



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 22, 2001

Ms. Ann McCarson
Victim Advocate
Easley Police Department
Post Office Box 466
Easley, SC 29641

Dear Ms. McCarson:

Your letter of February 1, 2001 asking for clarification regarding common law marriage was referred to me for response.

By its very nature, the concept of common law marriage derives from case law and therefore has no fixed elements that a statute would provide. A relationship is deemed a common law marriage as a legal conclusion, based on particular factual circumstances. Most cases on this topic stem from estate disputes arising from the death of one partner, subsequent marriages or more closely to the factual situation you pose, division of property. Therefore, marital status under common law is usually determined by a judge after parties bring these types of disputes before the court. Parties often need to establish a common law marriage, or lack thereof, in order to ascertain their relative rights and obligations.

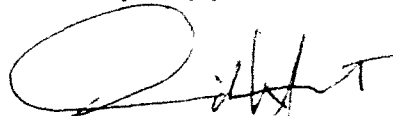
Most cases declaring or denying a common law union demonstrate that the intention of the parties primarily determines whether a particular relationship has common law marital status. See Cathcart v. Cathcart, 307 S.C. 322, 414 S.E.2d 811 (Ct. App. 1992); Ex Parte Blizzard, 185 S.C. 131, 193 S.E.2d (1937). There needs to be evidence of "a mutual agreement between the parties to assume toward each other the relation of husband and wife." Johnson v. Johnson, 235 S.C. 542, 550, 112 S.E.2d 647, 651 (1960). Intent of the parties is derived not only from how they present their relationship to the community at large but can also be inferred from factors such as: cohabitation; use of surnames; entering into contracts together; joint checking accounts; joint filing of tax returns; sharing medical bills and personal expenses; referring to each other with the title of "husband" or "wife;" and long term social acceptance of the couple as married. See Barker v. Baker, 330 S.C. 361, 499 S.E.2d 503 (Ct. App. 1998); Owens v. Owens, 320 S.C. 543, 466 S.E.2d 373 (Ct. App. 1996); Cathcart, 307 S.C. at 324, 414 S.E.2d at 812.

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The situation you pose in your correspondence demonstrates a common misconception about common law marital status. There is no precise fixed point in time that a common law marriage comes into existence. Campbell v. Christian, 235 S.C. 102, 105, 110 S.E.2d 1, 4 (1959). As Campbell further illustrates, “[i]llicit relationship, though accompanied by cohabitation, is not transformed into the legal state of marriage by mere lapse of time.” *Id.* Therefore, the couple in your scenario may live together for years, but if they do not do those things necessary to demonstrate their **intent** to enter into a marital relationship, they are not married under the common law. Furthermore, as stated previously, any assessment of their marital status and their rights therein, is usually determined by a court of law. Without commenting on any particular case, a perception of a couple’s marital status, without more, may not be dispositive of all issues regarding appropriate possession, use or treatment of personal property.

I hope the information provided herein proves helpful to you. This letter is an informal opinion. It has been written by a designated Assistant Attorney General and expresses the opinion of the writer as to the specific questions asked. It has not been scrutinized by the Attorney General nor published in a manner consistent with a formal opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Avant". The signature is fluid and cursive, with a large initial "D" and a stylized "A".

David K. Avant
Assistant Attorney General