

Common Law Marriage and Rights for Unmarried Couples

Many people believe that if a couple lives together long enough and acts as a married couple, they eventually are recognized as being legally married - even without a marriage ceremony or marriage license. This is called a common law marriage. Contrary to this popular belief, in the U.S., most states, including Wisconsin, have stopped recognizing common law marriage, and only a few still allow it today.

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Does Wisconsin Recognize Common Law Marriage?

No, Wisconsin stopped recognizing common law marriages in 1917. The state requires couples to go through a formal legal process to be married, including getting a marriage license and having an official ceremony. (Wis. Stat. § 765.16). See our article [Requirements for a Valid Marriage](#) for more information.

This means that even if you have lived together for many years and consider yourselves a married couple, Wisconsin law does not recognize your relationship as a legal marriage. However, there are still important legal issues to consider if you're in a long-term, unmarried relationship in Wisconsin.

What If We Were Common Law Married in Another State?

While Wisconsin does not allow people to create a new common law marriage, the state does recognize valid common law marriages from other states. This means that if you and your partner were legally considered married under common law in a different state, Wisconsin will recognize that marriage if you move here.

Caution: If your common law marriage from out-of-state is recognized after you've moved to Wisconsin, you'll be treated legally the same way that traditional married couples are treated. This means that if you do not want to be married anymore, you must file for a divorce or legal separation.

Some states that still recognize common law marriage include:

- Colorado
- District of Columbia
- Iowa
- Kansas
- Montana
- New Hampshire - for inheritance purposes only
- Oklahoma
- Rhode Island
- Texas
- Utah

States that no longer allow common law marriage, but do recognize common law marriages that were formed in that state before a certain date, include:

- Alabama - if created before Jan. 1, 2017
- Georgia - if created before Jan. 1, 1997
- Idaho - if created before Jan.1, 1996
- Ohio - if created before October 10, 1991
- Pennsylvania - if created before Jan. 1, 2005
- South Carolina - if created before July 24, 2019

If you were common law married in one of these states before moving to Wisconsin, you may still have the legal rights of a married couple.

What Rights Do Unmarried Couples Have in Wisconsin?

Even though Wisconsin does not recognize common law marriage, unmarried couples still have some legal options to protect their rights.

Property Ownership During Cohabitation

In Wisconsin, assets and income a partner obtains during cohabitation are generally treated as that partner's individual property unless stated otherwise. This is the opposite of how most property obtained during marriage is treated - as marital property.

If you and your partner buy a home together, make sure both names are on the title. Otherwise, the person whose name is on the title owns the house, and the other partner may have no legal claim to the house if the relationship ends.

If you and your partner decide to open a joint bank account, both of you will have equal access to all of the money in the account, regardless who put the money into the account. While this can simplify paying shared expenses, you should be aware of some potential downsides:

- **Breakup Challenges:** If the relationship ends, it can be complicated to divide assets in a joint account. Depending on the situation, one partner may end up owing the other money or having to take legal action after the breakup to recover the money.
- **Credit Impact:** A joint account can affect both partners' credit scores, as any negative action by one partner can affect the other.

Who Gets What After a Breakup?

One of the biggest challenges after a breakup is figuring out who owns what. Some things, like cars or bank accounts, have titles or ownership papers. But what about furniture, appliances, or other shared belongings? Without a legal divorce process, there's no easy way to decide who gets what. If one person takes more than their fair share, the other person can take legal action. There are two main ways to do this:

1. Unjust Enrichment Claims
2. Partition Actions

These legal actions, unlike a divorce, do not address child custody, placement, or support. Furthermore, spousal support (aka alimony) is only available in Wisconsin if

the couple was officially married. You cannot get spousal support based upon periods of living together while unmarried.

Unjust Enrichment Claims

In Wisconsin, unjust enrichment is one way for an unmarried partner to claim their fair share after a breakup. The idea is: if one person unfairly benefits from shared property, they should pay back the other person.

For example:

- If one partner takes all the furniture the couple bought together, the other partner may be able to demand payment for their share.
- If one partner stayed home to raise kids or support the other partner's career, they may be able to claim part of the money or assets gained during the relationship.

To win an unjust enrichment case, the person filing the claim must prove:

1. They helped contribute to the money, property, or assets the couple built together.
2. Their partner took an unfair share of those assets after the breakup.

If successful, the court can order the partner who took too much to pay back the other person so that the split is fair.

Partition Actions: Splitting Property with Ownership Papers

For things like cars or houses, both names may be on the legal documents. This means one partner cannot just take the property without the other's consent. One option is for a partner to buy the other's share of the property. But if they can't agree on this, they can ask the court for a partition action. In this process, the property is sold at a public auction and the partners split the money from the sale. While this ensures fairness, neither person ends up with the property and they often

get less money than if they had sold it privately.

Cohabitation Agreements

To try to avoid court, couples who live together can create a cohabitation agreement—a legal contract that outlines how finances, property, and living arrangements will be handled during the relationship and at the end of the relationship. This is similar to a pre- or post- nuptial agreement, and can help avoid disputes over shared expenses and property.

Some issues that might be covered in a cohabitation agreement include:

- Property
 - If the couple has a home or plans to buy a home: who owns the home, who is responsible for mortgage payments, and what happens if the home is sold.
 - What property is owned individually and what is jointly owned.
 - How shared property will be divided if the relationship ends.
 - How debts will be divided if the relationship ends
- Finances
 - How rent, utilities, groceries, and other household bills will be paid.
 - Whether one partner will provide financial support to the other in case of separation.
 - How joint bank accounts and credit cards will be managed.
- Dependents
 - If the couple has children or plans to have children: custody, placement, and child support plans if the relationship ends.
 - Who will have ownership of pets if the relationship ends.
- Other
 - How much time each partner has to move out if the relationship ends.
 - How disputes will be resolved, such as through mediation or arbitration.

Medical and End-of-Life Decisions

Unlike married couples, unmarried partners do not automatically have the right to make medical decisions for each other. To give your partner this right, you must sign a [Power of Attorney](#) for Health Care. This legal document allows your partner to

make medical choices for you if you become unable to do so.

Inheritance Rights

If one unmarried partner passes away without a will, the surviving partner will not inherit their stuff—instead everything will go to family members. To make sure your partner receives your property, you need to write a will.

There is some property that you can arrange to go to your partner without a will. For instance, if you and your partner open a joint bank account with “rights of survivorship”, the account will automatically transfer completely to the surviving partner when the other passes away. The funds in the account are not under the control of the probate court but are instead transferred directly to the surviving account holder. By default, most joint bank accounts have rights of survivorship, but check with your bank to be sure.

Similarly, if you buy a house together and are listed as “joint tenants with a right of survivorship” on the title, then the house will automatically pass to the surviving partner without a will. There are some downsides to this. With joint tenancy, each partner has equal ownership of the house - if the house is sold, you will each have the right to half the proceeds. With a joint tenancy, that cannot be changed even if you would prefer a different distribution of ownership (such as 90% ownership for the partner who pays the mortgage, and 10% for the other partner).

Warning: Estate planning, whether you are married or unmarried, can be complicated. This website does not provide legal advice, and we encourage you to see an estate planning attorney about your particular situation.

Child Custody and Support

A child born to a married couple is presumed by law to be the child of both spouses. Legal fatherhood is less clear when a child’s parents are unmarried. If an unmarried couple has children together, the father must establish paternity (legal fatherhood) in order to have parental rights. See our articles [How to Establish Paternity](#) and [Effects of Establishing Paternity](#) for more information. Once paternity is established, Wisconsin courts will treat child custody, placement, and support issues the same way for unmarried couples as they would for couples who had children while married.

Conclusion

Even though Wisconsin does not recognize common law marriage, unmarried couples can still protect their rights through legal agreements and careful planning. If you're in a long-term relationship but don't plan to marry, consider creating legal documents like a cohabitation agreement, will, and health-care power of attorney to protect yourself and your partner.

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