

OFFICE OF THE ATTORNEY GENERAL



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Honorable Paul Thomas
Probate Judge, DeKalb County
Fort Payne, Alabama 35967

Marriage - Marriage
Licenses - Probate
Judges

No certificate of
common-law marriage
exists under Alabama
law.

Dear Mr. Thomas:

This opinion is issued in response to your request
for an opinion of the Attorney General.

QUESTION

Does a certificate of common-law
marriage exist under the laws of
Alabama and, if it does not exist,
what can people present to various
federal agencies to establish a
common-law marriage and thus
establish eligibility for benefit
programs such as Social Security,
military benefits, etc.?

FACTS AND ANALYSIS

No such document as a "certificate of common-law
marriage" exists under the laws of Alabama to prove the
existence of a common-law marriage.

Alabama recognizes a common-law marriage as a
valid marriage. Campbell v. Gullott, 43 Ala. 57
(1869). Herd v. Herd, 194 Ala. 613, 69 So. 885 (1915).

The elements of a valid common-law marriage in Alabama are: (1) capacity; (2) present agreement or mutual consent to enter into the marriage relationship, permanent and exclusive of all others; (3) public recognition of the existence of the marriage; and (4) cohabitation or mutual assumption openly of marital duties and obligations. Adams v. Boan, 559 So. 2d 1084 (Ala. 1990). Once the man and woman have established a present agreement to enter into the marriage relationship, permanent and exclusive of all others, a common-law marriage is equal in validity with a ceremonial marriage. Adams, supra.

Although a common-law marriage springs into existence at the time of the concurrence of the four elements enumerated above, the existence or non-existence of the marriage remains a question of fact and law which might be disputed by reasonable men until adjudicated by a court of competent jurisdiction. For most benefit programs such as Social Security, the provider can make a factual determination of the existence of a common-law marriage for the purpose of establishing eligibility without resorting to litigation. Each provider must be consulted to obtain the procedures necessary to present the facts of the marriage in order to establish its validity for purposes of that particular program.

CONCLUSION

No certificate of common-law marriage exists under the laws of Alabama that can be used to prove a common-law marriage.

I hope that this opinion satisfactorily addressed your question.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division