

## COMMON LAW SPOUSAL ISSUES

The State of Alabama recognizes the institution of common law marriage that existed as of December 31, 2016. Effective January 1, 2017, the institution of common law marriage was abolished. *Ala. Code* § 30-1-20 (1975).

For a valid common law marriage to exist in Alabama the following elements are present: (1) capacity; (2) present, mutual agreement to permanently enter into the marriage relationship to the exclusion of all other relationships; and (3) public recognition of the relationship as a marriage and public assumption of marital duties and cohabitation. *Boswell v. Boswell*, 497 So.2d 479 (Ala. 1986). “No words of assent are required; present intention is inferred from cohabitation and public recognition.” *Walton v. Walton*, 409 So.2d 858 (Ala.Civ.App. 1982). “An agreement may be inferred from all of the surrounding circumstances.” *Sloss-Sheffield Steel and Iron Company v. Watford*, 245 Ala. 425 (1944). “The parties must consummate the marriage; that is, they must live in such a way as to gain public recognition that they are living as husband and wife.” *Piel v. Brown*, 361 So.2d 90 (Ala. 1978).

Whether the essential elements of a common law marriage exist is a question of fact. *Johnson v. Johnson*, 270 Ala. 587 (1960); *Arrow Trucking Lines v. Robinson*, 507 So.2d 1332 (Ala.Civ.App. 1987). Common law marriage claims are to be closely scrutinized. The proponent of the purported common law marriage must establish the elements of a common law marriage by clear and convincing evidence. *Baker v. Townsend*, 484 So. 2d 1097 (Ala.Civ.App. 1986).

“Clear and convincing evidence” is more than a preponderance of the evidence. Evidence that is clear and convincing requires a stronger showing than mere substantial evidence. *Reid v. Flournoy*, 600 So.2d 1024 (Ala.Civ.App. 1992). Clear and convincing evidence is evidence which convinces the trier of fact that a proposition is highly probable as distinguished from more probable than not, which is the preponderance of the evidence standard. Clear and convincing evidence is a higher standard of persuasion than required in many other types of civil legal matters. Clear and convincing evidence has been defined as “evidence when weighed against evidence and opposition will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim, and a high probability as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of evidence or the substantial weight of the evidence, but less than a beyond the reasonable doubt.” See *Ala. Code* § 6-11-20(b)(4) (1975)<sup>1</sup> and Schroeder & Hoffman, *Alabama Evidence* § 3.31 (3d. Ed. 2011). It should be noted however, that clear and convincing proof doesn’t necessarily mean that there is no undisputed proof. *Wambles v. Coppage*, 333 So.2d 829 (Ala.Civ.App. 1976) and *M. S. B. v. State*, 651 So.2d 69 (Ala.Crim.App. 1994).

---

<sup>1</sup>The most concise statutory statement of the definition of “clear and convincing evidence”. The Court recognizes that *Ala. Code* § 6-11-20 is not directly on point with the issues in this cause.

There are many different factually based points that can support a legal conclusion of common law marriage. These include:

1. The educational and professional/employment background of the decedent.
2. The decedent's reputation of paying attention to details - in legal matters, as well as personal matters.
3. The decedent's reputation of being an honest person who wouldn't perjure himself to any governmental entity with regard to legal - business matters.
4. Did the decedent and the alleged surviving spouse maintain different surnames?
5. Did the decedent and the alleged surviving spouse own any real property jointly?
6. Did the decedent and the alleged surviving spouse own any personal property jointly?
7. Did the decedent and the alleged surviving spouse maintain separate bank accounts and did either one have access to the other one's accounts or the funds therein?
8. Did the decedent and the alleged surviving spouse maintain separate credit card accounts and was either one of them authorized to use the other's credit card accounts?
9. Did the decedent and the alleged surviving spouse keep their personal finances separate?
10. Did the decedent provide hospitalization insurance coverage for the alleged surviving spouse?
11. Did the decedent and alleged surviving spouse exchange or wear the traditional engagement and/or wedding band?
12. How the decedent and the alleged surviving spouse reported to the United States and the State of Alabama his/her marital status on income tax returns, under the penalty of perjury?
13. Did the decedent and alleged surviving spouse share with their co-workers or friends that they were married?
14. How did the decedent or alleged surviving spouse reported their marital status in real estate deeds, real estate mortgages, insurance policy documents, and bank document.

15. Did the decedent execute a last will and testament, power of attorney instrument or any other legal document wherein he/she identifies the alleged surviving spouse as the decedent's spouse?
16. Did the alleged surviving spouse execute a last will and testament that reflects the decedent as his/her spouse?
17. Did the alleged surviving spouse have retirement and/or bank accounts? If so, who are the designated beneficiaries upon the death of the alleged surviving spouse?
18. Did the decedent and/or alleged surviving spouse own any motor vehicles. If so, who were these vehicles titled?
19. Did the decedent maintain a safety deposit box? If so, was the alleged surviving spouse identified as to said safety deposit box?
20. Did the decedent and/or the alleged surviving spouse maintain separate mailing addresses (post office box address) to which their mail was sent? Did the decedent or surviving spouse use this post office box address for mail?
21. Was there a marriage or wedding announcement by the decedent and the alleged surviving spouse at any point in time announcing that they were married to each other?
22. Was there a celebratory event (such as a party, dance, tea, dinner, etc.) to celebrate the alleged marriage relationship between the decedent and the alleged surviving spouse?
23. Did the decedent's children and the alleged surviving spouse (and their respective grandchildren) interact together as one family or any semblance of a family or a "blended" family?

The *best* evidence of the marital relationship are documents executed by the decedent and the alleged surviving spouse. Parties are encouraged to provide such documentation to the Court. Parties should expect the Court to inquire as the existence of such documents and copies of said documentation being furnished to the Court.