

ESTATE PLANNER'S CHECK LIST FOR COMMON LAW MARRIAGE

A preponderance of evidence is required to prove common-law marriage.

i. Types of evidence to consider:

1. Joint tax returns (filing married)
 - a. Direct statement of marriage
 - b. Signature block has a perjury warning
2. Joint bank or investment accounts
 - a. How account titled
 - b. Signature cards or other authorization forms
3. Joint credit cards
 - a. Contract/Application
 - b. Name listed on card
 - c. Authorized users forms list relationship to owner
4. Joint debts
 - a. Mortgages
 - i. Home ownership and living together
 - ii. Refinancing and Closing documents that state marital status
 - b. Contracts that state marital status
 - i. Cell phone account
 - ii. Utility or home phone applications and invoices
 - iii. Automobile Lease or purchase agreements
 - iv. Real Estate Contracts
 1. Listing agreements
 2. Offer or sale agreement
 - v. Home contracts
 1. Cleaning and maintenance
 2. Yard service
 - c. Loans
 - i. Contract/Application
 - ii. Other documents that state marital status or list dependents
5. Children who carry the surname of the man
 - a. Birth certificate, adoption or name change
 - b. Statement of witnesses
 - c. Cards and letters referring to relationship ("dear Dad")
 - d. School emergency contact information
6. Although there is no set period of time, duration may be factually significant
7. Use of surname by wife
 - a. Not as compelling, but helpful
 - b. Use of Mr./ Mrs. Or Husband/Wife

8. Insurance

- a. Contracts for insurance
 - i. Many statements of marital status
 - ii. Emergency contact person listed
 - iii. Who is covered by insurance
- b. Forms submitted to Employer

9. Types of Insurance

- a. Health Insurance
- b. Life insurance
- c. Car insurance
- d. Homeowners Insurance

10. Medical records that name spouse

- a. Emergency information forms
- b. Intake information sheets
- c. Medical records, Doctor notes

11. Other documents

- a. Wills or Testamentary instruments
- b. Powers of Attorney
- c. Trusts
- d. Dissolution Decrees
- e. Letters or Correspondences
- f. Police reports
- g. Public records
- h. Titles and records of property ownership

. Witness Statements

- a. Doctor or medical providers
- b. Family Attorney
- c. Real Estate agent
- d. Accountant/Tax preparer
- e. Employer
- f. Personal Banker
- g. Teacher or contact person a the child's school
- h. Neighbors
- i. Family and Friends