreds of years ago, England was primarily a rural country. Travel was difficult and time-consuming. As a result, people often lived in small isolated villages where religious or civil magistrates who normally conducted marriages were seldom available. Over time, couples that lived in such communities and conducted themselves as married couples were acknowledged to be legally married despite the fact they never participated in a formal marriage ceremony.

Many English common laws, including common law marriages, were carried over to the American colonies and, after gaining independence from England, became a legal tradition within the United States itself. However, there is a unique twist to the development of common laws in the U.S. Because our Constitution reserves to the states those powers not specifically given the federal government, each state has developed its own unique common laws. Common law traditions can greatly vary from state to state.

This is the situation with common law marriages. Some states have a tradition of recognizing such an institution, while others do not. And, a number of states that once recognized common law marriages have subsequently passed laws abolishing the tradition.

Today, only nine states and the District of Columbia maintain the tradition of recognizing common law marriages. They include Alabama, Colorado, Iowa, Kansas, Montana, Rhode Island, South Carolina, Texas, and Utah. Twenty-seven states that once permitted common law marriages no longer do, and 13 states have never recognized such an institution.

There is a common myth that couples that live together for seven years automatically become a common law couple. Interestingly, no state that recognizes common law marriages actually requires a couple to reside together for a specific

length of time. Rather, courts usually look at the following three factors to determine if a common law marriage exists:

- 1) Has the couple lived together for a lengthy period of time?
- 2) Has the couple told friends and family that they are married?
- 3) Has the couple demonstrated an intention to be married?

As I've learned over the years, many people here believe that Guam recognizes common law marriages. With some frequency, when I ask if a client is married to his or her partner, the client responds, "Yes, she (or he) is my common law."

Next week, we'll explore whether Guam actually does acknowledge common law marriages.